

COMPLAINT TO THE EUROPEAN OMBUDSMAN

Please note: Complaints to the European Ombudsman are filed via a form on the Ombudsman's website which contain the below questions. This version of the complaint is subject to final edits

What is the matter you complain about? When did you become aware?

1. The subject matter of this complaint is (1) the role of payments by EU Member States for imports of Russian fossil fuels in contributing to the flagrant violations of international law and human rights associated with the war in Ukraine and (2) the consequences for the EU's contribution to climate change of measures taken by the EU to reduce reliance on Russian fossil fuels. It is respectfully suggested that this complaint be read with the attached letter sent by the Complainants to the President of the European Commission on 26 April 2022 ("26 April Letter").

2. The Complainants note the following measures which have been adopted or proposed by the EU or its institutions in relation to the importation of Russian fossil fuels into the EU:

a. On 8 March 2022, the Commission published its first Communication outlining its "REPower EU" plan (hereafter the "First REPowerEU Communication") to make Europe independent of Russian fossil fuels well before 2030, starting with gas, which envisages a reduction in demand for Russian gas by two thirds before the end of 2022.[1]

b. On 7 April 2022, the European Parliament called for "an immediate full embargo on Russian imports of oil, coal, nuclear fuel, and gas".[2]

c. On 8 April 2022, as part of the fifth round of sanctions against Russia, the EU adopted a ban on coal and other solid fuels from Russia as and from August 2022.[3]

d. On 21 April 2022, the Commission launched an initiative entitled "Playing my part" in which it recommended that people voluntarily adopt measures proposed by the International Energy Agency (IEA) which are further discussed below to reduce reliance on Russian fossil fuels.[4]

e. On 4 May 2022, the President of the Commission indicated the EU's intention to "phase out Russian supply of crude oil within six months and refined products by the end of the year".[5]

f. On 18 May 2022, the Commission published a series of documents, including a second Communication on REPowerEU (hereafter the "Second REPowerEU Communication"), which elaborate on the plans outlined in its First REPowerEU Communication.[6]

3. Regarding the role of payments by EU Member States for imports of Russian fossil fuels in funding the war in Ukraine, the Complainants refer to the evidence outlined in the 26 April Letter which demonstrates that payments made by EU Member States for Russian fossil fuels contribute significantly to Russia's ability to pursue its war of aggression against Ukraine. The Complainants further refer to a report of the Centre for Research on Energy and Clean Air published on 27 April 2022 and entitled "Financing Putin's war on Europe: Fossil fuel imports from Russia in the first two months of the invasion" ("CREA Report").[7] According to that report: "63 billion EUR worth of fossil fuels were exported via shipments and pipelines from Russia since the beginning of the invasion. The EU imported 71% of this, worth approximately 44 billion EUR".[8] While the report notes that "[i]mport volumes already have fallen due to self-sanctioning, corporate and national decisions to stop purchases," it explains that recent increases in fossil fuel prices (resulting from the contraction in Russian supply)

“more than offsets the reduction in volumes” of Russian exports.[9] Ben Cahill, Senior Fellow at the Center for Strategic and International Studies has similarly observed: “Russia’s exports are likely to decline in May and June, as the impact of ‘self-sanctioning’ by the oil and gas majors, European refiners, commodity traders, and others takes hold. But high oil prices mean that Russia’s oil and gas revenue is rising rather than falling.”[10]

4. The CREA Report also notes as follows in relation to the steps adopted by the EU so far: “The European Union and many Member States have responded to the crisis by announcing new clean energy and energy efficiency targets, policies and measures. These steps will provide a replacement for Russian fossil fuels over the next few years, but they have essentially no effect on Russia’s fossil fuel export revenue in the short term.”[11]

5. As referred to at paragraph 2(d) above, the IEA has outlined a series of measures available to European governments to reduce reliance on Russian oil and gas in the near-term, such as reducing car use, turning down the heat of buildings or limiting air travel.[12] In an article on these measures entitled “Demand Restraint Measures”, it explains: “Measures can be light-handed, such as encouraging people to drive less, to carpool or to drive more efficiently. Or at the other end of the spectrum, governments can impose oil rationing or allocation, or limit or even outright ban driving.”[13] Other studies have proposed the adoption of more far-reaching demand restraint measures than those proposed by the IEA, such as banning business flights, the use of private jets and internal flights within Europe as well as restricting car use within cities.[14]

6. Regarding the consequences for the EU’s contribution to climate change of measures taken by the EU to reduce reliance on Russian fossil fuels, the Complainants note the following by way of elaboration upon what is outlined in this regard in the 26 April Letter.

7. The REPowerEU plan envisages phasing-out dependence on Russian fossil fuels, “based on two pillars: Diversifying gas supplies, via higher Liquefied Natural Gas (LNG) and pipeline imports from non-Russian suppliers, and larger volumes of biomethane and renewable hydrogen production and imports; and, reducing faster the use of fossil fuels in our homes, buildings, industry, and power system, by boosting energy efficiency, increasing renewables and electrification, and addressing infrastructure bottlenecks”.[15]

8. In line with the first pillar of the REPowerEU plan, on 25 March 2022, the Commission and the United States issued a joint statement on European energy security.[16] That statement envisages inter alia that the U.S. will provide additional LNG volumes for the EU market; that the “Commission will work with EU Member States toward ensuring stable demand for additional U.S. LNG until at least 2030 of approximately 50 [billion cubic meters]/annum”; that new infrastructure required for both the export of LNG from the U.S. and for its import into the EU will be developed; and that the EU will end dependence on Russian fossil fuels by 2027.

9. Many experts have expressed concerns that the Commission’s plan to substitute supply of Russian fossil fuels with alternative sources risks locking in fossil fuel use.[17] According to the Intergovernmental Panel on Climate Change (IPCC), the term “lock in” refers to “[a] situation in which the future development of a system, including infrastructure, technologies, investments, institutions, and behavioural norms, is determined or constrained (‘locked in’) by historic developments”.[18] A particular concern relates to the fact that the scale of the investment required to construct an LNG terminal, means that a terminal will need to operate for a significant duration (up to 20 years) to guarantee a return on that investment. A further concern is that the investment of large sums in fossil fuel infrastructure is a lost opportunity to invest those same sums in renewable energy (meaning there is a double-cost to such investments).

10. Reflecting these concerns, on 3 May 2022, a group of former EU Commissioners and other former senior officeholders wrote to the Commission warning it against locking the EU into years of dependence on fossil fuels by diversifying supply and encouraging it to adopt instead an emergency plan for a drastic reduction in fossil fuel use.[19]

11. This call is consistent with the IPCC's recently published Sixth Assessment Report, which concluded: "Estimates of future CO₂ emissions from existing fossil fuel infrastructures already exceed remaining cumulative net CO₂ emissions in pathways limiting warming to 1.5°C with no or limited overshoot", referring to the long-term temperature goal of the Paris Agreement.[20] It further stated: "Without early retirements, or reductions in utilisation, the current fossil infrastructure will emit more [greenhouse gases (GHGs)] than is compatible with limiting warming to 1.5°C. Including the pipeline of planned investments would push these future emissions into the uncertainty range of 2°C carbon budgets. Continuing to build new coal-fired power plants and other fossil infrastructure will increase future transition costs and may jeopardize efforts to likely limit warming to 2°C or 1.5°C with no or limited overshoot".[21] Upon the publication of that report, the UN Secretary General stated: "Investing in new fossil fuels infrastructure is moral and economic madness." [22]

12. It is also notable in this context that a study by four energy policy think tanks found that it is possible to cease imports of Russian gas by 2025, two years earlier than what is currently envisaged by the EU, and that two-thirds of this reduction in demand could be achieved "via clean energy solutions alone" and without the construction of further fossil fuel infrastructure.[23] This would require "[a]n urgent uplift in policy [...] to achieve the necessary level of implementation", going beyond what is required to achieve the EU's "Fit for 55" package of proposed measures to achieve its 2030 emissions reduction target.[24] The study emphasised the "paramount importance to reduce our economies' reliance on fossil fuels and avoid further lock-in, such as could be the result of rushed decisions to build new LNG-import terminals, speed up new gas transmission pipelines, or reconsider fossil fuel extraction in Europe or scaling it in partner countries".[25] Importantly, this study did not even consider the possibility of reducing reliance through "behavioural change such as 'turning down the heat'" i.e. demand restraint measures with near-term effect.[26]

13. It is finally of note in this context that the Commission has recently been criticised for encouraging investment in gas infrastructure in the Western Balkan States. An open letter sent to the President of the Commission on 5 April 2022 signed by 36 Non-Governmental Organisations criticises the Commission for actively promoting new gas infrastructure in the Western Balkans instead of measures to promote energy efficiency and renewable energy production. It states: "Gas [...] will lead us down a blind alley, to a new fossil fuel lock-in. Gas infrastructure would in many cases have to be built from scratch, which would be costly and take years. This diverts resources from investing in energy efficiency and sustainable renewables. [...] The alternative to Russian gas for most of the Western Balkans is not Azeri gas, nor LNG or any other gas. It is an energy efficient economy based on sustainable forms of renewable energy".[27] The First REPowerEU Communication states that "[t]he Commission continues to work with neighbours and partners in the Western Balkans, and in the Energy Community, which share the EU's fossil fuel dependencies and exposure to price hikes, while also having committed to the same long term climate goals".[28]

Footnotes

[1] See https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1511

[2] European Parliament resolution of 7 April 2022 on the conclusions of the European Council meeting of 24-25 March 2022, including the latest developments of the war against Ukraine and the

EU sanctions against Russia and their implementation (2022/2560(RSP)), available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0121_EN.html

[3] See <https://www.consilium.europa.eu/en/press/press-releases/2022/04/08/eu-adopts-fifth-round-of-sanctions-against-russia-over-its-military-aggression-against-ukraine/>

[4] See https://ec.europa.eu/info/events/savings-ukraine-savings-planet-2022-apr-21_en

[5] See https://ec.europa.eu/commission/presscorner/detail/en/speech_22_2785

[6] See https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3131

[7] Centre for Research on Energy and Clean Air (April 2022), “Financing Putin’s war on Europe: Fossil fuel imports from Russia in the first two months of the invasion” available at <https://energyandcleanair.org/publication/russian-fossil-exports-first-two-months/>

[8] Ibid., p. 2.

[9] Ibid., p. 3.

[10] Ben Cahill (Center for Strategic & International Studies, 10 May 2022), “European Union Prepares to Ban Russian Oil”, available at <https://www.csis.org/analysis/european-union-prepares-ban-russian-oil>.

[11] CREA Report (note 7), p. 3.

[12] See International Energy Agency (March 2022), “A 10-Point Plan to Reduce the European Union’s Reliance on Russian Natural Gas”, available at <https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas> and International Energy Agency (March 2022), “A 10-Point Plan to Cut Oil Use”, available at <https://www.iea.org/reports/a-10-point-plan-to-cut-oil-use>.

[13] International Energy Agency (18 March 2022), “Demand Restraint Measures”, available at <https://www.iea.org/articles/demand-restraint-measures>.

[14] See, for example, Mark Lynas, Rauli Partanen and Joris van Dorp (RePlanet Research Institute, March 2022), “Switch Off Putin – Ukraine Energy Solidarity Plan: How we can stop funding Putin’s war machine”, available at https://www.switchoffputin.org/files/ugd/dedb49_4bad98bd68a7423d9990753971bdb3a3.pdf and Agora Energiewende (March 2022), “Energiesicherheit und Klimaschutz vereinen – Maßnahmen für den Weg aus der fossilen Energiekrise” available at <https://www.agora-energiewende.de/veroeffentlichungen/energiesicherheit-und-klimaschutz-vereinen/>.

[15] See note 1.

[16] See https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2041

[17] See, for example, Clifford Krauss (New York Times, 25 March 2022), “Why the U.S. Can’t Quickly Wean Europe From Russian Gas”, available at <https://www.nytimes.com/2022/03/25/business/energy-environment/biden-europe-lng-natural-gas.html>; Wester van Gaal (EUObserver, 31 March 2022), “EU’s LNG shift may lock in gas use, experts warn”, available at <https://euobserver.com/green-economy/154631>; Dave Keating (Energy Monitor, 12 April, 2022) “Europe’s rush for energy security through LNG risks fossil fuel lock-in”, available at <https://www.energymonitor.ai/tech/decarbonising-gas/europes-rush-for-energy->

[security-through-lng-risks-fossil-fuel-lock-in](#); Jonathan Mingle (YaleEnvironment360, 21 April 2022), “How U.S. Gas Exports to Europe Could Lock in Future Emissions”, available at <https://e360.yale.edu/features/how-u.s.-gas-exports-to-europe-could-lock-in-future-emissions>. Christopher M. Matthews and Jenny Strasburg (Wall Street Journal, 28 April 2022) “As Europe Thirsts for Natural Gas, U.S., EU Signal Support for Long-Term Deals”, available at <https://www.wsj.com/articles/as-europe-thirsts-for-natural-gas-u-s-eu-signal-support-for-long-term-deals-11651174342>.

[18] See <https://www.ipcc.ch/sr15/chapter/glossary/>

[19] Kate Abnett (Reuters, 3 May 2022), “Former policy chiefs warn EU over hunt for non-Russian fossil fuels”, available at <https://www.reuters.com/world/europe/eu-warned-against-swapping-russian-gas-more-fossil-fuels-2022-05-03/>.

[20] IPCC, Working Group III Contribution to the IPCC Sixth Assessment Report (AR6): Technical Summary, available at <https://www.ipcc.ch/report/ar6/wg3/>, p. TS-26.

[21] Ibid., p. TS-54.

[22] See <https://www.un.org/press/en/2022/sgsm21228.doc.htm>.

[23] Bellona, Ember, E3G and Regulatory Assistance Project (23 March 2022), “EU Can Stop Russian Gas Imports by 2025: Accelerating Clean Energy Avoids Fossil Lock-in” available at https://9tj4025ol53byww26jdkao0x-wpengine.netdna-ssl.com/wp-content/uploads/Briefing_EU-can-stop-Russian-gas-imports-by-2025.pdf, pp. 3 and 8.

[24] Ibid., p. 7.

[25] Ibid.

[26] Ibid.

[27] See <https://bankwatch.org/wp-content/uploads/2022/04/Open-letter-The-EU-must-promote-sustainable-energy-not-gas-dependence-in-the-Western-Balkans.pdf>.

[28] See the First REPowerEU Communication, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A108%3AFIN>.

What do you consider that the institution has done wrong?

1. The Complainants submit that the Commission is under an obligation to conduct each of the assessments highlighted in bold in the 26 April Letter for the reasons outlined in that letter and further outlined below. We further submit that these assessments ought to have been conducted with the utmost urgency, having regard to both (a) the egregiousness of Russia's violations of international law and the consequences of those violations for the people of Ukraine and (b) the climate emergency. As is further outlined below, the Commission has failed to conduct these assessments.

2. It is clear that the Commission has not conducted any assessment of the impact which the purchase by Member States of Russian fossil fuels has on the ability of Russia to prosecute its war of aggression in Ukraine. Nor has it assessed the full range of measures that are both available to the EU and appropriate – up to and including a full cessation of imports of Russian fossil fuels – to ensure that the EU does not contribute to the ability of Russia to prosecute its war of aggression in Ukraine. It is submitted that having regard to the immediacy of the crisis that is Russia's war on Ukraine, this assessment ought to have addressed the impact of payments for Russian fossil fuels on Russia's immediate ability to pursue the war, taking into account the fact that recent increases in the price of fossil fuels have offset the effect of reduced demand for Russian fossil fuels.

3. It is also clear that the Commission has not assessed all of the means available to the EU to reduce reliance on Russian fossil fuels as rapidly as possible (or, in other words, it has not assessed the full extent to which it is feasible to do so). It is submitted that, having regard again to the immediacy of the crisis in Ukraine, particular consideration ought to have been given to the availability of measures which have immediate/near-term effect on demand for Russian fossil fuels. As the Commission has acknowledged, "[t]here are two types of short-term measures to reduce the dependence on Russian fossil fuels: alternative sources of imports [and] behavioural demand reduction [i.e. demand restraint] measures".[1] With regard to the latter, the Commission has not assessed the extent to which it would be feasible or appropriate to require the adoption of such measures on an emergency basis. Instead, it has confined itself to recommending the adoption, via the "Playing my part" initiative, of certain demand restraint measures proposed by the IEA on a purely voluntary basis (while acknowledging that "only those who want and can make such choices will do"[2]). The Commission has not, furthermore, assessed whether more far-reaching measures than those outlined in the "Playing my part" initiative – which, if followed, would achieve a mere 5% reduction in demand for gas and oil[3] – would be appropriate.

4. In this regard, it is submitted that as part of its assessment, the Commission ought to have determined the extent of the economic and other costs associated with reducing reliance on Russian fossil fuels which would be "proportional to the aim" of minimising Russia's ability to continue its war of aggression, as required by Article 6 of the European Code of Good Administrative Behaviour ("the Code"). The gravity of Russia's aggression and its consequences means that a certain cost resulting from measures adopted to limit its ability to continue its war on Ukraine will be proportional to this aim. Indeed, a true commitment to "democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law", as required by Article 21 of the Treaty on European Union, demands a willingness to accept a certain cost to achieve this aim. This assessment also ought to have assessed how best a proportional cost of reducing reliance on Russian fossil fuels can be fairly distributed across European society, having regard to the "fair balance" principle enshrined in Article 6 of the Code.

5. The Commission has also not assessed the full extent to which it is feasible to reduce reliance on Russian fossil fuels beyond the immediate-term. Rather, the Commission has merely assessed the feasibility of achieving the measures it has itself proposed as part of the REPowerEU plan. This is clear from the Commission's Second REPowerEU Communication which states that its proposals in relation to renewable energy are "[b]ased on its modelling of impacts and feasibility".[4] The Commission Staff Working Document to which the Second REPowerEU Communication refers in this regard makes clear that what was "modelled" by the Commission was the feasibility of implementing the measures proposed as part of the REPowerEU plan (in comparison with the measures envisaged by the "Fit-for-55" package to meet the EU's 2030 GHG emissions target).[5] It is submitted that the Commission ought instead to have first assessed the full extent to which it is feasible to reduce reliance on Russian fossil fuels and then proposed a set of measures having considered the results of this assessment.

6. The Commission's approach to its feasibility assessment in relation to the REPowerEU plan bears a striking similarity to the approach it adopted to assessing the feasibility of the EU reducing its GHG emissions this decade. The EU's 2030 target was first proposed by then candidate for the presidency of the Commission, Ursula von der Leyen, in a document entitled the "Political Guidelines for the Next European Commission 2019-2024"[6] and subsequently in a Communication on the "European Green Deal".[7] The Impact Assessment which accompanied the latter stated: "[T]he options assessed regarding the ambition level to increase the 2030 GHG emissions reduction target for the EU...follow the mandate that the Commission has established in its Political Guidelines and the European Green Deal Communication: i.e. an increase of GHG emissions reductions in 2030 (from "at least" 40% currently agreed) to "at least" 50% to 55% (compared to 1990 levels)."[8] It further stated: "Some stakeholders have asked for a higher target – up to 65% or more GHG reduction by 2030 but scenarios with an EU GHG reductions target of over 55% were not assessed in this [Impact Assessment]".[9] Thus, the Commission confined its feasibility assessment to an assessment of the feasibility of the target it had previously proposed. As with the EU's proposed measures to reduce reliance on Russian fossil fuels, multiple studies have confirmed precisely what the Commission's Impact Assessment of its 2030 emissions target explicitly declined to assess i.e. that it is feasible for the EU to achieve a reduction greater than 55% relative to 1990 levels by 2030.[10] It is notable in this context that the Second REPowerEU Communication states that "REPowerEU builds on the full implementation of the Fit for 55 proposals tabled last year without modifying the ambition of achieving at least -55 % net GHG emissions by 2030".[11]

7. The Commission is thus systematically refraining from assessing the full extent to which it can reduce reliance on fossil fuels, including as part of its response to the Russian invasion of Ukraine. In doing so, the Commission deprives itself and other relevant EU institutions of information that is critically relevant to any decision taken by the EU in relation to Russian fossil fuels imports. Without such information, the Commission cannot "take into consideration [all of] the relevant factors and give each of them its proper weight in the decision", as required by Article 9 of the Code. Indeed, the failure to conduct an assessment of the full extent to which it is possible to reduce reliance on Russian fossil fuels undermines the very purpose of an Impact Assessment, namely to enable the Commission to "analys[e] the advantages and disadvantages of available solutions" to a policy problem.[12] By definition, where the Commission does not examine the full extent of the measures are feasible to address a particular problem, it cannot assess the advantages and disadvantages of all solutions available to address that problem.

8. It is also clear that the Commission has not conducted an adequate assessment of the implications of its proposed measures to reduce reliance on Russian fossil fuels for climate change. It is now beyond any doubt that climate change poses a grave threat to human rights.[13] Given that it is the case that

“where fundamental rights are not respected, there cannot be good administration”,[14] there also cannot be good administration if the EU reduces its contribution to the Ukrainian crisis by contributing to the climate crisis. Rather, we respectfully submit that good administration requires that out of a range of feasible means of minimising the EU’s reliance on Russian fossil fuels, those means which are most consistent with minimising any contribution to the climate crisis must be pursued. It follows that the Commission must assess the implications for climate change of any measures it considers to reduce reliance on Russian fossil fuels and must further assess how a rapid reduction in the EU’s reliance on Russian fossil fuels can be achieved in a manner that is most consistent with the imperative of reducing GHG emissions.

9. This assessment must include consideration of the potential to “lock in” in fossil fuel use. In this regard, the Second REPowerEU Communication states: “The regional assessment of additional gas infrastructure needs for REPowerEU shows that it will be possible to fully compensate the equivalent of Russian gas imports by a combination of demand reduction, a ramp up of domestic production of biogas/biomethane and hydrogen, and limited additions of gas infrastructure. [...] This limited additional infrastructure, as described in annex 3, should solve the needs for the forthcoming decade, without leading to a lock-in of fossil fuels and stranded assets that inhibit the long-term transition to a climate-neutral economy.”[15] It is clear, however, that this assertion is not based on any actual assessment of the extent to which the construction of gas infrastructure envisaged by the REPowerEU plan will lead to lock-in of fossil fuels. The study outlined in annex 3 makes no reference to any such assessment.[16] Notably, it also makes no reference to the most recent findings of the IPCC in relation to fossil fuel infrastructure referred to in the previous section.

10. What the study outlined in annex 3 of the Second REPowerEU Communication does make clear is that the Commission has not assessed whether it is possible to rapidly reduce reliance on Russian fossil fuels without constructing further fossil fuel infrastructure (which, as outlined in the previous section, other studies have concluded is possible). According to annex 3, that study “analysed to what extent infrastructure bottlenecks exist in the European gas network in case of an end to Russian gas flows to Europe using two different demand scenarios (current demand and 2030 demand assuming full implementation of fit for 55 proposals with a 27% lower gas demand compared to today which is expected to be even lower with the implementation of REPowerEU) and assuming different levels of infrastructure development”.[17] In other words, the Commission merely assessed the extent to which further gas infrastructure is required according to the level of gas demand that is consistent with the policy measures it has proposed. It did not, however, assess the availability of alternative policy measures which would give rise to “demand scenarios” that would not require the construction of further gas infrastructure. It is also important to note in this regard that this assessment was published almost two months after the Commission entered into its agreement with the U.S. which envisages the construction of further gas infrastructure.

11. It is further submitted that the Commission’s assessment of the implications for climate change of any measures it proposes to reduce reliance on Russian fossil fuels must extend to an assessment of the implications of any such measures for emissions in other countries. In light of the above-mentioned agreement between the Commission and the U.S., the Complainants refer in this regard to the significance of methane leakage in the process of extracting fossil fuels. Methane is a highly potent GHG which over a period of 20 years causes 84 times more warming than carbon dioxide.[18] According to the Government-endorsed Summary for Policymakers of the IPCC’s Sixth Assessment Report on the Mitigation of Climate Change, “[d]eep GHG emissions reductions by 2030 and 2040, particularly reductions of methane emissions, lower peak warming [and] reduce the likelihood of overshooting warming limits”.[19] Various studies have compared the climate impact of gas with coal

– the most GHG intensive fossil fuel – when methane leakage in the process of its extraction is taken into account and found that where between 3% and nearly 5% of extracted gas leaks into the atmosphere, gas has the same climate impact as coal.[20] In the U.S. context, a recent study by researchers at Stanford University found that more than 9 percent of all methane produced in New Mexico is being leaked into the atmosphere, several times higher than the estimates of the U.S. Environmental Protection Agency.[21] The latter has acknowledged that its estimates do not capture all methane emissions.[22]

12. The Commission’s communication on “EU external energy engagement in a changing world”, which it published alongside the Second REPowerEU Communication, states that “[t]he EU will aim to ensure that additional gas supplies from existing and new gas suppliers are coupled with targeted actions to tackle methane leaks”.[23] However, it is clear that the Commission has not conducted any assessment of the implications which its importation of LNG from the U.S. may have for methane leakage in that country.

Footnotes

[1] Commission Staff Working Document (18 May 2022), Implementing the Repower EU Action Plan: Investment Needs, Hydrogen Accelerator and Achieving the Bio-Methane Targets, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=JOIN%3A2022%3A23%3AFIN&qid=1653033264976>, p. 14.

[2] Communication of the European Commission (18 May 2022), “EU ‘Save Energy’”, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0240&from=EN>, p. 3.

[3] Second REPowerEU Communication, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:fc930f14-d7ae-11ec-a95f-01aa75ed71a1.0001.02/DOC_1&format=PDF, p. 3.

[4] Ibid., p. 6.

[5] Commission Staff Working Document (note 1), p. 5.

[6] Available at: https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf.

[7] Available at: https://ec.europa.eu/info/publications/communication-european-green-deal_en.

[8] Impact Assessment accompanying the Commission’s Communication entitled “Stepping up Europe’s 2030 climate ambition”, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0176>, p. 24.

[9] Ibid., p. 41.

[10] An overview of these studies is available in the following Climate Action Network-Europe Factsheet: https://caneurope.org/content/uploads/2020/09/CAN_Europe_65percent_is_feasible_sep20_short_2.pdf. This conclusion is also supported by the Impact Assessment’s own finding that the achievement of this target would impose no socio-economic burden on the EU. See in particular the findings in the Impact Assessment, at pp. 77, 84, 85, 89 and 90. Notably, the EU’s 2030 target is consistent with global warming reaching 3°C if all other countries pursued an equivalent level of ambition (on the range of measures of their “fair share” of the global emissions reductions required to hold global warming to 1.5°C); see <https://climateactiontracker.org/countries/eu/>.

[11] Second REPowerEU Communication (note 3), p. 2.

[12] Commission Staff Working Document (November 2021), Better Regulation Guidelines, available at: https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf, p. 30.

[13] See, for example, the latest IPCC report (published in February 2022) entitled “Climate Change 2022: Impacts, Adaptation and Vulnerability”, available at <https://www.ipcc.ch/report/ar6/wg2/>. The report was described by the UN Secretary General as “an atlas of human suffering”, see <https://news.un.org/en/story/2022/02/1112852>.

[14] Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement, para. 10.

[15] Second REPowerEU Communication (note 3), p. 13.

[16] The annexes to the Second REPowerEU Communication are available at: https://eur-lex.europa.eu/resource.html?uri=cellar:fc930f14-d7ae-11ec-a95f-01aa75ed71a1.0001.02/DOC_2&format=PDF.

[17] Ibid., p. 7.

[18] IPCC, Climate Change 2014 Synthesis Report, available at https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf, p. 87.

[19] IPCC, Climate Change 2022 Mitigation of Climate Change: Summary for Policymakers, available at https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf, para. C.2.

[20] For a summary of these studies see Karin Rives (S&P Global, 27 December 2021), “Natural gas use may affect climate as much as coal does if methane leaks persist”, available at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/natural-gas-use-may-affect-climate-as-much-as-coal-does-if-methane-leaks-persist-68096816>.

[21] Andrew Myers (Stanford News, 24 March 2022), “Stanford-led study: Methane leaks are far worse than estimates, at least in New Mexico, but there’s hope”, available at <https://news.stanford.edu/2022/03/24/methane-leaks-much-worse-estimates-fix-available/>.

[22] See the article cited at note 20 above.

[23] Communication of the European Commission (18 May 2022), “EU external energy engagement in a changing world”, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022JC0023&from=EN>, p. 4.

What in your view should the institution or body do to put things right?

The Commission must conduct the assessments outlined above/in the 26 April Letter and must in the meantime halt any measures which promote the construction of new infrastructure to facilitate imports of fossil fuels from countries other than Russia.