

Energy Crises on Two Fronts: Norway Considers Potential Power Export Limitations Amidst Russia-Ukraine War

I. INTRODUCTION

The European Union adopted an overhauled approach to energy security in 2019 called the Clean Energy Package (CEP), which in part aimed to prevent large scale energy crises.¹ Now, as of August 2022, Norway officials are considering limiting crucial power exports to neighboring countries in an attempt to avoid domestic shortages.² This report will consider potential effects on EU countries should Norway proceed with export limitation. Additionally, it will explore any connections to the oil and gas crisis created by the war between Ukraine and Russia.

II. BACKGROUND: THE CLEAN ENERGY PACKAGE

The CEP's overhauled approach to energy security targeted large-scale energy crises by providing criteria for risk-preparedness plans.³ Part of the CEP, Commission Regulation 2019/941, outlines these risk-preparedness plans by describing the specific duties of EU Member States in the European energy market.⁴ These duties include "ensur[ing] electricity crises with a cross-border impact are properly prevented or managed"⁵ and adhering to risk-

¹ Commission Regulation 2019/941, art. 11-12, 2019 O.J. (L 158) (EU); *Clean Energy for all Europeans package*, EUROPEAN COMMISSION, https://energy.ec.europa.eu/topics/energy-strategy/clean-energy-all-europeans-package_en [<https://perma.cc/HMT5-QD68>] (last visited Oct. 7, 2022).

² Richard Milne, *Norway set to curb electricity exports in blow to European energy supplies*, FINANCIAL TIMES (August 8, 2022), <https://www.ft.com/content/7f001d0c-63d0-4cfa-92a7-2cc6462d7887>.

³ See Commission Regulation 2019/941, 2019 O.J. (L 158) 6 (EU) ("This Regulation sets out a common framework of rules on how to prevent, prepare for and manage electricity crises, bringing more transparency in the preparation phase and during an electricity crisis and ensuring that measures are taken in a coordinated and effective manner.")

⁴ Commission Regulation 2019/941, art. 11-12, 15-16, 2019 O.J. (L 158) (EU).

⁵ Commission Regulation 2019/941, art. 12, 2019 O.J. (L 158) 1 (EU).

preparedness plans that comply with internal market rules.⁶ Such plans must be necessary and proportionate to any crisis or potential crisis at hand.⁷ Another part of the regulation warns against risk-preparedness plans that are likely to jeopardize the security of another Member State's electricity supply.⁸ Because it assigns duties with emphasis on cross-border impacts and necessary, proportionate protective measures, this regulation arguably works to prevent large-scale, cross-border energy crises in the European market when read as a whole.

Crucial to understanding of the power export limitation threat in Norway is the European Union's Directive 2019/944, which defines the Union's "Member States" and what are referred to as "third countries."⁹ While not Member States themselves, "third countries" interact closely with Member States and are held to standards sometimes comparable to those expected of Member States.¹⁰ According to the relevant directive, Norway is not a member of the European Union, but is a member of the European Economic Area (EEA).¹¹ The EEA includes all countries which are part of the EU, plus Norway, Iceland, and Liechtenstein.¹² This classification of Norway as part of the EEA but not of the EU makes Norway what is known as a "third country" that operates within Europe's internal energy market.¹³ As a result, Norway must comply with applicable EU law despite not actually being an EU member state.¹⁴

⁶ Commission Regulation 2019/941, art. 16, 2019 O.J. (L 158) 1-2 (EU).

⁷ *Id.* at 2.

⁸ Commission Regulation 2019/941, art. 13, 2019 O.J. (L 158) 2(d) (EU).

⁹ Council Directive 2019/944, 2019 O.J. (L 158) 14 (EU).

¹⁰ *Id.*

¹¹ See *Countries in the EU and EEA*, GOV.UK, <https://www.gov.uk/eu-eea> [<https://perma.cc/D542-DJ2P>] (last visited Oct. 7, 2022).

¹² See Council Directive 2019/944, *supra* note 10.

¹³ Council Directive 2019/944, *supra* note 10; Council Directive 2019/944, art. 3, 2019 O.J. (L 158) 5 (EU).

¹⁴ *Id.*

III. NORWAY THREATENS TO REDUCE POWER EXPORTS

How does the 2019 introduction of the CEP tie into the current situation in Norway?

Norway is a crucial provider of power in Europe, exporting a significant amount of energy to other areas within Europe each year.¹⁵ Europe's reliance on Norway's large exports became a problem when, in August of 2022, Norway officials announced that they were considering limiting the crucial power exports which they normally supply to other, less energy-rich European countries.¹⁶ This limitation came into consideration as a result of a particularly dry spring which left Norway with lower hydropower reserves than is typical for the country.¹⁷ The rationale behind limiting Norway's power exports seems to be an attempt at avoiding domestic power shortages, or at the very least an attempt to avoid domestic price hikes for power.¹⁸

¹⁵ Lars Paulsson and Stephen Treloar, *Norway Moves to Limit Power Exports in Blow to Europe*, BLOOMBERG (Aug. 8, 2022, 4:01 AM), <https://www.bloomberg.com/news/articles/2022-08-08/norway-must-follow-eu-rules-if-cutting-power-exports-lobby-says?leadSource=uverify%20wall> [<https://perma.cc/9HBT-BW5K>].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Agreement on the European Economic Area art. 43, 1994 O.J. (L 001) 4 (stating European Free Trade Association (EFTA) states, including Norway, may take protective measures if they are in difficulties or seriously threatened with difficulties regarding its balance of payments); Agreement on the European Economic Area art. 61, 1994 O.J. (L 001) 3(b) (listing aid to remedy a serious disturbance in the economy of an EFTA state as a policy goal compatible with the Agreement on the European Economic Area); see *Norway Announces Extension of Electricity Subsidy Regime*, BLOOMBERG LAW (Aug. 24, 2022, 1:00 AM), https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X8STFUAA000000?bc=W1siU2VhcmNoIChYgQnJvd3NlIiwiaHR0cHM6Ly93d3cuYmxvb21iZXJnbGF3LmNvbS9wcm9kdWNOL2JsYXcv2VhcmNoL3Jlc3VsdHMvYjRjNzBkN2YxYjYxZTJiMzM3OGU4ZWZmZmQ4ZTFhOWEiXV0--53a04675a05ff79fbf6bdf5c3129bd7341a8adce&bna_news_filter=bloomberg-law-news&criteria_id=b4c70d7f1b61e2b3378e8ec1fd8e1a9a&search32=jCudB9AN0_Qzseo6YBE2mQ%3D%3DIlepDkG-MwccZSNarFAYHTxqitTzt7Y9u5CYkZBZkc4_PR2Mfr4ksCqtcsjt-jP_bON5z7zxYBSc3pfN9vA4oUrsziKAN6jTokZrXB50YJwLCF5ZiEKgYu4e5ka2N2zE [<https://perma.cc/6K2C-MUPP>] (reporting that Norway subsidizes electricity when it goes above a set market price); see Ewa Krukowska and Jorge Valero, *EU Starts Talks With Norway to Try to Cut the Price of Gas*, BLOOMBERG LAW (Sept. 14, 2022, 9:07 AM) https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/XACM5IGG000000?bc=W1siU2VhcmNoIChYgQnJvd3NlIiwiaHR0cHM6Ly93d3cuYmxvb21iZXJnbGF3LmNvbS9wcm9kdWNOL2JsYXcv2VhcmNoL3Jlc3VsdHMvYjRjNzBkN2YxYjYxZTJiMzM3OGU4ZWZmZmQ4ZTFhOWEiXV0--53a04675a05ff79fbf6bdf5c3129bd7341a8adce&bna_news_filter=bloomberg-law-news&criteria_id=b4c70d7f1b61e2b3378e8ec1fd8e1a9a&search32=jCudB9AN0_Qzseo6YBE2mQ%3D%3DIlepDkG-MwccZSNarFAYHTxqitTzt7Y9u5CYkZBZkc4_PR2Mfr4ksCqtcsjt-jP_bON5z7zxYBSc3pfN9vA4oUrsziKAN6jTokZrXB50YJwLCF5ZiEKgYu4e5ka2N2zE [<https://perma.cc/LAG5-643S>]

However, this reasoning could be problematic if it is indeed behind the plans of Norway officials. The CEP regulation requiring that risk-preparedness plans be necessary and proportionate applies to Norway since Norway, despite not being a member of the EU,¹⁹ is a third country which must comply with certain EU laws.²⁰ The conclusion that limiting power exports is “necessary” and “proportionate” when a country desires to avoid domestic price hikes is thus arguably inconsistent with EU law.²¹ This seems particularly true in light of the fact that EEA countries are warned against jeopardizing other Member States’ electricity supplies²² and are expected to properly prevent or manage cross-border impacts.²³ By limiting crucial power exports to the rest of Europe, Norway would indeed jeopardize other countries’ energy supplies to some degree.²⁴ The effect could be magnified if other countries follow Norway’s

(“[I]t’s in Norway’s interest to have more stable – and lower – prices” and “a European cap would be a bad idea that would end up crimping supply”).

¹⁹ *Countries in the EU and EEA*, UK.GOV, <https://www.gov.uk/eu-eea> [<https://perma.cc/D542-DJ2P>] (last visited Oct. 7, 2022).

²⁰ Council Directive 2019/944, *supra* note 10; Council Directive 2019/944, art. 3, 2019 O.J. (L 158) 5 (EU).

²¹ See Frazer Norwell, *Norway’s energy directorate says power exports can’t be stopped to ease high prices*, THE LOCAL: NORWAY’S NEWS IN ENGLISH (Aug. 22, 2022, 10:20 AM), <https://www.thelocal.no/20220822/norways-energy-directorate-says-power-exports-cant-be-stopped-to-ease-high-prices/> [<https://perma.cc/8LXP-YXLY>] (arguing that because protective measures must be necessary and proportionate, “a total cut in exports would require extraordinary circumstances”).

²² Commission Regulation 2019/941, art. 13, 2019 O.J. (L 158) 2(d) (EU) (implying that a risk-preparedness plan will be subject to review when it “sets out measures that are likely to jeopardize the security of electricity supply of other Member States”).

²³ Commission Regulation 2019/941, art. 12, 2019 O.J. (L 158) 1 (EU) (“[T]he risk-preparedness plan of each Member State shall include regional and, where applicable, bilateral measures to ensure that electricity crises with a cross-border impact are properly prevented or managed”).

²⁴ See Paulsson and Treloar, *supra* note 15 (“The UK is among the nations most dependent on Norwegian exports, and any limitations would raise already elevated prices and may force National Grid Plc to utilize its strategic reserve of coal generation”); Torkel Nyberg, *Norway Considers Limiting Electricity Exports To Prevent Domestic Crunch*, OILPRICE.COM (Aug. 5, 2022, 10:30 AM), <https://oilprice.com/Latest-Energy-News/World-News/Norway-Considers-Limiting-Electricity-Exports-To-Prevent-Domestic-Crunch.html> [<https://perma.cc/FH5X-H34Y>] (reporting Europe is already “scramble[ing] to procure natural gas for winter power generation and heating”).

lead and restrict their own power exports to rest of Europe, thus shrinking European energy supplies even further.²⁵

IV. ACROSS EUROPE, AN OIL CRISIS IN RUSSIA AND UKRAINE

Meanwhile, in Eastern Europe, the Russia-Ukraine war is resulting in an oil crisis.²⁶ Ukraine has been halting oil flows to central Europe since August 4, 2022 “because Western sanctions prevented [Ukraine] from accepting transit fees from Moscow.”²⁷ Not being able to accept transit fees from Moscow means that there is currently no legal way for Ukraine to transport oil from domestic sources to central Europe – a situation which could be exacerbated by any energy shortages.²⁸ Should Norway cut back on power exports at a time when energy shortages are already affecting central Europe by way of blocked Ukrainian oil, a situation which is already dangerous could become much worse.²⁹ Two energy crises from two different European fronts could merge and morph into exactly the type of large-scale, cross-border

²⁵ Stine Jacobson, *Nordic power grid operators urge Norway to reconsider export restriction plans*, NASDAQ (Aug. 19, 2022, 4:01 AM), <https://www.nasdaq.com/articles/nordic-power-grid-operators-urge-norway-to-reconsider-export-restriction-plans> [<https://perma.cc/GZA5-VFY6>].

²⁶ See Jeff Tollefson, *What the war in Ukraine means for energy, climate and food*, NATURE (Apr. 5, 2022), <https://www.nature.com/articles/d41586-022-00969-9> [<https://perma.cc/HS4V-6STH>] (“Russia’s unprovoked invasion of Ukraine has . . . driv[en] oil and gas prices to their highest levels in nearly a decade and forc[ed] many countries to reconsider their energy supplies”); Shanti Menon, *War and gas: What Russia’s war on Ukraine means for energy prices and the climate*, ENVIRONMENTAL DEFENSE FUND (May 9, 2022), <https://www.edf.org/article/war-ukraine-driving-gas-prices> [<https://perma.cc/Y3EZ-7PEU>] (attributing 40% of Europe’s natural gas supply and 10% of global oil supply to Russia); see generally MUQSIT ASHRAF ET AL., *THE WAR IN UKRAINE: A MOMENT OF RECKONING FOR THE OIL AND GAS INDUSTRY* (2022) (emphasizing global reliance on Russian oil and gas, the importance of securing an affordable energy supply, and possible implications of the war in Ukraine).

²⁷ *Ukraine halted oil flows to Europe over payment issue, Russia’s Transneft says*, REUTERS (Aug. 9, 2022, 12:18 PM), <https://www.reuters.com/business/energy/russia-suspends-oil-exports-via-southern-leg-druzhba-pipeline-due-transit-2022-08-09/> [<https://perma.cc/8GS2-EFMG>].

²⁸ See Paulsson and Treloar, *supra* note 24; Nyberg, *supra* note 24; Jacobson, *supra* note 25.

²⁹ See Ido Vock, *Can Norway save us from the energy crisis?*, THE NEW STATESMAN (Sept. 5, 2022), <https://www.newstatesman.com/quickfire/2022/09/europe-energy-crisis-norway> [<https://perma.cc/V4LY-JX5V>] (arguing that without intervention, the energy supply crunch could lead to European energy shortages during the 2022-2023 winter season).

energy crisis the EU sought to prevent when it enacted the CEP in 2019.³⁰ Norway has arguably replaced Russia as the next biggest supplier of gas in the region,³¹ so electricity export limitations on the part of Norway would only grow the power shortage currently being suffered by Europe in the wake of Russia's invasion of Ukraine.

V. WHAT WENT WRONG?

These energy crises merging on the horizon beg the question of how recent legislation such as the CEP, which was designed specifically to counter such crises, could fail so quickly. The policy goal of the CEP was ultimately to contain or minimize energy shortages via the cooperation of EU Member States, EEA countries, and "third countries," as "electricity crisis and prevention cannot be a purely national task" and naturally must reach across borders to have meaningful effect.³² In addition to the national measures which must be taken by countries bound under EU law, "the risk-preparedness plan of each Member State shall include regional and, where applicable, bilateral measures to ensure that electricity crises with a cross-border impact are properly prevented or managed."³³

Since the CEP explicitly outlines these duties and policy goals, it may be questioned whether one factor that has contributed to the current European energy crises is Norway's identity as a country somewhere in between a Member State and a complete outsider.³⁴

Although not a Member State, Norway is bound by EU law in its energy market transactions,

³⁰ Commission Regulation 2019/941, art. 12, 2019 O.J. (L 158) 1 (EU).

³¹ Richard Milne, *Nordic neighbours attack Norway's 'selfish' plan to curb electricity exports*, FINANCIAL TIMES (Aug. 28, 2022), <https://www.ft.com/content/7a287504-b559-4d8b-832e-9b6c47fba0aa> [<https://perma.cc/9JLU-RHGC>].

³² Commission Regulation 2019/941, 2019 O.J. (L 158) 3 (EU).

³³ Commission Regulation 2019/941, art. 12, 2019 O.J. (L 158) 1 (EU).

³⁴ See Commission Regulation 2019/941, *supra* notes 9-10; GOV.UK, *supra* note 11.

and this arguably blurs the boundaries of Norway's duties as a prominent yet in-between player in Europe's internal energy market.³⁵

But perhaps it is not fair to tie the failure of the CEP to a single country's status as a member or non-member of the EU, especially since so many other factors enter into a country's decision into how they fit into Europe's overall political and economic sphere.³⁶ The real culprit may instead be the CEP itself, which assumes rather boldly that a large-scale, cross-border energy crisis can actually be prevented when the countries bound by the CEP are expected to find an appropriate balance between domestic needs and duties to their neighbors. While extraneous factors such as continuing economic recovery from a global pandemic³⁷ and an ongoing war certainly do not help matters, the core of the issue may be that any country is expected to find that their own energy needs are not "necessary" enough to justify cutting foreign exports when an internal economic crisis could otherwise result.³⁸ How does a Member State or legally adjacent "third country" determine what is proportionate in such circumstances, especially when Europe's economic and political atmosphere is as turbulent as it

³⁵ See *id.* (identifying Norway as a "third country" in relation to the EU's single energy market); see Paulsson and Treloar, *supra* note 24; see Nyberg, *supra* note 24.

³⁶ *Key European Union achievements and tangible benefits*, EUROPEAN UNION, https://european-union.europa.eu/priorities-and-actions/achievements_en#:~:text=It%20enables%20most%20goods%2C%20services,retire%20in%20any%20EU%20country [<https://perma.cc/9EVM-YZWJ>] (last visited Oct. 7, 2022); *Argument Against Joining the EU*, LEARN EUROPE, <http://www.learneurope.eu/index.php?cid=309> [<https://perma.cc/34XL-TD3M>] (last visited Oct. 7, 2022).

³⁷ See *World Bank: Russia's Invasion of Ukraine is hampering Post-Pandemic Economic Recovery*, NOVINITE.COM (Oct. 6, 2022, 11:31 AM), <https://www.novinite.com/articles/216991/World+Bank%3A+Russia%27s+Invasion+of+Ukraine+is+hampering+Post-Pandemic+Economic+Recovery> [<https://perma.cc/Q3TD-3H27>]; *COVID-19 pandemic stalls global economic recovery: UN report*, UNITED NATIONS (Jan. 13, 2022), <https://news.un.org/en/story/2022/01/1109702> [<https://perma.cc/57PJ-NW8W>].

³⁸ See Frazer Norwell, *Norwegian electricity rates set new record: Why are prices still going up?*, THE LOCAL: NORWAY'S NEWS IN ENGLISH (Aug. 22, 2022, 6:16 AM), <https://www.thelocal.no/20220822/norwegian-electricity-rates-set-new-record-why-are-prices-still-going-up/> [<https://www.thelocal.no/20220822/norwegian-electricity-rates-set-new-record-why-are-prices-still-going-up/>] (predicting domestic Norwegian electricity prices will continue to rise).

has been in the three years since the CEP was passed?³⁹ While the underlying policy goals are admirable, Europe is currently seeing the ill effects of a somewhat impossible balancing test, to the detriment of the continent's uncertain state of energy security.

VI. CONCLUSION

The risks presented to Europe's internal energy market by potential Norwegian power export limitations weigh against their implementation,⁴⁰ especially in light of already dwindling energy supplies resulting from the war in Ukraine.⁴¹ As alternatives to export limitations, recommendations for Norway include maintaining procedures to ensure that sufficient water supplies are retained in Norwegian reservoirs throughout the winter season, and recommendations for Europe in general include carrying out information campaigns to reduce power consumption by the public and entering into agreements with industrial companies so that their power consumption will decrease when the need to ration power becomes an immediate threat.⁴² Adopting alternatives to power export limitations should remain a priority not only to preserve Europe's energy supplies in times of need, but also to preserve Norway's reputation as a major power supplier for Europe.⁴³ Without a certain standard of reliability and trust being upheld, the stability of Europe's internal energy market is at stake.⁴⁴

³⁹ See *COVID-19: the EU's response to the economic fallout*, EUROPEAN COUNCIL: COUNCIL OF THE EUROPEAN UNION (Sept. 8, 2022), <https://www.consilium.europa.eu/en/policies/coronavirus/covid-19-economy/> [<https://perma.cc/T6HG-FPBA>] (providing overview of the EU's response to pandemic-related economic challenges); see generally Tobias Tesche, *Pandemic Politics: The European Union in Times of the Coronavirus Emergency*, 60 J. COMMON MKT. STUD. 480, 480-96 (2021) (assessing increased polarization of EU politics in response to the global COVID-19 pandemic).

⁴⁰ See Paulsson and Treloar, *supra* note 24; Nyberg, *supra* note 24; Jacobson, *supra* note 25.

⁴¹ See Tollefson, *supra* note 26; Menon, *supra* note 26; ASHRAF ET AL., *supra* note 26; REUTERS, *supra* note 26.

⁴² *Norway: Statnett Presents Recommended Measures to Ensure Power Supply this Winter*, STATNETT (Oct. 3, 2022), <https://electricenergyonline.com/article/energy/category/t-d/56/982389/norway-statnett-presents-recommended-measures-to-ensure-power-supply-this-winter.html> [<https://perma.cc/838A-V52M>].

⁴³ Milne, *supra* note 31.

⁴⁴ See *id.* (arguing that power export limitations "will hurt the whole brand of Norway" and that "reliability and trust are one of the basic ingredients" of Norway presenting itself as a reliable supplier of petroleum).