



Introduction

Gas Trade Review is a publication that analyses maritime and contractual aspects relevant to the global LNG trade and the European pipeline gas trade.

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

- **Requirements For Force Majeure Declaration In LNG MSPAs**
- **Contractual Implications Of The Proposed Ban On Russian LNG Imports**

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

Requirements For Force Majeure Declaration In LNG MSPAs

by Vlad Cioarec, International Trade Consultant



The Force Majeure clause of the LNG MSPAs provides that an event of force majeure affecting a contracting party shall constitute force majeure only to the extent that such event meets the requirements stated in the definition of force majeure.

In GIIGNL Master LNG Sale and Purchase Agreement Template, 2024 Edition, Force Majeure is defined as *any event or circumstance whatsoever (or combination of events or circumstances) that delays, interferes with or prevents the affected Party from fulfilling one or more of its obligations under the Agreement and “which is beyond the reasonable control of the affected Party and the effects of which cannot be avoided by steps which might reasonably have been expected to have been taken by the affected Party acting as a Reasonable and Prudent Operator [but] excluding any such event or circumstance or combination thereof that is the direct or indirect result of a failure by the affected Party to perform any of its obligations under the applicable Transaction¹.”*

Sub-clause 15.4 of GIIGNL Master LNG Sale and Purchase Agreement Template, 2024 Edition, also provides that:

“A Party claiming Force Majeure shall use reasonable endeavours:

(a) to eliminate or overcome the event or circumstance of Force Majeure relied on to enable it to resume full performance of its obligations; and

(b) to minimize the effects of the event or circumstance of Force Majeure; provided however that:

(i) such Party claiming Force Majeure shall not be obliged to take any steps which would be beyond its reasonable control or would not be taken by a Reasonable and Prudent Operator and

(ii) a strike or any other kind of labour dispute may be settled by the Party concerned at its absolute discretion.”

These provisions require the party who claims force majeure to show that the event invoked as force majeure was beyond its reasonable control, that the event invoked as force majeure delayed, interfered with or prevented it to perform its contractual obligations and that it could not have avoided or overcome the effects of the event by using reasonable endeavours.

1. The Event Invoked As Force Majeure Was Beyond The Reasonable Control Of The Affected Party

Regardless of whether the event invoked as force majeure was specified as force majeure or not in the force majeure clause of the LNG MSPA, it has to be beyond the reasonable control of the party seeking to rely upon it.

An event is considered to be beyond the reasonable control of the affected party, if it occurs without its fault. Therefore, in order to be considered force majeure, the event invoked must take place without the fault of the party seeking to rely upon it.

In disputes arising from the declaration of force majeure, the arbitrators and courts will first consider whether the event invoked was indeed an event that could not have been reasonably foreseen or whether it was an event that the party invoking force majeure had the means and

¹ See Sub-clause 15.1 of GIIGNL Master LNG Sale and Purchase Agreement Template, 2024 Edition.

opportunity to prevent but nevertheless allowed to occur through negligence or whether the event invoked was caused by the actions of the party invoking force majeure².

Force majeure declarations for events arising from the negligence or wilful misconduct of the party invoking force majeure will be considered invalid.

If a party affected by an event fails to take reasonable steps to prevent that event from occurring, it cannot subsequently validly claim that the event is a force majeure event. For instance, on 8 June 2022, at the US Freeport LNG plant in Quintana, Texas, a gas pipeline overheated and caused an explosion. Due to the blast, Freeport LNG plant had to be shut for about eight months from 8 June 2022 until February 2023.

Initially, Freeport LNG declared force majeure on 9 June 2022, but by the end of that month, after it was found that the explosion occurred due to inadequate operating and testing procedures, it has withdrawn the force majeure notice, thus admitting its fault on the incident.

2. The Event Invoked As Force Majeure Was The Only Effective Cause That Delayed, Interfered With Or Prevented The Affected Party To Perform Its Contractual Obligations³

In English law, this is called the “causation requirement”.

The force majeure clause of LNG MSPAs lists the events that may constitute force majeure: e.g.

(a) flood, atmospheric disturbance, lightning, storm, hurricane, cyclone, typhoon, tornado, earthquake, tsunami, landslide, perils of the sea, soil erosion, subsidence, washout, pandemic or other acts of God;

(b) war (whether declared or undeclared), riot, civil war, piracy, blockade, insurrection, acts of public enemies, civil or military disturbances, sabotage or act of terrorism, quarantine restriction;

(c) fire, explosion, breakdown, freezing, breakage of or accident to, or the necessity for making repairs or alterations to any of the seller's facilities or equipment, unless such event occurred due to the seller's failure to properly maintain such facilities or equipment;

(d) strikes, lock out, or other industrial disturbances or labour disputes;

(e) chemical or radioactive contamination or ionising radiation;

(f) compliance by the affected party with an act, regulation, order or demand of a competent authority or of any person purporting to be or act for a competent Authority;

(g) in relation to an FOB delivery only, any circumstances relating to the loading of the LNG vessel at the loading port and/or seller's facilities, which affects the ability of the seller to deliver the LNG at seller's facilities; and

(h) in relation to an Ex-Ship delivery only, any circumstances relating to the unloading of the LNG vessel at the unloading port and/or receiving facilities or relating to the transportation of the LNG, which affects the ability of the buyer to receive, unload or use the LNG to be delivered under the Master Sale and Purchase Agreement.

However, the fact that a listed event occurs does not automatically allow a contracting party to declare force majeure as an excuse to avoid the performance of the contractual obligations.

The affected party may declare force majeure only if the event in question truly delays or temporarily prevents it to perform its contractual obligations⁴. In the case of a dispute, the party who claimed force majeure has the burden to prove that.

2 See the English case *Lauritzen A/A v. Wijsmuller B.V.*, [1989] EWCA Civ 6; [1990] 1 Lloyd's Rep. 1

3 See *Seadrill Ghana Operations Ltd. v. Tullow Ghana Ltd.*, [2018] EWHC 1640 (Comm)

4 In English law, the event invoked as force majeure must be the only effective cause that delayed or prevented the affected party to perform its contractual obligations. See *Seadrill Ghana Operations Ltd. v. Tullow Ghana Ltd.*, [2018] EWHC 1640 (Comm)

In the English case *Seadrill Ghana Operations Ltd. v. Tullow Ghana Ltd*⁵, the company Tullow Ghana Ltd. declared force majeure notwithstanding that the event invoked did not delay or in any way prevent it to perform its contractual obligations. Therefore, the English Commercial Court held that Tullow Ghana Ltd. could not rely on the occurrence of the event for failure to perform its contractual obligations.

3. The Effects Of The Event Invoked As Force Majeure Could Not Have Been Reasonably Avoided Or Overcome By The Affected Party Through Reasonable Endeavours

In English law, the obligation to use reasonable endeavours is an obligation to take all reasonable steps which a reasonable and prudent operator, acting in its own interests, would take to overcome the effects of the force majeure event⁶ and to enable the performance of the contractual obligations⁷. If a party claims that a force majeure event delays or prevents it to perform the contractual obligations, it must also prove that it has taken all reasonable steps that a reasonable and prudent operator would have taken to eliminate, overcome or minimize the effects of the force majeure event or that there were no reasonable measures that it could have taken to eliminate, overcome or minimize the effects of the force majeure event.

A party cannot claim force majeure based on the mere occurrence of an event listed in the force majeure clause of the LNG MSPA as an excuse for failure to perform the contractual obligations, unless it has taken reasonable steps to eliminate, overcome or minimize the effects of the respective event.

The Force Majeure clause of the LNG MSPA template used by the US LNG suppliers provides that:

“To the extent that the Party affected by an event of Force Majeure fails to use commercially reasonable efforts to overcome or mitigate the effects of such event, it shall not be excused for any delay or failure in performance that would have been avoided by using such commercially reasonable efforts.”

In a dispute arising from the declaration of force majeure, if it can be shown that the party who claimed force majeure could have taken reasonable steps to eliminate or overcome the effects of the event invoked as force majeure, the cause of the failure to perform the contractual obligations will be considered to be the affected party's inadequate response to the force majeure event, rather than the force majeure event itself⁸.

5 [2018] EWHC 1640 (Comm)

6 See *IBM United Kingdom Ltd. v. Rockware Glass Ltd.*, [1980] FSR 335

7 Clause 1 of GIIGNL Master LNG Sale and Purchase Agreement Template, 2024 Edition, stipulates that “Reasonable and Prudent Operator means a Person seeking in good faith to perform its contractual obligations, and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions.”

8 See *RTI Ltd v. MUR Shipping BV*, [2024] UKSC 18, [2024] 1 Lloyd's Rep 621, [2024] Bus LR 1492, [2024] 4 All ER 623, [2025] AC 675, [2024] 2 WLR 1350

Contractual Implications Of The Proposed Ban On Russian LNG Imports



by Vlad Cioarec, International Trade Consultant

On 17 June 2025, the European Commission published a legislative proposal for a regulation on phasing out Russian gas and LNG imports. Proposed measures to end Russian gas and LNG imports include:

- a prohibition of Russian gas and LNG imports under new supply contracts concluded after 17 June 2025, that shall apply as of 1 January 2026;
- a prohibition of Russian gas and LNG imports under short-term supply contracts concluded before 17 June 2025, that shall apply as of 17 June 2026;
- a prohibition of Russian gas and LNG imports under long-term supply contracts concluded before 17 June 2025, that shall apply as of 1 January 2028;
- a prohibition to EU LNG terminals to provide services to Russian companies or Russian controlled companies as of 1 January 2026, in the case of contracts for LNG terminal services concluded or amended after 17 June 2025;
- a prohibition to EU LNG terminals to provide services to Russian companies or Russian controlled companies as of 1 January 2028, in the case of long-term contracts for LNG terminal services concluded before 17 June 2025.

The European Commission expects the regulation to be adopted by the European Parliament and Council before the end of 2025, in order to enter into force on 1 January 2026.

More recently, on 19 September 2025, the European Commission announced the 19th package of sanctions which includes, among other measures, a ban on imports of Russian LNG into the EU under long-term supply contracts, that shall apply from 1 January 2027.

Therefore, European importers of Russian LNG will have to find alternative legal or commercial solutions to avoid contractual liability towards Russian suppliers.

Most of Russian LNG delivered to the EU is sourced from the Yamal liquefaction plant located at the port of Sabetta on the Yamal peninsula in the Arctic¹. Yamal LNG cargoes are initially loaded on Arc7 ice-class LNG carriers operated by Novatek and then transshipped onto conventional LNG carriers at the Russian port of Murmansk. In the case of LNG cargoes delivered on FOB terms, the conventional LNG carriers are chartered by the European buyers, whilst in the case of LNG cargoes delivered on DES terms, the conventional LNG carriers are chartered by the Russian suppliers.

According to data published by GIIGNL in 2023 Annual Report and by ACER in the 2024 Market Monitoring Report, European buyers of LNG sourced from the Yamal liquefaction plant are the following companies:

- **SEFE Marketing&Trading**² which has concluded a MSPA with a validity period from 2018 to 2038 with FOB delivery terms;
- **TotalEnergies** which has concluded one MSPA with a validity period from 2018 to 2032 with FOB delivery terms and two MSPAs with a validity from 2018 to 2041 with DES terms for delivery to France;
- **Gunvor** which has concluded a MSPA with a validity period from 2018 to 2038 with FOB delivery terms;
- **Shell** which has concluded a MSPA with a validity period from 2019 to 2041 with FOB delivery terms;

1 Of a total of 18 bcm delivered in 2023, the LNG from the Yamal liquefaction plant represented 16 bcm. See ACER's 2024 Market Monitoring Report – “Analysis of the European LNG market developments”.

2 SEFE Marketing&Trading is a German state-owned company that was created following the nationalization of Gazprom's German subsidiary in 2022.

- **Naturgy Energy Group** which has concluded a MSPA with a validity period from 2018 until 2038 with DES terms for delivery to Spain;
- **Repsol** which has concluded a MSPA with a validity period from 2024 until 2038 with DES terms for delivery to Spain.

Challenges For FOB Buyers

In the FOB contracts, the European buyers of Russian LNG cannot declare the upcoming import ban as a force majeure event, as it does not prevent them from taking delivery of LNG cargoes at the port of Murmansk and then reselling them to any destination outside the EU they choose.

It is their problem to find alternative markets for Russian LNG.

One challenge for the European LNG buyers is that the re-direction of Yamal LNG to non-EU markets would extend considerably the time spent by the LNG carriers on the laden and ballast voyages which could affect the European LNG buyers' ability to comply with the delivery windows agreed with suppliers in the Annual Delivery Program.

One possible solution could be to arrange cargo swaps with the Chinese buyers of US LNG.

The cargo swaps with the Chinese buyers of US LNG would allow the European buyers of Russian LNG to take delivery of US LNG instead of Russian LNG and therefore avoid the need to re-schedule cargo shipments.

Possible Solutions For Ex Ship Buyers

In the case of LNG MSPAs providing for delivery on Ex Ship basis at EU receiving terminals, the European importers should check whether the MSPAs include clauses that allow them to terminate such contracts on the grounds of import ban.

Typically, LNG MSPAs include a clause that allows the affected party to terminate the MSPA and any LNG transaction concluded under it, if the MSPA and/or LNG transaction exposes the affected party to punitive measures in the event of non-compliance with the trade restrictions imposed by authorities. An example of such clause is the Clause 21 of GIIGNL Master LNG Sale and Purchase Agreement Template, 2024 Edition, which provides that:

“21.1 Each Party represents and warrants to the other Party that it:

(a) is knowledgeable about the Trade Controls Laws applicable to this Agreement or any Transaction;

(b) shall in the performance of such Agreement or any Transaction comply with the Trade Control Laws; and

(c) shall not do anything which may cause the other Party to be in breach of (or expose such Party to punitive measures under) any Trade Control Laws³.

21.2 The Buyer represents and warrants that if such activity is prohibited or contrary to any of the Trade Control Laws the LNG Cargo delivered under this Agreement shall not be sold, supplied, exported, re-exported or imported, directly or indirectly into any Restricted Jurisdiction or to any Restricted Party. The Seller represents and warrants that if such activity is prohibited or contrary to any applicable Trade Control Laws, the LNG Cargo delivered under this Agreement shall not be

3 Clause 1 of GIIGNL Master LNG Sale and Purchase Agreement Template defines “Trade Control Laws” as “any trade or economic sanctions or embargoes, Restricted Party lists, controls on the imports, export, re-export, use, sale, transfer, trade, or otherwise disposal of goods, services or technology, anti-boycott legislation or similar laws or regulations, rules, restrictions, licenses, orders or requirements in force from time to time, including without limitation those of the United Nations, the European Union, the United Kingdom, the United States of America, any LNG Regulating Country or other official government laws, rules or requirements applicable to this Agreement or a Party to this Agreement.”

bought, taken, accepted or sourced directly or indirectly from any Restricted Jurisdiction or from any Restricted Party.

21.3 If a Party fails to comply with its obligations under clause 21.1 or 21.2, then the other Party shall have the right to terminate the Agreement and/or any Transaction immediately without incurring any liability by giving written notice to the other Party.”

In the case of Ex Ship LNG MSPAs that do not include such a clause, the European importers should check whether the force majeure provisions of such MSPAs allow them to declare the import ban an event of force majeure.

Typically, the Force Majeure clause of Ex Ship LNG MSPAs lists which events can constitute force majeure and which events cannot constitute force majeure. Among the events that may constitute force majeure is commonly listed the requirement to comply with an act of an international, national or other authority that prevents the affected party to perform its contractual obligations. On that basis, the European Commission argues that:

“A legal prohibition of imports of natural gas under a Union trade measure constitutes a sovereign act of the Union beyond the control of gas importers and rendering the performance of natural gas imports from Russia unlawful, with direct legal effect and without any discretion for Member States concerning its application⁴.”

In addition to mentioning such an event, the Force Majeure clause of GIIGNL Master LNG Sale and Purchase Agreement Template mentions as a force majeure event *“any circumstances relating to the unloading of the LNG Vessel at the Unloading Port and/or Receiving Facilities or relating to the transportation of the LNG, which affects the ability of the Buyer to receive, unload or use the LNG to be delivered under this Agreement⁵”*.

However, the declaration of force majeure by the European buyers could be rejected by the Russian LNG suppliers and contested in arbitration proceedings on the grounds that the prohibition of Russian gas and LNG imports was an anticipated measure that has been under public discussion long before it was adopted. Therefore, it could not qualify as an unforeseen event for buyers.

Besides, the Ex Ship LNG MSPAs do not mention that a force majeure event would entitle the affected party, in this case the buyers, to terminate the contract. If the force majeure event prevents the affected party to perform its contractual obligations for a prolonged period of time, e.g. 24 months, only the non-affected party has the right to terminate the contract.

Accordingly, the European companies importing Russian LNG on Ex Ship delivery terms should take into consideration the available options.

The easy way is to try to reach an agreement with the Russian suppliers over the conditions for diversion of LNG cargoes to non-EU markets.

The hard way is to see whether they can declare the import ban or the impending war between Russia and NATO a force majeure event and then seek the termination of LNG MSPAs in arbitration proceedings. The European importers of Russian LNG could request the arbitral tribunals to find that the import ban and/or the impending war constitute force majeure events and to declare the LNG MSPAs concluded with Russian suppliers terminated on the grounds that the parties to a contract cannot remain bound by the contract when the performance of contractual obligations is legally impossible for an indefinite period of time.

4 See Sub-section 4.4 “Legal considerations on the impact on existing long-term contracts” of the European Commission Staff Working Document “Assessing the impact of measures to phase out Russian gas imports and improve the monitoring of potential energy dependencies and amending Regulation (EU) 2017/1938”.

5 See Sub-clause 15.2(f).