



**University of Dundee**

## **Looking into the Policy, Legal and Institutional Framework of the New EU Energy Platform**

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## Oil, Gas & Energy Law Intelligence

### Looking into the Policy, Legal and Institutional Framework of the New EU Energy Platform by E. Bonafé and S. Suci

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# Looking into the Policy, Legal and Institutional Framework of the New EU Energy Platform

*Ernesto Bonafé and Simina Suciú<sup>1</sup>*

## I. Introduction

The REPowerEU Plan<sup>2</sup> to rapidly reduce dependence on Russian fossil fuels seems to bear fruits. Before the war in Ukraine, the EU imported 155 billion cubic metres (bcm) per year from Russia.<sup>3</sup> In 2022, 61 bcm was imported from Russia<sup>4</sup> and by mid-February 2023 that number decreased to 500 million cubic metres.<sup>5</sup> Russian gas has amounted to around 8% of all pipeline gas imported in the EU since September 2022.<sup>6</sup> Moreover, the price of European natural gas has fallen from €300 /MWh in August 2022 to below €50 /MWh in February 2023.<sup>7</sup>

Despite the progress towards reducing dependency from Russia and stabilising energy markets, the EU could still face a 30 bcm shortfall in gas it needs to fuel its economy and sufficiently refill storage sites during summer of 2023. Therefore, the biggest challenge on energy security is yet to come in the winter of 2023-2024, according to the IEA.<sup>8</sup>

The EU Energy Platform, which became the Energy AggregateEU Platform (the “Platform”), was set up in the context of the REPowerEU Plan to address high gas prices and diversify energy imports away from Russia.<sup>9</sup> It has received growing attention since its proposal and establishment, both endorsing and questioning its added value.<sup>10</sup>

The Platform was presented by the European Commission (the “Commission”) as a new coordination mechanism based on three pillars: pooling energy demand from member states, negotiating energy supply deals with international partners and coordinating infrastructure use

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<sup>2</sup> Commission Communication “REPowerEU Plan” COM (2022) 230 final, 18.5.2022.

<sup>3</sup> 522 million cubic meters in week six of 2023 through Turkstream and Ukraine transit pipelines as per European natural gas imports dataset published on 15/02/2023, Bruegel, <https://www.bruegel.org/dataset/european-natural-gas-imports>.

<sup>4</sup> Commission, ‘Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU’, 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

<sup>5</sup> 522 million cubic meters in week six of 2023 through Turkstream and Ukraine transit pipelines as per European natural gas imports dataset published on 15/02/2023, Bruegel, <https://www.bruegel.org/dataset/european-natural-gas-imports>.

<sup>6</sup> Commission, ‘Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU’, 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

<sup>7</sup> Financial Times ‘European natural gas prices fall to 18-month low as energy crisis ebbs’ 17 February 2023; the article is illustrated with data from Benchmark TTF contract.

<sup>8</sup> IEA, ‘Never Too Early to Prepare for Next Winter: Europe’s Gas Balance for 2023-2024’, <https://www.iea.org/reports/never-too-early-to-prepare-for-next-winter>.

<sup>9</sup> Commission, EU Energy Platform, [https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform\\_en](https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en).

<sup>10</sup> (1) Alex Barnes, Senior Visiting Research Fellow, ‘EU Commission proposal for joint gas purchasing, price caps and collective allocation of gas: an assessment’, OIES Paper: NG 176, December 2022. (2) Boltz, W., K.D. Borchardt, T. Deschuyteneer, J. Pisani-Ferry, L. Hancher, F. Lévêque, B. McWilliams, A Ockenfels, S. Tagliapietra and G. Zachmann (2022) ‘How to make the EU Energy Platform an effective emergency tool’, Policy Contribution 10/2022, Bruegel.

within the EU. This paper approaches each of the three pillars from a policy, legal and institutional perspective in an attempt to better understand the Platform's role in the broader context of the REPowerEU and the European Green Deal.<sup>11</sup>

## II. The Establishment of the New Platform

As part of the REPowerEU Plan, the new Platform aims to leverage EU's economic and political weight in seeking alternative supplies of liquefied natural gas (LNG) in the short term, but also pipeline gas as well as renewable gases, including hydrogen and biomethane, in the longer term. The purpose of the Platform is to facilitate pooling demand from member states, articulate joint purchasing of energy, mostly natural gas (LNG and pipeline gas) and coordinate the efficient use of infrastructure.<sup>12</sup> The Platform was created as an emergency and temporary measure that should be up and running by spring 2023. A first call for companies to jointly buy gas was launched by the European Commission on 25 April 2023.<sup>13</sup> The main piece of legislation depicting what the Platform entails, its purpose and how it is designed to function, is the Joint Purchasing Regulation published in December 2022.<sup>14</sup>

On the basis of the principle of EU solidarity, the Platform will allow member states and third countries such as Ukraine, Moldova, Georgia and the Western Balkans to obtain additional gas supplies following the decrease of Russian flows into Europe.<sup>15</sup> More specifically, through the Platform, the EU aims to: (i) have a leverage in the negotiation of better prices through collective purchasing power, (ii) make it less likely that member states outbid each other, (iii) increase transparency and the buying position of smaller and locked in countries that do not have experience in contracting LNG, and (iv) directly support member states heavily dependent on Russian gas.<sup>16</sup>

Following the plan to contract, through procurement, a third-party service provider from existing energy exchanges or capacity allocation platforms,<sup>17</sup> in January 2023, the Commission contracted Prisma as the third-party service provider, which is the largest capacity booking platform for gas transmission services in the EU.<sup>18</sup> The Platform's activities can be divided in two steps.<sup>19</sup>

First, Prisma is to aggregate gas demand from the companies in terms of volume, delivery time, duration and place. Then, the aggregated demand is to be published (ensuring confidentiality) and matched -through tendering - against offers made by the supply side. Following the

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<sup>11</sup> Commission Communication 'The European Green Deal' COM (2019) 640 final, 11.12.2019.

<sup>12</sup> Commission, EU Energy Platform, [https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform\\_en](https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en); Commission, 'Energy Security: Commission hosts first meeting of EU Energy Purchase Platform to secure supply of gas, LNG and hydrogen', 8 April 2022, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2387](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2387).

<sup>13</sup> Commission "EU Energy Platform: Commission launches first call for companies to jointly buy gas" Press release, 25 April 2023.

<sup>14</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, proposed by the Commission on 18.10.2022 and final version published in OJ L335/1 on 29.12.2022.

<sup>15</sup> Joint Purchasing Regulation, paras. 4, 7, 23.

<sup>16</sup> Draft Joint Purchasing Regulation issued by the Commission on 18.10.2022, pages 2 and 4. 2

<sup>17</sup> *Ibidem*, section 2.2.1. The requirements needed to be met by the third-party service provider are provided in Article 6 of the Joint Purchasing Regulation.

<sup>18</sup> Reuters, 'EU hires firm to launch countries' joint gas buying', 30 January 2023, [https://www.reuters.com/business/energy/eu-hires-firm-launch-countries-joint-gas-buying-2023-01-30/#:~:text=BRUSSELS%2C%20Jan%2030%20\(Reuters\),gas%20buying%20among%20EU%20countries](https://www.reuters.com/business/energy/eu-hires-firm-launch-countries-joint-gas-buying-2023-01-30/#:~:text=BRUSSELS%2C%20Jan%2030%20(Reuters),gas%20buying%20among%20EU%20countries).

<sup>19</sup> Joint Purchasing Regulation, paras. 8, 12-13.

aggregation exercise, companies are not obliged to purchase the gas,<sup>20</sup> namely to enter into purchase/sales agreements with suppliers.

Second, companies that participated in the aggregation process, can become parties to supply agreements. It was initially proposed that they could constitute gas purchasing consortium/a in order to enter into single or multi- contracts with suppliers that participated in the matching process, as discussed in the first meeting of the ad hoc Steering Board of the Platform in January 2023.<sup>21</sup> However, it appears that there was no appetite for such a consortium/a option in the market and, instead, two other models were proposed: the Agent-on-behalf, which means that a company is entrusted to act as an agent for providing services to other companies appointing it (such as reservation of a slot in an LNG terminal), and the Central Buyer option in which buyers would ask other companies to act on their behalf as a Central Buyer, which would purchase gas for them.<sup>22</sup> The period until when companies can exit the obligation to contract the gas is not publicly available.

Moreover, the companies can “*coordinate conditions of the purchase, such as volumes, gas price, delivery points and time*”<sup>23</sup> subject to competition rules, which brings us to the next section.

### III. Demand Pooling from an EU Competition Law Perspective

Pooling gas demand from member states and preparing for joint purchasing of commodities is the task being implemented by the Platform first. “Pooling” is the watchword describing the manner in which the Platform operates, and it is relevant from an energy regulation and antitrust law perspective. The potential watering down of the application of competition law to the Platform’s *modus operandi*, through the Joint Purchasing Regulation, is worth being noted here.

Commercialisation, sales, production and marketing activities through joint mechanisms were already assessed from an antitrust perspective in some cases, which were settled or in which fines were imposed by the Commission. If price-fixing or market-partitioning is not present in such joint activities, usually the main antitrust concern is the disclosure or exchange of commercial/competitive sensitive information or even “*an increase of commonality of costs, which may facilitate collusion and soften competition.*”<sup>24</sup>

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<sup>20</sup> Draft Joint Purchasing Regulation issued by the Commission on 18.10.2022, page 3.

<sup>21</sup> Commission, ‘Joint gas purchasing: The ad hoc Steering Board of the EU Energy Platform meets for the first time’, 16 January 2023, [https://energy.ec.europa.eu/news/joint-gas-purchasing-ad-hoc-steering-board-eu-energy-platform-meets-first-time-2023-01-16\\_en](https://energy.ec.europa.eu/news/joint-gas-purchasing-ad-hoc-steering-board-eu-energy-platform-meets-first-time-2023-01-16_en).

<sup>22</sup> Commission speech, ‘Press remarks by Vice-President Šefčovič following the second formal meeting of the Steering Board of the EU Energy Platform’, 2 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1347](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1347).

<sup>23</sup> Joint Purchasing Regulation, para. 32.

<sup>24</sup> Lars Kjølbye, ‘EU Energy Law, vol. II EU competition law and energy markets, 4<sup>th</sup> edition, Part 3 – Agreements, decision, concerted practices and abuse dominance, Chapter 2 – Horizontal Agreements’, section 4.3, page 193. Other concerns related to joint purchasing agreements may include: restrictive effects on competition on the upstream purchasing and/or downstream selling markets, anti-competitive foreclosure of other possible purchasers, exclusion of certain companies from the markets in the shape of collective boycotts, collusive outcomes (where exchanges reduce the uncertainty about the actions of competitors). There are two competition law angles relevant to be considered for the demand aggregation and joint purchasing: antitrust and State aid rules – this section of the article focuses on the former.

Focusing on the Platform, besides the monitoring of demand aggregation, the Commission offered to support the initially proposed consortium/a by rapidly adopting decisions or providing informal antitrust guidance on joint purchasing aspects.<sup>25</sup> This more flexible and accommodating approach may be justified given the exceptional nature of the ongoing energy crisis, in line with the Commission's practice during the COVID pandemic.<sup>26</sup>

Therefore, crisis situations, like the current energy crisis, seem to trigger a more relaxed approach towards the application of EU antitrust rules to companies' cooperation that otherwise would be scrutinised in more detail.<sup>27</sup> Indeed, a coordination at upstream wholesale level of the energy market is now necessary, and it has to be temporary and proportionate. Yet several questions arise. For instance, it remains to be seen what antitrust safeguards the Commission will expect from the companies when issuing such rapid decisions or providing informal antitrust guidance on joint purchasing aspects; whether companies will be willing to approach the Commission for more legal certainty; and how alignment within the consortium/a will work when more legal certainty is requested. Irrespective of the 'shield' offered by the Commission, companies involved in the Platform still need to conduct their own antitrust assessments.<sup>28</sup>

Joint purchasing arrangements can trigger efficiency gains in the form of substantial economic benefits, sharing risks, saving costs, increasing investments, pooling know-how, as well as addressing shortages and disruptions in supply chains or reducing dependency on sellers. Zooming in: How will the balancing exercise between the efficiency gains and the antitrust concerns in relation to joint purchasing arrangements look like? Will the pro-competitive effects of joint purchasing automatically outweigh the restrictions of competition created by the same only because of this exceptional situation? Will the efficiency of decreased prices be passed-on to consumers in the short and medium-term term and how will that be verified?

When explaining the compatibility of the demand aggregation and joint purchasing activities with antitrust rules, the Commission focuses on certain antitrust elements.<sup>29</sup> For instance, access to and flows of information are key for demand aggregation, transparency needs to be limited in the demand aggregation process and it should not translate into wider transparency on commercial sensitive information pertaining to individual companies.

However, more questions arise: How will demand aggregation play out? How will sensitive information be collated, checked and aggregated? What IT security measures and controls will be put in place to protect the confidentiality and sensitivity of the information shared with the third-party service provider and how it will be ensured that companies do not receive each

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<sup>25</sup> The Commission provides high-level guidance on the conditions to be met for issuing such informal guidance in its *Notice relating to novel or unresolved questions concerning Articles 101 and 102 of the Treaty on the Functioning of the European Union that arise in individual cases (guidance letters)*, (OJ C381/9, on 4.10.2022).

<sup>26</sup> See for example the 'Communication from the Commission on the Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak' (2020/C 116 I/02), (OJ C 116 I/7, 8.4.2020).

<sup>27</sup> Or the application is adjusted to the markets reality as suggested by the President of Bundeskartellamt in relation to building LNG terminals and the sugar producers – Mlex, ICN Competition, Growth and Recovery Workshop, ICN, Online, 25 October 2022.

<sup>28</sup> Based on Regulation 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (currently, Articles 101 and 102 TFEU, published in OJ L 1, 4.1.2003, p. 1.), companies are required to ensure that their practices and agreements are in line with EU antitrust rules (the 'self-assessment regime'), without notifying the agreements to the Commission for exceptions.

<sup>29</sup> Detailed in the Draft Joint Purchasing Regulation issued by the Commission.

other's sensitive information? It is essential that companies have access only to the aggregated information and their own individualised data. Will other national energy or competition authorities, besides the Commission (with full access to the data), have access to the Platform? It is expected that all these aspects, or at least some of them, are detailed in the terms of reference or governing documents of the third-party service provider, Prisma, in relation to the Platform.<sup>30</sup>

In addition, based on the *European Commission's Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements*,<sup>31</sup> joint purchasing is less likely to trigger antitrust concerns if the companies involved do not have market power, including a joint market share of less than 15% on each of the purchasing and selling markets. Although this market share threshold may be exceeded in the current circumstances, since the thresholds of energy companies may be "*significant in terms of market shares on a given downstream or related market*".<sup>32</sup> The Commission's justification relies on the fact that: (i) the negotiating power on the buying side needs to increase if one considers the current severe supply constraints and, (ii) in contrast with the total participation in the consortium/a, the representation of companies with high market shares may be limited.

In parallel with the Joint Purchasing Regulation initiative, the Commission has revised its Horizontal Guidelines,<sup>33</sup> which cover, amongst others, the assessment of purchasing agreements, joint venture arrangements and 'pure' information exchanges. Following the extensive feedback received from the market consultation in 2019, the Commission improved in 2022 the assessment of joint purchasing agreements and exchange of information. An updated draft of the Horizontal Guidelines includes clarifications on facilitation of self-antitrust assessments, distinction from nascent buying cartels, an update of by object restrictions (including on sensitive information), guidance on Article 101(3) TFEU, and exchanges stemming from regulatory initiatives. Could the point on exchanges stemming from regulatory initiatives cover energy as well?<sup>34</sup>

By spring 2023, the update of the Horizontal Guidelines is expected to be finalised, which is a good timing for the Platform's operational work: to what extent antitrust assessments under this updated guidance will cascade down into the activities of the Platform or the other way around is a space to watch!

The latest models of cooperation proposed by the Commission, the Agent-on-behalf and Central Buyer, are aimed to replace the model of consortium/a (whether institutionalised as entities with full functionality under EU merger control or not), the latter not being preferred by the market players because of the competition law concerns referred above. The two new

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<sup>30</sup> An innovation of the Joint Purchasing Regulation with relevance on the transparency front is the requirement for companies to notify the Commission and the relevant member state their intention to launch tenders to purchase gas or open negotiations with suppliers from non-EU countries on the purchase of gas with a volume above 5 TWh/year. The reasoning behind this requirement is better coordination to ensure that there is no negative impact on the internal market, on security of supply or on energy solidarity (Article 3 of the Joint Purchase Regulation).

<sup>31</sup> Published in OJ C 11/1 of 14 January 2011.

<sup>32</sup> Draft Joint Purchasing Regulation issued by the Commission, page 12.

<sup>33</sup> Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements under review in March-April 2022 together with the two Horizontal Regulations, [https://competition-policy.ec.europa.eu/public-consultations/2022-hbers\\_en](https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en). The Commission initiated the revision already in 2021.

<sup>34</sup> EC's Overview of Main Proposed Changes and Draft Communication from the EC - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements.

models are aimed to increase competition and ensure that different groups of companies are represented, but competition concerns persist to a certain extent since there is a focal third-party point towards which information flows, besides the Prisma platform. Given that information would not be potentially flowing in multiple directions among members of consortium/a in these new updated models, competition law exposure is decreased. However, most – if not all – of the questions raised above in relation to information sharing, flowing and protection still stand.

Zooming out from the Platform’s modus operandi, another legislative initiative that deserves attention from an EU antitrust law perspective is the new Gas Storage Regulation adopted in June 2022.<sup>35</sup> Beyond the energy regulatory aspects, the activities of filling up gas storages, implementing the burden sharing principle<sup>36</sup> and withdrawing gas from storages should be in line with competition rules. More specifically, these activities cannot amount to strengthening a dominant position, creating windfall gains, increasing arbitrarily storage tariffs increases, and overall distorting market competition beyond what is necessary to achieve considering the goals of the Gas Storage Regulation. All measures taken in this regard should be “*necessary, clearly defined, transparent, proportionate, non-discriminatory and verifiable*”.<sup>37</sup> The Gas Storage Regulation does not provide further insight into these principles, and it will be interesting to see which authorities, energy regulatory authorities or competition watchdogs, may take a leading role on this front.

#### **IV. Engaging with External Energy Partners**

The second pillar of the Platform refers to negotiating energy supply deals with international partners. Imports of Russian natural gas decreased from more than 50% to around 10% towards the end of 2022.<sup>38</sup> As a result, the EU needs to increase gas imports from non-Russian sources, mostly LNG (+50 bcm), but also pipeline gas (+10 bcm or more), while some argue that increased volumes of imported LNG threaten to undermine the decarbonisation efforts.<sup>39</sup> The EU has intended to initiate, reignite and expand international partnerships in line with the external energy engagement strategy.<sup>40</sup> In addition to natural gas imports, the EU plans to import 10 million tonnes of green hydrogen by 2030.

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<sup>35</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173/17 on 30.06.2022).

<sup>36</sup> A Member State without underground gas storage facilities may develop a burden-sharing mechanism with one or more Member States with underground gas storage facilities taking into account certain parameters, *ibidem*, article 6(c) of Gas Storage Regulation.

<sup>37</sup> Gas Storage Regulation, para. 18; Article 6(b)(2) of the amended Security of Supply Regulation.

<sup>38</sup> Yolanda Garcia Mezquita representing the Commission at Europe, Russia & the Great Game of Energy Geopolitics event, 17 November 2022. In January 2019, 51.3% of gas was imported from Russia, while in September 2022, this number decreased to 12.9%, ‘Infographic - Where does the EU’s gas come from?’, Council of the European Union’, <https://www.consilium.europa.eu/en/infographics/eu-gas-supply/>.

<sup>39</sup> Politico, ‘LNG expansion in Europe opposes climate goals, says research’, 8 February 2023, [https://globalenergymonitor.org/wp-content/uploads/2022/12/GEM-EU-LNG-Briefing-2022.pdf](https://www.politico.eu/sponsored-content/lng-expansion-in-europe-opposes-climate-goals-says-research/#:~:text=Researchers%20warn%20the%20doubling%20down,threatens%20to%20derail%20decarbonization%20efforts; Global Energy Monitor, ‘When is enough, enough? The state of play with Europe’s new LNG terminal projects in response to the energy crisis’, December 2022, <a href=).

<sup>40</sup> Joint Communication ‘EU external energy engagement in a changing world’ JOIN(2022) 23 final, 18.5.2022.



The Platform is expected to coordinate and reinforce EU's international outreach to gas partners and markets, including LNG and hydrogen.<sup>41</sup> However, the Platform's role under this second pillar seems yet to be defined. By contrast, member states have been actively seeking their own gas deals with third countries, for instance, Germany with Qatar, Italy with Algeria, and Romania with Azerbaijan.<sup>42</sup> More controversial, from a REPowerEU perspective, is Hungary's agreement with Russia for additional gas shipments on top of the supplies under a long-term deal.<sup>43</sup>

### *1. Imports via Liquefied Natural Gas*

The interest in an EU-US energy cooperation dates back to 2018 with an agreement on additional LNG imports into the EU.<sup>44</sup> One year later, LNG imports increased by 181% (7.9 bcm) and the US became the third LNG supplier to the EU, after Qatar and Nigeria.<sup>45</sup> Although the US seemed to overdeliver LNG to the EU, a new deal was established between the two for the supply of additional 15 bcm of LNG in 2022 and 50 bcm by 2030<sup>46</sup> under the REPowerEU Plan. As reported by the Commission, from the overall 135 bcm of LNG imported from the global market in 2022, 56.4 bcm were imported from the US, which is an additional 34 bcm in comparison with previous years.<sup>47</sup> To offset the use of fossil gas, the parties undertook to reduce the greenhouse gas intensity of all new LNG infrastructure and associated pipelines, to build renewable hydrogen infrastructure and to collaborate to advance the production and use of clean and renewable hydrogen to displace unabated fossil fuels and cut greenhouse gas emissions.<sup>48</sup> In February 2023, the Commission chaired an industrial roundtable in Washington

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<sup>41</sup> Commission, 'Energy Security: Commission hosts first meeting of EU Energy Purchase Platform to secure supply of gas, LNG and hydrogen', Press release, IP/22/2387, 8 April 2022.

<sup>42</sup> Italy has agreed with Algeria to increase energy imports and to build a new pipeline to transport natural gas and hydrogen (Euractiv 'Italy boosts key energy ties with Algeria' 24 January 2023, <https://www.euractiv.com/section/politics/news/italy-boosts-key-energy-ties-with-algeria/>);

Germany signed a 15-year contract for the delivery of LNG from Qatar (Euractiv 'Germany inks first major gas deal with Qatar' 29 November 2022, <https://www.euractiv.com/section/energy/news/germany-inks-first-major-gas-deal-with-qatar/>);

'Romania signs new gas delivery contract with Azerbaijan' 3 February 2023, available at <https://www.euractiv.com/section/politics/news/romania-signs-new-gas-delivery-contract-with-azerbaijan/>).

In the short-term, however, due to the long-term contracts already in place with Asian countries, only a small number of LNG cargoes (10-15%) can be diverted from Qatar to Europe (Financial Times 'Europe at risk of 'much worse' energy crisis next year, warns Qatar' 18 October 2022, <https://www.ft.com/content/96611190-3c09-48b7-8ded-7b2651590f94>).

<sup>43</sup> Euractiv 'Hungary agrees additional Russian gas shipments, oil transit fees' 12 April 2023, available at Hungary agrees additional Russian gas shipments, oil transit fees – EURACTIV.com

<sup>44</sup> Joint U.S.-EU Statement following President Juncker's visit to the White House, Statement of 25 July 2028, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_18\\_4687](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_4687).

<sup>45</sup> EU-U.S. Joint Statement: Liquefied Natural Gas (LNG) imports from the U.S. continue to rise, up by 181%, Statement of 8 March 2019, [https://ec.europa.eu/commission/presscorner/detail/es/IP\\_19\\_1531](https://ec.europa.eu/commission/presscorner/detail/es/IP_19_1531).

<sup>46</sup> Euractiv, 'EU, US strike LNG deal as Europe seeks to ditch Russian gas' 25 March 2022, <https://www.euractiv.com/section/energy/news/eu-us-strike-lng-deal-as-europe-seeks-to-ditch-russian-gas/>.

<sup>47</sup> Commission, 'Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU', 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

<sup>48</sup> Fact Sheet: United States and Commission Announce Task Force to Reduce Europe's Dependence on Russian Fossil Fuels - The White House, 25 March 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/25/fact-sheet-united-states-and-european-commission-announce-task-force-to-reduce-europes-dependence-on-russian-fossil-fuels/>.

bringing together representatives of major European gas companies and US producers and exporters of LNG.<sup>49</sup>

In June 2022, at the East Mediterranean Gas Forum, the EU, Egypt and Israel signed a trilateral Memorandum of Understanding for enhancing their energy cooperation: additional natural gas from Israel, Egypt and other resources aimed to be shipped to the European markets through Egypt's LNG infrastructure.<sup>50</sup> It may take some years to have LNG exports significantly expanded. The MoU also refers to the energy transition: Egypt becoming a regional hub for the production and exporting of renewable energy, as well as promoting a Mediterranean Hydrogen Partnership.<sup>51</sup> In parallel, Egypt signed agreements for green hydrogen and ammonia projects on its Red Sea coast.<sup>52</sup>

Outreaching other parts of the world, Japan and Korea accepted to divert LNG surplus cargoes towards the European market. An EU-Japan Green Alliance focusing on renewables was established in 2021, followed by multiple workshops on the same and LNG in 2022, as well as the signing of a Memorandum of Cooperation on hydrogen at the end of 2022.<sup>53</sup>

Although Canada is one of the world's largest gas producers and the EU's international energy strategy refers to the dedicated working group to look at possible LNG and hydrogen deliveries, it is questionable whether Canada can provide a realistic source of gas for Europe in the immediate future, as it does not have an operating LNG infrastructure. Instead, the EU-Canada workshops are focusing on the production and trade of hydrogen and the support of the development of a global regulatory framework for hydrogen and its derivatives.<sup>54</sup>

The EU international energy strategy contains a wish list by referring to untapped LNG sources (Senegal and Angola) and other potential sources of green hydrogen and other renewable gases (Australia, Chile, India, Kazakhstan, and The Gulf).

## *2. Imports via Natural Gas Pipelines*

Norway has become the first largest oil and gas supplier to the EU, overtaking Russia.<sup>55</sup> While most of the natural gas is delivered through pipelines, Norway also exports LNG – albeit it is a small player in this segment of the market.<sup>56</sup> In 2022, Norway exported 113 bcm, which

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<sup>49</sup> Commission news article 'Joint gas purchasing: Vice-President Sefcovic in the US to advance work with international partners' 13 February 2023. Available at [https://energy.ec.europa.eu/news/joint-gas-purchasing-vice-president-sefcovic-us-advance-work-international-partners-2023-02-13\\_en](https://energy.ec.europa.eu/news/joint-gas-purchasing-vice-president-sefcovic-us-advance-work-international-partners-2023-02-13_en)

<sup>50</sup> EU Egypt Israel Memorandum of Understanding, 17 June 2022, [https://energy.ec.europa.eu/eu-egypt-israel-memorandum-understanding\\_en](https://energy.ec.europa.eu/eu-egypt-israel-memorandum-understanding_en).

<sup>51</sup> EU-Egypt Joint Statement on Climate, Energy and Green Transition, 15 June 2022, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_22\\_3703](https://ec.europa.eu/commission/presscorner/detail/en/statement_22_3703).

<sup>52</sup> Reuters, 'EU, Israel and Egypt sign deal to boost East Med gas exports to Europe', 15 June 2022, <https://www.reuters.com/business/energy/eu-israel-egypt-sign-deal-boost-east-med-gas-exports-europe-2022-06-15/>.

<sup>53</sup> EU-Japan Memorandum of Cooperation on Hydrogen, 2 December 2022, [https://energy.ec.europa.eu/eu-japan-memorandum-cooperation-hydrogen\\_en](https://energy.ec.europa.eu/eu-japan-memorandum-cooperation-hydrogen_en).

<sup>54</sup> EU-Canada cooperation on energy issues, [https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/canada\\_en](https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/canada_en).

<sup>55</sup> Commission, 'Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU', 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

<sup>56</sup> Gisreportsonline, Energy, 'Will Norway turn the energy crisis into opportunity?', 2 August 2022, <https://www.gisreportsonline.com/r/norway-energy-crisis/>.

represents an annual increase of up to 4.5 bcm.<sup>57</sup> The intention is to further increase gas deliveries and develop a cooperation on offshore renewable energy, hydrogen, carbon capture and storage and energy research and development.<sup>58</sup>

Algeria was the third source of piped natural gas supply to the EU before the crisis situation triggered by the war in Ukraine.<sup>59</sup> In a high-level energy dialogue held in Algiers in October 2022, several areas of cooperation were identified: increasing the volumes of Algerian gas available for export to Europe by tapping into new gas fields in cooperation with European companies, reducing fugitive methane emissions and flaring, development of renewable energy and green hydrogen in Algeria for local consumption and for export to Europe.<sup>60</sup>

The EU and Azerbaijan have strengthened their existing energy partnership through the Southern Gas Corridor by signing a Memorandum of Understanding in July 2022. While Azerbaijan was already increasing deliveries of natural gas to the EU (from 8.1 bcm in 2021 to an expected 12 bcm in 2022), the parties committed to double the capacity of the corridor to deliver at least 20 bcm to the EU annually by 2027.<sup>61</sup> The collaboration includes the development of schemes to collect vented, flared and released natural gas and acknowledging the importance of the Global Methane Pledge.<sup>62</sup>

All in all, the pipelines with Norway, Algeria and Azerbaijan are delivering gas to the EU nearly to their maximum capacity. Having memoranda of understanding in place is a positive first step, but in order for the increase of capacity to become a reality, major investments and regulatory alignments, that may take years, are required. Likewise, the promotion of international cooperation between the EU and international partners within an emerging hydrogen economy raises important questions and challenges.<sup>63</sup> As mentioned above, the Platform's specific role and tasks in the area of international outreach are still unclear.

## V. Ensuring an Efficient Use of Energy Infrastructure

The efficient use of the infrastructure is meant to be the third pillar of the Platform, which is to coordinate actions to maximise LNG imports absorption, comply with gas storage obligations, ensure security of gas supply, and help identify additional infrastructure needs suitable for future hydrogen use.<sup>64</sup> Gas storage and gas demand reduction will obviously have an impact

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<sup>57</sup> S&P Global Commodities Insights, 'Norwegian gas supplies to Europe, UK hit 11-month high in December', 10 January 2023, <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/natural-gas/011023-norwegian-gas-supplies-to-europe-uk-hit-11-month-high-in-december#:~:text=For%202022%20as%20a%20whole,biggest%20single%20gas%20supply%20source>.

<sup>58</sup> EU-Norway cooperation and energy partnership, [https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/norway\\_en](https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/norway_en).

<sup>59</sup> European Commission, Energy Neighbourhood-South, [https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/neighbourhood-south\\_en#:~:text=Algeria%20is%20the%20third%20biggest,for%20its%20security%20of%20demand](https://energy.ec.europa.eu/topics/international-cooperation/key-partner-countries-and-regions/neighbourhood-south_en#:~:text=Algeria%20is%20the%20third%20biggest,for%20its%20security%20of%20demand).

<sup>60</sup> Commission, 'Remarks by Commissioner Simson after the EU-Algeria High-Level Energy Dialogue' SPEECH/22/6098, 10 October 2022, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_22\\_6098](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_6098).

<sup>61</sup> EU and Azerbaijan enhance bilateral relations, including energy cooperation, 18 July 2022, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4550](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4550).

<sup>62</sup> Homepage | Global Methane Pledge.

<sup>63</sup> Rainer Quitzow, Clara Mewes, Sonja Thielges, Marina Tsoumpa and Yana Zabanova, 'Building partnerships for an international hydrogen economy. Entry-points for European policy action', FES speech, January 2023, <https://library.fes.de/pdf-files/a-p-b/19921-20230215.pdf>

<sup>64</sup> Commission, 'Energy Security: Commission hosts first meeting of EU Energy Purchase Platform to secure supply of gas, LNG and hydrogen' Press release, IP/22/2387, 8 April 2022.

on the infrastructure use. A clear description of the Platform's tasks under this pillar appears to be necessary, not least because there is a risk of overlapping with existing entities already responsible for the management of gas infrastructures.

### *1. New Legal Provisions to Store and Save Natural Gas*

While gas storage was going to be only incentivised under a legal proposal of December 2021, it became mandatory in a new proposal in March 2022<sup>65</sup> due to the geopolitical situation. Underground gas storage is essentially a fall-back option in case of high demand disruption of supply and, in a normal winter, it covers 25-30% of gas consumed across the EU.<sup>66</sup>

Joint purchasing through the Platform is voluntary in nature except for a 15% mandatory threshold of the storage filling requirement of 90% for the next year, overall 13.5 bcm for all EU, applicable to member states to require from *natural gas undertakings* (which is a term broadly defined and capturing nearly all actors in the gas value chain). 22 member states expressed the interest to aggregate more than 17 bcm for the period of next three years.<sup>67</sup> Although the volumes of natural gas subject to mandatory joint purchasing may seem to be low, this is an important innovation in terms of EU law. Having the legal mechanism for mandatory joint purchasing in place, the threshold can be scaled up with political will if the circumstances so require.

To make sure that storages are properly filled in comparison with previous years, Regulation 2022/1032<sup>68</sup> establishes the following thresholds: (i) minimum 80% gas storage filling target by 1 November 2022 for winter 2022-2023, (ii) minimum storage filling target rising to 90% for the following years and (iii) intermediary filling targets as a trajectory throughout the year. To gain momentum, the Commission provided for a 100% discount on capacity-based transmission tariffs at entry and exit points of storage facilities.<sup>69</sup> The storage filling target for the 2022 winter was already met in August 2022. Two months ahead of the deadline of 1<sup>st</sup> of November, EU's gas storage capacity was 95% full.<sup>70</sup> By March 2023, capacity storage was at 57%, which is double the percentage of filling of the previous year.<sup>71</sup>

Another novelty is the qualification of storage as critical infrastructure and the mandatory certification process that storage system operators ("SSOs") need to go through to ensure there is no undue influence from third countries. Lack of certification amounts to giving up

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<sup>65</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and Regulation (EC) n°715/2009 on conditions for access to natural gas transmission networks, Brussels, 23 March 2022, COM(2022) 135 final, 2022/0090 (COD), [https://eur-lex.europa.eu/resource.html?uri=cellar:2f3116bc-aaa3-11ec-83e1-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2f3116bc-aaa3-11ec-83e1-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>66</sup> Commission 'Questions and Answers on the new EU rules on gas storage' 23 March 2022, [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_22\\_1937](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_1937).

<sup>67</sup> Commission 'Press remarks by Vice-President Šefčovič following the second formal meeting of the Steering Board of the EU Energy Platform' 2 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1347](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1347).

<sup>68</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (OJ L 173/17, 30.6.2022) (the "Gas Storage Regulation").

<sup>69</sup> Commission, Gas storage, [https://energy.ec.europa.eu/topics/energy-security/gas-storage\\_en](https://energy.ec.europa.eu/topics/energy-security/gas-storage_en).

<sup>70</sup> Gas Infrastructure Europe 'EU's underground storage is ready for winter' Press release, 9 November 2022, <https://www.gie.eu/press/eus-underground-gas-storage-is-ready-for-winter/>

<sup>71</sup> Commission 'Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU', 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

ownership or control. This seems to be similar to the unbundling and certification regimes applicable to transmission system operators (TSOs),<sup>72</sup> with the requirement of ownership unbundling if certification does not take place. The criteria to be taken into account by the certifying national authorities have a strategic nature, particularly whether the person controlling or exercising ‘any right’ over the SSO could endanger the following: security of supply or essential security interests; commercial relationships that could negatively impact the filling requirements; international obligations of the Union with the third country; the impossibility of mitigating gas supply risks; and the certification process between the certifying authorities and the Commission.<sup>73</sup>

This suggests that the existing obligations applicable to SSOs regarding access, legal unbundling, capacity allocation mechanisms are not sufficient for breaking the ties with undesired external influence. On top of that, the certification is still required in the situations where SSOs are controlled by TSOs that already went through the unbundling certification process. If there were any links to third countries, the controlling TSOs would have been already assessed under Article 11 of the Third Gas Directive.<sup>74</sup> Therefore, it is questionable whether this regulatory intervention in the market is necessary or it rather creates additional red tape.

The efficient use of gas infrastructure also depends on gas demand. To tackle the risk of gas shortages, the Demand Reduction Regulation sets a 15% decrease of gas demand.<sup>75</sup> Demand was reduced overall more than the threshold, up to 19% (42 bcm of gas) between August 2022-January 2023.<sup>76</sup> The 15% threshold is in principle voluntary in nature and would apply for a limited duration from 1 August 2022 to 31 March 2023 (currently under discussion to be extended for another year), allowing member states to use means of implementation of their own choice. However, the threshold would become mandatory if the Council triggered a ‘Union alert’ on security of supply, following Commission’s proposal ‘*in case of a substantial risk of a severe gas shortage or an exceptionally high gas demand, or if five or more member states that have declared an alert at national level request the [EC] to do so.*’<sup>77</sup>

Storage drew a lot of attention in 2022 and it has contributed to navigate through the 2022-2023 winter, with the help of milder temperatures and gas demand reductions. According to the IEA, next winter will be more difficult, and therefore the measures provided in the (extended) Demand Reduction Regulation could apply, shifting the focus from storing to saving, either voluntarily or mandatory.

## 2. Existing EU Entities Dealing with the Use of Energy Infrastructure

The optimal use of energy infrastructure is an area covered by numerous regulations and competent entities, and where the Platform still needs to find its way. The Platform is to work

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<sup>72</sup> Articles 9-11 of the Gas Storage Regulation, where Article 11 covers companies linked to third parties.

<sup>73</sup> Gas Storage Regulation, Recital 30; Article 3(a)(1)-(13) of the amended Gas Regulation.

<sup>74</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211/94, 14.8.2009).

<sup>75</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, published in (OJ L 206/1, 8.8.2022).

<sup>76</sup> Commission ‘Remarks by Commissioner Simson in the ITRE Committee of the European Parliament on One Year of REPowerEU’ 9 March 2023, [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_1568](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_1568).

<sup>77</sup> Council of the European Union ‘Council adopts regulation on reducing gas demand by 15% this winter’, 5 August 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/08/05/council-adopts-regulation-on-reducing-gas-demand-by-15-this-winter/>.

through regional groups, covering South-East Europe, Central-Eastern Europe (including Ukraine and Moldova), Western Europe, South-Western Europe, the Baltics and Finland. The work of these regional groups is based on action plans endorsed by the Commission and intended to guide the implementation of REPowerEU at regional level.<sup>78</sup>

The Platform is to rely on the assessment of energy infrastructure made by existing regional groups dealing with Projects of Common Interest (“PCIs”)<sup>79</sup> and gathering member states, national regulatory authorities, TSOs, the Commission, ACER, the EU DSO entity and the European Network of Transmission System Operators (ENTSO) for Electricity or for Gas.

According to REPowerEU, a limited additional gas infrastructure, estimated at around €10 billion of investment, would be needed to fully compensate for the loss of Russian gas imports, without locking in fossil fuels or creating stranded assets.<sup>80</sup> The Commission launched a call for proposals for cross-border infrastructure<sup>81</sup> and gave a green light to eight projects, including the expansion of gas storage in Romania and financing studies for an LNG terminal in Poland.<sup>82</sup> On the other hand, the new Regulation 2022/869 TEN-E<sup>83</sup> has introduced a new investment category, smart gas grids, to enable the integration of renewable and low-carbon gases into the grid to replace natural gas.<sup>84</sup>

Public financial support to diversify energy supply away from Russia is also provided under the Recovery and Resilience Facility.<sup>85</sup> The RRF Regulation is the cornerstone of the post-pandemic growth strategy that has been amended to integrate specific REPowerEU chapters in the existing national recovery and resilience plans setting the investment and reform agenda for the coming years. These new chapters aim to improve the energy infrastructure and meet the immediate security of supply needs for oil and gas, including LNG, and as such can benefit from an exemption to the sustainable principle of ‘do no significant harm’.<sup>86</sup> This will build on the infrastructure needs identified by ENTSOG.<sup>87</sup>

In addition to the PCIs regional groups and ENTSOG, there is the Gas Coordination Group (GCG),<sup>88</sup> which monitors the measures to be taken under Regulation 2017/1938 on

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<sup>78</sup> Commission, ‘Bulgaria to set up first regional platform as part of the EU's Energy Purchase Platform’ READ/22/2730, 28 April 2022, Energy: Bulgaria sets up regional platform (europa.eu); and Commission, ‘New regional task force of the EU Energy Platform for Central-Eastern Europe’, 1 July 2022, New regional task force of the EU Energy Platform for Central-Eastern Europe (europa.eu).

<sup>79</sup> Commission, EU Energy Platform, [https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform\\_en](https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en).

<sup>80</sup> Commission ‘REPowerEU: A plan to rapidly reduce dependence on Russian fossil fuels and fast forward the green transition’ Press release, IP/22/3131, 18 May 2022.

<sup>81</sup> DG ENER ‘Commission launches €800 million call for clean energy infrastructure projects to support REPowerEU Plan’, news article, 18 May 2022.

<sup>82</sup> DG ENER ‘Connecting Europe Facility: over € 600 million for energy infrastructure in support of the European Green Deal and REPowerEU’, news announcement, 8 December 2022.

<sup>83</sup> Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure (OJ L 152, 3.6.2022).

<sup>84</sup> [https://energy.ec.europa.eu/topics/infrastructure/projects-common-interest/selection-process\\_en#documents](https://energy.ec.europa.eu/topics/infrastructure/projects-common-interest/selection-process_en#documents).

<sup>85</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L57/17, 18.2.2021).

<sup>86</sup> Commission Communication ‘Recovery and Resilience Facility: Two years on. A unique instrument at the heart of the EU’s green and digital transformation’ COM (2023) 99 final, 21 February 2023.

<sup>87</sup> Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans COM(2022) 231 final, 18.5.2023, [https://commission.europa.eu/system/files/2022-05/com-2022-231\\_en.pdf](https://commission.europa.eu/system/files/2022-05/com-2022-231_en.pdf).

<sup>88</sup> DG Energy, EU Energy Platform, [https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform\\_en](https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en).

safeguarding security of gas supply.<sup>89</sup> GCG members include national authorities, ACER, ENTSOG, the Energy Community, and representatives of industry and consumer associations. The regulation on security of gas supply covers cooperation between EU countries in regional groups in charge of assessing supply risks and develop joint preventive and emergency measures, the facilitation of bi-directional capacity on cross-border interconnections, and the preparation of simulations of gas supply and infrastructure disruption carried out by ENTSOG.

Moreover, the Energy Infrastructure Forum was set up in 2015 in Copenhagen to discuss major issues relating to infrastructure, the internal market and energy policy. It brings together representatives of member states, transmission system operators, national energy regulatory authorities, project promoters, ENTSOG, ACER, the European Investment Bank, EU institutions and NGOs. In June 2022, the Forum stressed the need to adapt the gas grid to the transport of biomethane by 2030 in view of achieving the 35 bcm target set by REPowerEU.<sup>90</sup>

Furthermore, natural gas (and nuclear) is considered sustainable energy sources under the EU taxonomy,<sup>91</sup> which is being challenged by Austria before the EU Court of Justice.<sup>92</sup> The position of member states vis-à-vis natural gas is, however, far from unanimous. For instance, Slovenia announced the construction of a pipeline to transport gas from Algeria, via Italy, to Hungary.<sup>93</sup> Hungary also plans to import Black Sea gas from fields discovered in Romania as well as expanding LNG imports through Croatia. These developments have not prevented Hungary to keep and possibly increase gas imports from Russia. From a REPowerEU perspective, the case of Hungary is a disturbing example of member states' discretionary power on the use of natural gas and related infrastructure.

Natural gas infrastructure will play a critical role in ensuring security of supply in the EU, while the climate objective is to be fulfilled by enabling the transportation of green hydrogen and biogas through the re-purposing gas pipelines. This requires the reconciliation of short- and long-term visions. The role of the Platform in ensuring the efficient use of the infrastructure seems still unclear in terms of gas storage, gas demand, cooperation with existing bodies, and the choice between natural gas and alternative fuels.

## VI. Conclusion

This paper has reviewed the three pillars of the new Platform in the context of the REPowerEU Plan and the European Green Deal. Considering that 15% of the compulsory joint gas purchase threshold applies to the 90% for gas storage capacity, which in a normal winter covers 25-30% of gas consumed across the EU, one may conclude that the joint purchase mechanism, the major added value of the Platform, is to play a rather limited role, even more in a mild winter

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<sup>89</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1–56).

<sup>90</sup> 8th Energy Infrastructure Forum, 2-3 June Copenhagen, Conclusions, [8th\\_energy\\_infrastructure\\_forum\\_-\\_final\\_conclusions.pdf](https://europa.eu/energy-infrastructure-portal/8th-energy-infrastructure-forum-final-conclusions.pdf) (europa.eu)

<sup>91</sup> Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 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 (OJ L 188/1, 15.7.2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1214&from=EN>.

<sup>92</sup> Financial Times, 'Challenges against EU 'green' label for gas and nuclear energy steps up', 10 October 2022, <https://www.ft.com/content/42320458-dfeb-4f5e-9655-aba281cef662>.

<sup>93</sup> Financial Times 'Slovenia plans to build pipeline to Hungary to transport Algerian gas', 5 December 2022, <https://www.ft.com/content/f57f7857-bf7e-4fc5-9cab-091a5aae2de0>.

2022-2023 coupled with an effective voluntary gas demand reduction. Arguably, it is in the challenge of covering the 30 bcm gap in the winter 2023-2024 that it will be possible to better appreciate the role of the Platform and related regulations.

Nevertheless, the Platform's role in the joint purchase mechanism is a major innovation from an EU law perspective. Indeed, the once scarcely-used solidarity principle has now translated into a mandatory purchase mechanism, while the agreed thresholds can be reviewed upwards in the future if necessary. Similarly, the demand-reduction mechanism is an important innovation based on the principle of subsidiarity, especially the EU alert that would make it compulsory, which in practice may amount to energy rationing. In that sense, the Platform could play an advisory role when recommending the European Commission to activate an EU alert.

On pooling gas demand from member states, the paper has raised some practical questions from an EU competition law perspective, even if the whole policy approach is not contested given the circumstances that motivated the establishment of the joint purchasing. Indeed, Article 122 TFEU authorises the Council to decide upon appropriate measures to deal with severe difficulties arising in energy supply. Moreover, joint purchases of gas build on the recent experience of joint purchases of vaccines. Furthermore, the EU's State Aid Temporary Crisis Framework (adopted as a reaction to the war in Ukraine) has become a Temporary Crisis and Transition Framework (as a reaction to the US Inflation Reduction Act). New questions arise whether EU competition and state aid rules are entering an uncharted territory and could be toned down overall.

From an international angle, the European Commission has been approaching external partners, such as the US, Algeria, Israel and Egypt, to diversify gas imports. Similar outreach efforts are undertaken directly by some member states with third countries as exemplified above. There might not be a race, but rather a sense of urgency, leading the Commission and individual member states to reach out external suppliers beyond the limited mandatory amounts under joint purchasing, because ultimately national capitals are responsible for energy security in their countries. Those natural gas agreements, especially those sought by the Commission, include a low-carbon component spanning from renewables to the promotion of green hydrogen, in an attempt to align the needs of energy security with the goals of the European Climate Law.<sup>94</sup> More problematic from a REPowerEU perspective is Hungary's unilateral decision to increase gas supplies from Russia.

It is hard (maybe just early) to appreciate the role of the Platform in the area of efficient management of energy infrastructure. Indeed, there are already numerous competent bodies dealing with energy infrastructure. Despite the little progress on this front, it makes sense to raise some fundamental questions: How to avoid a conflict of interests in advisory bodies where the industry is represented and decisions on the use and construction of new energy infrastructure are to be made? What is the role of natural gas in the energy transition as REPowerEU Plan is unfolding? Is the changing approach to competition and state aid rules to have an impact on the use of natural gas? Will the Platform be equipped to help answer these questions? Less than one year after the Commission announced the setting up of the Platform, it seems that it will focus more on implementing concrete pieces of legislation rather than

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<sup>94</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1119>.



playing a leading role in defining a long-term, consistent and effective energy policy for the EU and its member states.