European Commission
DG Energy
Via DECLARE system

Re: Request for internal review

Dear Madame Commissioner,

In our capacity as legal representatives empowered to represent Global Legal Action Network, we hereby file a request for internal review pursuant to Article 10 of Regulation 1367/2006 and Commission Decision 2023/748.

The power of attorney is attached as Annex 1.

The documents pursuant to Article 4(2) of Commission Decision 2023/748 proving that we are authorised to practise before a court of a Member State are attached as Annex 2.

Sincerely,

Dr. Fiala-Butora János

Dr. Fiala-Butora Erika

Request for internal review under Title IV of the Aarhus Regulation

of the mid-term tender published on 15 February 2024 by the European Commission (the 'Contested Act')

Submitted on behalf of

Global Legal Action Network (GLAN), a non-profit making legal person, having its office at Irish Centre for Human Rights, University Road, Galway, Co. Galway, represented by Gearóid Ó Cuinn, e-mail address: gocuinn@glanlaw.org (hereinafter the 'Applicant'),

Under Article 10 of Regulation 1367/2006[1] and Commission Decision 2023/748 of 11 April 2023.[2]

[1] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies (the 'Aarhus Regulation').

[2] Commission Decision (EU) 2023/748 of 11 April 2023 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council as regards requests for the internal review of administrative acts or omissions (the "Commission Decision 2023/748").

Table of Contents

I. LEGAL FRAMEWORK

1. Gas prices rose sharply after Russia invaded Ukraine in February 2022. One of the reasons for the peak price of over 300 EUR/MWh[3] in August 2022 was that countries were bidding against each other to get gas on the market to meet storage needs.[4]

2. In response to the market volatility, the EU started to work on strategies to normalize energy prices and secure energy security to its Member States.

3. As a result, the European Commission developed and communicated its REPowerEU Plan in March 2022.[5] Among others, the European Commission proposed that Member States use joint purchasing of gas and a joint European platform for international negotiations.[6]

4. In line with the REPowerEU Plan, the Commission launched the EU Energy Platform in April 2022.[7] The EU Energy Platform serves as the platform for implementing the goals established in the REPowerEU Plan. The EU Energy Platform has 3 objectives a) demand aggregation and joint purchasing of gas, b) most efficient use of existing infrastructure, and c) international outreach.[8]

5. In line with the EU's efforts to diversify its sources of energy supply, the EU Energy Platform facilitated the signing of a memoranda of understanding with gas exporting countries such as the US,[9] Azerbaijan,[10] Egypt and Israel[11], Algeria,[12] and Norway.[13]

6. The EU Energy Platform was initially established on the basis of a European Council mandate,[14] and then the Emergency Regulation,[15] adopted by the Council on 19 December 2022, laid down its legal basis.

---

[3] https://tradingeconomics.com/commodity/eu-natural-gas

[4] https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en under 'Objectives' mentions outbidding as a problem.

[5] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – REPower EU - COM(2022) 230 final, Brussels, 18.5.2022 (The initial plan was published on 8 March 2022 - https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2387).

[6] Ibid, point 2.

[7] https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en

[8] https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en , under 'Objectives'

[9] https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2041

[10] https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4550

[11] https://energy.ec.europa.eu/publications/eu-egypt-israel-memorandum-understanding_en

[12] https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_6098

[13] https://ec.europa.eu/commission/presscorner/detail/en/statement_22_3975

[14] European Council meeting (24 and 25 March 2022) – Conclusions, Section III. on energy, in particlar: "**With a view to next winter, Member States and the Commission will urgently: (...) work together on voluntary common purchase of gas, LNG and hydrogen, making optimal use of the collective political and market weight of the European Union and its Member States to dampen prices in negotiations. The common purchases platform will also be open for Western Balkan countries and the three associated Eastern Partners.**"

[15] Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (the "**Emergency Regulation**")

7. Pursuant to Article 31, the Emergency Regulation was to remain in force until 30 December 2023.[16]

8. The Emergency Regulation serves as the legal basis for operating not just the EU Energy Platform, but also the so-called AggregateEU mechanism. AggregateEU is a "service allowing for demand aggregation and joint gas purchasing by undertakings established in the Union."[17]

9. AggregateEU is considered to be "the hub"[18] of the EU Energy Platform, established by the European Commission.

10. Pursuant to recital 5 of the Emergency Regulation, the joint purchase platform "can play a pivotal role in seeking mutually beneficial partnerships that contribute to security of supply and lead to lower import prices of gas purchased from third countries, making full use of the Union's collective weight."

11. Pursuant to recital 8, the AggregateEU mechanism should consist of two steps. "As a first step, natural gas undertakings or undertakings consuming gas established in the Union would aggregate their gas demand through a service provider, contracted by the Commission [(Service Provider)]. This would allow gas suppliers to make offers on the basis of large aggregated volumes, instead of many smaller offers to purchasers approaching them individually. In a second step, natural gas undertakings or undertakings consuming gas established in the Union may conclude gas purchase contracts, individually or in a coordinated manner with others, with natural gas suppliers or producers that have matched the aggregated demand. "

12. The Service Provider is a private entity contracted by the European Commission to fulfill the tasks of demand aggregation and matching them with offers received on a platform operated by the Service Provider.[19]

13. Each time a tender round is organized, the European Commission launches and publishes the tender proposal on its website.[20] Then, the Service Provider matches the aggregated demand with the supply offered on the tender.

---

[16] The Emergency Regulation entered into force on 30 December 2022.
[17] Article 1 (1)(a) of the Emergency Regulation
[18] Please see the short video available at https://audiovisual.ec.europa.eu/en/video/I-240464?lg=EN%2FEN (the relevant part starts at 0.22)
[19] The tasks of the Service Provider are listed under Article 7 of the Emergency Regulation. Please see also recital 16 of the Emergency Regulation.
[20] Each of the tender invitations were launched by the European Commission and published on the European Commission's website:
https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2403 ,
https://energy.ec.europa.eu/news/eu-energy-platform-commission-launches-second-round-demand-pooling-joint-gas-purchases-2023-06-26_en ,
https://energy.ec.europa.eu/news/eu-energy-platform-commission-launches-third-round-demand-pooling-joint-gas-purchases-2023-09-21_en ,
https://energy.ec.europa.eu/news/fourth-round-demand-aggregation-joint-gas-purchasing-starts-today-2023-11-23_en ,
https://energy.ec.europa.eu/news/international-suppliers-offer-almost-100bcm-gas-european-consumers-first-mid-term-tender-under-eu-2024-02-28_en

14. The sellers' offers are ranked from the lowest to the highest price.[21] There is no ranking principle that would take into account environmental considerations. The Emergency Regulation does not condition the purchase of gas on compliance with any standards as to methane emissions or even require reporting of such emissions to be eligible for participation in the tender process. Recital 7 of the Emergency Regulation only calls the participants' attention to the possibility of using the UN Oil and Gas Methane Partnership 2.0 reporting framework in the parties' bilateral negotiations.

15. After matching, the parties start bilateral negotiations, where they agree on all contractual details, such as the exact price, payment and guarantee terms, etc. The European Commission and the Service Provider do not participate in this stage of the tender.[22]

16. Four tendering rounds were organized from April to December 2023. During these 4 rounds, more than 54 billion cubic metres (bcm) of gas demand from European companies were aggregated and more than 61 bcm were offered by international suppliers. After seeking the most competitive offers, AggregateEU matched more than 42 bcm to cover European demand.[23]

17. There are two types of tenders: short-term tenders and mid-term tenders. In the former, demands are submitted for calendar months in the near future. In the latter, buyers are able to submit gas demand for multiple 6-month periods, up to a maximum of 5 years, running from April 2024 to October 2029.[24] In 2023, only short-term tenders were organized.

18. AggregateEU has been successful in achieving its aim of aggregating demand and coordinating the purchase of natural gas and has attracted strong interest from market players.[25]

19. Therefore, on 21 December 2023 the Council adopted the Commission's proposal for a 12-month extension of the Emergency Regulation.[26] Now, the amended Emergency Regulation is valid until 31 December 2024.

20. The products offered on AggregateEU were extended to include mid-term tenders that were introduced in 2024. Mid-term tenders intend to support longer trading partnerships between sellers and buyers – that is, up to 5 years. Also, in mid-term tenders demand

[21] https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform/aggregateeu-questions-and-answers_en , under 'Matching and tendering'

[22] See under question 'Who negotiates the tender' on https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform/aggregateeu-questions-and-answers_en#price

[23] https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform_en , under 'Results in 2023

[24] For explanation on what are short-term and mid-term tenders, please see the following explanatory article published on the Service Provider's website: https://aggregateeu.prisma-capacity.eu/support/solutions/articles/36000486579-what-are-mid-term-tenders-and-how-you-can-learn-more-about-them-

[25] https://energy.ec.europa.eu/news/aggregateeu-one-year-2024-02-01_en#:~:text=Results%20in%202023&text=During%20these%204%20rounds%2C%20more,bcm%20to%20cover%20European%20demand , under 'Results'.

[26] Council Regulation (EU) 2023/2919 of 21 December 2023 amending Regulation (EU) 2022/2576 as regards the prolongation of its period of application

is not aggregated, rather the demand of each individual buyer is published as a discrete tender in which sellers can participate.[27]

21. The European Commission launched the first mid-term tender on 15 February 2024.[28]

22. According to publicly available information, approximately 97.4 bcm of natural gas was offered under the first mid-term tender, more than three times the demand that was registered on the platform.[29]

23. Given the success of the demand aggregation, the European Commission is considering extending in the near future the mechanism to other commodities, such as hydrogen.[30]

24. The present internal review request addresses the mid-term tender published on 15 February 2024 by the European Commission (the "Contested Act").

II. ADMISSIBILITY

25. According to Article 10 of the Aarhus Regulation, as amended, any non-governmental organisation that meets the criteria set out in Article 11 is entitled to request an internal review to the Union institution or body that adopted an administrative act, or in the case of an alleged administrative omission, should have adopted such an act, because such an act or omission contravenes environmental law within the meaning of point (f) of Article 2(1).

26. Therefore, an internal review request fulfills the requirements of Article 10 if: (i) the Applicant meets the criteria set out in Article 11 Aarhus Regulation; (ii) the Contested Act constitutes an administrative act in the sense of Article 2(1)(g) of the Aarhus Regulation and (iii) the legal grounds raised in the request allege that the Contested Act contravene environmental law.

27. The Applicant submits that the present request fulfills the requirements of the Aarhus Regulation.

a. The Applicant meets the criteria set out in Article 11 of the Aarhus Regulation

28. The Applicant is an independent non-profit making legal person established in accordance with Irish law.

[27] https://www.prisma-capacity.eu/news/marketnews/prisma-introduces-mid-term-tenders-through-aggregateeu , under 'About Mid-Term Tenders via AggregateEU'
[28] https://energy.ec.europa.eu/news/aggregateeu-launches-first-mid-term-tender-ensure-stability-and-predictability-energy-supplies-2024-02-15_en#:~:text=The%20mid%2Dterm%20tender%20is,these%20demands%20out%20to%20tender.
[29] https://www.euractiv.com/section/energy-environment/news/supply-offer-three-times-larger-than-eu-demand-for-natural-gas-under-joint-scheme/
[30] https://www.euronews.com/my-europe/2023/07/13/eu-should-replicate-joint-gas-purchases-for-hydrogen-critical-raw-materials-commissioner

29. The Applicant has existed for more than two years[31] and is actively pursuing the objective of environmental protection. Section 3 of its Constitution states that the main object of the organisation is to benefit the community "by developing and implementing legal strategies that promote (i) environmental protection, and in particular the mitigation of climate change".[32]

30. An annual activity report for the year 2022 and 2023 is available on the Applicant's website[33] and attached to this request under Annex 5. The annual activity report is evidence that the Applicant is actively engaged in climate change-related litigation and in protecting the environment more generally.

31. The subject matter of this internal review is closely related to climate change, a subject matter that is covered by the objectives and the activities of the Applicant.

32. Furthermore, the Applicant submitted an internal review request to the Commission in 2023 and the Commission accepted that the Applicant fulfils the criteria under Article 11(1) of the Aarhus Regulation. In line with Article 2(5)(d) of Commission Decision 2023/748, the Applicant is submitting the reply to its previous internal review request,[34] as evidence that it fulfils the criteria under Article 11 of the Aarhus Regulation. The Applicant declares that the conditions for eligibility continue to be met.

b. The Contested Act is an administrative act in accordance with Article 2(1)(g) of the Aarhus Regulation

i. Explanatory information and the Contested Act

33. The European Commission launched the first mid-term tender on 15 February 2024 – the Contested Act.

34. Most generally, a tender is an invitation to a supplier of goods or services to bid for an entitlement to provide a good or service to the issuer of the tender, on specific terms.

35. The Contested Act – among others - contains the following information:

> "Today, under the AggregateEU platform for joint gas purchasing, the Commission is launching a first mid-term tender, where buyers will be able to submit their gas demand for multiple 6-month periods running from April 2024 to October 2029.
> ….
>
> To participate in this first mid-term tender, buyers and sellers must register and subscribe to the AggregateEU platform. Demand must be submitted by 21 February for this first round, and will be put out to tender from 26 to 27

[31] Please see the Certificate of Incorporation in Annex 4.
[32] Please see paragraph 3 of the Constitution in Annex 3.
[33] 26e1a5_f457c8d8b2034da88bfa7e1199c6dd08.pdf (glanlaw.org)
[34] Please see the Reply in Annex 6.

February. After the demand and supply is matched through the platform, the individual companies negotiate their contract bilaterally.

AggregateEU is the Commission's flagship initiative for demand aggregation and coordinated gas purchasing at the European level as part of the EU Energy Platform launched in April 2023, to make the EU's energy supply more diverse, secure and coordinated."

36. In addition to the specific wording of the tender proposal published on the European Commission's website, the Applicant submits that the Contested Act should be interpreted in the light of the available explanatory information on the functioning of the mechanism The Applicant relies on explanatory information in circumstances where the tender is not itself public.[35] The Emergency Regulation only prescribes the broad outlines of how the AggregateEU should operate, therefore the explanatory information published by the European Commission and the Service Provider are also relevant. Section I above highlights the most relevant aspects of the AggregateEU mechanism for the purpose of this internal review request.

37. The Applicant submits that the explanatory information on the functioning of the AggregateEU mechanism forms an integral part of the Contested Act, therefore they should be taken into account when assessing whether the Contested Act complies with the Union's environmental law.

ii. Article 2(1)(g) of the Aarhus Regulation

38. The Applicant submits that the Contested Act constitutes an administrative act under Article 2(1)(g) of the Aarhus Regulation and is therefore eligible for an internal review request.

39. Article 2(1)(g) of the Aarhus Regulation, as amended, defines 'administrative act' as "any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1)."

40. According to this definition, an act should have three elements to qualify as an administrative act within the meaning of the Aarhus Regulation and be eligible for an internal review. The act should be a) a non-legislative act adopted by a Union institution, b) it should have legal and external effects, and c) the provisions of the Contested Act contravene environmental law.

41. The Applicant submits that the Contested Act fulfills all three requirements, therefore it is eligible for an internal review for the following reasons:

[35] Based on the explanatory information provided by the European Commission and the Service Provider, the Applicant assumes that a tender proposal is sent to registered interested suppliers. Please see the information provided under 'Tender Publication and Offer Submission Phase' under https://help.prisma-capacity.eu/support/solutions/articles/36000486181-what-is-the-timeline-of-the-first-mid-term-tendering-round-february-2024-

iii. The Contested Act is a non-legislative act adopted by a Union institution

42. Pursuant to recital 7 of the Aarhus Regulation, "Article 9(3) of the Aarhus Convention provides that, within the framework of its national law, each Party is to ensure that members of the public, where they meet the criteria laid down in its national law, have access to judicial or other review procedures to challenge the substantive and procedural legality of any decision, act or omission which contravenes provisions of its national law relating to the environment."

43. Pursuant to recital 12 of the Aarhus Regulation "an act to have legal effects implies that an act can be subject to a request for review, regardless of its form, as its nature is considered with regard to its effects, objective and its content."

44. An administrative act may therefore take a wide range of forms such as a letter, invitation, opinion, recommendation, or as in the present case a tender invitation.[36]

45. In another internal review request, the Commission did not contest that a letter of objection could constitute an administrative act.[37]

46. The Applicant also submits that the Contested Act was adopted by the European Commission. The Contested Act was launched and published on the European Commission's website. The Service Provider acts on behalf of the European Commission. Pursuant to Article 2(4) of the Emergency Regulation, the Service Provider is an "undertaking established in the Union and contracted by the Commission". Pursuant to recital 16, the Service Provider is an entity "which is able to develop an appropriate information technology tool ('IT tool') and organise the process of aggregation of demand."

47. The fact that the European Commission contracted a service provider to develop the IT tool and to organize the process of aggregation of demand,[38] does not mean that the Contested Act was not adopted by the European Commission.

48. The EU Energy Platform, the AggregateEU, the Contested Act and all related acts and activities are developed and conducted in order to implement the EU policy on energy, a task that was delegated to the European Commission. The fact that some technical functions are outsourced to a contracted service provider does not change the fact that the European Commission is the responsible institution for implementing the joint purchase of gas mechanism. This interpretation is confirmed by the fact that the Contested Act was launched and published by the European Commission, and not by the Service Provider.

[36] Recital 12 indirectly confirms this interpretation. Recital 12 provides that "Preparatory acts, recommendations, opinions and other non-binding acts that do not produce legal effects vis-à-vis third parties and cannot therefore be considered to have external effects, in accordance with the case law of the CJEU, should, therefore, not be considered to constitute administrative acts under Regulation (EC) No 1367/2006." This also confirms that the form of an act does not bear a decisive factor, if the act in question complies with the external effect requirement.
[37] Internal review request ref. IR/2023/275267 by Association BLOOM concerning the objection from the European Union to IOTC Resolution 23-02 On Management of Drifting Fish Aggregating Devices (DFADs) in the IOTC area of competence, which was adopted at the 6th Special Session of the IOTC.
[38] Recital 16 of the Emergency Regulation

49. Consequently, the Applicant submits that the Contested Act satisfies the first requirement of Article 2(1)(g) of the Aarhus Regulation: the Contested Act is a non-legislative act adopted by a Union institution.

iv. The Contested Act has legally binding and external effects

50. Regarding the second requirement, namely that the act should have legally binding and external effects, this requirement must be interpreted "in accordance with the concept of 'acts…intended to produce legal effects vis-à-vis third parties', referred to in the first paragraph of Article 263 TFEU, which excludes, in principle, acts which produce effects only within the internal sphere of the EU institution, body, office or agency which adopted them, without creating any rights or obligations vis-à-vis third parties."[39]

51. A tender unquestionably produces legal effects vis-á-vis third parties. The Contested Act produces legal effects towards the buyers, the suppliers, and the Service Provider.

52. The Contested Act creates the right of interested buyers that their demand will be evaluated and put out to tender.[40]

53. The Contested Act also creates the right of suppliers that their bid would be considered and matched with potential buyers.[41]

54. Furthermore, the Contested Act produces legal effects towards the Service Provider. Article 7 of the Emergency Regulation details the obligations of the Service Provider in organizing the demand aggregation and joint purchase. The tender triggers these obligations to be performed by the Service Provider. Among others, the Service Provider has to evaluate the buyers' demand and put out to tender, and has to match the demand with offered supply.

v. The Contested Act contravenes environmental law

55. According to Article 2(1)(f) Aarhus Regulation, 'environmental law' means "Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilization of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems."

56. Recital 10 of the Aarhus Regulation explains that „when assessing whether an administrative act contains provisions which could, because of their effects, contravene environmental law, it is necessary to consider whether such provisions could have an adverse effect on the attainment of the objectives of Union policy on the environment

[39] Recital 11 of the Aarhus Regulation, and C-212/21, EIB v ClientEarth ECLI:EU:C:2023:546, para. 108 and the case law cited therein.
[40] https://help.prisma-capacity.eu/support/solutions/articles/36000486181-what-is-the-timeline-of-the-first-mid-term-tendering-round-february-2024- and Contested Act referenced under para 34 states that *"Demand must be submitted by 21 February for this first round, and will be put out to tender from 26 to 27 February. After the demand and supply is matched through the platform, the individual companies negotiate their contract bilaterally."*
[41] Ibid.

set out in Article 191 TFEU. Where that is the case, the internal review procedure should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment."

57. The EU General Court has held that the concept of environmental law "must be interpreted, in principle, very broadly."[42]

58. The Applicant submits that the Contested Act "contravenes environmental law within the meaning of point (f) of Article 2(1)" of the Aarhus Regulation, for the purpose of Article 10(1) of that Regulation. This is because, for the reasons outlined in section IV, the tender mechanism in its present form is contrary to the obligations and policies of the EU under (1) the Charter of Fundamental Rights ('CFR'), (2) Article 191 of the Treaty on the Functioning of the EU ('TFEU'), (3) relevant international law and the principles giving it effect within EU law and (4) the European Climate Law, all of which form part of environmental law within the meaning of point (f) of Article 2(1).

59. In summary, the Applicant submits that the present request for internal review meets all the requirements of the Aarhus Regulation, thus making the request admissible.

III. THE OBLIGATIONS OF THE EU IN RELATION TO METHANE EMISSIONS

a. The factual basis for the obligations outlined in this section

i. Global warming: cause, trajectory, impacts and the 1.5°C LTTG

60. The Applicant relies on the best available science including the reports of the Intergovernmental Panel on Climate Change (IPCC). According to the 6th Assessment Report (AR6) of the IPCC, "increases in well-mixed [GHG] concentrations since around 1750 are unequivocally caused by human activities".[43] The best estimate of the degree of human-caused global warming to date is 1.07°C.[44]

61. As to projected warming, the UN Environment Programme's (UNEP) Emissions Gap Report 2023 states: "A continuation of the level of mitigation effort implied by global warming under the current policies scenario is projected to limit global warming to 3°C (range: 1.9–3.8°C) with a 66 per cent chance […]. A continuation of the unconditional NDC scenario lowers this estimate to 2.9°C (range: 2.0–3.7°C)".[45]

62. The level of global warming to date is unsafe. AR6 states: "Climate change has adversely affected physical health of people globally (*very high confidence*) and mental health of people in the assessed regions (*very high confidence*)…In all regions extreme heat events have resulted in human mortality and morbidity (*very high confidence*)".[46] It notes the increase in diseases and that "[i]ncreased exposure to wildfire smoke,

[42] T-33/16, TestBioTech v Commission, EU:T:2018:135, para. 44-46.
[43] AR6 Working Group ('WG') 1 ('WG1') Summary for Policymakers ('SPM'), p. 4, para. A.1.1.
[44] Ibid., p. 4, para. A.1.3 and IPCC Special Report on 1.5°C ('SR1.5') SPM, p. 4, para. A.1.
[45] UNEP, Emissions Gap Report 2023, pp. 30-31. Also AR6 WG3 SPM, p. 21, para. C.1.1.
[46] AR6 WG2 SPM, p. 11, para. B.1.4. Also SR1.5 SPM, p. 5, para. A.3.1.

atmospheric dust, and aeroallergens have been associated with climate-sensitive cardiovascular and respiratory distress (*high confidence*)".[47]

63. AR6 states: "Climate change and related extreme events will significantly increase ill health and premature deaths from the near- to long-term (*high confidence*). Globally, population exposure to heatwaves will continue to increase with additional warming, with strong geographical differences in heat-related mortality without additional adaptation (*very high confidence*)".[48] It finds that "[m]ental health challenges, including anxiety and stress, are expected to increase…in all assessed regions, particularly for children, adolescents [and others] (*very high confidence*)".[49] This finding is consistent with the heightened vulnerability of young people's mental and physical health to climate change generally.[50]

64. AR6 outlines Europe's vulnerability to climate change, noting four "key risks" including direct risks from heat and flooding.[51] It also finds that "impacts vary both across and within European regions, sectors, and societal groups (*high confidence*)" and that "[s]outhern regions tend to be more negatively affected, while some benefits have been observed, alongside negative impacts in northern and central regions".[52] Furthermore, "adaptive capacity […] tends to be higher in northern and western parts of Europe".[53]

65. AR6 states: "With every additional increment of global warming, changes in extremes continue to become larger".[54] In 2018 the IPCC stated: "Climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C".[55]

66. Global warming of 1.5°C would not be safe. AR6 states: "Global warming, reaching 1.5°C in the near-term [i.e. 2021-2040], would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans (*very high confidence*)."[56] It also found that even under a "very low GHG emissions scenario", 1.5°C is "more likely than not to be reached" by 2040.[57]

67. *Any* overshoot of 1.5°C would cause severe risks. AR6 states: "If global warming transiently exceeds 1.5°C in the coming decades or later (overshoot), then many human

[47] Ibid.
[48] Ibid., p. 15, para. B.4.4.
[49] Ibid.
[50] Clark et al, A future for the world's children? A WHO–UNICEF–Lancet Commission (2020) 395 The Lancet 605, 609 **;** Hickman et al, Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey (2021) 5 The Lancet: Planetary Health 12; Thiery et al, Intergenerational inequities in exposure to climate extremes (2021) 374(6564) Science 158, 158-160; Sanson and Burke, Climate Change and Children: An Issue of Intergenerational Justice in Balvin and Christie (eds), *Children and Peace* (Springer 2019) 343, 345.
[51] AR6 WG2 Ch 13 ("Europe"), p. 1819.
[52] Ibid.
[53] Ibid 1823.
[54] AR6 WG1 SPM, p. 15, para. B.2.2.
[55] SR1.5 SPM, p. 9 para. B.5. Also SR1.5 SPM, p. 5, para. A.3.
[56] AR6 WG2 SPM, p. 13, para. B.3.
[57] AR6 WG1 SPM, p. 15, para. B.1.3. Also SR1.5 SPM, p. 4, para. A.1.

and natural systems will face additional severe risks, compared to remaining below 1.5°C (*high confidence*). Depending on the magnitude and duration of overshoot […] some [impacts] will be irreversible".[58] Risks of overshooting include the crossing of "tipping points", which pose an existential threat to civilisation.[59] One such tipping point is a "[s]ubstantial increase in potentially deadly heatwaves".[60]

68. The EU and its Member States have been aware of the dangers of climate change since the adoption in 1992 of the UN Framework Convention on Climate Change (UNFCCC). In 2009, Parties to the UNFCCC acknowledged the risks of warming exceeding 1.5°C.[61] A review of the appropriate LTTG commenced in 2010 led to the replacement of the "below 2°C" LTTG with the LTTG of "well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C" in Art. 2(1)(a) of the Paris Agreement (PA).[62] States recently accepted the 1.5°C LTTG and *inter alia* the IPCC's and UNEP's findings in the "Sharm el-Sheikh Implementation Plan" adopted at COP27.[63]

ii. The urgent need to reduce methane emissions and the feasibility and benefits of doing so

69. Methane (CH_4) is a short-lived climate pollutant which causes 84 times more warming than CO_2 over a 20-year period.[64] Reducing methane emissions to the extent possible will reduce future global warming by three times as much as reducing CO_2 alone.[65] It is therefore widely recognised that urgent and steep reductions in methane emissions are necessary to avoid catastrophic climate change:

    (a) The Global Methane Assessment (part-authored by the UNEP) states: "Methane's short atmospheric lifetime means taking action now can quickly reduce atmospheric concentrations and result in similarly rapid reductions in climate forcing and ozone pollution. Lower methane concentrations would rapidly reduce the rate of warming, making methane mitigation one of the best ways of limiting warming in this and subsequent decades. Doing so would also help limit dangerous

[58] AR6 WG2 SPM, p. 19, para. B.6. Also SR1.5 SPM, p. 7, para. B.1.
[59] AR6 WG1 SPM, p. 27, para. C.3.2. Lenton et al, Climate tipping points – too risky to bet against (2019) 575 Nature 592, 595. Also: McKay et al, Exceeding 1.5°C global warming could trigger multiple climate tipping points (2022) 377 Science 1171.
[60] SR1.5 Ch 3, p. 264 (Table 3.7).
[61] Decision 2/CP.15, UN Doc FCCC/CP/2009/11/Add.1 ("Copenhagen Accord"), para. 12.
[62] See Copenhagen Accord, para. 2 and Decision 1/CP.16, UN Doc FCCC/CP/2010/7/Add.1 ("Cancun Agreements") paras. 4 and 138-140. Also William Hare et al., 'Achieving the 1.5°C Limit of the Paris Agreement: an Assessment of the Adequacy of the Mitigation Measures and Targets of the Respondent States in Duarte Agostinho v Portugal and 32 other States' (7 January 2022) ('CA Mitigation Report'), p. 53. Available at: https://climateanalytics.org/publications/2022/an-assessment-of-the-adequacy-of-the-mitigation-measures-and-targets-of-the-respondent-states-in-duarte-agostinho-v-portugal-and-32-other-states/, pp. 5-6 and 9-10, noting that "below 2°C" LTTG pathways carry a 66% probability of holding global warming to below 2°C, with maximum warming of 1.7-1.8°C (best estimate).
[63] Draft decision -/CP.27, UN Doc FCCC/CP/2022/L.19, paras. 1-5.
[64] IPCC, AR4 Synthesis Report, 87.
[65] Dreyfus et al. (2022), Mitigating climate disruption in time: A self-consistent approach for avoiding both near-term and long-term global warming, 119(22) Proc. Nat'l Acad. Sci., 5.

climate feedback loops, while simultaneously delivering important health and economic benefits from reducing ground-level ozone."[66]

(b) AR6 states: "Deep GHG emissions reductions by 2030 and 2040, particularly reductions of methane emissions, lower peak warming, reduce the likelihood of overshooting warming limits and lead to less reliance on net negative CO_2 emissions that reverse warming in the latter half of the century."[67]

(c) More recently, the IEA has stated: "Reductions in fossil fuel use alone […] do not achieve deep enough cuts in methane emissions to reach levels consistent with limiting warming to 1.5°C with no or low overshoot. Additional, targeted actions to tackle methane emissions from fossil fuel production and use are essential to limit the risk of crossing irreversible climate tipping points."[68]

70. Steep reductions in methane emissions are required this decade to hold global warming to 1.5°C:

(a) The Global Methane Assessment states: "Currently available measures could reduce emissions from these major sectors by approximately 180 Mt/yr, or as much as 45 per cent, by 2030. This is a cost-effective step required to achieve the United Nations Framework Convention on Climate Change (UNFCCC) 1.5°C target. According to scenarios analysed by the Intergovernmental Panel on Climate Change (IPCC), global methane emissions must be reduced by between 40–45 per cent by 2030 to achieve least cost-pathways that limit global warming to 1.5°C this century, alongside substantial simultaneous reductions of all climate forcers including carbon dioxide and short-lived climate pollutants."[69]

(b) AR6 states: "In pathways that limit warming to 1.5°C (>50%) with no or limited overshoot [...] global CH 4 emissions are reduced by 34% [21–57%] in 2030 […]. Higher emissions reductions of CH 4 could further reduce peak warming. (high confidence)."[70] These reductions are consistent with those outlined in the Global Methane Assessment, the percentage reductions in which are expressed relative to baseline (i.e. projected 2030 emissions based on current policies) as opposed to 2019 emissions levels.[71]

---

[66] UNEP and Climate & Clean Air Coalition (2021), ('Global Methane Assessment'), 11.
[67] AR6 WG3 SPM, 23, para. C.2.
[68] IEA, UNEP and Climate & Clean Air Coalition (2023), The Imperative of Cutting Methane from Fossil Fuels An assessment of the benefits for the climate and health ('The Imperative of Cutting Methane from Fossil Fuels'), 3.
[69] Global Methane Assessment, 9.
[70] AR6 WG3 SPM, 21, para. C.1.2.
[71] An update of the Global Methane Assessment published in 2022 states: "One of the key conclusions of the [Global Methane Assessment] was that currently available technological measures and policies could reduce emissions from the three main anthropogenic methane emitting sectors by as much as 45 per cent of baseline emissions levels by 2030 (approximately 180 Mt per year in 2030). Baseline emissions scenarios assume implementation of existing policies and commitments but do not include additional mitigation action. Furthermore, such a reduction would be consistent with the range of methane mitigation called for in the Intergovernmental Panel on Climate Change's (IPCC) least cost-pathways that limit global warming to 1.5°C in this century so long as it occurs alongside simultaneous reductions of other major climate forcers including

71. The extraction, processing and distribution of gas and other fossil fuels is a major source of methane emissions globally:
    (a) AR6 states: "Global methane emissions from energy supply, primarily fugitive emissions from production and transport of fossil fuels, accounted for about 18% [13–23%] of global GHG emissions from energy supply, 32% [22–42%] of global CH4 emissions, and 6% [4–8%] of global GHG emissions in 2019 (high confidence)."[72]

    (b) The Global Methane Assessment puts the contribution to global anthropogenic methane emissions of the production and distribution of oil and gas specifically at 23 percent.[73]

72. According to the IEA's Global Methane Tracker 2024, methane emissions from the energy sector remained near a record high in 2023, with the United States topping the list of methane emitters from oil and gas operations.[74] There are also significant methane emissions associated with the production of oil and gas in other countries, such as Azerbaijan and Egypt, with which the EU has entered into agreements to increase supply to the EU of gas, including as a result of the practice of "flaring".[75]

73. According to the Global Methane Assessment, "[r]educing human-caused methane emissions is one of the most cost-effective strategies to rapidly reduce the rate of warming and contribute significantly to global efforts to limit temperature rise to 1.5°C."[76] As to the availability and/or cost-effectiveness of measures to reduce methane emissions in the fossil fuel sector:

    (a) The Global Methane Assessment further states: "Nearly half of [readily available] technologies are available to the fossil fuel sector in which it is relatively easy to reduce methane at the point of emission and along production/transmission lines"[77] and "[u]p to 80 per cent of oil and gas measures […] could be implemented at negative or low cost".[78]

    (b) AR6 states: "About 50–80% of CH_4 emissions from these fossil fuels could be avoided with currently available technologies at less than USD50 tCO2-eq–1 (medium confidence)".[79]

    (c) The IEA states: "More than 75% of methane emissions from oil and gas operations […] today can be abated with existing technology, often at low cost. The oil and

carbon dioxide and short-lived climate pollutants." UNEP and Climate and Clean Air Coalition (2022), 'Global Methane Assessment: 2030 Baseline Report', 6.
[72] AR6 WG3 SPM, 28, para. C.4.5.
[73] Global Methane Assessment, 9.
[74] IEA (2024), Global Methane Tracker.
[75] Clean Air Task Force (2023), "Fueling Change: EU's Opportunity to Curb Flaring Pollution and Protect Millions". Flaring is a practice which results in the release of both carbon dioxide and methane. Ibid., p. 6.
[76] Global Methane Assessment, 8.
[77] Ibid., 9.
[78] Ibid., 13.
[79] AR6 WG3 SPM, 28, para. C.4.5.

gas sector has the greatest share of ready-to-implement and cost-effective technical opportunities to reduce methane emissions".[80]

74. Furthermore, because methane emissions have significant adverse consequences for human health and the environment (beyond their contribution to global warming), there are significant health and environmental co-benefits associated with reducing them.[81]

iii. The role of trade in driving emissions released in the production of imported goods

75. Trade is a major driver of GHG emissions.[82] Trade contributes to the release of emissions in various ways, including by increasing the scale of production of goods in an exporting state or region, where the production of those goods involves the release of emissions.[83] Emissions released in the production of a good which is subsequently exported are referred to as being "embedded" in that good and as the "consumption" emissions of the importing state or region.[84] Failure to limit the consumption emissions of States can result in a situation where certain importing States reduce their "territorial" emissions but global GHG emissions fail to decline or even increase as a result of the emissions of exporting States.[85]

76. As noted, the purpose of the Emergency Regulation, and therefore the Contested Act, is to reduce the price of gas purchased by Member States. It is axiomatic that a decrease in the price of a traded good increases the volume of trade in that good which, in turn, entails an increase in the volume of production of the good and therefore of the emissions released in its production.

b. The obligations on the EU

77. The following obligations on the EU prevent the EU from engaging in any act that is inconsistent with the imperative of holding global warming to the 1.5°C LTTG:

(a) The obligations to protect human rights under the Charter of Fundamental Rights ('CFR');

(b) The obligations under Article 191 TFEU;

(c) The obligations of the EU and its Member States under international law, in particular the Paris Agreement, the harm prevention principle and the precautionary principle[86] and the relevant principles of EU law giving effect to these international law obligations within EU law.[87]

---

[80] The Imperative of Cutting Methane from Fossil Fuels, 3.
[81] Global Methane Assessment, 8.
[82] Mehling and van Asselt (2022), Expert Report Addressing the Contribution of Emissions from Imported Goods (submitted as Annex 7 to this request), para. 12.
[83] Ibid., para. 10.
[84] Ibid., paras. 1 and 3.
[85] Ibid., paras. 16-17.
[86] As the precautionary principle in international law applies in the present context in the same way as the equivalent principle under EU law, reference to the application of that principle under EU law may be taken as applying equally to its application under international law and therefore the principle as it applies in international law will not be considered further.
[87] Article 216 TFEU, Case C-162/96, *Racke v Hauptzollamt Mainz*, ECR I-3655, para. 45-46

78. As to the obligations of the EU under the CFR, it is relevant that climate change threatens the effective enjoyment of a range of human rights, including the right to life (Article 2 CFR), the right to physical integrity (Article 3 CFR), the right not to be subjected to torture, inhuman or degrading treatment (Article 4 CFR), the right to respect for private and family life (Article 7 CFR), the right to property (Article 17), the right to non-discrimination (Article 21 CFR) and the rights of children (Article 24 CFR).

79. As to the appropriate LTTG, it would be manifestly inappropriate within the meaning of relevant case law[88] for the EU to act in a manner inconsistent with the 1.5°C LTTG for the following reasons:

    (a) Global warming of 1.5°C would already be clearly unsafe;[89]

    (b) There is political consensus as to the need to prevent global warming from exceeding 1.5°C in order to prevent severe harm to people and the environment;[90]

    (c) Both the CFR and Article 191(2) TFEU compel the EU to adopt policies consistent with the protection of people and/or the environment in the regions of the EU with the greatest vulnerability and lowest capacity to adapt to climate change, where impacts on the wellbeing of people and the environment above 1.5°C will be especially harmful;

    (d) The EU is obliged by Article 191(2) TFEU to "aim at a high level of protection"[91] and to base its policy on the environment "on the precautionary principle and on the principles that preventive action should be taken", noting the greater risks associated with warming above 1.5°C.[92]

    (e) based on the gravity of the impacts of global warming above 1.5°C, for the purpose of Article 52 of the CFR, the "essence" of the rights impacted by climate change cannot be respected by any measure that is not consistent with that LTTG, nor could such a measure ever be "necessary and genuinely meet objectives of general interest" in that it is necessary in the general interest, as well as those of specific individuals affect by climate change, to hold global warming to that LTTG.

80. The 1.5°C LTTG must therefore be understood as an upper limit.

81. Therefore, having regard to the need for steep and urgent reductions in methane emissions this decade for the 1.5°C LTTG to remain achievable, any measure which contributes to the release of readily preventable methane emissions in the production of fossil fuels is *per se* contrary to the obligations outlined above. In particular, and by

---

[88] Case T-740/18, *Taminco BVBA and Arysta LifeScience Great Britain LTD v European Commission*, ECLI:EU:T:2022:61, para. 179-180. C-293/12 and C-594/12, *Digital Rights Ireland and Others* ECLI:EU:C:2014:238, para 47, Joined cases T-74/00, T-76/00, T-83/00, T-84/00, T-85/00, T-132/00, T-137/00 and T-141/00, *Artegodan GmbH and Others v Commission of the European Communities*, ECLI:EU:T:2002:283, para 184, C-488/15 *Commission v. Bulgaria (PM10*) ECLI:EU:C:2017:267, para 106, and EU:C:2016:862, 105 – Opinion of Advocate General Kokott, para 96: C-723/17 *Craeynest and Others v. Brussels Hoofdstedelijk Gewest and Others* ECLI:EU:C:2019:168 – Opinion of Advocate General Kokott, para 55.

[89] See para. 66.

[90] See para. 68.

[91] See also Article 37 CFR.

[92] See para. 67.

way of elaboration on paragraph 79 above, any measure which contributes to such emissions in this way cannot be said:

(a) for the purpose of Article 191(1) TFEU, to contribute to: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change;

(b) for the purpose of Article 191(2) TFEU, to aim at a high level of protection or to be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay;

(c) to have been based on a proper taking account of the potential benefits and costs of action or lack of action as required by Article 191(3) TFEU;

(d) to reflect the principle of proportionality.

82. As to emissions "embedded" in imported goods, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the European Court of Human Rights recently held as follows:

> "It would therefore be difficult, if not impossible, to discuss Switzerland's responsibility for the effects of its GHG emissions on the applicants' rights without taking into account the emissions generated through the import of goods and their consumption or, as the applicants labelled them, "embedded emissions". […] This means, in terms of the above-noted principles of the Court's case-law, that the Court needs to clarify, if necessary even of its own motion, these facts when assessing the applicants' original – and rather general – complaint that Switzerland had failed to reduce its GHG emissions in line with the 1.5°C target."[93]

83. There is also a corresponding procedural obligation arising under the above-mentioned obligations to assess the extent to which any proposed measure could contribute to the release of methane emissions and to assess what preventative measures could be taken to limit any such contribution by the proposed measure. Failure to do so prior to adopting any such proposed measure constitutes a manifest error of appreciation.[94]

84. Article 6(4) of the European Climate Law also sets out the following obligation: "The Commission shall assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) and the Union 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and make the result of that assessment publicly available at the time of adoption."

85. Article 2(1) of the European Climate Law states: "Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter". Article 4(1) and (3) further make clear

---

[93] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* App. No. 53600/20 (9 April 2024) Judgment (Merits and Just Satisfaction), para. 280.

[94] C-487/17, *Verlezza and Others*, ECLI:EU:C:2019:270, para. 57; Case C-269/90, *Technische Universität München*, ECLI:EU:C:1991:438, para. 14; C-425/08, *Enviro Tech (Europe)*, ECLI:EU:C:2009:635, para. 62; C-350/12 P, *Council v In't Veld*, EU:C:2014:2039, para. 63; Case C-343/09, *Afton Chemical* ECLI:EU:C:2010:419 para. 34.

that "the Union 2030 and 2040 climate targets" are linked to achievement of the climate neutrality-objective in Article 2(1).

86. Article 1 of the European Climate Law makes clear that "the binding objective of climate neutrality in the Union by 2050" has been set "in pursuit of the long-term temperature goal set out in point (a) of Article 2(1) of the Paris Agreement".[95]

87. Because the stated purpose of the climate neutrality-objective is to ensure the achievability of the LTTG of the Paris Agreement, a purposive interpretation of the obligation in Article 6(4) of the European Climate Law means that it must be interpreted as including a requirement to assess the extent to which any draft measure may undermine the LTTG of the Paris Agreement, including because it may increase the EU's consumption emissions.[96]

IV. THE CONTRAVENTIONS BY THE CONTESTED ACT OF ENVIRONMENTAL LAW

88. The Contested Act breaches the obligations outlined at paragraph 77 above by contributing to the release of readily preventable methane emissions through its promotion of the purchase of gas, whether within or outside the EU, whose production involves the release of such emissions. In particular, the Contested Act imposes no conditions on the manner in which methane leakage is to be reduced in the production of the gas to be supplied, pursuant to its terms, up until 2029. This is wholly contrary to the urgent need for reductions in methane emissions this decade.

89. The Contested Act also contravenes environmental law as a result of it having been adopted without any prior assessment of the kind outlined at paragraph 83 above or under Article 6(4) of the European Climate Law.

V. CONCLUSION

90. In this Request for Internal Review, the Applicant has put forward facts and legal arguments which, it is submitted, establish that the Contested Act contravenes environmental law within the meaning of point (f) of Article 2(1) of the Aarhus Regulation. We therefore hereby request the Commission to review the Contested Act in accordance with the Aarhus Regulation and to take all steps necessary to rectify this contravention.

[95] The Applicant notes that nothing in this request should be taken as implying that it accepts that the 2050 climate neutrality-objective or the related 2030 and proposed 2040 targets are sufficient to meet the LTTG of the Paris Agreement.

[96] On the concept of 'consumption emissions' please see para. 75 and the footnote referenced therein.

VI. LIST OF ANNEXES

Annex 1: Power of Attorney
Annex 2: Documents pursuant to Article 4(2) of Commission Decision 2023/748
Annex 3: Constitution of the Applicant
Annex 4: Certificate of Incorporation dated 20 May 2019
Annex 5: Annual activity report 2022-2023
Annex 6: Reply of the Commission to the Applicant's internal review request submitted in 2023
Annex 7: Mehling and van Asselt (2022), Expert Report Addressing the Contribution of Emissions from Imported Goods