

On 31 March 2022, Russia issued Decree No. 172, titled “On special procedure for the fulfilment of obligations by foreign buyers to Russian Natural Gas suppliers” (the “Decree”), under which gas supplied by Russian exporters after 1 April 2022 to “unfriendly” states was requested to be paid by way of a multi-step mechanism through specialised Gazprombank accounts – regardless of the actual contractual terms. The rationale behind the Decree was purportedly to strengthen the value of the rouble, which had weakened dramatically following the onset of the Russia-Ukraine conflict in February.

The authors of this article previously shared details of the new banking terms in an article published in *Global Arbitration Review* on 11 May 2022, noting that: (i) the affected buyer must open special “type K” banking accounts in euros and roubles at Gazprombank; (ii) the affected buyer would then have to transfer the foreign currency stipulated in its contract into its own “type K” account at Gazprombank; and (iii) Gazprombank would then change the euro payment into roubles before depositing that sum in the Russian exporter’s account.¹

At that time, the market was caught in a state of reactive flux, actively evaluating the possible effects of the Decree, both practically and legally. Over the last few months, greater clarity on this issue has come to light. European gas buyers have been managing and confronting the effects of the Decree as daily supply cuts, coupled with contested declarations of *force majeure*, have continued to disrupt European gas markets. It appears that many buyers cautiously considered the impact of the Decree and adopted the approach of finding a “middle ground” identified in our May 2022 *Global Arbitration Review* article: namely, finding a work-around to continue technically paying in euros while not running afoul of the Decree.

Others, however, took more expedited and contentious actions. Publicly available information indicates that multiple European buyers refused to pay in roubles or to employ a workaround and Gazprom Export, LLC responded by cutting off their gas supplies entirely:

- In May 2022, Gasum (Finland) announced “Gasum does not accept Gazprom Export’s requirement to switch to rouble payments and will consequently not make payments in rubles or under Gazprom Export’s proposed payment arrangement. In addition, the companies are in significant dispute concerning other claims submitted under the contract.”
- Reports from May 2022 also stated that Gazprom Export would stop supplying gas to GasTerra (the Netherlands). GasTerra announced it would not pay in roubles, “[i]n response, Gazprom announced that it would discontinue supply to the Netherlands from Tuesday (31 May).”²
- Reports from June 2022 stated that Gazprom Export suspended gas supplies to Shell Energy Europe (Germany) as of 1 June 2022. Gazprom Export was reported as attributing the suspension to a failure by Shell Energy Europe to pay in roubles. “Since no money has been received for April, deliveries will be stopped, Gazprom Export announced.”³
- Reports from June 2022 indicated that Gazprom Export completely suspended deliveries to Bulgargaz (Bulgaria). According to the reports, “[s]tate-owned gas company Bulgargaz still regularly reminds Gazprom that the Russian company is not fulfilling its contracts with Bulgaria, which expire at the end of this year.”⁴ Press reports from late August indicated that, following the change in government, Bulgaria resumed negotiations with Gazprom Export concerning the resumption of supplies.⁵

¹ “Gas Payment Issues in Europe: What Are the Next Steps?” *Global Arbitration Review*, 11 May 2022

² “Euractiv, Russia’s Gazprom to cut gas supply to the Netherlands.” <https://www.euractiv.com/section/energy-environment/news/russias-gazprom-to-cut-gas-supply-to-the-netherlands/>.

³ EEK Media, LLC “Orsted and Shell no longer receive gas from Gazprom.” <https://www.eek-energy.com/en/news/natural-gas/detail/news/orsted-und-shell-erhalten-kein-gas-mehr-von-gazprom.html>.

⁴ Euractiv.com. “Bulgaria will never negotiate with Gazprom again.” <https://www.euractiv.com/section/energy-environment/news/bulgaria-will-never-negotiate-with-gazprom-again/>.

⁵ POLITICO Europe. “Bulgaria risks a relapse into its addiction to Russia’s Gazprom.” <https://www.politico.eu/article/bulgaria-risks-a-relapse-into-its-addiction-to-russias-gazprom/>.

- Reports from June also stated that Gazprom Export suspended gas supplies to Ørsted (Denmark) as of 1 June 2022. Gazprom Export was reported as attributing the suspension to a failure by Ørsted to pay in roubles.⁶
- Reports from July 2022 stated that Gazprom stopped deliveries to Latvijas Gaze (Latvia): “Today Gazprom stopped gas supplies to Latvia within the framework of the July order due to the violation of ... conditions.”⁷

The market looked on with interest, awaiting news of these efforts, and on 14 November 2022, the first official updates were shared with the media by the affected parties.

On that date, a Stockholm-seated tribunal issued an award in the ad hoc arbitration between Finland’s state-owned energy company, Gasum, and Russian energy company Gazprom Export under their long-term supply contract. While the award remains confidential, both parties have released contrasting statements summarising its findings:

- According to **Gasum**, the award confirms that Gasum is not required to pay for gas in roubles and the parties must now “continue their bilateral contract negotiations to resolve the current situation.” Gasum also reported that it had not received any gas supplies since May.⁸
- According to **Gazprom Export**, the award confirms that, on the one hand, the Decree constituted a *force majeure* event entitling Gazprom to suspend gas supplies to Gasum, and, on the other hand, Gasum is in breach of take-or-pay obligations under the supply contract.⁹ Gazprom Export reported that, as a result, Gasum owes Gazprom Export more than €300 million. Gazprom Export also made reference to other aspects of Gasum’s claims that were rejected, including a claim that Gazprom Export’s demand for payment in roubles was contrary to European law, and a request for a declaration that minimum daily and annual supply quantities under the contract violated European or national competition law.¹⁰

Gasum’s counsel has since suggested that Gazprom Export’s account of the award deliberately omits “important aspects of the tribunal’s findings” in order to avoid any risk of the award affecting the outcome of other similar arbitrations in which Gazprom Export is participating.¹¹

As the award will remain confidential, it is difficult for other, similarly affected European parties to obtain definitive and helpful guidance from its findings. Even if they could, that guidance would, in any event, be only that: guidance. Each buyer has a different contract with Gazprom Export that may have different terms, obligations, governing law and arbitral seat.

Any dispute between parties other than Gasum and Gazprom Export would need to be resolved under the terms of the relevant parties’ particular supply contract in an arbitration before a tribunal appointed for that particular dispute.

However, the available reporting on the award does provide some information that may be of broader interest:

- First, it shows the efficiency of, and the possibility of considering, a procedure for emergency or expedited arbitration under applicable rules. Gasum announced on 17 May 2022 that it was commencing arbitration against Gazprom Export and, within just six months, on 14 November 2022, the parties had an award. This being said, enforcement of orders – emergency or otherwise – may still prove difficult in the current climate.
- Second, it shows that Gazprom Export is actively participating in international arbitration and is represented by counsel. *Global Arbitration Review* reports that Gazprom Export was represented by Moscow-based law firm Mansors, with a team lead by former Baker McKenzie lawyers.

The *Gasum v. Gazprom Export* award is the first one that has been publicly reported, but it is not known at this time whether other cases are currently pending, and, if so, how many. The *Gasum v. Gazprom Export* award involved roubles payments under the Decree and was commenced in May 2022, but, since that time, Gazprom Export has significantly reduced deliveries to Europe, exacerbating the existing gas supply crunch. These circumstances raise other issues, apart from those of the roubles payments, and, as of today, there is no information on their resolution.

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6 EEK Media, LLC. “Ørsted and Shell no longer receive gas from Gazprom.” <https://www.eek-energy.com/en/news/natural-gas/detail/news/oersted-und-shell-erhalten-kein-gas-mehr-von-gazprom.html>.

7 POLITICO Europe. “Gazprom cuts gas supplies to Latvia.” <https://www.politico.eu/article/russia-gas-europe-latvia-supply-gazprom-ukraine-war/>.

8 “Gasum to continue negotiations regarding natural gas supply contract after a decision from the arbitral tribunal.” Gasum statement, 16 November 2022.

9 “Gazprom: Stockholm arbitration court orders Gasum to pay 300 mln euros for Russian gas supplies, recognizes transfer to ruble payments as per force majeure in contract.” InterFAX, 17 November 2022. <https://interfax.com/newsroom/top-stories/85048/>.

10 “Gazprom sheds light on dispute with Finnish gas buyer.” *Global Arbitration Review*, 17 November 2022.

11 *Ibid.*