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Introduction

Gas Trade Review is a publication in which the shipping and contractual issues relevant to the global LNG trade and the European pipeline trade with natural gas are analyzed.

In this edition, you can read about the following topics:

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If you have any comments about the matters reviewed in this edition, please address them to editor@commoditylaw.eu

Criteria For The Allocation Of LNG Cargoes Under The Portfolio Contracts

by Vlad Cioarec, International Trade Consultant



The portfolio players are trading companies that have access to multiple supply sources around the world, fleets of LNG carriers, capacity rights at regasification terminals in various regions and large customer portfolios. The companies with the largest LNG portfolios are BP, Shell, TotalEnergies, Chevron and ExxonMobil.

They offtake the LNG production at various liquefaction terminals under medium or long-term contracts for resale under short, medium or long-term contracts.

In the offtake contracts, the LNG cargoes are delivered FOB basis at the liquefaction terminals, with no destination restriction and profit sharing provisions. The destination freedom in the offtake contracts gives the possibility to the portfolio players to allocate the LNG cargoes to the customers that offer the highest revenue. The FOB contract price is the origin market benchmark price or an oil-indexed price.

In the resale contracts that are referred to as “portfolio contracts”, the LNG cargoes have to be delivered DES basis at the regasification terminals specified by the buyers.

The portfolio contracts do not need to mention the supply source but only that the LNG cargoes will be delivered from the seller's portfolio.

The portfolio contracts provide various options to buyers, such as the option to request adjustments to the Annual Delivery Programme in respect of the number of LNG cargoes to be delivered and in respect of the Scheduled Delivery Windows in order to be able to deal with the changes in demand.

The DES price of the portfolio contracts is the destination market benchmark price.

The portfolio players allocate the LNG cargoes to various destinations taking into consideration the following criteria:

- the FOB prices of the LNG in the offtake contracts;
- the DES prices of the LNG in the destination market;
- the cargoes' quality characteristics and the regasification terminals' quality specifications, particularly the Wobbe Index Value range accepted by the regasification terminals;
- the LNG volumes required to be delivered;
- the Scheduled Delivery Windows agreed in the Annual Delivery Programmes;
- the sea distances from the liquefaction terminals to the regasification terminals and the transportation costs;
- the time spent by the LNG carriers on the sea routes from the liquefaction terminals to the regasification terminals;
- the compatibility of their LNG carriers with the liquefaction and regasification terminals, i.e. which LNG carriers from their fleet is approved by both the liquefaction and regasification terminals.

The Sellers' Liability For Failure To Deliver In The Event Of The Cargo Diversion

by Vlad Cioarec, International Trade Consultant



The DES prices for the US LNG cargoes sold to the countries in the Asia Pacific region under long-term SPAs are normally higher than the DES price for the EU market due to the higher transportation costs and higher cargo loss through boil-off during the transportation from the LNG terminals in the US Gulf Coast to the Asia-Pacific region.

However, this was not always the case. In 2022, after the Russia's invasion of Ukraine the European spot prices for LNG imports sky rocketed. In order to take advantage of the higher prices in the EU market, some LNG suppliers to Asia-Pacific region redirected their cargoes to buyers in the EU countries, thereby defaulting on their delivery obligations under the long-term SPAs with the Asian importers.

The seller's liability for failure to deliver an LNG cargo in the event of the cargo diversion depends on whether or not the contractual provisions allow the seller to cancel the delivery of some cargoes. In the case of LNG sale contracts that enable the sellers and buyers to cancel the delivery of cargoes, i.e. the portfolio sale contracts, if the seller chooses to divert a cargo to a higher priced market, it can cancel the delivery of the respective cargo with no obligation to deliver a replacement cargo. In such case, the seller shall have to pay a specified amount as cancellation fee which shall be the buyer's sole and exclusive remedy for the seller's decision to cancel the delivery of the respective cargo.

In the case of LNG sale contracts that do not allow the sellers to cancel the delivery of cargoes, the sellers have to reschedule the delivery of cargoes which they are unable to deliver within the range of time (scheduled unloading window) stipulated in the Annual Delivery Plan and/or Transaction Confirmation Notice. LNG SPAs provide that in such case the seller and buyer shall, within a specified number of days after the end of the scheduled unloading window, use "reasonable endeavours" to reschedule the relevant LNG cargo, subject to the seller's obligation to reimburse the buyer all reasonable, documented costs and expenses arising from the rescheduling¹.

If the seller and buyer are unable to reschedule the LNG cargo within the contractual time limit, then the buyer shall be entitled to cancel the delivery of the respective LNG cargo and the seller shall have to pay to buyer an amount as damages.

The extent of amount to be paid by the seller as damages will be in function of whether or not the buyer is able to procure a replacement cargo.

If the buyer is able to procure a replacement cargo, an amount shall be paid by the seller to buyer for the actual damages incurred by the buyer to procure a replacement cargo. Such an amount shall be equal to the amount by which the buyer's cost to procure the replacement cargo (including any additional documented transportation and logistics cost) in the spot market exceeds the value of LNG cargo not delivered by the seller on the last day of the scheduled unloading window based on the applicable contract price².

If the buyer is not able to procure a replacement cargo, an amount shall be paid by the seller to buyer as liquidated damages. This amount, commonly referred in LNG SPAs as "cargo underdelivery amount", is typically stated as the product of a percentage of the contract price (usually between 40% and 50%) per MMBtu for the LNG cargo not delivered and the nominal quantity of LNG in MMBtu stipulated in the Transaction Confirmation Notice for the respective cargo.

1 See Sub-clause 3(4) of GIIGNL Master Ex-Ship LNG Sales Agreement 2011.

2 See Sub-clause 3(4) of GIIGNL Master Ex-Ship LNG Sales Agreement 2011.

LNG SPAs provide that in the event that the buyer is unable to procure a replacement cargo, the payment of the cargo underdelivery amount shall be the buyer's sole and exclusive remedy for the seller's failure to deliver an LNG cargo, thereby preventing the buyer to bring a claim for other losses. Furthermore, LNG SPAs have a liability limitations clause that expressly precludes the buyer to recover damages for the loss of income or profit or business opportunity, business interruption or consequential or indirect losses.

In 2022, there were sellers who sought to take advantage of the price differentials between the European and Asian markets by diverting Asian cargoes to Europe relying on the liquidated damages and liability limitations clauses to settle the buyers' claims. However, the liability limitations clause does not apply in the case of wilful misconduct³.

A deliberate breach of contract such as a cargo diversion for commercial reasons could be considered a wilful misconduct and invalidate both the liquidated damages clause covering the sellers failure to deliver a cargo and the liability limitations clause.

Can A Force Majeure Declaration Protect The LNG Sellers In The Event Of Cargo Diversion For Commercial Reasons?

Some of the sellers who redirected their LNG cargoes in 2022 to the buyers in Europe sought to declare force majeure as an excuse for their failure to deliver the respective LNG cargoes as per agreed schedules to the buyers in the Asia Pacific region.

LNG SPAs provide that a party claiming that a force majeure event prevents it to perform any of its contractual obligations must give a notice of such force majeure to the other party stating the information available about the event, an estimate of the likely duration of the event, the contractual obligations affected by the event and the actions taken to minimise the effects of the force majeure event.

The sellers who purport to declare a force majeure event should be able to prove the occurrence of the force majeure event and that the event invoked was beyond their reasonable control, that the event prevent them to deliver the LNG cargo on time and the event is not the direct or indirect result of their failure to perform their contractual obligations.

If the notice of force majeure given by the sellers to buyers does not comply with the contractual requirements to provide the required information about the purported force majeure event or the sellers are unable to prove the occurrence of the force majeure event, the sellers cannot rely on the force majeure for their failure to deliver in the case of the cargo diversion. An event invoked as force majeure by sellers does not constitute force majeure if its occurrence or effect is not beyond the reasonable control of the sellers⁴.

3 See Sub-clause 14.1 of Trafigura's Master LNG Sale and Purchase Agreement and Sub-clause 13(1) of GIIGNL Master Ex-Ship LNG Sales Agreement 2011.

4 See Sub-clause 15.3 of BP Standard Form MSA (DES) 2019 Edition.

Reporting Obligations Of The European Importers Of Natural Gas And LNG Under The EU Methane Regulation



by Vlad Cioarec, International Trade Consultant

At COP26 UN Climate Conference in 2021, the European Union and the United States launched the **Global Methane Pledge**, a political commitment to work together in order to collectively reduce the global methane emissions by 2030 by at least 30% compared to 2020 levels and to take comprehensive domestic actions to achieve that target¹. In line with that commitment, on 13 June 2024, the European Parliament and the Council of the European Union adopted the Regulation (EU) 2024/1787, referred to as the “EU Methane Regulation”, which stipulates a series of requirements for the reduction of the methane emissions from the coal, oil and natural gas sectors in the EU that will also affect the imports of natural gas and LNG from third-countries.

The focus in this article are the measures applying to the companies which import natural gas and/or LNG into the EU.

The EU Methane Regulation imposes obligations on the European importers of natural gas and LNG on the grounds that the EU imports 90% of its natural gas consumption, that in 2023 the LNG imports represented 42% of the EU's total gas imports² and that the consumption of the natural gas has a significant contribution to the methane emissions in the EU.

The obligations imposed on the European importers of natural gas and/or LNG are progressive with four implementation phases and reporting deadlines that have been set based on the OGMP 2.0's reporting deadlines³, taking into consideration the fact that many European companies have already joined OGMP 2.0.

1 By January 2025, 159 countries have joined the Global Methane Pledge and have committed to contribute to a collective effort to reduce the global methane emissions by 2030 by at least 30% compared to 2020 levels.

2 See ACER's Analysis of the European LNG market developments – 2024 Market Monitoring Report.

3 The Oil and Gas Methane Partnership (OGMP) is a voluntary initiative that was first launched by the Climate and Clean Air Coalition (CCAC) and the United Nations Environment Programme (UNEP) at the UN Climate Summit in 2014 to help the oil and gas companies to reduce the methane emissions in the upstream segment. It is a measurement-based reporting framework for the oil and gas industry. In November 2020, CCAC, UNEP, the European Commission, the Environmental Defense Fund and 62 oil and gas companies launched a new version of the partnership, OGMP 2.0, to cover also the midstream and downstream segments. The OGMP 2.0 reporting framework applies to all segments of the gas and oil sector where material quantities of methane can be emitted. This includes the upstream exploration and production, gathering and processing, liquefaction and regasification terminals, gas transmission, underground gas storage and downstream gas distribution. Over 115 companies have committed so far to the OGMP 2.0 reporting framework. In addition to the major oil and gas production companies, among the OGMP 2.0 members are operators of natural gas transmission and distribution pipelines, gas storage facilities and LNG terminals. The OGMP 2.0 has set a standard for the methane emissions reporting and performance called the “gold standard”. The member companies have to establish and communicate their methane emissions target by 2025 and submit an implementation plan in which to describe the pathway to achieve the gold standard. The OGMP 2.0 member companies must report annually their methane emissions data from all sources at both operated and non-operated assets. The deadline for submitting the annual report is 31 May. The OGMP 2.0 establishes five reporting levels: **Level 1** – Reporting at OGMP 2.0 Level 1 requires the reporting of a single consolidated methane emission figure representing the methane emissions from a reporting unit. It is the lowest reporting level for the OGMP 2.0. **Level 2** – Reporting at OGMP 2.0 Level 2 requires the reporting of methane emissions based upon five different emission categories for the upstream segment and three categories for the midstream and downstream segments. **Levels 3, 4 and 5** require the reporting of methane emissions at the individual source level. The differences between the reporting levels 3, 4 and 5 consist in the way in which the estimation is undertaken at the source level. At Level 3, the methane emissions have to be reported by individual source type based on generic emission factors. At Level 4, the methane emissions have to be reported by detailed source type based on specific emission and activity factors. At Level 5, the highest reporting level, the methane emissions have to be reported similarly to Level 4 but with the addition of site-level measurements. A member company can achieve the gold standard if it is able to report at Level 4 the methane emissions for the operated assets within three years and for the non-operated assets within five years. Once achieved, the gold standard can be maintained by increasing the reporting level to Level 5.

First Reporting Obligation – Obligation To Report The Methane Emission Data

The Article 27 of the EU Methane Regulation stipulates that by 5 May 2025 and 31 May every year thereafter, the European importers of natural gas and/or LNG will have to provide to the regulatory authority appointed by the EU Member State in which they are established the following information:

- the name and address of the exporter (supplier) and, if different from the exporter, the name and address of the third-country producer;
- the country where the natural gas was produced;
- information whether the exporter or the third-country producer, as applicable, is carrying out source- and site-level measurement and quantification of methane emissions, whether its methane emissions data are subject to independent third-party verification, whether its methane emissions are reported and whether that data are in compliance with the UNFCCC reporting requirements⁴ or with the OGMP 2.0 standards;
- information whether the exporter or the third-country producer, as applicable, applies regulatory or voluntary measures to control its methane emissions, including a description of those measures.

The European importers of natural gas and/or LNG must provide the first methane emissions report by 5 May 2025. In the first report, the European importers of natural gas and/or LNG have to provide the methane emissions data for the natural gas and/or LNG imported between 5 August 2024, the first day after the date when the EU Methane Regulation entered into force, and 31 December 2024. In the reports that have to be provided in the following years by 31 May, the European importers of natural gas and/or LNG will have to provide the methane emissions data for the natural gas and LNG imported between 1 January and 31 December of the previous year.

In order to comply with this reporting obligation, the European importers of natural gas and/or LNG will have to obtain the consent of their suppliers for the inclusion in the supply contracts of clauses that require the exporters to provide the required information.

In the case of LNG imports, the contractual clauses should stipulate the seller's obligation to provide to buyer reports at specified deadlines in respect of each LNG cargo delivered stating the name and address of the natural gas producer, the country where the natural gas was produced, whether the natural gas producer is carrying out source- and site-level measurement and quantification of methane emissions, whether its methane emissions data are subject to independent third-party verification, whether its methane emissions are reported, whether that data are in compliance with the UNFCCC reporting requirements or with the OGMP 2.0 standards and whether the natural gas producer applies regulatory or voluntary measures to control its methane emissions, in which case the methane emissions reports should also include a description of those measures.

Although the European importers cannot impose clauses that require the exporters to provide the methane emissions reports and the other required information in the supply contracts concluded before 4 August 2024, the date when the EU Methane Regulation entered into force, it is possible to include such clauses in the new supply contracts or in the current supply contracts which are in the process of being renewed.

If the importers are unable to submit the required information, they have to provide “sound justification” for such failure and set out the actions that they have undertaken to obtain the information.

4 The United Nations Framework Convention on Climate Change (UNFCCC) require each country to submit greenhouse gas inventory reports to the UNFCCC Secretariat using one of the three methods prescribed, referred to as “tiers”, to estimate the magnitude of annual greenhouse gas emissions. Tier 1 is the lowest tier. Tier 1 methods use the Intergovernmental Panel on Climate Change (IPCC) default emission factors and require the most basic and the least disaggregated activity data. Tier 2 and 3 require more elaborate methods based on multiple data sources and highly disaggregated activity data. UNFCCC Tier 3, which is the highest tier, is the EU target standard.

A Global Framework For The Measurement, Monitoring, Reporting And Verification Of The Methane Emissions Data

In the absence of an agreed global framework for the measurement, monitoring, reporting and verification of the methane emissions data, the LNG buyers cannot compare the methane emissions data provided by different suppliers. This is due to the different approaches for the quantification and reporting of the methane emissions across the natural gas supply chain and a lack of clear metrics for valuing and fostering higher quality data. There is currently no consensus on how the natural gas suppliers can credibly account for and verify claims regarding the methane emissions associated with their natural gas in the marketplace.

To overcome this obstacle, in November 2023, a group of importing and exporting countries agreed to establish an international working group (The International Working Group to Establish a Greenhouse Gas Supply Chain Emissions Measurement, Monitoring, Reporting and Verification (MMRV) Framework) that will create a global framework based on the OGMP 2.0 Reporting Framework, for the measurement, monitoring, reporting and verification of the greenhouse gas emissions, including methane, that occur during the production, processing, transmission, liquefaction, transport and distribution of the natural gas. The International MMRV Working Group participants include policy and technical experts from Argentina, Australia, Brazil, Canada, Colombia, East Mediterranean Gas Forum (Observer), European Commission, Egypt, France, Germany, India, Italy, Japan, Republic of Korea, Malaysia, Mozambique, Nigeria, Norway, United Arab Emirates, United Kingdom and United States.

The purpose of the global MMRV framework is to improve the accuracy, completeness and transparency of the greenhouse gas emission reports in the marketplace through a set of criteria for the measurement, quantification and reporting of the greenhouse gas emissions and for the independent third-party verification of the greenhouse gas emissions by accredited and technically qualified certifiers.

The global MMRV framework will enable the LNG suppliers to provide, starting from 2025, comparable and reliable information about methane emissions to the LNG buyers from all over the world and compete on the global LNG market on the basis of a lower methane profile.

Second Reporting Obligation – Obligation To Report The Application Of MRV Measures By Third-Country Producers

From 1 January 2027, the European importers of natural gas and/or LNG will be required to demonstrate and report on annual basis to the regulatory authority appointed by the EU Member State in which they are established that the contracts for the purchase of natural gas or LNG produced outside the EU that were concluded or renewed on or after 4 August 2024, the date when the EU Methane Regulation entered into force, cover only natural gas from producers who apply methane monitoring, reporting and verification (MRV) measures that are equivalent to those set out in the Articles 8, 9 and 12 of the EU Methane Regulation⁵.

In order to comply with this reporting obligation, the European importers of natural gas and/or LNG have to include in the purchase contracts concluded after 4 August 2024 clauses that require the sellers (exporters) to provide documentary evidence that the methane emissions data in respect of the natural gas or LNG imported into the EU are subject to independent third-party verification and that the natural gas producer applies monitoring and reporting measures equivalent to those set out in Article 12 of the EU Methane Regulation or, if the natural gas producer is a member of the OGMP 2.0, it reports its methane emissions data at OGMP 2.0 reporting level 5.

In the case of natural gas or LNG purchase contracts concluded before 4 August 2024, the date when the EU Methane Regulation entered into force, the importers will be required to undertake

⁵ See Article 28 paragraph 1 of the EU Methane Regulation.

“all reasonable efforts” to convince their suppliers to agree with the amendment of those contracts to include clauses that require the suppliers (exporters) or producers to apply, in respect of the natural gas or LNG supplied into the EU from 1 January 2027, MRV measures equivalent to those set out in the Article 8, 9 and 12 of EU Methane Regulation⁶.

In the case of those contracts, starting from 1 January 2027 the importers will be required to inform annually the regulatory authority appointed by the EU Member State in which they are established of the results of such efforts and, in the case of failure, must provide “sound justification” to the regulatory authority for such failure and set out the actions they have undertaken as part of those efforts⁷.

The only importers exempted from this reporting obligation are those who import natural gas and/or LNG from third countries that apply MRV measures equivalent to those set out in the Article 8, 9 and 12 of EU Methane Regulation⁸.

Third Reporting Obligation – Obligation To Report The Methane Intensity Of The Natural Gas Imported Into EU

By 5 August 2027, the European Commission shall adopt a methodology for calculating the methane intensity of the production of natural gas⁹.

Article 29 paragraph 1 of the EU Methane Regulation stipulates that by 5 August 2028 and every year thereafter, for the natural gas or LNG supply contracts concluded or renewed on or after 4 August 2024, the date when the EU Methane Regulation entered into force, the European importers of natural gas or LNG will have to report to the regulatory authority appointed by the EU Member State in which they are established the methane intensity of the production of natural gas placed by them on the EU market calculated in accordance with the methodology adopted by the European Commission.

In the case of contracts for the supply of natural gas or LNG concluded before 4 August 2024, the European importers are required to undertake “all reasonable efforts” to report to the regulatory authority appointed by the EU Member State in which they are established the methane intensity of the production of natural gas placed by them on the EU market calculated in accordance with the methodology adopted by the European Commission. From 5 August 2028, those importers will be required to report on the results of such efforts on an annual basis¹⁰.

In order to comply with this reporting obligation, the European importers will have to get the consent of their suppliers for the inclusion in the supply contracts of clauses that require the suppliers to provide the methane intensity information to importers.

Fourth Reporting Obligation

Based on the methodology adopted for the calculation of the methane intensity of the production of natural gas, the European Commission shall establish the mandatory maximum methane intensity value for the natural gas and LNG placed on the EU market, taking into consideration the potential impact of setting this value on the security of gas and LNG supply into the EU.

Article 29 paragraph 2 of the EU Methane Regulation stipulates that by 5 August 2030 and every year thereafter, for the supply contracts concluded or renewed after 5 August 2030, the European importers will be required to report and demonstrate to the regulatory authority appointed by the EU Member State in which they are established that the methane intensity of the production of natural

6 See Article 28 paragraph 2 of the EU Methane Regulation.

7 See Article 28 paragraph 2 of the EU Methane Regulation.

8 See Article 28 paragraph 7 of the EU Methane Regulation.

9 See Article 28 paragraph 4 of the EU Methane Regulation.

10 See Article 29 paragraph 1 of the EU Methane Regulation.

gas placed by them on the EU market is below the maximum methane intensity value for the natural gas established by the European Commission.

This means that from 5 August 2030, the European importers of natural gas and/or LNG will only be able to conclude or renew supply contracts for natural gas and/or LNG with a methane intensity that is below the maximum methane intensity value established by the European Commission.

Methane Transparency Database

The regulatory authorities in the EU Member States will have to submit the information provided by the importers of natural gas and/or LNG to the European Commission in respect of the measures adopted by third-country producers to control the methane emissions, the application of MRV measures and the methane intensity of the production of natural gas into the EU.

On the basis of the information provided by the importers of natural gas and/or LNG, the European Commission will set up and manage a methane transparency database that will serve as a source of information for the future purchasing decisions of the importers of natural gas and LNG. The methane transparency database shall include the list of countries where the natural gas is produced and from which it is exported to the EU and the list of importers placing the natural gas and LNG on the EU market.

By 5 August 2026, on the basis of the information available in the methane transparency database, the European Commission shall publish in the methane transparency database the methane performance profiles of the EU Member States and importers which place natural gas and/or LNG on the EU market, as well as of the third countries from which the EU imports natural gas and/or LNG and of the third-country producers and exporters which supply them to the EU.

Penalties For Non-Compliance With The EU Methane Regulation

Article 33 of the EU Methane Regulation stipulates that in the case of failure to comply with the reporting obligations and/or with the maximum methane intensity value established by the European Commission for natural gas, the national regulatory authorities of the EU Member States have the power to impose a series of penalties, including the confiscation of profits and administrative fines of up to 20% of the annual turnover.

Potential Impact Of The EU Methane Regulation On The Security Of LNG Supply To European Union

The European importers of LNG will be able to comply with the reporting obligations imposed by the EU Methane Regulation only in the case of liquefaction facilities where the natural gas producers can be identified and are willing to provide the required data. In the case of US liquefaction facilities, not only that the LNG exporters are different from the natural gas producers but in cases where the natural gas is sourced from multiple gas fields, it could be difficult to determine who is the natural gas producer for an LNG cargo.

It is expected that at least in 2025 and 2026, some of the US LNG exporters will refuse to assume obligations which they are unable to comply with. This could affect the LNG supply to European Union in the future, taking into consideration the fact that in 2023 the United States was the largest supplier of LNG to European Union, accounting for almost half of the deliveries, 63 bcm out of 134 bcm.