



Energy Policy Studies

2(6) / 2020



IGNACY ŁUKASIEWICZ
**ENERGY
POLICY
INSTITUTE**



Creative Commons Attribution-NonCommercial-NoDerivatives
4.0 International Public License (CC BY-NC-ND 4.0): Authors

Cover design: Aku Studio

Typesetting: Lidia Mazurkiewicz, MSc, Eng.

Publisher: Ignacy Lukasiewicz Energy Policy Institute

Technological Incubator 4

Jasionka 954E

PL 36-002 Jasionka

eps@instytutpe.pl

<http://www.instytutpe.pl/en/eps-en/>

Editorial Board:

Prof. PRz, Mariusz Ruszel, PhD, DSc, Rzeszow University of Technology, Rzeszow, Poland – Editor in Chief

Prof. PRz, Adam Masłoń, PhD, Eng, Rzeszow University of Technology, Rzeszow, Poland – Editor

Anna Kucharska, PhD – Jagiellonian University, Krakow, Poland – Editor

Przemysław Ogarek, B.A. – Rzeszow University of Technology, Rzeszow, Poland – Editorial Assistant

Scientific Board:

Prof. PRz, Stanisław Gędek, PhD, DSc, Eng – Rzeszow University of Technology, Rzeszow, Poland

Prof. Andrea Stocchetti, PhD, DSc – Ca’Foscari University Venezia, Venice, Italy

Prof. Wim Heijman, PhD, DSc – Wageningen University & Research, Wageningen, Netherlands

Prof. Dzintra Atstāja, PhD, DSc – Banku Augstskola, Riga, Latvia

Prof. Piotr Moncarz, PhD, DSc – Stanford University, California, USA

Prof. Władysław Mielczarski, PhD, DSc – Lodz University of Technology

Prof. SGH, Grażyna Wojtkowska-Łodej, PhD, DSc – SGH Warsaw School of Economics, Warsaw, Poland

Mariusz Swora, PhD, DSc – Member of the BoA ACER, Mariusz Swora Legal Office, Gniezno, Poland

Prof. KUL, Andrzej Podraza, PhD, DSc – The John Paul II Catholic University of Lublin, Lublin, Poland

Prof. AGH, Adam Szurlej, PhD, DSc, Eng. – AGH University of Science and Technology, Krakow, Poland

Prof. UJ, Tomasz Młynarski, PhD, DSc – Jagiellonian University, Krakow, Poland

Prof. ISP PAN, Paweł Borkowski, PhD, DSc – Warsaw University, Warsaw, Poland

e-ISSN: 2545-0859

The electronic version of the journal is the original version.

Rzeszow 2020

The vertical restriction on abuse of a dominant position of the Gazprom under Gas Directive

Marika Marciniak

Abstract: The subject of the research is a presentation of the right to compensation in vertical relationships due to unfair practices under international agreements and the Gas Directive. The thesis centres on the presentation of proof that Gazprom abuses its dominant position. The paper presents the multidimensional content of Gazprom's dominant activities, which significantly distorts the European energy market. Initially, the author indicates the history of Gazprom's activities and economic way of transparency in pricing based on the latest American research. The matrix of research is a presentation of proceedings before the Court of Justice of the European Union and the Arbitrage Tribunal in Stockholm. In the last part of paper, there is clarification of the doctrine of *direct effect* and the procedure of an action for damages. The Gas Directive provisions are subject to the *direct effect* principle and in vertical relation, the individuals may bring an action for damages. *In fine*, the appearance of dominant and unfair practices means that individual proceedings against a country will constitute a majority in the future in the scope of energy law in the European Union. In this dogmatic study, the tools were criticisms, heuristics, hermeneutics and experiments.

Key words: action for damage, Gazprom, energy law, direct effect.

1.0 Introduction

Unfair practices in global turnover are not a rare phenomenon. The Gazprom enterprise has infringed national law in certain Member States and European provisions from a long time. One of the material problems is overpricing for the same quantity of natural gas.

The research interprets the problem of Gazprom's dominant position, which significantly distort fair international trade. Furthermore, its unfair practices have been a challenge for the European Union, and therefore the European legislator decided to codify the Gas Directive under which Gazprom falls in terms of European provisions and jurisdiction.

The study shall be composed of four sections. In first part, the author presents the history of the establishment of Gazprom and the Russian ideology of *ведомственность*. Then, there are discussions in the field of the EU-Russia relationship and proceedings before the Court of Justice of the European Union and the Arbitration Institute of the Stockholm Chamber of Commerce. The final section focuses attention on *direct effect* and the procedure of action for damages. The scientific description will clear up the right to compensation in the vertical relationship. This comprehensive study substantiates the right to bring an action for damages brought by individuals.

1.2 Introductory remarks

The Russian gas market features large-scale gas reserves. *Prima facie*, it seems that Gazprom abuses its dominant position. Nonetheless, acceptance of this assertion requires a deeper analysis. Initially, it has to take a closer look at Gazprom's history of natural gas mass production. Its origins date back to 1999, when the total gas capacity reached 100 billion cubic metres (Moe, Kryukov, 2013:2). From 1965-1980 there was an extension of pipelines. The most favourable sources were discovered in the North Caucasus and Ukraine by the end of 1950. In 1970, there was further rapid expansion of natural gas consumption. Some data specify the gas pipeline quantity, which reached 50,000 kilometres of main pipelines, 690 compressor stations and 22 underground warehouses. The total distribution amounts to 340,000 kilometres. The total kilowatt continuous load reaches 42 million (Moe, Kryukov 2013:2). Furthermore, the production and distribution operate under the Russian regime in force. *Ad exemplum*, the first market sharing of oil and natural gas industries was under the decision of the Ministry of the Gas Industry (Mingazprom) (Moe, Kryukov 2013:4).

As is known, Russia went through a crisis during the 1960s and they had to store gas reserves due to the Cuban Missile Crisis, US concession and finally the Sino-Soviet border conflict. Therefore, they wanted to restore the national economy. It is worth considering whether Gazprom's present dominant position is rooted in twentieth-century Russian ideology. One of the latest phases of Russian reforms concentrated on the establishment of the state gas enterprise "Gazprom" at the end of 1989 (Aron 2013:4). It was allied with the "ведомственность" phenomenon, which was a control measure introduced in order to increase government power (Whitefiled 1993:54). It appears that Gazprom's political and economic behaviour results from previous incautiousness in relation to the US. It may be that excessive prices arise from previous Russian lessons. Currently, the overpricing problem is considered unfair practice.

According to data, in 2019 the production and distribution of natural gas constituted 11% of GDP (Gaddy, Ickes 2013:3). Currently, demand for natural gas has fallen slightly to 8.7% (Oxford Analytica). Moreover, Russia possesses 65 billion bcm natural gas reserves for the year 2020 (112 UA 2020: 1). However, it is difficult to produce a reason for the decrease in natural gas demand. It may result from the EU decision declaring Gazprom's dominant position or the COVID-19 global pandemic.

1.3 EU-Russia Energy Relations

For the purpose of research on unfair practices, we shall consider the relationship between the Federation of Russia and the European Union. From 1951, the European Coal and Steel Community did not recognise EU energy policy as a substantial priority. For the first time, the ECSC had striven to establish coal and steel production in France and Germany. The primary project included judicial control in order to maintain a competitive market and provide the development of a coal and steel market. Nonetheless, according to the European Community, energy policy was still a primary issue for the ECSC. However, the diversification of European geopolitics had substantive implications for energy policies. The Arab oil crisis was the first handicap, and during this time, the ECSC did not recognise EU-Russia relations (Kopp 2015, 68).

The initial energy relationship between the European Community and the Federation of Russia dates back to the adoption of the Partnership and Cooperation Agreement on 24 June 1994 on the island of the Corfu (Tichý 2019: 15). This act had a 10-year period of validity under art. 106 of the Partnership and Cooperation Agreement (Agreement on Partnership and Cooperation:85). The European Community had adopted its first energy package soon after adoption of the PCA. Then, there was codification of competition provision, liberalisation of the energy market under the Directive on the improvement in gas industries within the territory of the European Union (Dz.U.U.E L 185). The basic objective was to avoid the abuse of monopolist practices (Gao 2010:99). The packages are considered to be a “harbour”. Therefore, this problem ought to have already been eradicated in 1998.

While the beginning of the development of an energy legal framework sparked a meeting between the President of the European Commission – Romano Prodi and the 1st Deputy Minister of Russia – Viktor Khristenko by the end of 2000s, where again there was re-initiation of energy dialogue. Nonetheless, these activities seem to be a form of diversion (Talseth 2017: 17). In relation to the ineffectiveness of the previous energy package, there was the adoption of a 2nd energy package, which came into force in 2003. This package concentrated on the establishment of common procedures and principles on gas transit pipelines. Also, the European Union took into account supervisory role of the European Commission during transactions in relation to the supply of natural gas (Gao 2010: 99). The Russian favourable approach ensured that the parties reciprocally agreed that any progress to be made in the area of energy policy should provide a sustainable level of competition (Talseth 2017: 1). According to Gazprom, the joint energy dialogue constituted a first step towards adopting the Energy Charter Treaty (Talseth 2017:46).

The aforementioned activities were allegedly supposed to lay down a secure relationship between the Member States of the European Union and the Federation of Russia. However, the consequences were different. Gazprom could not deliver on the promises made for unknown reasons. Taking into consideration Gazprom’s non-compliance with EU competition rules, in 2005 the European Commission initiated inquiry proceedings concerning gas supply. Gazprom breached art. 17 of Regulation 1/2003. The matrix of the inquiry proceeding was the instability of prices and the politicisation of Gazprom, who made prices dependent on political relations (Dz.U.U.E L 1/1: 13).

1.4 Measuring gas rents

With reference to the inquiry procedure against Gazprom, it is worth discussing the method of calculating gas prices. This is because the method at issue is regarded as an unfair practice.

The Russian gas sector provides $\frac{2}{3}$ of total national exports reaching 11 % of the Russian Gross Domestic Product (GDP) for 2019. According to the assumptions, the rents are revenue from the sale of gas taking into consideration the deduction resulting from economic and opportunity costs. Occasionally, Gazprom will deduct guarantee costs. Furthermore, it is worth taking into consideration the indexation of liquid assets. The gas sector distinguishes the "natural cost", which hinges on the production price determined in certain brackets (Gray 1998: 44). The research of Gaddy and Ickes accepted the following formula in calculating gas prices:

$$R_t \equiv P_t Q_t - C_t$$

1. *Source: Gaddy, Ickes 2018: 3.*

The authors pointed out that P is the price, Q is the actual quantity produced, and C is the natural gas price. Moreover, the following method may be carried out by manipulating the changing variable, which is the overestimated costs of gas production.

$$\hat{C}_t = P_t Q_t - C_t$$

6. *Gaddy, Ickes 2018: 3-4.*

However, the formula means gas price reduction and therefore there occurs a inquiry concerning offset and cost compensation. The literature indicates further Gazprom price manipulation. However, selling after a price reduction brings with it certain consequences. First of all, Gazprom ought to and must align costs in order to maintain financial stability. Such reduction in prices defined the term “subsidy prices”, which in practice is each payment on an exporter account. The subsidy constitutes a refund of part of the costs related to gas production, which entail additional costs i.e. fiscal and social, known as the phenomena of “windfall” (Coady, Baig, Ntamatungiro 2007: 9). The subsidy should be converted using the following formula:

$$S = P_{per\ unit} Q$$

7. *Own elaboration based on Gaddy, Ickes 2013: 4.*

The symbol P is price per unit of resources, while the symbol Q is quantity of supply. There we should observe the correctness of the formula of subsidy admission. Nonetheless, when the total amount of price and costs is excessive, then the operation profits go up, as in the following formula:

$$T_p = \hat{P}_t Q_t - \hat{C}_t$$

8. *Own elaboration based on Gaddy, Ickes 2013: 4.*

By introducing excessive costs, they are certainly going to levy some informal and formal taxes. It may assumed that the following formula presents the relevant manipulation of Gazprom practices. It is worth indicating that excessive operating costs (pretax) may be deducted from income in the tax return. It may be assumed that Gazprom may levy informal taxes which arise by virtue of law or informally, which simply allow it to survive on the global market. As one of the last formulae presents a tax cascade, whose main purpose is the deduction of informal and formal taxes and operational profits.

$$T_t = (1 - T^f T^i) O^p$$

9. *Own elaboration based on Gaddy, Ickes 2013: 4.*

In fine, assuming the aforementioned formulas, there is an identification of five excessive surpluses. The gas enterprise may boost amount of rents by:

1. overabundant extraction gas cost;
2. subsidies;
3. formal taxes;
4. informal taxes;
5. remaining profits.

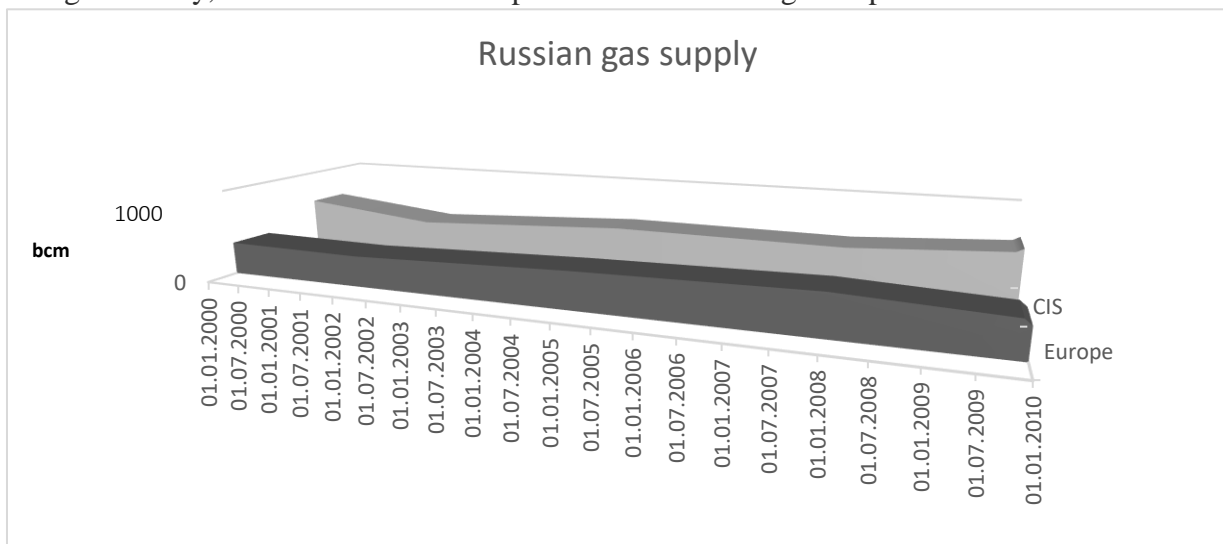
The variant method of calculation of gas rents indicates the differentiation of the European gas price and the price paid, which is the amount of export subsidy.

$$E_p - P_p = S$$

10. Own elaboration based on Orttung and Overland 2011: 80.

Before the gas conflict, the Ukraine paid 20 % more than standard gas price (Chow and Elkind 2009: 83). Furthermore in 2006, the subsidies reached a peak of \$17 billion. While in the subsequent years the subsidy prices fell dramatically to \$5 billion (Ibidem: 80).

The European Union and the Member States are not able to predict gas price manipulation due to excluding Russia as a 3rd national country from EU legislation and the Court of Justice of the European Union jurisdiction. *Ad exemplum*, the manipulation of gas prices precisely described Russia-Ukraine gas disputes, when Gazprom inflated the value of gas prices by increasing subsidised prices. These events have resulted in the breakdown of Ukraine-Russia relations by cutting off access and supply to natural gas (Wilson-Rowe, Torjesen 2000: 93). The Ukraine-Russia gas dispute has launched a discussion on EU summit on energy issues, i.e. energy security and diversification of supply. The following chart presents EU demand for natural gas exactly, which has not been impoverished since the gas dispute.



11. Source: Melling 2010: 4.

Presently, Gazprom have three pipelines, the Nord Stream, the Jamal Pipeline, and Nord Stream II. However, the manipulation of gas prices still hinders competitive supply to EU countries. As per the latest information, the total cost of natural gas for Germany amounts to 371 USD per 1,000 bcm, while Lithuania has been paying 484 USD per 1,000 bcm. However, that is much less than the price of natural gas for Poland, which will have to pay 570 USD per 1,000 bcm till the end of 2022 by virtue of the contract (Martewicz, Strzelecki).

The average gas prices fell \$94 per 1,000 bcm. The table below presents the amount of subsidies for Germany, Lithuania and Poland.

German	\$277
Lithuania	\$390
Poland	\$476

The gas enterprise is suspected of hindering the free supply of natural gas by concluding "destination clauses" in primary contracts, too. Under this clause, it is prohibited to re-sell gas to 3rd parties (Sartori 2013: 5). This significantly obstructs fair sale.

1.5 Gazprom activities before the CJEU and the SCC

The proceedings before the Court of Justice of the European Union and Arbitration Institute of the Stockholm Chamber of Commerce exposed the problem of Gazprom's unfair practices. Although the initial CJEU decision was unfavourable for the Polish company, then over time the CJEU jurisdiction and Gas Directive codification committed to the introduction of compensation for damage brought by individuals.

Gazprom has already abused its dominant position since 2015, when the Polish company PGNiG had a dispute before the Arbitral Tribunal. Initially, the illicit supply of natural gas relied on a request for enhancement of pipeline throughput operation by the Bundesnetzagentur known as the OPAL. On 16th December 2016, Poland submitted an application on the validity of the European Commission decision of 28th October 2016 on gas transmission by raising an objection by entering a demurrer of art. 18 and 25 of the Directive 2003/55/EC (ECLI:EU:T:2017:544: 1/2). *In brevi*, the German transmission of natural gas known as the OPAL is an extension of the Nord Stream. On the basis of previous a European Commission decision, Gazprom, as one of the major gas enterprises, is not entitled to use more than 50 % of total gas capacity in a one year period (ECLI:EU:T:2017:544: 2). This limit may be exceeded if the gas enterprise is going to offer 3 billion m³ with acceptance of the competitive rules under art. 18 of the Gas Directive issued (Dz.U.UE L 176: 240/243). This provision is required to adopt a common methodology in order to provide access to the gas transmission system. Moreover, an expired art. 18 called for the publication of gas tariffs. The subsequent art. 25 of Directive 2003/55/EC required the appointment of a National Regulatory Office, which should assure a competitive and non-discriminatory gas market. As already shown, the NROs had to publish a national methodology and common tariffs at least one year before the implementation of the conditions. It seems that the 2003 Gas Directive has been an operable mechanism for implementing the common gas market. It is supposed to mean parity of prices between Member States.

In the first decision, the European Commission excluded the third party from gas access. Nonetheless, Gazprom started implementation of the Gas Transfer Program, in relation to which the main transmission operator had to share the OPAL pipeline on competitive, just, and non-discriminative auctions. Also, the European Commission provided for the proper functioning of the competitive gas market by indicating that in the event of higher demand than 90% of OPAL capacity at the annual bidding procedure, the BNetzA was required to increase the FZK capacities by 1.6 million kWh. Moreover, the price may not exceed the average amount and it had to be comparable in relation to other products. As the aforementioned evidence suggests, Gazprom did not observe the EC decision, which increasingly exposed the problem of Gazprom's unfair practices.

With reference to price inequalities, PGNiG S.A. requested an action for annulment. According to the case files, the work on the German gas pipeline was completed on 13 June 2011 and it had 36.5 bln m³ of total throughput. The applicant asked for the suspension of execution of the European Commission decision, suspension of execution by BNetzA, OGT, OAO Gazprom, and OOO Gazprom of the public contract, and a Gazprom commitment to adjust to the new conditions. In the opinion of the Court of Justice of the European Union, the

urgency prerequisites had not been accomplished and that application should be dismissed under the principle of “*fumus boni iuris*”. The CJEU considered the application incomplete, which affected its final decision.

The complaints against Gazprom were surprisingly many. On 19 July 2019, the European Parliament along with the Council codified the Gas Directive on common rules for internal gas markets (Dz.U.UE L 211: 1/2). The legislative shortcomings proceeded from the exclusion of EU jurisdiction in the previous Gas Directive. Art. 49b of the Directive 2019/692/EU describes the notification procedure and the European Commission supervision order thoroughly (Dz.U.UE L 117: 45b). Basically, it means a restriction on the Nord Stream II pipeline. Gazprom must respect EU provision even at the first interconnection point with the Member States' network, located in the area of the territorial sea of the Member States. This means that Nord Stream belongs to the territorial sea of Denmark and Sweden, and Gazprom must uphold the provisions under the Gas Directive from 2019. The injustice of Gazprom actions have resulted in subsequent appeals to the European Commission and this must be borne in mind.

The Republic of Poland and the Republic of Latvia have requested the European Commission decision, which stated the legality of the OPAL manufacturing hub in the scope of exclusion from access by 3rd parties to Gazprom's gas under art. 18 of 2009 Gas Directive, be annulled. (ECLI:EU:T:2019:567: 29/30). Furthermore, the Republic of Poland has brought six complaints against the decision. According to the case record, which basically concerned breaches of the principle of solidarity, *ius certum*, the provisions of the international agreement, art. 36 Gas Directive, which referred to the violation of energy security and competition, and art. 101-102 of the Treaty on the functioning of the European Union (the scope of exclusion from access by 3rd parties to Gazprom gas under art. 18 of the 2009 Gas Directive) (ECLI:EU:T:2019:567: 48). Referring to art. 194 of the Treaty on the Functioning of the European Union, the CJEU has recognised an infringement identifying a restriction or even complete containment of gas transmission through the Jamal Pipeline due to the full capacity of the Nord Stream throughput (ECLI:EU:T:2019:567: 61/62). The Republic of Poland also raised concerns about the distortion of gas supply and increase in costs, which were not the subject of deliberations by the European Commission (Ibidem: 63). The CJEU dismissed the European Commission claims concerning due consideration of art. 194 of the Treaty on the Functioning of the European Union along with art. 36 of the Gas Directive. The CJEU made a clarification that the European Union Energy Policy could not bring negative effects for the Member States under art. 194 of the Treaty on the functioning of the European Union. Therefore, the European Commission ought to make an assessment in the scope of the legality of Gazprom activities on the energy market before issuing a decision (Ibidem, 77/78). And yet Gazprom still contended that the judgement of the CJEU should have been different. The Nord Stream I and Nord Stream II enterprises brought a complaint which was negative *in fine*. They demanded action for an annulment judgement (ECLI:EU:T:2020:210: 1-2). The claims concerned firstly, exemption from the exclusion from access of 3rd parties to the gas transmissions, secondly, to provide an unbundling and lastly, transparency in pricing (Ibidem: 1). In a deep analysis, there are some doubts as to whether Gazprom possesses a dominant position. The requirements placed by the aforementioned company bulldoze competition in the energy market proposed by the European Union in its 3rd energy package. The Tribunal just allowed for bring an application before the German Regulatory Office in order to obtain permission to be exempted. However, on 15 May

2020, the Regulatory Office dismissed Nord Stream's claims (News Polsat: 2019). This means support for the EU's fair, competitive and free energy market *in fine*. In the literature, the inquiry proceedings between the European Commission and Gazprom were called the "antitrust clash of the decade".

There were arbitration proceedings simultaneously. The Arbitration Institute of the Stockholm Chamber of Commerce launched a conciliation procedure by PGNiG against Gazprom. The matrix of the procedure was reduction of prices under the agreement on gas transmission via the Jamal pipeline. There was an amendment in the recalculation of the gas price system as given by the President of PGNiG. The codified system had to take into consideration the average natural gas prices in the EU market under the Jamal contract. Furthermore, the conciliation judgement manages 1.5 bln USD compensation for the Republic of Poland (ale-Bank: 2020). This may mean that Gazprom will perform the provisions of the agreements fairly, at last.

The newest information indicates PGNiG's growth in financial results, because Gazprom has paid the compensation amount. However, in the case of a different scenario and damages for individuals, Gazprom would fall under the doctrine of direct effect.

1.6 The doctrine of direct effect and the procedure action for damages

The doctrine of *direct effect* means uniform application of the European Community provisions, and now the Treaty on the Functioning of the European Union, the Treaty on the European Union, and the Charter of Fundamental Rights. This concept was developed in the judgement *Costa v. ENEL* at the end of 1963 (Martines 2014: 129-131). It may be applied horizontally or vertically.

The vertical right to bring an action for damages refers to a natural person who was injured due to the violation of principles and provisions resulting not just from international agreements. However, the directive's provisions fall under the doctrine of direct effect, too.

As is known, art. 101-102 of the Treaty on the functioning of the European Union prohibit any undertakings or abuse of a dominant position even if it resulted from functioning international conventions in which the European Union is a party. However, the right to bring an action for damages resulting from *acquis communautaire* of the European Union remains undisputable.

It is worth pointing out that the codified Gas Directive introduced new set of rules in the area of actions for damages. It adopted more restrictive rules on energy distribution. Firstly, the gas companies have to act in compliance with European gas transmission rules. Furthermore, it includes the right to interpretation by the CJEU. The Gas Directive imposes more restrictive conditions for receiving derogations.

While in the scope of the right to an action for damages in a vertical relation, the person who was aggrieved even financially shall be entitled to bring the issued action. *Ad exemplum*, the overpricing problem for an individual may led to compensation *in fine*. The present research points out that three premises have to arise, i.e:

1. real damage;
2. provisions are unconditional and do not depend on any other provisions;
3. causal link between conferred right and real damage;

However, in the case of PGNiG, the individuals had paid a plateaued price, and therefore in this case, solely PGNiG may bring an action for damages in a vertical relation.

On the other hand, the right to bring an action for damages resulting from agreement was doubtful till 1987. It was confirmed by the ruling of the Court of Justice of the European Union *Demirel* from 30 September 1987, which stated that a provision of the agreement may be applicable entirely if that provision is clear, precise and conditional (ECLI:EU:C:1987:400:2). Any parties cannot experience negative effects from concluding and executing international agreements. In my opinion, these kinds of measures constitute a legal certainty for performing international agreements, in which the European Union is party under art. 218 of the Treaty on the functioning of the European Union.

Definitely, the codification of the Gas Directive has introduced a new system of protection from undesirable Gazprom practices. On 21 August 2020, the newest information communicated the average natural gas prices for 2020. Gazprom communicated that the average price would reach \$133 per thousand cubic metres for 2020. However, it is difficult to assess whether these promises will come true.

It is unknown whether Gazprom has changed trade politics and the right to damages there will go away. Definitely, currently this kind of action for damages does not occur, but then it may happen if such illicit practices occur over time.

Summary

It worth emphasising that the European energy market requires challenges in the area of conclusion of international agreements. Despite the codification of the Gas Directive, Gazprom strives to show its congregation back through bringing appeals and complaints. Gazprom's solvency of compensation was precarious. However, recent information points out the fulfilment of European provisions and the SCC judgement. Despite giving Gazprom a statement concerning average natural gas prices, it can be assumed that the Russian natural gas supply may be significantly affected and may determine trends and prices, too, in future.

The legal and natural bodies await the development of a procedure against unfair practices and abuse of a dominant position with great hope. Although, currently this has not occurred, a right to an action for damages resulting from international agreements, the individuals have the right to bring an action for damages arising from illicit Gazprom actions under the 2019 Gas Directive. Due to the fact that from 2019 Gazprom belongs to EU legislation and jurisdiction gives it a sense of expectation.

Bibliography

1. Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of one part, and the *Russian Federation* of 29.11.1987, OJ L 327.
2. Oxford Analytica. "Russian gas exports may see uptick in fourth quarter". Emerald Expert Briefings.
3. AleBank: PGNiG powinno otrzymać ok. 1,5 mld USD odszkodowania od Gazpromu, <https://alebank.pl/pgnig-powinno-otrzymac-ok-15-mld-usd-odszkodowania-od-gazpromu/> (dostęp: 21.05.2020).

4. Aron, L. *The Political Economy of Russian Oil and Gas*, [in:] Russian Outlook, American Enterprise Institute for Public Policy Research. 2013.
5. Case T-526/19: Action brought on 25 July 2019 — Nord Stream 2 v Parliament and Conseil; Case T-530/19: Action brought on 26 July 2019 — Nord Stream v Parliament and Council, OJ C 312.
6. Coady, D., Baig T., Ntamatungiro J. *Domestic Petroleum Product Prices nad Subsidies: Recent Developments and Reform Strategies*, International Monetary Fund, 2007.
7. Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users, OJ L 185.
8. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), Dz.U.UE L 1/1.
9. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1.
10. Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, OJ L 176.
11. Gaddy, C., and Ickes, B. *Russia's Dependence on Resources*, [in:] The Oxford Handbook of the Russian Economy, Alexeey M., and Weber S., Oxford University Press. 2018.
12. Gao, A.M-Z. *Regulating Gas Liberalization: A Comparative Study on Unbundling and Open Access Regimes in the US, Japan, South Korea and Taiwan*. Wolter Kluwer, Netherlands. 2010.
13. Gray, D.F. *Evaluation of Taxes and Revenues From the Energy Sector in the Baltics, Russia and Other Former Soviet Union Countries*, International Monetary Fund. 1998.
14. Judgement of the General Court (First Chamber, Extended Composition) of 10th September 2019 Republic of Poland and Republic of Latvia v. European Commission, T-883/16, ECLI:EU:T:2019:567.
15. Judgment of the Court of 30 September 1987, Meryem Demirel v Stadt Schwäbisch Gmünd C-12/86, Zbiór Orzeczeń 1987 -03719.
16. Kopp, S-D. *Politics, Markets and EU Gas Supply Security. Case Studies of the UK and Germany*, Springer Publishing, Berlin. 2015
17. Orttung, R. and Overland, I. “A limited toolbox: Explaining the constraints on Russia’s foreign energy policy”. *Journal of Eurasian Studies* 2, 2011.
18. Chow, E., and Elkind, J. “Where east meets west: European gas and Ukrainian reality”. *The Washington Quarterly*, 32(1), 2009.
19. Martewic, Strzelecki: Poland seeks gas-price cut from Gazprom in contract negotiations, <http://www.gasprocessingnews.com/news/poland-seeks-gas-price-cut-from-gazprom-in-contract-negotiations.aspx>. (dostęp: 19.05.2020).
20. Martines, F. Direct Effect of International Agreements of the European Union, “*International Journal of Constitutional Law*” 12(1) 2014.
21. Melling, A., *Review o the contracting practices of key gas industry platers* [in:] Natural gas pricing and its future: Europe as the battleground. Carnegie Moscow Center. 2010.

22. Sartori, N., *The European Commission vs. Gazprom: An Issue of Fair Competition or a Foreign Policy Quarrel ?*, Instituto Affari Internazionali Working Papers 13.
23. Moe A., and Kryukov, A., *The Russian Natural Gas Sector*, [in:] *The Oxford Handbook of the Russian Economy*, Alexeey M., and Weber S., Oxford University Press. 2018
24. Postanowienie z dnia 21 lipca 2017, Polska/Komisja, T-883/16, ECLI:EU:T:2017:542.
25. Super Polsat: Dyrektywa gazowa. Sąd UE odrzucił skargę Nord Streamu, <https://www.polsatnews.pl/wiadomosc/2020-05-20/dyrektywa-gazowa-sad-ue-odrzucil-skarge-nord-streamu/> (dostęp: 21.05.2020).
26. Talseth, L.Ch-U. *The power of politics. EU-Russia Energy Relations in the 21st Century*. Springer Nature, Switzerland. 2017.
27. Whitefield, S., *Industrial Power and the Soviet State*, Calarendon Press, Oxford. 1993.
28. Wilson-Rowe, E., Torjesen. S. *The Multilateral Dimension in Russian Foreign Policy*. Routledge, New York.
29. 112 Ukraine: Transit of Russian gas through Ukraine through TurkStream decreases by half, <https://112.international/ukraine-top-news/transit-of-russian-gas-through-ukraine-through-turkstream-decreases-by-half-53303.html> (access 21.08.2020)

Marika Marciniak – Master of Arts of the Catholic University of Lublin, Faculty of the European Union Law, Faculty of the Business Law, Master of Arts of the Maria Curie-Skłodowska University, Faculty of Law, Faculty of Management. Phd Candidate of Maria-Curie Skłodowska Doctoral School of Social Science in the field of law. Law student of Catholic University of Lublin. Research conducted in the European Union Law Department of Faculty of Law and Administration at Maria Curie-Skłodowska University. Member of Students' Scientific Circle of Law. Her scientific interests include: EU energy policy, law making process, sources of EU law, cybersecurity.

Orcid: 0000-0002-5598-3417



ISSN: 2545-0859