

## COMPLAINT TO THE EUROPEAN OMBUDSMAN

*Please note: Complaints to the European Ombudsman are filed via a form on her website which contain the below questions in bold. The below text is the text which has been submitted via that form in response to each of these questions.*

### **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 entered into an agreement on European energy security.[16] That agreement 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 CO<sub>2</sub> emissions from existing fossil fuel infrastructures already exceed remaining cumulative net CO<sub>2</sub> 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](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](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](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](https://ec.europa.eu/commission/presscorner/detail/en/speech_22_2785)

[6] See [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3131](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](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](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](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”.<sup>[1]</sup> 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”<sup>[2]</sup>). 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<sup>[3]</sup> – 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 which 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 in the first place. 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. (on 25 March 2022) 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](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](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](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](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](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](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](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](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 urgently conduct the assessments outlined in the preceding section/the 26 April Letter and must in the interim halt any measures which promote the construction of new infrastructure to facilitate imports of fossil fuels from countries other than Russia.**

Ms Ursula von der Leyen  
President of the European Commission  
Rue de la Loi 200 / Wetstraat 200, 1040  
Bruxelles / Brussel  
Belgium

cc: President of the European Parliament;  
President of the Council of Europe.

*By email only (corresponding email address: [gliston@glanlaw.org](mailto:gliston@glanlaw.org))*

26 April 2022

**Re: Commission's obligation to conduct a human rights and environmental impact assessment in relation to European imports of Russian oil and gas**

Dear President von der Leyen,

We write in relation to the ongoing importation into the EU of Russian oil and gas in the context of Russia's invasion of Ukraine. We do so as organisations concerned with both the role of imports of oil and gas in funding Russia's war on Ukraine and with the consequences for climate change of measures taken by the EU to substitute Russian oil and gas.

It is our view that both the egregious violation of international law that is Russia's invasion of Ukraine and the extremely serious consequences for human rights posed by the climate crisis give rise to a series of obligations on the Commission relating to the importation of Russian oil and gas. We outline these obligations below.

*The Commission's obligation to conduct an impact assessment: the basis*

In the case concerning the Commission's failure to carry out a human rights impact assessment of the envisaged EU-Vietnam free trade agreement,<sup>1</sup> ("Vietnam decision") the EU Ombudsman held that prior to entering into a Free Trade Agreement with Vietnam, the Commission was required to conduct an impact assessment to determine the effects on human rights in Vietnam which entering into that agreement would entail. The Ombudsman further noted that "depending on the results of its analysis, the Commission could consider appropriate measures which would ensure that no such adverse effects [on human rights] would occur."<sup>2</sup> Subsequently, in *Council of the EU v Front Polisario*,<sup>3</sup> the Advocate

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<sup>1</sup> EU Ombudsman Case 1409/2014/MHZ.

<sup>2</sup> Draft recommendation of the European Ombudsman in the inquiry into complaint 1409/2014/JN against the European Commission, Recommendation on 26 March 2015, <https://www.ombudsman.europa.eu/en/recommendation/en/59398>

<sup>3</sup> *Council of the European Union v Front Populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario)*, C-104/16 P

General similarly held that “before concluding international agreements, the EU institutions must ensure compliance with the very short list of peremptory norms of international law (*jus cogens*) and *erga omnes* obligations, which include ‘the outlawing of acts of aggression, and of genocide, [and] the principles and rules concerning the basic rights of the human person [...]’.”<sup>4</sup> Such compliance was, according to the Advocate General (who endorsed the view of the Ombudsman in the Vietnam decision), to be ensured by conducting an impact assessment.

It is our view that this obligation, based as it is on the “settled case-law that the Union must respect international law in the exercise of its powers”,<sup>5</sup> applies in relation to Russia’s invasion of Ukraine. The obligation cannot be understood as being confined to the area of trade agreements. Rather, it applies to any situation in which the conduct of the EU or operation of EU law may give rise to adverse effects on human rights or contribute to a violation of a peremptory norm of international law.

The fact that any decision to restrict imports of Russian oil and gas would be taken pursuant to Article 215 of the Treaty on the Functioning of the European Union – and therefore would require the adoption by the European Council of a decision in accordance with Chapter 2 of Title V of the Treaty on European Union – does not detract from the obligation on the Commission to conduct an impact assessment. The importation of Russian oil and gas is a matter falling within the exclusive competence of the EU. It is governed by Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports, Article 1 of which provides that Russian oil and gas be “freely imported into the Union” and “shall not be subject to any quantitative restrictions”. As guardian of the treaties, the Commission must ensure that EU law does not operate in a manner which causes the EU or its Member States to contribute to Russia’s violations of international law in relation to Ukraine.

*The specific obligation to conduct an impact assessment in relation to imports of Russian oil and gas*

There is ample evidence that the tax revenue which Russia derives from its exports of oil and gas to Member States of the EU is a critical source of funding for the war on Ukraine. In particular:

- according to the UNEP Production gap report 2019, “[t]he oil and gas sector is estimated to contribute between 10% and 20% of Russia’s GDP and almost half of federal government revenues (IEA 2014; Ministry of Energy of the Russian Federation 2017; Economic Expert Group 2019)”;<sup>6</sup>
- according to one paper published by the International Institute for Sustainable Development, “[d]ue to differences in how trade in fossil fuels is accounted for, official estimates of the share of the fossil fuel sector in Russia’s GDP vary from around 10 per cent to 25 per cent. Fossil fuels accounted for over 60 per cent of Russia’s export value in 2018 (Federal Customs Service of the Russian Federation, 2019)”;<sup>7</sup>
- according to the European Commission, “[i]n 2021, the EU imported more than 40% of its total gas consumption, 27% of oil imports and 46% of coal imports from Russia. Energy represented

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<sup>4</sup> Ibid, Opinion of Advocate General Wathelet, para. 259.

<sup>5</sup> Ibid, paras. 256 and 290.

<sup>6</sup> UNEP, Production Gap Report 2019, 20 November 2019, p 32, <https://www.unep.org/resources/report/production-gap-report-2019>

<sup>7</sup> Ivetta Gerasimchuk et al., “Case Study: Russia, Beyond Fossil Fuels: Fiscal Transition in BRICS”, International Institute for Sustainable Development, November 2019, p. 2, <https://www.iisd.org/system/files/publications/beyond-fossil-fuels-russia.pdf>

62% of EU total imports from Russia, and cost €99 billion. [... In 2011] energy represented almost 77% of EU imports from Russia (equivalent to €148 billion)”;<sup>8</sup>

- according to one paper published by Politico, “[t]he total value of Russian exports to EU countries of mineral fuels and products, including oil and gas, exceeded Russian military spending in 2020 (in dollars)”;<sup>9</sup>
- according to Josep Borrel, the High Representative of the European Union for Foreign Affairs and Security Policy, the EU’s “[t]he EU has paid €35 billion for Russian energy since the start of the war compared to the €1 billion it has sent to Ukraine in the form of foreign aid”;<sup>10</sup>
- according to EU Environment Commissioner Virginijus Sinkevičius: “I don’t need to go deep into our dependency on fossil fuels, and how many billions every year we pay to Russian war chest”;<sup>11</sup>
- according to President Putin’s former chief economic adviser, if Western countries ceased purchasing oil and gas from Russia, the war in Ukraine would end “probably within a month or two”.<sup>12</sup>

On the basis of the foregoing, it is our view that the Commission must conduct its own **assessment of the precise impact of the purchase by Member States of Russian oil and gas** on the ability of Russia to prosecute its war of aggression in Ukraine, taking into account the evidence outlined above. The Commission must also **assess the full range of measures that are both available to the EU – including a full cessation of imports of Russian oil and gas – and appropriate** to ensure that the EU does not contribute to the ability of Russia to prosecute its war of aggression in Ukraine.

This assessment must include consideration of the entire range of measures available to the EU and its Member States to cease reliance on Russian oil and gas in the quickest manner possible. This means that the Commission **must examine – and consider other authoritative studies which examine – all available means of rapidly reducing reliance on Russian oil and gas within the EU**, both in the immediate-term and over the longer-term. Failure to do so would constitute a failure to “take into consideration the relevant factors” as required by Article 9 of the European Code of Good Administrative Behaviour.

Furthermore, when conducting such an examination, the Commission must also **consider what measures are “proportional to the aim pursued”**,<sup>13</sup> taking into account the gravity of Russia’s violations of international law and the consequences of those violations for Ukrainian citizens and residents.

In this regard, we note that the **International Energy Agency has outlined a series of measures that are available to reduce demand for Russian oil and gas**. In its “**10-Point Plan to Cut Oil Use**”, it proposed the following measures:

- “1. Reduce speed limits [...] ; 2. Work from home [...] ; 3. Car-free Sundays in cities ; 4. Make the use of public transport cheaper and incentivise micromobility, walking and cycling [...] 5.

<sup>8</sup> European Commission, “*In focus: Reducing the EU’s dependence on imported fossil fuels*”, News, 20 April 2022, [https://ec.europa.eu/info/news/focus-reducing-eus-dependence-imported-fossil-fuels-2022-apr-20\\_en](https://ec.europa.eu/info/news/focus-reducing-eus-dependence-imported-fossil-fuels-2022-apr-20_en)

<sup>9</sup> C Hirsch et al, How Europe is funding Putin’s war, Politico, 24 February 2022,

<https://www.politico.eu/article/europe-eu-oil-gas-trade-russia-budget-military-spending-ukraine-war-crisis/>

<sup>10</sup> Euronews, “*EU has spent €35bn on Russian energy since the war began and just €1bn on aid to Ukraine – Borrell*”, 06.04.2022, <https://www.euronews.com/my-europe/2022/04/06/eu-has-spent-35bn-on-russian-energy-and-just-1bn-on-aid-borrell>

<sup>11</sup> Reuters, “*EU says dependence on fossil fuels is funding Russian 'war chest'*”, 17 March 2022,

<https://www.reuters.com/business/energy/eu-says-dependence-fossil-fuels-is-funding-russian-war-chest-2022-03-17/>

<sup>12</sup> BBC News (Author: Jonathan Josephs), “*Full embargo on oil could stop war - ex-Putin aide*” (10 April 2022). Available at <https://www.bbc.com/news/business-61040424>.

<sup>13</sup> As required by Article 6 of the European Code of Good Administrative Behaviour.

Alternate private car access to roads in large cities [...] 6. Increase car sharing and adopt practices to reduce fuel use [...] 7. Promote efficient driving for freight trucks and delivery of goods [...] 8. Using high-speed and night trains instead of planes where possible [...] 9. Avoid business air travel where alternative options exist. [...] 10. Reinforce the adoption of electric and more efficient vehicles”<sup>14</sup>

The IEA also noted that “Further reductions in demand are possible in the near term, however, through actions by governments and citizens”.<sup>15</sup> In a related article on “Demand Restraint Measures”,<sup>16</sup> it stated that “[m]easures [to cut oil use] 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.”

The IEA also published a “10-Point Plan to Reduce the European Union’s Reliance on Russian Natural Gas”<sup>17</sup>, which included proposal such as “[t]urning down the thermostat for buildings’ heating”. The IEA stated in a footnote that it has “not included additional near-term measures to curb industrial demand, because of the risk of wider knock-on effects on the European economy.”

We further note in this context that while the RePowerEU plan of the Commission to make Europe independent from Russian fossil fuels “well before 2030”, refers to a range of measures to “[r]educ[e] faster our dependence on fossil fuels” (by “[r]olling out solar, wind and heat pumps”, “[d]ecarbonising industry” and “[e]nabling faster permitting”), it does not refer to the full range of measures outlined by the IEA to reduce reliance on Russian oil and gas.<sup>18</sup> It therefore appears that the Commission has not conducted an assessment of all of the means available to reduce the EU’s reliance on Russian oil and gas in the quickest manner possible.

#### *The obligation to take the climate crisis into account*

Given the extreme, widespread and ever-worsening consequences of the climate crisis for human rights, the Commission must also assess the implications for the EU’s greenhouse gas emissions of any measures it considers to reduce reliance on Russian oil and gas. This assessment must include consideration of the risk of “carbon lock-in” entailed by any measure it proposes to substitute supply of Russian oil and gas with supply from other sources of oil and gas – including the construction of infrastructure for the importation of gas (as envisaged by the RePowerEU Communication). In this context, we note that concerns have been raised about the risk of carbon lock-in resulting from efforts to substitute the supply of Russian oil and gas. For instance, in relation to Liquefied Natural Gas (LNG) supplies delivered by US exporters to the EU<sup>19</sup>, an article in the New York Times recently stated as follows:

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<sup>14</sup> IEA, “A 10-Point Plan to Cut Oil Use”, 18 March 2022; <https://www.iea.org/reports/a-10-point-plan-to-cut-oil-use>

<sup>15</sup> *Ibid.*

<sup>16</sup> <https://www.iea.org/articles/demand-restraint-measures>

<sup>17</sup> IEA, “A 10-Point Plan to Reduce the European Union’s Reliance on Russian Natural Gas”

<https://www.iea.org/reports/a-10-point-plan-to-reduce-the-european-unions-reliance-on-russian-natural-gas>

<sup>18</sup> European Commission, REPowerEU: Joint European Action for more affordable, secure and sustainable energy, Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions, Strasbourg, 8.3.2022 COM(2022) 108 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A108%3AFIN>.

<sup>19</sup> European Commission - Statement Joint Statement between the European Commission and the United States on European Energy Security Brussels, 25 March 2022, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_2041](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_2041)

“While reducing demand would help, some climate scientists and activists are worried that the Biden administration’s and European Union’s focus on building L.N.G. terminals could deal a grievous blow to the effort to address global warming by encouraging the use of fossil fuels. “There is a risk of locking in 20 or even 30 years of emissions from export infrastructure at a time when you really need to be reducing your overall emissions,” said Clark Williams-Derry, a senior fellow at the Institute for Energy Economics and Financial Analysis, a research organization.”<sup>20</sup>

**More generally, the Commission must assess how a rapid reduction in the EU’s reliance on Russian oil and gas can be achieved in a manner that is most consistent with the imperative of reducing greenhouse gas emissions.** This includes giving consideration to the full range of measures available to reduce demand for Russian oil and gas of the kind outlined by the IEA. It also requires an assessment of which measures to reduce reliance on Russian oil and gas ought to be excluded on the basis of their environmental consequences.

#### *Request for urgent clarification*

We request clarification as to whether the Commission has conducted or will conduct each of the assessments highlighted in bold above. It is our position that, given the gravity of the violations of international law committed by Russia, such assessments ought to have been conducted immediately upon Russia’s commencement of the invasion and with the utmost haste. Because of this same urgency, we ask that clarification as to whether the above assessments have been conducted be provided within 7 days of the date of this letter. We also note that the failure to conduct any of the assessments of the kind outlined above in a timely manner would, in our view, constitute maladministration and provide the basis for a complaint to the EU Ombudsman.

Yours sincerely,

Dr Gearóid Ó Cuinn  
Director  
Global Legal Action Network

Svitlana Romanko  
Ukrainian environmental  
lawyer and founder of:

Patricia Martin Diaz  
Campaign Director at  
Avaaz Foundation

Jérémie Suissa  
Délégué Général  
Notre affaire à Tous



<sup>20</sup> The New York Times (Author: Clifford Krauss), “Why the U.S. Can’t Quickly Wean Europe From Russian Gas”, 25 March 2022, <https://www.nytimes.com/2022/03/25/business/energy-environment/biden-europe-lng-natural-gas.html>