

First Dutch-German Forum on Comparative and European Energy Law on security of gas supply in Tilburg

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On 4 November 2022 the “First Dutch-German Forum on Comparative and European Energy Law (FCEEL)” on security of gas supply took place at the Faculty Club of Tilburg University. The title already emphasizes the workshop’s aim to promote an exchange of EU, Dutch and German legal perspectives on security of gas supply and possible influences on other Member States’ energy markets.

The initiative, by Dr. Max Baumgart and Prof. Dr. Saskia Lavrijssen from the Tilburg Institute for Law, Technology, and Society (TILT), Prof. Dr. Torsten Körber from the University of Cologne’s Institute for Energy Law (EWIR), Prof. Dr. Charlotte Kreuter-Kirchhof from the Düsseldorf Institute for Energy Law (DIER), Prof. Dr. Christian Pielow from the Bochum Institute for Mountain and Energy Law (IBE), Prof. Dr. Leonie Reins from the University of Rotterdam and Dr. Lea Diestelmeier and Dr. Ruven Fleming from the Groningen Center for Energy Law and Sustainability, wants to add value by bringing together experts from academia and the industry from two of the most economically and culturally intertwined regions in the EU. Besides its main objective to facilitate a platform for discussion and inspiration in the field of energy law, FCEEL intends to strengthen the academic relations between the close neighbors Netherlands and North Rhine-Westphalia, Germany.

Accordingly, the legal and economic contributions to the conference provided for critical reflections on matters of import dependency and how to ensure gas supply security within the European Union. The in-person and online participants of the forum were offered a diverse variety of topics. The conference started with the welcome address of Prof. Dr. Saskia Lavrijssen, Prof. Dr. Torsten Körber and Dr. Max Baumgart, who highlighted the importance of interdisciplinary approaches to address security of energy supply and the urgency of the energy transition from a legal, economic and societal perspective.

1. EU Energy Solidarity and the EU Commission’s Challenge to Secure Energy Supply

Prof. Dr. Charlotte Kreuter-Kirchhof from the Düsseldorf Institute for Energy Law at the University of Düsseldorf kicked off the first presentation of the conference, emphasizing the importance of energy solidarity during times of crisis. She

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highlighted a general obligation of energy solidarity enshrined in Article 194 TFEU and specified in the Security of Gas Regulation as a three-stage escalation system of solidarity mechanisms. In its judgement C-848/19 P, the Court of Justice of the EU (CJEU) confirmed the obligation of national governments to take interests and threats to security of supply of other Member States into account. However, Prof. Dr. Kreuter-Kirchhof stressed that solidarity is limited by only triggering moderate legal consequences for non-compliance and by the lack of interconnectivity between the energy infrastructures of Member States. Nevertheless, in view of current threats to gas supply, she advocated for strengthening energy solidarity as a point out of the crisis, especially as the EU's response to the weaponization of energy by Russia.

This presentation was followed by a contribution of Ulrich von Koppenfels, Head of Sector at the Directorate-General for Energy at the European Commission, on the recent emergency measures introduced by the European Commission in response to the current energy crisis. He outlined different possibilities for so-called “gas caps” on the current gas prices, which prompted a lively discussion on the legal and economic consequences of these regulatory interventions. Von Koppenfels also emphasized the urgency of the crisis, which not only requires a swift response, but which consequently also renders extensive economic impact assessments difficult. While he stressed that the current reliance on Article 122 TFEU as a legal basis for emergency measures does provide for expedited legislative procedures, implementation issues remain. Questions continue to exist with regard to how to react to cases, in which Member States are non-compliant – may this be by undermining the internal market through unilateral actions or by the lack of initiative of Member States to conclude solidarity agreements with each other.

The first panel was concluded by Prof. Dr. Leigh Hancher (TILT) with comments on the EU Gas Storage Regulation and the joint gas purchasing mechanisms. She drew a comparison between the Euratom supply agency in charge of ensuring security of supply of nuclear materials and the currently established joint gas purchasing plans of the EU, which aim to provide a voluntary platform for Member States to pool gas demands to maximize leverage. Prof. Dr. Hancher raised questions regarding the implications of such platform on the applicability of competition law including the possibility to rely on exemptions granted under Article 103 TFEU. She also emphasized practical implementation on issues such as a fair distribution of attracted gas among Member States and implications of joint purchase aggregation for existing supply contracts. Most importantly, Prof. Dr. Hancher highlighted the lack of planning ahead when it comes to intergenerational justice and broader aspects of sustainability but also on how to trigger a swift decarbonization of industry, which is still heavily reliant of fossil fuels.

2. An Industry Perspective

Ulrich Ronnacker, Head of Legal and Regulatory Affairs at Open Grid Europe GmbH, highlighted that both, a national shortage on gas, but also local bottlenecks, constitute a significant threat to security of gas supply in Germany. The consequences of the implications of the energy crisis for transmission system operators include new development plans, which allow for a swift change of transport routes, the integration of new LNG sources and green hydrogens as well as the reversal of load flows. His presentation prompted a lively discussion on the economic advantages of the United States in the years to come through the reliance on shale gas.

3. Concluding Remarks

Overall, the First Dutch-German Forum on Comparative and European Energy Law was a great success – it offered a place for an interdisciplinary and multi-jurisdictional dialogue on how to jointly address the current challenges of the energy crisis in the Netherlands, Germany and the European Union. The lively participation of representatives from academia, EU institutions and the industry ensured a fruitful exchange of perspectives. As Dr. Max Baumgart emphasized in his closing remarks, the main challenge for energy legislators will be to draft a legal framework and policies that guarantee a high level of energy supply security, while addressing the climate goals at the same time. Creative solutions will be needed and learning from other countries' experiences can be very helpful. To this, the FCEEL initiative wants to contribute as a platform for dialogue and academic cooperation. Another conference is planned for 2023.

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