



## Nord Stream 2 - Divide et Impera Again? *Avoiding a Zero-Sum Game*

The question of Europe's energy security has risen in importance in recent years, especially following the major disruption of gas supplies caused by the January 2009 Ukraine-Russia dispute, and even more so given the political and security tensions that followed Russia's annexation of Crimea. Indeed, Russia remains the EU's main supplier of oil, gas, coal and nuclear fuel – even if its energy sector has been affected by the EU-imposed sanctions regime. In this context, Gazprom's 'Nord Stream 2' pipeline project, aims to expand gas supplies from Russia to Germany, largely following the route of the Nord Stream 1 pipeline on the bed of the Baltic Sea, and bypassing transit countries, such as Poland, Slovakia and Ukraine.

*'I have a strong preference for pipelines that unite rather than for pipelines that divide.'*

Jean-Claude Juncker, Saint Petersburg, 16 June 2016

However, the project is reopening an old debate among Member States about energy security and broader EU-Russia political and economic relations. With many very different concerns voiced by many Member States, the project constitutes a test for EU solidarity and for the

completion of a resilient Energy Union. President Juncker took a clear stance on the subject during his visit to Saint Petersburg in 2016: **The Energy Union cannot be held hostage by pipeline politics**, and any new project must comply with European rules and align with European interests.

### I. POSITIVE LESSONS FROM THE EARLY IMPLEMENTATION OF THE EU'S RESILIENT ENERGY UNION ON SECURITY, SOLIDARITY AND TRUST

#### The Energy Union provides a remedy against divisions and fragmentation

The Nord Stream 2 dossier is a clear case of what the Energy Union aims to avoid.<sup>1</sup> The Russian strategy of *divide et impera*, enhanced by the ability to move from one project (South Stream) to another (Nord Stream 2), rapidly and effectively, is again putting European unity at risk. This is regrettable given that the EU and Russia have, to a certain extent, convergent interests:

Some EU Member States can import Russian gas as an inexpensive and less polluting fuel, while Russia's struggling economy can benefit from exports to EU markets.

**Nord Stream 2**, seen from a common EU perspective, **is a project with neither economic rationale nor political backing**. It would cost billions of euros that could be spent in other priority segments of the economy and the energy sector. Its economic rationale ignores EU objectives on energy efficiency (that will also diminish gas demand); renewables (heat sources and biogas); and research and innovation (the potential future technological breakthrough on electricity storage and/or power-to-gas would further slash post-2030 EU gas imports).

#### Disclaimer

The views expressed in this paper are those of the authors and do not necessarily correspond to those of the European Commission.

- **A divisive project:** Nord Stream 1 already led to political tensions between Member States, amplifying cleavages between Western European countries that supported the project, and Central European Member States, which viewed it as a Trojan Horse – a tool for economic and political dominance by Russia and a way to undermine the region's diversification efforts. Nord Stream 2 again represents a major potential factor of division and therefore challenges the Energy Union project.
- **Little justification:** Looking at Nord Stream 2 from a common EU perspective, it is a project with neither economic rationale, nor strong political backing. There is no clear indication on how it would enhance the diversity of EU energy supply, whether in terms of energy sources, suppliers or routes, as it would lead to a concentration in the Baltic corridor. The construction of Nord Stream 2 would also impact the coherence of the EU's foreign policy, in particular towards Ukraine, and given the ongoing economic sanctions towards Russia.
- **EU mandate needed to avoid legal void:** Against the background of colliding legal regimes, the construction of such an important element of infrastructure cannot happen in a legal void.

A legal framework would be needed that takes account of the key principles of the EU energy market. The European Commission asked for a clear mandate to negotiate a specific legal regime for Nord Stream 2 and full powers on energy matters. The ball is now in the court of Member States that are responsible for agreeing on a common position. In parallel to the negotiations on the recommended mandate, the Commission is working on a proposal to clarify the common rules for gas pipelines entering the European internal gas market, as announced in the 2017 State of the Union speech by President Juncker and the Letter of Intent.

- **The Energy Union can help avoid a zero-sum game:** Nord Stream 2 risks jeopardising major progress achieved over the past two years in terms of completing the internal energy market in a spirit of solidarity and trust. Rather than focusing on this divisive issue that has already captured too much of the EU's political attention, the debate should be used to consolidate progress on projects of common interest that will interconnect the EU's regional gas markets, genuinely improve security of supply, and thereby reconcile Member States' interests.

The construction of **Nord Stream 2 would hardly be compatible with the Energy Union's strategic goals.** It would not contribute to the implementation of the EU Energy Security Strategy based on diversification of supply, energy sources, suppliers and routes. It would be a liability for the other key drivers of energy security, such as the completion of the internal energy market and more efficient energy consumption.

The Ukrainian gas transit crises of 2006 and 2009 provided an opportunity for the EU to drastically improve the security of supply and competitiveness of its gas market. EU Member States realised that joint approaches in the field of energy security can make all parts of the EU – and its neighbours – stronger, including in the case of supply shortages or disruptions. **The spirit of solidarity in energy matters** was explicitly integrated in the Treaty on the Functioning of the European Union and **is at the heart of the Energy Union.** And in May 2014, the European Commission set out in its European Energy Security Strategy<sup>2</sup> to raise the issue of the EU's vulnerability to external energy shocks, and called on policymakers at national and EU level to make clear to citizens the choices involved in reducing EU dependency on particular fuels, energy suppliers and routes. As set out in the strategy,<sup>3</sup> the strong dependence on Russia as an energy supplier

can be remedied not only by building further pipelines to diversify the sources, but also by further **demand reductions, better use of indigenous resources (including renewables) and in particular through a well-functioning, liquid and interconnected internal energy market.**

Eventually these efforts have resulted in the project of the Energy Union which is currently being pursued.<sup>4</sup> The key drivers of energy security are the completion of the internal energy market and more efficient energy consumption, more transparency, as well as more solidarity and trust between the Member States.

### New rules on security of gas supply for more solidarity and trust

With the adoption of the **Security of Gas Supply Regulation and the update proposed in 2016,**<sup>5</sup> the EU has taken a big step forward to strengthen its energy security. The new rules are built upon solidarity and cooperation among the Member States. Notwithstanding the national conditions and specificities of the Member States, the EU-wide framework of regional groups makes coordinated actions possible. Thus, Europe becomes better equipped to avoid and cope with eventual crises. The Regulation improves

risk identification, cross-border cooperation ahead and during crisis, sets rules for solidarity between Member States and improves transparency of key gas supply contracts. **It introduces a solidarity principle between Member States in case of a gas crisis and provides clarity for its practical implementation.** Such solidarity covers the most vulnerable gas consumers, including households, with a view to making the impact of an eventual gas crisis less severe for them.

Finally, the new Regulation extends notification obligations to national authorities, and then eventually to the European Commission, of key new and existing gas contracts and details of related elements. The aim is to provide national authorities and the European Commission with information necessary for an accurate assessment of security of supply at national, regional and EU level.

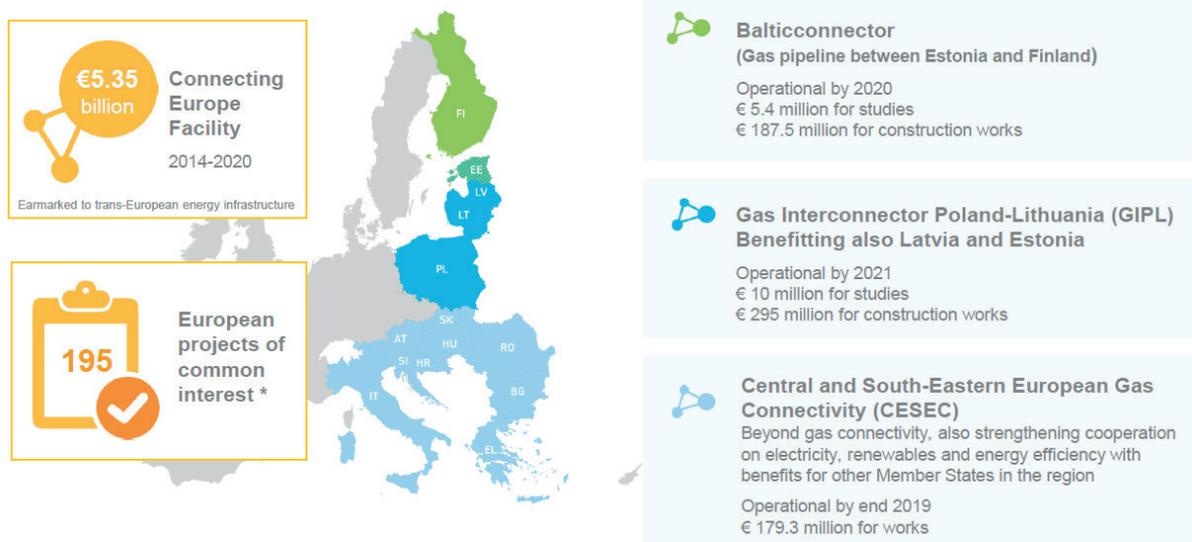
**The Baltic Sea route, including Nord Stream 1 and 2 (the latter, if built), will be analysed specifically as a risk group.** As a result, common as well as national risk assessment plans and cross-border measures will have to include specific risks related to Nord Stream 1 and 2. The new obligation to notify long-term gas supply contracts does not extend to pure infrastructure contracts, so contracts for the construction of Nord Stream 2 would not be covered. However, should a long-term gas supply contract delivered via Nord Stream 2 surpass the 28% threshold of the annual consumption in the Member State, foreseen in the new Regulation, it would have to be notified. Moreover, should such a contract be linked or conditioned by the operation or construction of Nord Stream 2, the details of the Nord Stream 2 related agreements should also be notified.

### Major steps taken to end the fragmentation of EU's gas markets and further diversify supplies

The European Commission supports interconnected and competitive gas markets across the European Union **by completing its internal gas market.** EU law<sup>6</sup> already obliges Member States to enable reverse flows of gas, including from West to East, in order to stimulate competition in the EU gas market. Furthermore, the European Commission is **increasing the energy tool-box of Europe namely through regional groupings** such as the Baltic Energy Market Interconnection Plan and the Central Eastern and South-Eastern European Gas Connectivity, through the improvement of access to liquefied natural gas or the development of gas hubs. The Trans-Adriatic Pipeline, opening up the Southern Gas Corridor, or the support lent to the development of the Gas Interconnector Poland – Lithuania, are concrete examples of the support given by the EU, its budget and tax-payers to infrastructure projects that help end the isolation of regions, increasing security of supply and increasing market resilience. The revision of the list of Projects of Common Interest (PCIs) in late 2017 will enable the European Commission to further focus the list on the most important projects, in particular in terms of enhancing the integration of EU countries' markets and networks, increasing competition, and enhancing security of supply.

The EU has also taken concrete steps to diversify its gas supplies with the **Southern Gas Corridor**<sup>7</sup> which should connect the EU's regional gas markets to a new, significant source of gas in the Caspian Basin. The first gas deliveries should arrive through this pipeline system

**Figure 1: The Energy Union interconnecting Europe's gas markets**



Source: European Commission

to the EU in 2020. Although the original volumes will not be big (in total 10 billion cubic meters per year), the potential of the Caspian Basin and other gas fields along the route (e.g. from Iran or Iraq, if conditions are right) are considerable and the pipelines could be extended to transport bigger amounts of gas in the future. Another major pipeline project in planning is a pipeline connecting the recent gas discoveries in the Eastern Mediterranean with the EU.

In addition, **several liquefied natural gas regasification terminals are under construction** and even more are in the planning phase. In December 2015, the first delivery of liquefied natural gas reached the terminal in Świnoujście in Poland. This EU co-funded project will help to reduce Poland's reliance on Gazprom. There are also plans to further export this gas to other countries of Central and Eastern Europe. This has been made possible thanks to the EU's efforts in interconnecting regional gas markets. In the Baltics, the EU for instance supports the building of the Balticconnector, a gas pipeline connecting Estonia and Finland. Furthermore, it co-funded the construction of the Klaipėda–Kursenai gas transmission pipeline under the Connecting Europe Facility to connect the liquefied natural gas terminal infrastructure in Klaipėda to the gas transmission system towards Kursenai and thus facilitate Lithuania's liquefied natural gas imports. The EU also supports the construction of an off-shore liquefied natural gas terminal on the Croatian island of Krk which will bring diversification in the region mostly dominated by Russia as the single source of supply.

**The European Commission, together with the European External Action Service, has also revitalised European energy diplomacy.** Member States unanimously adopted an EU Energy Diplomacy Action Plan<sup>9</sup> that aims at full coherence of energy dialogues with related political and security dialogues and argues that systematic efforts should be made for the EU to speak with one voice on major energy issues. In parallel, the Third Energy Package and the related guidelines and network codes (adopted through comitology procedure) set the framework for the further development of the internal energy market. Enforcement actions to ensure correct implementation of the Third Energy Package are continuing. In addition, the European Commission is also supporting Member States and the relevant operators in the implementation of the network codes in practice.

Thanks to the Energy Union, **the European gas import infrastructure is well diversified** with pipelines originating from Russia (three main corridors via Ukraine and Slovakia, Belarus and Poland and via the Baltic Sea to Germany (Nord Stream 1)), from Norway, Algeria and Morocco, as well as a multitude of liquefied natural gas regasification terminals across the EU.<sup>9</sup>

## II. WHAT IS THE RATIONALE JUSTIFYING NORD STREAM?

### From Nord Stream 1 to Nord Stream 2

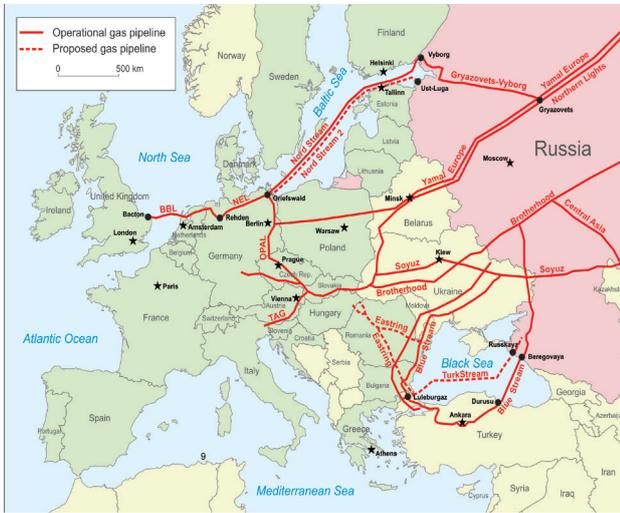
Nord Stream is probably the best-known pipeline in Europe. It originates from a 1990s idea: sending gas from the Barents Sea's sites of production, north of Russia, directly towards the EU market via a pipeline under the Baltic Sea, thus bypassing the three Baltic States, as well as transit countries for other pipelines such as Poland, Slovakia and Ukraine. The latter in particular has been considered by Russia as an unreliable and problematic transit country, as highlighted by the 2006 and 2009 disruption of gas supplies. In 2004, Poland and the Baltic States saw the Nord Stream project as a Russian Trojan Horse put in place to circumvent their countries, causing uncertainty about gas delivery and/or a substantial loss of transit revenues, as well as **challenging the nascent solidarity between 'old' and 'new' EU Member States**. On some occasions, the project was referred to as a 'new Ribbentrop-Molotov Pact', even by moderate politicians in Central Europe. Instead of Nord Stream, Poland and the Baltics favoured onshore projects on their soil (e.g. Amber Pipeline and Yamal 2).<sup>10</sup>

**Nonetheless, in 2006, after intense debate, the Nord Stream project was labelled by the EU as a 'Project of European Interest',<sup>11</sup>** receiving all the necessary authorisations<sup>12</sup> and going into construction.<sup>13</sup> In 2011, it started operating – first with a single pipeline able to send up to 27.5 billion cubic meters per year. When the second parallel pipeline became operational in 2012, its capacity reached 55 billion cubic meters. Once in Germany, Nord Stream's gas enters the EU market via two onshore pipelines:

- The Northern European natural gas pipeline (so-called NEL Pipeline), towards Western and Northern Europe, owned by a partnership of Wintershall Holding GmbH and Gazprom (51%), E.ON Ruhrgas (10%), Gasunie (20%), and Fluxys (19%);
- and OPAL, towards Central-Southern Europe, which connects the Nord Stream pipeline with the JAGAL (the continuation of the Yamal-Europe pipeline), and the STEGAL (transports gas from the Central-European Russian gas transit system (Transgas) via Czech Republic and Slovakia) pipelines in Germany).

Legally speaking, Nord Stream 1 is not subject to any international treaty but only to a commercial contract between European private companies that are Nord Stream 1 shareholders, and Gazprom, which is the main owner with 51% of the shares. In that sense, it is different to the two connecting onshore pipelines built

**Figure 2: Russian gas export pipelines to Europe**



Source: European Commission, Joint Research Centre

to transport this gas within EU markets: both are subject to the EU regulatory framework that encompasses third party access, tariff setting and free capacity allocation.<sup>14</sup>

In September 2015, five European gas companies (France’s Engie, Austria’s OMV, British-Dutch Shell and Germany’s Uniper and Wintershall) signed a shareholders agreement<sup>15</sup> with Gazprom to build an extra pipeline, the so-called ‘Nord Stream 2’, aimed at doubling Nord Stream 1’s capacity (from 55 billion cubic meters per year to 110 billion cubic meters per year) with two additional lines. The new pipelines would increase gas transport directly from Russia to Germany, again bypassing Poland, Slovakia and Ukraine. Nord Stream 2 is planned to be operational as of 2019, with a total project cost estimated at 9.5 billion euro.

However, in summer 2016, the Polish competition authority raised concerns as regards the potential of the Nord Stream 2 Joint Venture to undermine competition in Central and Eastern Europe. This meant that the five European companies had to withdraw from the Joint Venture, which in turn means that Gazprom will remain the sole owner of the Nord Stream 2 AG. In April 2017, the five European companies announced that they would nonetheless provide financing in the form of loans covering 50 % of the total cost of the project, with each European company funding up to 950 million euro. Notwithstanding this, Gazprom is and will remain the sole shareholder of the project company, Nord Stream 2 AG.<sup>16</sup>

**What is the economic rationale justifying Nord Stream 2?**

The share of natural gas in the EU’s energy mix is around 22% (2015), and the EU is to a large and growing extent dependent on imports of natural gas from third countries. This trend is likely to continue due to a falling domestic gas production, which is only partly offset by the falling gas demand due to energy efficiency and decarbonisation policies. The share of net gas imports as compared with the EU’s total gas consumption was 69.3% in 2015.<sup>17</sup> Russia is the EU’s biggest gas exporter (accounting for 42% of overall EU imports in 2016), followed by Norway (34%), Algeria (10%) and imports via liquefied natural gas terminals (14%).<sup>18</sup>

**Figure 3: Existing LNG import terminals in the EU and planned ones (red)**



Source: European Commission, DG Energy

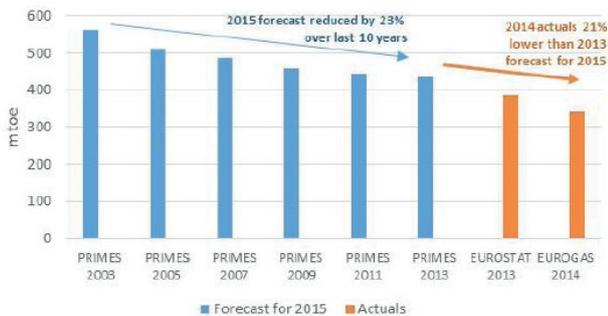
According to European Commission assessments, **the EU currently has the capacity to import around 700 billion cubic meters per year** (490 from pipelines, 197 from liquefied natural gas terminals). In 2015, EU gas imports amounted to 300 billion cubic meters.<sup>19</sup> **There is thus an infrastructure overcapacity in the EU as it currently imports less than half the gas that it could when using all existing available infrastructure.**

The picture does not change much when looking at 2020-2030 projections for European future gas demand – even if these differ considerably from each other, ranging from 300 to 600 billion cubic meters by 2030/2035. There are three main scenarios on the potential evolution of EU demand and related gas import needs. Their diversity partially results from the fact that different stakeholders promote their particular interests, while the EU is not sufficiently equipped to model and project these kinds of trends on its own. The first scenario places stronger emphasis on energy

efficiency measures and development of renewables, the second supports gas imports, while the last one extrapolates past trends.

**As a general rule, official gas demand projections appear to have been constantly overestimated in the past.**<sup>20</sup> Nord Stream 1 was supposed to meet a rising EU gas demand that never materialised. In a 2008 press release, the Nord Stream company estimated that the EU demand for imported gas would reach 536 billion cubic meters per year by 2015.<sup>21</sup> In reality, EU gas imports barely reached 300 billion cubic meters in 2015, decisively far from the figure that officially legitimised the building of Nord Stream 1. Between November 2011 and October 2015, Nord Stream 1 transported only 100 billion cubic meters overall, meaning that it was used at only about 50% of its total capacity. Capacity utilisation increased in 2016, rising to almost 80%, transporting 43.8 billion cubic meters.<sup>22</sup> The main reason for the limited use of the Nord Stream 1 pipeline was the downstream usage restrictions, in particular regulatory obligations imposed on the OPAL pipeline, which transports gas from Nord Stream 1's landing point to customers in Germany and the Czech Republic.<sup>23</sup>

**Figure 4: Gas demand, European Commission PRIMES Forecast for 2015 vs Actuals**



Source: European Commission, Sandbag, E3G

One fundamental question is how fast Europe's domestic gas resources are depleting. The Netherlands, which is one of the few gas exporters in the EU, has capped natural gas production in its Groningen gas field to 24 billion cubic meters per year over the next years, due to the perceived risk of earthquakes in the region. In addition, reserves in the Dutch gas fields – many of them offshore – are also diminishing. Dutch production fell by 38% from 2014 to 2016.<sup>24</sup> This also implies a serious reduction of future gas production in the Netherlands, which will also have an impact on its gas exports to other EU countries. Oil & Gas UK, a trade association for the United Kingdom offshore oil and gas industry, provides a similar picture, speaking

of 'a decline in exploration activity and lack of material exploration success [for oil and gas]'. This 'means that many of the current development prospects are not new – more than two-thirds of the associated reserves were discovered before 2000. Without a significant change in the fundamental economics of these potential projects, either driven by a rise in prices or a fall in costs, many will never be developed'.<sup>25</sup> In some periods of the year, the United Kingdom is already net importer instead of net exporter of gas. The situation in the Netherlands and the United Kingdom is likely to lead to a need for higher imports from third countries.

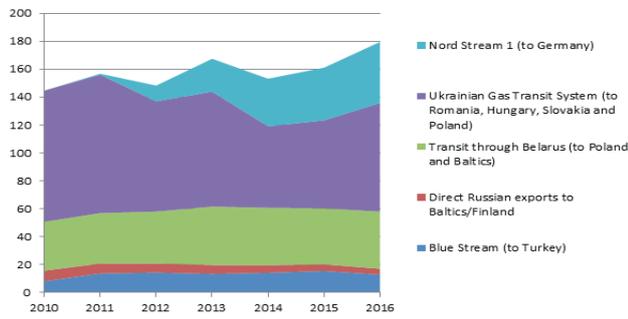
**Nonetheless, looking at gas demand and import needs, there is no immediate indication that Nord Stream 2 would enhance EU energy security,** given that existing infrastructure is sufficient to meet future EU demand for imported gas, even if only a pro-gas-import scenario is taken into account. **The EU already has enough pipelines to import all the gas it needs, not to mention its liquefied natural gas terminals.** Thus, **the building of Nord Stream 2 will lead to stranded assets in the future,** either in the form of the new pipeline itself or of other pipeline investments which would get stranded due to the change in entry points and linked downstream gas flows (e.g. some of the interconnection projects in Central- and South-East Europe).

Looking at the way Nord Stream 2 is structured both upstream in Russia and downstream in Europe, there is also, so far, no clear indication on how it would enhance the diversity of EU energy supply, neither from an energy source perspective nor from a route perspective as it would follow more or less the transit route of Nord Stream 1. To the contrary, the **Nord Stream 2 pipeline would lead to a concentration of routes in the Baltic corridor.**

### What is the Russian rationale behind Nord Stream 2?

The main rationale of Nord Stream 2, compared to other gas routes and projects, seems to be to **avoid alternative transit routes**, in particular through Ukraine, but subsequently also through Belarus or Poland. Besides Nord Stream 1 and the Nord Stream 2 project, Russia has also introduced pipeline projects that would similarly avoid transit countries via a Southern route. The initial memorandum for a South Stream pipeline was signed by Italy's Eni and Gazprom in 2007, with French EDF and German Wintershall joining the project later. The pipeline would have bypassed Ukraine by linking Russia and Bulgaria via the Black Sea with four strings of 63 billion cubic meters total capacity.

**Figure 5: Russian Pipeline gas exports: routes and volumes, 2010-2016, bcm**



Source: Data from International Energy Agency

However, in 2014 it was cancelled by Russia (arguably also due to an infringement procedure by the European Commission against Bulgaria, for violation of procurement rules) and replaced by the ‘Turkish Stream’ pipeline project. The latter resembles the South Stream route but its first string is planned to end outside the EU’s jurisdiction in western Turkey rather than on the Bulgarian coast. Up to now, all the gas Bulgaria consumes is imported from Russia, via pipelines crossing Ukraine, Moldova and Romania. Via this route, Bulgaria also acts as a transit country for Russian gas to Turkey and obtains revenue from transit taxes. With Turkish Stream, Turkey would no longer need to transit Bulgaria for imports from Russia. And, as Russia plans to stop supplies to Turkey via Ukraine, this means that **Bulgaria would have no other choice but to import Russian gas from Turkey**. Given the current state of the relations between the EU and Turkey, it is perhaps not surprising that Bulgarian Prime Minister Boyko Borrisov wants to create a gas hub in Bulgaria, with EU support, at a location near Varna, where the second thread of Turkish Stream – with a capacity of 15.7 billion cubic meters per year – could reach the Bulgarian shore along the route that was initially planned for South Stream, thus avoiding transit through Turkey.<sup>26</sup>

With Nord Stream 2, Gazprom would acquire even more flexibility in reaching its core EU gas market, including Germany. Gazprom has an interest in cementing its dominant position in Central- and South-Eastern Europe by saturating existing interconnection points on the Western borders of Member States which were typically developed to diversify and complement existing East-West supply routes. **Gazprom’s market share in the EU has substantially increased in recent years**. This appears to be the result of its current strategy to prioritise market share over profit margins. Benefitting from the more competitive cost structure of gas production fields in Russia, it can outbid most of its competitors. When confronted with the EU’s arguments against

**Figure 6: Russia’s Turkish Stream and South Stream projects**



Source: European Commission, Joint Research Centre

Nord Stream 2, Gazprom and Nord Stream 2 argue that the EU’s internal energy market would allow gas to flow freely between Member States once it enters the EU. This would render irrelevant the question of which route is used for the gas to arrive in the EU. So far, large quantities of Russian gas enter the EU via the eastern route, through Ukraine and Belarus. However, with Nord Stream 2, the direct gas transport capacities from Russia to Germany would double. More gas would be delivered to Central and Eastern Europe via Germany and less via Ukraine and Belarus. The transport capacities from Western to Central and Eastern Europe would transport Russian gas in a West to East direction, reducing gas transport capacities for non-Russian gas from Western European regional gas markets to Central and South-East Europe.

Though legally separate, the intra-EU downstream infrastructure planned for Nord Stream 2 is strategically part of the same project. On the basis of what Gazprom considers a ‘negative experience’ with OPAL, the on-shore continuation of Nord Stream 1, it has opted for a fully regulated (i.e. non-exempted) pipeline to evacuate the gas coming through Nord Stream 2. The so-called EUGAL pipeline will run largely parallel to the OPAL pipeline from Greifswald in the North of Germany to the Czech border, where it will probably be linked up with the existing Czech gas pipeline system to transport the gas further through Slovakia to the gas hub in Baumgarten (on the Slovak-Austrian border). Gazprom has already procured downstream capacity in the regular yearly capacity auctions in March 2017 and made legally-binding bookings (in the value of billions of euro) reserving essentially all existing capacity until 2039 – or even 2042 – from the entry point in Germany to the Czech/Slovak border. Naturally these bookings would have no purpose in the event that Nord Stream 2 is not built but, by reversal, these bookings start creating commercial facts on the ground in relation to Nord Stream 2. In June 2017, six European

gas transmission operators warned the European Commission that talks with Russia over the Nord Stream 2 gas pipeline project could create legal uncertainty for future pipeline projects and put infrastructure investments at risk.<sup>27</sup>

It should however be stressed that Russia's gas sector should not be treated as a monolith. There are divisions among and within the biggest companies. Options which are not favourable for Gazprom might be so for its competitors, such as Novatek, Russia's largest privately-owned oil and gas company, or Rosneft, an integrated oil company majority owned by the Russian government. As regards gas exports, Gazprom still has a monopoly on pipeline exports. However, it has lost this monopoly over the last years as regards liquefied natural gas exports, where Rosneft, Novatek and other companies received export licences. Keeping the access to new gas infrastructures open for potential competitors will be important for an eventual lifting of the pipeline export monopoly in the future.

### What is the legal status of Nord Stream 2?

In his June 2016 letter to nine Heads of State or Government of EU Member States, President Juncker pointed out that, if built, **Nord Stream 2 would have to fully comply, as any other infrastructure project, with applicable EU law**, including on energy and environment. He stated that this was also the case for offshore infrastructure under the jurisdiction of the Member States, including their exclusive economic zones. The construction of such an important infrastructure could not happen in a legal void, or only according to Russian law. Against the background of colliding legal regimes, **a legal framework would be needed that takes into account key principles of the EU energy market as well as environmental rules.**<sup>28</sup>

Several Member States have asked the European Commission for clarification about the application of the relevant pieces of legislation in the Third Energy Package, i.e. the Gas Directive<sup>29</sup> and the Gas Regulation,<sup>30</sup> to the offshore parts of the pipeline. In a letter by Vice-President Šefčovič and Commissioner Arias Cañete to Danish Minister Lilleholt and Swedish Minister Baylan, it was clarified that **a specific legal regime for the Nord Stream 2 pipeline is needed.** The European Commission also stated why the core provisions of the Third Energy Package, i.e. transparency, non-discrimination in tariff-setting, an appropriate level of third-party access and a degree of separation between activities of supply and transmission (unbundling), should be part of such a specific legal regime. The letter concluded that the European Commission would seek a negotiating mandate

from the Council for an agreement with the Russian Federation as regards the application of these key principles by the Nord Stream 2 project.

On 9 June 2017, **the European Commission formally asked the Council for such a negotiation mandate.**

For the Commission, the legal position is clear: As the Third Energy Package does not apply to gas pipelines entering the European internal gas market, it proposes a mandate on the basis of the EU's competence set out in Article 194 TFEU (in conjunction with Article 3(2)). In view of this, the adoption of the mandate would be subject to a qualified majority in the Council. On 28 September, the Legal Service of the Council presented its own opinion on the draft mandate, agreeing with the Commission's Legal Service that EU internal gas market legislation (the Third Energy Package) is not applicable, as the EU Directive makes no mention of offshore pipelines similar to Nord Stream 2. It thus concludes that 'the Union legislator did not intend to apply the Directive' to those infrastructures. However, the Council Legal Service considers that the envisaged agreement would not fall under an exclusive European Union competence. Therefore, any agreement could only be a mixed agreement requiring ratification by Member States. Furthermore, the Council Legal Service concludes that unanimity ('common accord') is needed for the granting of the mandate.

In parallel to these negotiations on the recommended mandate, the European Commission is working on a proposal to clarify the common rules for gas pipelines entering the European internal gas market, as announced in the 2017 State of the Union speech by President Juncker and the Letter of Intent.

## III. POTENTIAL IMPACT OF NORD STREAM 2 ON THE EUROPEAN UNION

### Impact on energy markets and infrastructures

The Nord Stream 2 project could have **two major types of impact on the European gas market that would most likely be borne by European consumers and taxpayers.** Firstly, if Nord Stream 2 diverts gas transport away from Ukraine, it will impact those trunk pipelines built in Slovakia, Czech Republic, Austria, Hungary, Romania, Bulgaria, and the South-West Balkans to carry gas from Ukraine towards centres of consumption, thereby reducing both the availability of gas flowing in those pipes and transmission fees. Secondly, **there will be an impact on the EU's gas markets as Gazprom consolidates its market power.**

Europe and Turkey remain Gazprom's only export

market, despite Russia's efforts to diversify its customer base (to China in particular). **Gazprom is also one of the main beneficiaries of the market opening and cross-border integration of the European regional gas markets** as they have established subsidiaries/ trading firms in all major European regional gas markets and are using the opportunities provided by the market to its fullest. However, Russia – with the support of Gazprom – has also challenged the Third Energy Package in front of the World Trade Organisation as they consider it discriminatory towards them (in particular the provisions on unbundling and exemption decisions).

### The Gazprom antitrust case

The European Commission and Gazprom are in the course of settling an antitrust dispute. The investigation against Gazprom concerns the alleged abuse of its dominant position in eight Central and Eastern European Member States, in line with the Statement of Objections sent to Gazprom in April 2015.<sup>31</sup> It does not concern Nord Stream 2 which enters the EU in Germany. It is not expected that the completion of Nord Stream 2 would compromise the effectiveness of the commitments made by Gazprom in the settlement, also with regard to the free flow of gas at competitive prices across Central- and Eastern Europe. Even if Gazprom were to completely stop transiting gas via Ukraine (the delivery point to Bulgaria, Negru Voda, is supplied with gas transiting Ukraine) or via Belarus (the delivery point to the Baltics, Kotlovka, is supplied with gas transiting Belarus), the commitments oblige Gazprom to offer its customers in the region other delivery points to the Baltics/Bulgaria that it could use for future deliveries (e.g. in respect of Bulgaria, this could be the entry point to Bulgaria on the planned Turkish Stream pipeline).<sup>32</sup> Gazprom does not have a dominant market position in Germany,<sup>33</sup> which is one of the most liquid regional gas markets in Europe, and the addition of a new pipeline could bring additional gas to Europe. Since Nord Stream 2 is likely to replace reduced gas deliveries through Ukraine, Gazprom's market share is not expected to increase significantly.

### Impact on Ukraine

Natural gas transit through Ukraine is declining with the availability of other transmission routes. While the technical capacity of the Ukrainian transmission system is approximately 142 billion cubic meters per year – and it still transported 104 billion cubic meters in 2011 – transit decreased to its lowest amount so far in 2015, with 67 billion cubic meters (47% of the technical capacity).<sup>34</sup>

**The construction of Nord Stream 2 would impact the coherence of the EU's foreign policy and economic sanctions towards Russia.** The main rationale, since the annexation of Crimea and invasion in Eastern Ukraine, was that Russia would pay an economic price for violating Ukraine's territorial sovereignty, which would incentivise it to change its policy. **Nord Stream 2 is not only an unnecessary project, but also provides a clear economic benefit for Russia at a moment when EU sanctions are still in place and the reasons for those sanctions remain acute.** At the same time, **the construction of Nord Stream 2 would lead to diminishing transit revenues for Ukraine.** The Ukrainian State currently earns about 2 billion US dollars of revenues per year from the fee that is paid for Russian gas going through Ukraine towards the EU market. As the EU, the United States and the International Monetary Fund are currently the main providers of finance to the Ukrainian government, they would also indirectly be affected by Ukraine's losses.

Nord Stream 2 would also be **in contradiction with current EU and international efforts – economic and financial – to support the modernisation of Ukraine's gas infrastructure network.** In the past, the European Investment Bank and European Bank of Reconstruction and Development invested 300 million euro to modernise the Urengoy-Pomary-Uzhgorod pipeline. Moreover, in the context of the trilateral negotiations with Russia and Ukraine, Vice-President Šeřčovič has facilitated efforts to secure financing for Ukraine for gas purchases, in particular through the International Financing Institutions. In October 2015, the European Bank of Reconstruction and Development approved a 300 million US dollar trade financing facility for Ukraine's gas company Naftogaz. In December 2016, the World Bank approved and signed a similar 520 million US dollar facility for Naftogaz, by which the two banks, Deutsche Bank and Citibank, provide letters of credit to gas suppliers of Naftogaz. The World Bank facility was facilitated by a guarantee offered by the European Investment Bank to the World Bank for its credit exposure to Ukraine for 500 million US dollars, which is counter-guaranteed by the EU under European Investment Bank's external lending mandate. This has been operational since March 2017. **The extra cost of building Nord Stream 2 – currently expected to reach approximately 9.5 billion euro – exceeds the costs of renovating Ukrainian gas pipelines,** expected to stand at 6 billion euro. Nord Stream 2 would ensure a capacity of 55 billion cubic meters per year while the renovation of the Ukrainian pipelines would ensure a capacity of 160 billion cubic meters per year.

**In order to maintain the current level of route diversification and related security of supply, the existing corridors through Ukraine would have to continue their operation.** The Ukrainian route would have to maintain a certain critical level of transit as otherwise the system would become uneconomic (e.g. if decreased to 12-15 billion cubic meters per

year, as recently insinuated by Gazprom, from today's 67-82 billion cubic meters per year). In order to increase its attractiveness as a transit country, Ukraine is undertaking reforms by implementing EU energy regulation, creating a gas market and engaging with EU transmission system operators for the operation of its gas transmission system.

## Gas geopolitics vis-à-vis Ukraine

Initial disputes between Kiev and Moscow over gas deliveries started immediately after the collapse of the Soviet Union. While oil import prices to Ukraine reached world market levels in 1993, transit fees and prices for natural gas remained below European levels due to bilateral Russia-Ukraine negotiations. Consequently, large-scale supply of cheap Russian gas led to the growth of energy-intensive industries and consolidated Ukraine's status as one of the world's least energy-efficient economies. Ukraine's gas debts, the illicit diversion of Russian gas exports to the EU from the transit system, numerous supply reductions by Moscow and pressure on Kiev to hand over infrastructure in return for debt relief have been at the centre of Russian-Ukrainian gas disputes ever since.

Since Ukraine's Orange Revolution in 2004, Gazprom has turned recurrently to sharp price increases and considerable supply disruptions, while Ukraine has occasionally used its role of a transit country for Russian gas deliveries to Europe as a bargaining chip, even blocking gas transit temporarily. Disputes between Russia and Ukraine over gas prices and debt for past deliveries to be paid led to supply disruptions in Europe in 2006 and 2009. The latter incident left millions of Europeans without heating in the first weeks of January 2009 – an unprecedented event in the system of international gas trade. In 2013, Gazprom reacted immediately to political events around the overthrow of Ukraine's former President Victor Yanukovich by reducing the price for natural gas for Kiev by 33% when the Yanukovich government refused to sign the Association Agreement with the EU, and announcing an 81% increase three months later, after the Maidan popular movement had brought a pro-Western government to power.

When, in 2015, pro-Russian separatists damaged a pipeline in Ukraine's Donbass, Gazprom began shipping gas directly to rebel-controlled territories. Even after those damages were repaired by Kiev, Gazprom continued to direct gas supply to rebels in the Donetsk and Luhansk regions, while still billing the Ukrainian government for the deliveries – a payment policy hardly to be interpreted in any other way than Gazprom bluntly using energy to demonstrate Ukraine's current political weakness and dependence on Russian gas.

Kiev stopped purchasing Russian gas directly from Gazprom in November 2015. Its gas imports from Slovakia, Hungary and Poland are based on gas supplies, mostly of Russian origin, from EU gas companies and traders. The overall gas intensity of the Ukrainian economy has significantly decreased as a result of energy efficiency measures, market reforms and a downturn in the Ukrainian economy. Kiev's best efforts to wean itself off a dependency on Russian energy supplies will continue to be an uphill battle for the coming year.

The EU strongly supports Ukraine's territorial integrity, sovereignty and independence. To unlock the geopolitical situation in Ukraine, the full implementation of the Minsk Agreements by all sides is crucial. The security situation in eastern Ukraine remains highly volatile. Recent 'administrative measures' by Russia and the separatists, such as the illegal expropriation of companies in non-government controlled areas, continue to undermine Ukraine's sovereignty and territorial integrity and increase tensions.

## Impact on EU solidarity and trust

**The project of Nord Stream 1 led to political tensions between Member States<sup>35</sup> and impacted the EU-Russia partnership,** with Poland and the Baltic States successively vetoing the mandate for negotiations of a new partnership agreement aimed at replacing the current legal framework which expired in 2007 and has not yet been renewed. Nord Stream 2 is

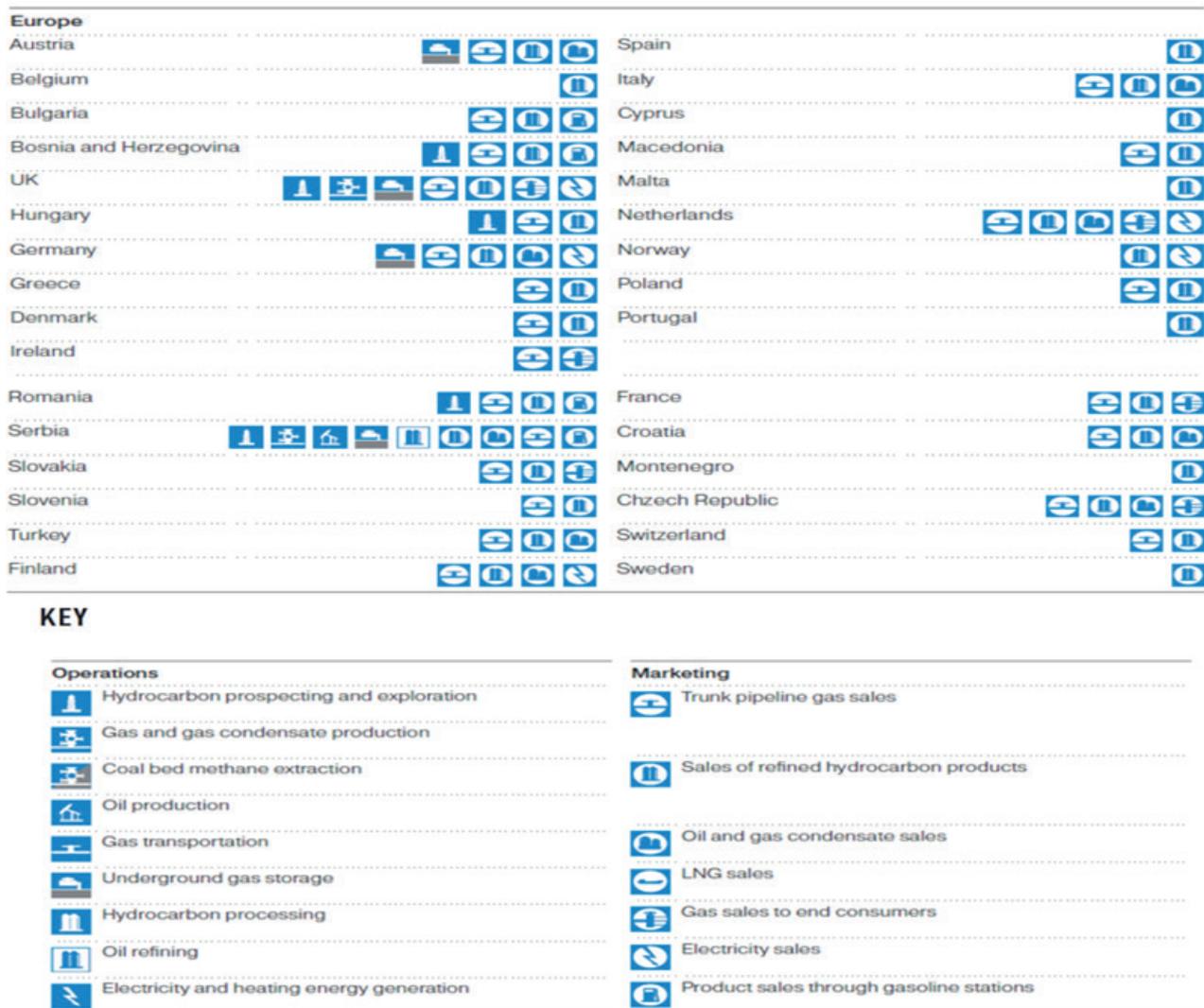
again a potential major factor of division and therefore challenges the Energy Union project. It amplifies the cleavage between Western and Central-Eastern European Member States.

The five European companies supporting the project are based in the Netherlands, France, Austria and Germany. These companies are all active in other business operations with Gazprom. Consequently, **some Western**

**European countries, led by Germany, tend to see Nord Stream as a purely economic project**, arguing that it is demanded by market players, gas companies and industry, in order to ensure more stable and competitive gas supplies. France and the Netherlands take a similar stance – the latter being concerned about its collapsing domestic gas production. Italy, with its energy company ENI, has in the past been the strongest proponent of Russia’s South Stream pipeline project.

The fact that South Stream was cancelled, even as Nord Stream 2 is moving ahead, is seen with a degree of bitterness. Nord Stream 2 is perceived as a project that would advantage Northern members of the EU, while Italy may face higher transit fees.<sup>36</sup> In April 2017, the energy ministers of Cyprus, Greece, Israel and Italy met in Tel Aviv to sign a preliminary agreement to advance a gas pipeline project aimed at linking their four countries: the EastMed pipeline.

**Figure 7: Gazprom’s commercial activities in Europe and Turkey**



Source: Gazprom, Annual Report, 2013

**Central Europeans – led by Poland – see Russia first and foremost as a political threat and Nord Stream as a Trojan horse in the EU energy market.**<sup>37</sup> Nord Stream 2 is perceived as a tool for economic and political dominance by Russia and as a way to undermine the region’s diversification efforts. However, **the motives for criticising the Nord**

**Stream 2 project differ among Member States.** The Baltic countries see the project as a security threat. The Czech Republic initially signed a letter at Ministerial level against the project. Currently, their position is more nuanced and they likely see themselves as a beneficiary of transit of Russian gas from Nord Stream 2 to Austria, Central and Eastern and South Eastern

Europe. Slovakia criticises the Nord Stream 2 project for affecting Ukraine's geopolitical and economic position in a negative way, while at the same time advocating lifting sanctions against Russia. Arguably their criticism of the Nord Stream 2 project is motivated by concerns over losing transit revenues from gas deliveries via the Ukrainian route passing through their territory. While criticising the Nord Stream 2 project, Hungary has recently restarted negotiations with Russia and Serbia for the construction of a smaller-size pipeline that would be supplied through Russia's Turkish Stream pipeline – also circumventing Ukraine by delivering gas to Western Turkey through the Black Sea.

Bulgaria also stands to benefit from that project and the Chairperson for the parliamentary Energy Committee, Delyan Dobrev, in June 2017 declared that Bulgaria would 'subordinate its gas plans to the construction of Turkish Stream and develop its gas transit network in order to supply the excessive gas quantities from Turkey to other countries'.<sup>38</sup> The country is also lobbying for the construction of a second string of Turkish Stream that would resemble the South Stream route and reach the Bulgarian coast. Sweden and Denmark's main concerns are in relation to defence issues, in particular the use of their ports. Therefore, the Swedish government tried to influence regional and local governments into not accepting the offers of Nord Stream 2 to use their ports as a basis for the laying of ships and storage of essential material. Finland takes a very careful stance, from an initial degree of opposition to neutrality. It also argues that the project should not become politicised. Finland's Balticconnector will cross Nord Stream 1, and its ports will be used for the construction of Nord Stream 2.

There is also an investment dimension to the issue of Nord Stream 2. In September 2015, Gazprom made asset swaps with both BASF and OMV.<sup>39</sup> Such agreements are not helpful to creating a level playing field for EU companies in Russia. So far, there have been no available EU reviews of foreign investments into critical sectors of the economy, including energy infrastructures, even though they are critical for European security. This is not specific to Russia and applies to all foreign actors increasingly active in EU energy markets, including the US, China, Azerbaijan, Turkey and others.

As announced by President Juncker in his State of the Union speech 2017, the European Commission has proposed a new legal framework to enable Europe to preserve its essential interests. This includes a

**European framework for the screening of foreign direct investments** by Member States on the grounds of security or public order, including transparency obligations, the rule of equal treatment among foreign investment of different origin, and the obligation to ensure adequate redress possibilities with regard to decisions adopted under these review mechanisms. Furthermore, the European Commission proposed a cooperation mechanism with the Member States that can be activated when a specific foreign investment in one or several Member States could affect the security or public order of another. Finally, the Commission proposed a screening by the European Commission on the grounds of security or public order for cases in which foreign direct investment in Member States may affect projects or programmes of Union interest. This includes projects and programmes in the areas of research (Horizon 2020), space (Galileo), transport (Trans-European Networks for Transport, TEN-T), energy (TEN-E) and telecommunications.

*'Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests. This is why today we are proposing a new EU framework for investment screening. If a foreign, state-owned, company wants to purchase a European harbour, part of our energy infrastructure or a defence technology firm, this should only happen in transparency, with scrutiny and debate. It is a political responsibility to know what is going on in our own backyard so that we can protect our collective security if needed.'*

Jean-Claude Juncker, State of the Union speech, 13 September 2017

### **US and Russian energy geopolitics in Europe**

Recently the United States Congress added itself to the equation by voting on legislation aimed at sanctioning firms cooperating with Russian companies on energy projects. If signed by President Trump, the bill would lead to the imposition of sanctions on any company which is involved in the development, maintenance, modernisation or repair of energy export pipelines by Russia. While clearly targeting Nord Stream 2, the bill could affect other transport infrastructure, including the Ukraine gas transit system. The United States has announced that it will soon publish implementing guidelines regarding these sanctions, which will bring more clarity about the scope of their application.

## IV. CONCLUSION – FROM A SHORT-TERM POLITICAL DILEMMA TO A MID-TERM OPPORTUNITY FOR THE ENERGY UNION

The EU is facing a dilemma. On the one hand, Nord Stream 2 is a test case for solidarity and responsibility in the EU when it comes to building a resilient Energy Union together. It is a very divisive issue for European solidarity and captures too much of the EU's political attention and energy. This comes at the expense of progress in the modernisation of the EU's economy and energy systems. On the other hand, the EU currently has no specific tool to formally reject the Nord Stream 2 project, even though it is inconsistent with its flagship Energy Union policy initiative. The project will not go away by itself, even though Russia has on previous occasions changed its plans with regard to other infrastructure investments. Russia has ensured the support of key companies from five EU Member States, arguably in connection with the protection of existing assets in Russia, or future gas exploration prospects. Building Nord Stream 2 will mean that Russia's stakes in the European gas market will increase. This means the EU will need to speed up its efforts to finalise its internal gas market. Meanwhile, there are a wide range of legal dimensions that might apply (environment, public procurement, internal market and competition) but their exact scope and temporality when applied to that project requires clarification. Therefore, a mandate is being proposed to the Council to negotiate a specific legal framework for the future operation of the Nord Stream 2 pipeline. **A broader EU settlement should be sought, assuming that all actors would be prepared to show flexibility on issues which are important for them.** At the same time, the European Commission is working on a proposal to clarify the common rules for gas pipelines entering the European internal gas market.

This complex and potentially divisive situation reflects the paradoxes that the EU has been facing in energy policy for a long time, and which go beyond the Nord Stream 2 issue. It is exactly to avoid such risks of disunion that President Juncker decided to transform EU energy policies into an Energy Union that is about much more than gas pipeline politics. The long-term project to be carried out by the Energy Union will only be possible if it is based on an integrated, competitive, liquid and resilient energy market and interconnected infrastructure network. It remains the key tool to achieve all the Energy Union's essential objectives simultaneously. On all these challenges, the European Commission, together with EU Member States, has steered major progress in the last two years. To implement the Energy Union, major efforts have been made to pursue the integration of the EU's energy 'islands' and markets through both upgraded regulation and integrated infrastructure projects of

common European interest. This enables Member States and market players to better use existing infrastructures for gas imports, both pipelines and liquefied natural gas terminals. And, where necessary, these infrastructures are being upgraded. **The consequence is that Nord Stream 2 – if built – would enter into a totally different EU energy market – one that is much more resilient, but also competitive, and rules-based.**

The discussions around Nord Stream 2 should be used to consolidate the common understanding on all the progress that has been achieved over the last two years, while identifying the common challenges that remain to be addressed, and the responsibilities that need to be taken by each and every Member State. Based on that common assessment, and comprehensive bigger picture, it should be possible to demonstrate that **Member States' interests can be reconciled** through the adequate regulatory framework for security of supply, combined with the right projects of common interest that will interconnect EU regional gas markets. It is time to take every opportunity to talk about how to achieve this, rather than infighting about different pipeline options that external suppliers present to Europeans.

In order to avoid a zero-sum game discussion in the Council over the fate of Nord Stream 2, the EU needs to move away from a reactive stance by developing **a more holistic approach to the internal energy market, including the relationship with its external suppliers.** The design of a resilient Energy Union implies taking better account of the interdependence of different energy sectors (oil, coal, uranium and nuclear) – and actors (Member States, third countries, national energy companies, private investors, regulators, and operators). The European energy reality is made of diversity: energy mixes, sources of fuels, domestic production, centralised and decentralised generation, levels of interconnections, storages, liquefied natural gas terminals, and so on. This combination of national assets and regional realities should be seen in a common perspective, in line with the Energy Union.

**The strengths of the system should be reinforced in order to mitigate its weaknesses.** In other words, pooling resources to optimise the whole energy system – in normal times, as well as in times of emergency – would bring benefits to all. These are challenges where various, but also inter-dependent, interests are at stake, which inevitably impacts the discussions over each and every single project, including the Nord Stream 2 challenge. It is the goal of the Energy Union to make these interests and projects more than the sum of their parts. Offering a European platform where the big picture and the common interests can be articulated is a way to be big on the big things, and more modest on smaller things.

## Notes

1. Cf. Jacques Delors, Sami Andoura, and Jean-Arnold Vinois, [From the European Energy Community to the Energy Union – A new Policy Proposal](#), Jacques Delors Institute's Report, Paris, January 2015.
2. COM (2014)330.
3. COM(2014) 330.
4. COM, Energy Union Strategy, 25 February 2015; p.21.
5. Adopted by the Council on 9 October 2017.
6. Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC.
7. The Southern Gas Corridor consists of a pipeline corridor from the Azerbaijani offshore gas field Shah Deniz across Georgia, the Trans-Anatolian Pipelines (TANAP) across Turkey, and the Trans-Adriatic Pipeline (TAP) from the Turkish-Greek border via Greece, Albania and the Adriatic to Italy.
8. Council of the European Union, Council conclusions on Energy Diplomacy, 20 July 2015; p. 5.
9. Cf. Sami Andoura, [EU Energy Solidarity: from national independency towards EU interdependency](#), Jacques Delors Institute Report, Paris, July 2013.
10. <https://euobserver.com/foreign/113652>
11. European Union, Decision 1364/2006/EC laying down guidelines for trans-european energy networks. <http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32006D1364&from=EN>.
12. Those are mainly authorisations coming from the Danish, Swedish, Finnish, Russian and German authorities as the pipeline goes into their exclusive economic zones' seas.
13. Nord Stream, Fact sheet – The Nord Stream Pipeline Project, August 2014.
14. OPAL is only partially subject to the EU regulatory framework due to the exemption received from the German Bundesnetzagentur in 2009 and revised in 2016. See the latest decision of the Bundesnetzagentur, which is still subject to legal proceedings: [https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1BK-Geschaeftszeichen-Datenbank/BK7-GZ/2008/2008\\_0001bis0999/2008\\_001bis0999/BK7-08-009\\_BKV/Ver%C3%B6ffentlichung\\_Aktuelles30-11-2016\\_BF.pdf;jsessionid=6057B6809D551EB8C11044BAD3DBD944?\\_blob=publicationFile&v=2](https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1BK-Geschaeftszeichen-Datenbank/BK7-GZ/2008/2008_0001bis0999/2008_001bis0999/BK7-08-009_BKV/Ver%C3%B6ffentlichung_Aktuelles30-11-2016_BF.pdf;jsessionid=6057B6809D551EB8C11044BAD3DBD944?_blob=publicationFile&v=2). The underlying European Commission decision on the exemption request can be downloaded here: [https://ec.europa.eu/energy/sites/ener/files/documents/2016\\_opal\\_revision\\_decision\\_en.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/2016_opal_revision_decision_en.pdf).
15. <http://www.gazprom.com/press/news/2015/september/article245837/>.
16. <https://www.nord-stream2.com/media-info/news-events/nord-stream-2-ag-and-european-energy-companies-sign-financing-agreements-47/>.
17. [http://ec.europa.eu/eurostat/statistics-explained/index.php/Natural\\_gas\\_consumption\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Natural_gas_consumption_statistics).
18. [https://ec.europa.eu/energy/sites/ener/files/documents/quarterly\\_report\\_on\\_european\\_gas\\_markets\\_q4\\_2015-q1\\_2016.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/quarterly_report_on_european_gas_markets_q4_2015-q1_2016.pdf).
19. Data on EU gas production and consumption are all taken from the British Petroleum Statistical Review 2016. EU import demand is calculated as the difference between EU gas production and EU gas consumption.
20. For more on the over-evaluation of future gas demands by the European Commission as well as by ENTSO-G, cf. Dave Jones, Manon Dufour & Jonathan Gaventa, Europe's declining gas demand – trends and facts on European gas consumption, E3G Report, June 2015.
21. [http://www.nord-stream.com/media/news/press\\_releases/en/2008/01/independence-of-environmental-impact-assessmentfor-nord-stream-assured\\_20080129.pdf](http://www.nord-stream.com/media/news/press_releases/en/2008/01/independence-of-environmental-impact-assessmentfor-nord-stream-assured_20080129.pdf).
22. [https://www.nord-stream.com/media/news/press\\_releases/en/2017/01/nord-stream-utilisation-averages-80-in-2016-438-bcm-transported-to-the-european-union\\_490\\_20170110\\_1.pdf](https://www.nord-stream.com/media/news/press_releases/en/2017/01/nord-stream-utilisation-averages-80-in-2016-438-bcm-transported-to-the-european-union_490_20170110_1.pdf).
- Capacity utilisation for 2015 was 39.1 bcm, for 2014 35.5 bcm and for 2013 23.8 bcm.
23. Gazprom was only allowed to use 50% of OPAL's technical capacity in order to prevent it from dominating the Czech gas market. In October 2016, the European Commission approved a decision by Germany's energy regulator whereby Gazprom enjoyed access to more than 50 percent of Opal's capacity through monthly auctions. Flows through OPAL increased. However, in December 2016, after an appeal by Poland and two Polish energy companies, the General Court adopted interim measures and suspended the European Commission's decision. In February 2017, capacity auctions for OPAL had to be cancelled and flows through OPAL dropped. In July 2017, the General Court lifted the suspension, pending judgement on the actual merits of the case, expected for 2019. At least until then Gazprom will be able to use more than 50 percent of Opal's capacity through monthly auctions.
24. <https://www.bloomberg.com/professional/blog/europes-biggest-natural-gas-producer-running-fuel/>
25. Oil&Gas UK, Economic Report 2016.
26. <https://www.euractiv.com/section/energy/news/bulgaria-warns-eu-is-becoming-over-dependent-on-gas-transited-via-turkey/>
27. <http://af.reuters.com/article/africaTech/idAFL8N1J01GP>
28. Cf. Philipp Offenberg, [The European neighbourhood and the EU's security of supply with natural gas](#), Jacques Delors Institut Berlin Policy Paper, Berlin, January 2016.
29. Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.
30. Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.
31. See IP/15/4828.
32. See the proposed commitments in case AT 39816 as published for the market test on 13 March 2017, [http://ec.europa.eu/competition/antitrust/cases/g2/gazprom\\_commitments.pdf](http://ec.europa.eu/competition/antitrust/cases/g2/gazprom_commitments.pdf).
33. Gazprom currently has a market share of 40-50% on the German wholesale market. There are however a number of important competitors, such as Statoil (20-30%), GasTerra (5%), Shell (5-10%), ENI (5-10%), ExxonMobil (0-5%) and Dong (0-5%). See also the merger clearance case in COMP/M.6910 (Gazprom/Wintershall) where the European Commission concluded that Gazprom does not appear pivotal for the German gas market.
34. In 2016, transits increased again to 82 bcm, i.e. 58% of the technical capacity of the pipeline system.
35. Cf. Jacques Delors, Sami Andoura, Leigh Hancher, and Marc Van der Woude, [Towards a European Energy Community: A Policy Proposal](#), Notre Europe Study 76, Paris, April 2010.
36. <http://de.reuters.com/article/energy-nordstream-eu-idUKL5N18K4KG>
37. See the letters sent by different Member States on the issue to President Juncker and President Tusk. In addition, a broad coalition of Members of the European Parliament also repeatedly addressed the European Commission with similar concerns as expressed by the Baltic States and the Member States in Central- and South-Eastern Europe.
38. [Медиаpool.bg, България ще подчини газовите си планове на "Турски поток", 12.06.2017.](#)
39. Further deals were made with European companies over the last year. The most recent example is a further deepening of the business relationship between OMV and Gazprom which was announced at the St. Petersburg International Economic Forum 2017.