

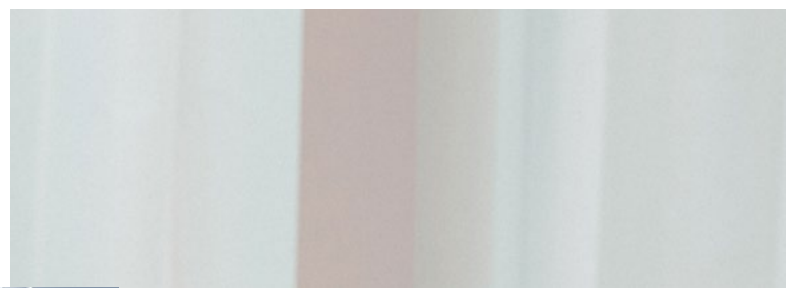
Europe's energy crisis

The Board of Directors in an environment characterized by uncertainties. Interview with Phyllis Scholl, attorney-at-law and independent board member.

Phyllis Scholl is at home in the power industry. As an attorney and partner at Baryon, she has broad experience of M&A transactions in the energy sector. In addition, Phyllis Scholl serves on the boards of directors of both listed and non-listed companies in the energy sector and is also mayor of a suburban Zurich municipality. In an interview with Reto Eberle, the lawyer talks about the current energy crisis in Europe and how we can make energy production and management in Switzerland sustainable.

Prof. Dr. Reto Eberle: *We seem to have had one crisis after another in recent years – diverse in nature and appearing with increasing velocity: the financial crisis was followed by the COVID-19 crisis, and now the war in Ukraine. Are crises also always an opportunity, and do you think lessons have been learned and appropriate changes made?*

Phyllis Scholl: Crises are indeed opportunities, even if the statement contains a measure of calculated optimism. Crises reveal the weak points in our system, and that's the great opportunity we should take advantage of. The last crises we experienced were certainly on the list of possible scenarios, but governments and risk managers rated their probability of occurrence as low. This is probably why preparation for these scenarios was neglected. A good example is the threat of an energy shortage in Switzerland. Just because the probability was rated as very low, it doesn't mean we shouldn't have prepared for it – precisely because an energy shortage has very high damage potential. In the absence of existential crises in our society





“We need to pay more attention to crisis scenarios with low probability but high damage potential.”

in recent decades, we’ve neglected the art of foresight. So, it’s important to now consider possible future crisis scenarios with low probability but high damage potential. And we should take precautions to avoid – or at least mitigate the damage of – existential crises as far as possible.

Were we too naive as a society, or did we shy away from the expense of necessary crisis prevention?

I think it was a lack of foresight, or a lack of imagination that it could happen at all. Our experience over the last 50 to 60 years has been that things have always turned out well in the end. In addition, the energy sector is a network economy with a large number of players. We’ve also paid more attention to economic and ecological aspects than to supply security. In the last months of winter, we always depend heavily on energy imports from other countries. If they’re no longer able or willing to deliver, we have a problem, and this is certainly something that has been underestimated for a long time.

The energy sector is strongly influenced by policy. The partial opening of the electricity market in 2008 brought it closer to a market economy. How do you assess the impact of (partial) liberalization to date? What are the possible effects of further liberalization, including for smaller electricity consumers (with less than 100 MWh)?

Partial liberalization has led to a market distortion, and we’re now stuck in it. Having benefited for years from extremely advantageous market conditions, large electricity consumers now face high market prices, while small companies and private households had to pay proportionately higher electricity prices, but are now much less affected by the high market prices. I’m of the opinion that we should decide on a concept and either release all consumers or none into the free energy market.

The decisive advantage of liberalization is that the market and demand send signals to production. Alongside price, security of supply has now regained importance. This helps to push domestic production more strongly as well. A return of all players to basic state supply is conceivable, but not a good solution, as it would mean a lack of signals from the market, which in turn would exacerbate the problem of available energy. In any case, the current situation is unsatisfactory. Households and businesses do not constantly want to have to deal with the question of where electricity comes from and how much it costs. People simply assume – as they do with water – that it will always be available and affordable.

Your work as a board member is certainly also characterized by the long investment horizon that is typical for the energy sector (at least in the area of power generation). In the current volatile market situation, how do you deal with the associated planning uncertainty, especially when assessing long-term investment projects?

For hydropower plants, for example, the aim is to have a concession of 60-80 years. These are long time horizons in which a lot can happen. In the past, it was assumed that the investment would pay off in the long run. But there was always the question of how to deal with what we call non-amortizable investments. It can be helpful to use the triangle of “ecology, economy and security of supply” to make sense of them. The economic component of price development on the sales market has been the most uncertain. One approach to controlling this would be to introduce sliding feed-in premiums. These define a

“Partial liberalization in the Swiss electricity market has led to market distortion.”

bandwidth for the electricity price. If the price falls below a certain level, the public sector would intervene to support the company; if the price rises above a certain level, the company would have to hand over part of the surplus to the state.

When the concession expires, negotiations start for the reversion of the power plants. In other words, the production infrastructure is returned to the public sector, e.g. the local municipality.

That's right. Between 2030-2045, the concessions of most large power plants in Switzerland will expire. While a concession can be renewed again for a further period, it is to be expected that the municipalities and cantons will be keen to take on electricity production again – at least to some extent. Even more so in the current environment of high electricity prices. The municipalities concerned argue that when business goes well, profits are not taxed locally but at the locations of the large electricity companies, and that energy trading jobs are also located in the large conurbations and not at the site of electricity production. On the other hand, operating a power plant requires specialist knowledge and is associated with significant risks, including economic risks. In essence, the fundamental regulatory question arises as to which tasks should be performed by the state and which are better left to the private sector.

What's your take on the impact of the implementation of the indirect counter-proposal to the Responsible Business Initiative? For instance, this includes a reporting obligation regarding non-financial matters.

In my view, motivation for more transparency in non-financial reporting isn't based exclusively on regulatory requirements, especially in the energy sector. Companies recognized very early on that various stakeholders have a great interest in these topics. Not only do investors now react much more sensitively to information in the area of sustainability, there's also more appetite for these areas when recruiting employees and in dialogue with the public. And whenever something is felt to benefit a company, the drive comes from within – without the regulator first having to issue new rules. Some of the regulatory requirements are also very extensive and almost impossible to meet. I consider market-based pressure from investors or other stakeholders to be more effective than further complex regulations from the legislator.





The report on non-financial matters is also associated with new risks such as greenwashing. How does the Board of Directors take these new risks into account?

“Greenwashing” does indeed carry a reputational risk that can have a negative impact, both in terms of financing and raising capital as well as on the job market. Once you’ve got the greenwashing label, it becomes very difficult. What you communicate to the outside world must also be correct. It’s also fine to be honest and say: “We’re working on the topic, but we haven’t yet reached our goal,” instead of making exaggerated promises.

“We need to get back to anticipating crisis scenarios with more farsightedness.”

Do board members face liability risks in addition to reputational risks?

You would have to be very clumsy in your communication. In order to assert a liability claim, a party would have to be able to derive and prove concrete damage. My credo is: you should be careful and pragmatic in what you do and communicate. Companies don’t want to generate additional work with these activities, some of which can be very costly, they want to provide a benefit and contribute to value creation. It’s fine to document your path toward a goal and report on it without saying we have already achieved this and that.

Against this background, do you consider an audit of sustainability reports to be useful? What is the benefit of such an audit – which in Switzerland, unlike in the EU, is not yet required by law – for the board of directors?

I can certainly imagine that there are benefits to having the sustainability report audited. Generally speaking, the more people or entities that take a serious look at something, the more insights and benefits can be gained. On the other hand, it’s another cost factor and having an extra step in the process slows it down. Over the next two to three years, we can benefit from the experience gained in the EU and deduce which approaches could be useful for us and which will not. Today’s sustainability reports perhaps still have too few hard facts and figures to verify. Many reports refer to intentions and plans for measures, and auditing these seems like a difficult undertaking to me.

Alongside your role as board member, you're also the mayor of a suburban municipality in Zurich. Where do you see similarities between your work in business and in politics? And how do these two areas of responsibility differ?

For me, there are clearly more similarities than differences. In both spheres, the planning of major projects and ongoing day-to-day business are big tasks for the management bodies. In political management, for example, population trends, large construction projects or the expected course of tax revenues define long-term planning. In addition to day-to-day business, new major projects are constantly being suggested and proposed. Selecting the right ones with foresight is crucial. And once you decide on an issue and a project, you have to see it through. There's a great danger of procrastination. This applies to both the private sector and the political world.

When I took up the position as mayor, we first looked at the question of how we wanted to work together on the committee, even before asking ourselves what we wanted to do. Above all, it was important to me to introduce a culture of learning and making mistakes. This allows us to have open communication with each other and also to admit to mistakes so we can learn from them for the future.

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About Phyllis Scholl:

Phyllis Scholl serves on the board of directors of several major energy companies (including Alpiq and Energiedienst) as well as on the board of directors of a construction company and a software start-up. She has many years of experience in corporate law, contract law and public law. She also advises companies on corporate governance issues. Before joining Baryon AG, Ms. Scholl was a partner at Bär & Karrer AG, a leading international commercial law firm.

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