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## **Germany, the EU, and Russia: The Conflict over Nord Stream 2**

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### **Introduction**

The European Union today is afflicted by numerous problems. These include migration, refugee and asylum issues; the rise of right-wing nationalism and populism in many EU member countries; risks attached to the European Central Bank's flooding of the market with cheap money; the precarious state of finances and lagging economic growth in southern European countries; the lingering Greek debt crisis; and uncertainties over the British referendum on a possible EU exit. Yet another source of conflict is the agreement reached by five European energy companies and the Russian energy giant Gazprom in September 2015 to build what has come to be labeled as Nord Stream 2, a second set of two parallel natural gas pipelines to connect Germany and Russia under the Baltic Sea.

The project, in essence, is a replica of Nord Stream 1, conceived in the early 2000s as a means to avoid conflicts over Ukrainian transit of gas to Europe, and to bring gas to Russia's most lucrative

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market, Germany.<sup>3</sup> The twin pipelines were completed in November 2011 and October 2012 respectively, each with a carrying capacity of 27.5 billion cubic meters (bcm) of natural gas per year, thus bringing the combined transport capacity to 55 bcm. The pipeline runs from Vyborg on the Russian coast to Greifswald on the German coast, passing through the exclusive economic zones of Finland, Sweden, Estonia, Latvia, Lithuania, Denmark, and Germany (and the territorial seas of the latter two states; see the map below). From there, the gas enters the gas transportation systems of other European countries via two extensions in Germany: OPAL and NEL.<sup>4</sup> The pipeline length is 1,224 kilometers, making it the world's longest undersea gas pipeline. The holding company is Nord Stream AG, based in the Canton of Zug in Switzerland. The Chairman of the Board is ex-Chancellor Gerhard Schröder who, together with President Vladimir Putin, was one of the chief sponsors of Nord



Source: Wojciech Jakóbiak, 'Time is on the Side of Nord Stream 2's Opponents', *Neweasterneurope.eu*, 16.02.2016, <http://neweasterneurope.eu/articles-and-commentary/1890-time-is-on-the-side-of-nord-stream-2-s-opponents>.

Stream 1, and who today is an ardent supporter of Nord Stream 2. The shareholders of the consortium to finance the former project were Gazprom; the German companies Wintershall (a BASF subsidiary) and E.ON; the Dutch Gasunie; and the French GDF SUEZ, renamed Engie in April 2015. The cost of the project amounted to €7.4 billion, with 30 percent of equity injections from shareholders and 70 percent from banks and export credit agencies. In 2015, the twin pipeline system operated at 71

<sup>3</sup> Data concerning Nord Stream 1 and 2 according to the website of the Nord Stream AG, <http://www.nord-stream.com/>. – For a better comprehension of the complex issues arising from the Nord Stream 2 project I am very much indebted to Alan Riley who, in addition to his article *Nord Stream 2: Too Many Obstacles, Legal, Economic, and Political to be Delivered?* (Washington, D.C.: Atlantic Council, November 2015), clarified several issues in correspondence.

<sup>4</sup> NEL, Nordeuropäische Erdgasleitung (Northern European Pipeline); OPAL, Ostsee-Pipeline Anbindungsleitung (Baltic Pipeline Extension). The pipeline extensions are to supply parts of northern and eastern Germany and continue to the Netherlands and the Czech Republic respectively.

percent of its 55 bcm annual capacity to supply 39.1 bcm/y of natural gas to European Union member countries.<sup>5</sup>

On 4 September 2015, at the Economic Forum in Vladivostok, Gazprom and several European companies signed an agreement to embark on the Nord Stream 2 project. Yet again, two pipelines with a carrying capacity of 27.5 bcm per year each are to be constructed with a combined transport capacity of 55 bcm of natural gas, thus bringing the total of Nord Stream 1 and 2 gas flow to a possible 110 bcm. The Vyborg compressor complex is to be linked to the Gryazovets–Vyborg pipeline, which, in turn, is a branch of the Northern Lights pipeline that supplies gas to the north-western region of Russia. Royal Dutch Shell, OMV, E.ON, and BASF/Wintershall each were to hold 10 percent of the shares in the project. Engie was to receive 9 percent. Gazprom would thereby have retained a controlling interest in the amount of 51 percent of the shares. However, for reasons to be explained below, on 12 November 2015, Gazprom and Engie announced a modification of their stakes, according to which Gazprom would reduce its holding to 50 percent and Engie would take 10 percent of the Nord Stream 2 AG.<sup>6</sup>

The project raises a whole host of international and domestic political, economic, and legal issues even more controversial and more difficult to resolve than those of Nord Stream 1. This is due to a new EU regulatory framework for energy infrastructure, the on-going crisis in and over Ukraine, and the fact that the East-Central and South-Eastern European countries are now active members of the European Union. It raises questions about Russia's objectives in Europe, and the Kremlin's attitudes and policies toward Ukraine. It fuels suspicion about Germany's Ostpolitik and the direction of

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<sup>5</sup> The figure of 71 percent, according to *Nord-stream.com*, 22.1.2016, <http://www.nord-stream.com/press-info/press-releases/another-record-year-for-nord-stream-39-bcm-of-natural-gas-delivered-to-the-european-union-480/>. Nord Stream AG also provides data for the progression of the project, stating that previous equivalent figures were 43 percent of the annual capacity in 2013, 65 percent in 2014, and 77.9 percent in December 2015. In the literature, however, it is stated that Nord Stream 1 has “since 2012 operated at about half of its capacity” (Vladimir Socor, “Nord Stream Two: Implications for Europe,” *Geopoliticalmonitor.com*, 22.10.2015, <http://www.geopoliticalmonitor.com/nord-stream-two-implications-for-europe/>); that “only 22.5 billion cubic meters of its capacity is actually used” and that this was “*due to EU restrictions on Gazprom*” (Wikipedia, [https://en.wikipedia.org/wiki/Nord\\_Stream](https://en.wikipedia.org/wiki/Nord_Stream)), “*because of a drop-off in demand for Russian gas*” (Indrek Tarand, “Why Nord Stream is Another Mistral Deal,” *Politico.eu*, 26.10.2015, <http://www.politico.eu/article/why-nord-stream-is-another-mistral-deal/>), and/or “because the adjacent pipeline *OPAL [...] is awaiting an exemption from EU regulations*” (“Forget Russia, European Energy Security Begins at Home,” *Brookings.edu*, 28.10.2015, <http://www.brookings.edu/blogs/order-from-chaos/posts/2015/10/28-russian-natural-gas-europe-boersma>).

All these assertions are in error: Completion of a pipeline never means that it is able immediately to run at full capacity, and it is also hardly ever the case that pipeline capacity and contractual obligations are perfectly aligned.

<sup>6</sup> “Gazprom and ENGIE Modify Nord Stream 2 Shareholdings, Equalizing EU-Russian Ownership,” *Nord-stream2.com*, 12.11.2016, <http://www.nord-stream2.com/media-info/news/gazprom-and-engie-modify-nord-stream-2-shareholdings-equalizing-eu-russian-ownership-6/>.

German-Russian relations. It also puts in doubt the utility and effectiveness of the EU's energy policy, including the stated purposes of its Third Energy Package. What, then, are the interests and objectives underlying the policies of the respective actors?

### **Russian Rationales**

The agreement to construct a third and fourth leg of the Nord Stream gas pipeline confirms that Russia is committed to implementing its strategic objective to build up infrastructure so it can cease using Ukraine as a transit country for Russian gas exports.<sup>7</sup> That aim was clearly and unambiguously stated during the visit by Putin and Gazprom CEO Alexei Miller to Ankara on 1 December 2014. On that occasion, the Kremlin chief told reporters that Moscow was scrapping plans to build the South Stream pipeline and that a new gas pipeline to Turkey would be built, instead. The latter was to run from southern Russia through the Black Sea to the European part of Turkey, from there to Greece and – provided the European Commission developed corresponding transportation infrastructure – to South-Eastern and Central Europe. Alexei Miller, Gazprom's CEO, explained that, once the new pipeline to Turkey became operational, the role of Ukraine as a transit country “[would] be reduced to zero.”<sup>8</sup>

From the Russian viewpoint, the strategic aim has both political and economic dimensions. Concerning political aspects, the threat of eliminating Ukraine as a transit country is yet another means of pressure on the country, its foreign policy and economic orientation, and its relations with the EU. In economic terms, the zero option replaces the vagaries of supply through a third country by direct control over transmission. Furthermore, Gazprom's declared intention to transfer substantial volumes of gas from Nord Stream 2 to the Baumgarten-Central European Gas Hub (CEGH) in Austria combined with the possibility of obtaining substantial third-party access exemptions for Nord Stream 2's onshore German/European legs would allow the Russian corporation to maintain a share in the Central European market. In addition, given the relatively low gas production costs in Russia, Gazprom could compete more effectively with supplies from alternative sources, such as liquefied

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<sup>7</sup> This summary of the Russian position draws on Szymon Kardás, Agata Łoskot-Strachota, and Konrad Popławski, “Gas Business as Usual? The New Agreements between Gazprom and EU Energy Companies,” *Osw.waw.pl*, 09.09.2015, <http://www.osw.waw.pl/en/publikacje/analyses/2015-09-09/gas-business-usual-new-agreements-between-gazprom-and-eu-energy>.

<sup>8</sup> “Russia Turns to Turkey in EU Gas Clash,” *Rbth.com*, 16 December 2014, <http://rbth.com/business/2014/12/16/russia-turns-to-turkey-in-eu-gas-clash-42279.html> (italics mine).

natural gas (LNG) and new pipeline gas supplies. It could even disable or affect some of the planned alternative projects, for example, the planned LNG terminal in Wilhelmshaven.<sup>9</sup>

The political and economic dimensions of the Nord Stream 2 project have to be evaluated in conjunction with an agreement signed at the September 2015 Economic Forum in Vladivostok. This concerns the asset swap between Gazprom and German gas companies. Under the deal, Wintershall will receive a 25 percent stake in two blocks on the Urengoy field in Western Siberia. In return, Gazprom will acquire shares in Wingas and Wintershall Handelshaus (dealing with gas sales), gas reservoirs, and a 50 percent stake in Wintershall Noordzee (engaged in gas extraction in the North Sea).

Nord Stream 2 and the asset swap underline that, despite all the rhetoric about the Asian alternative, Gazprom still sees Europe as the main market in its external gas strategy. Furthermore, it appears to calculate that intensified Russian-German gas cooperation will increase the effectiveness of its lobbying in EU institutions; improve its chances for exemptions from the EU's Third Energy Package; and decrease interest in Berlin and Brussels for trilateral cooperation between Russia, Ukraine, and the EU for the modernization of the Ukrainian gas infrastructure.

The Kremlin certainly is conscious of the important role the EU Commission is bound to play in the controversy surrounding the project. Thus, in order to try to evade the application of EU law, Russia attempted to convey the notion that Nord Stream 2 is not really under the control of Gazprom. This is why, two weeks after meeting with the German Energy Minister, the French energy company Engie, which initially had agreed to take a 9 percent shareholding in the project, suddenly increased its stake to 10 percent, while Gazprom's share fell to 50 percent.<sup>10</sup>

### **The Ukrainian Dimension**

Although a complete shutdown of the Ukrainian transit route will not be possible before 2020, when the Russian-Ukrainian transit contract in force since 2009 expires, the new strings of Nord Stream would allow Gazprom to significantly reduce the amount it now transmits via Ukraine. As detailed studies show, assuming the maintenance of transit through Ukraine at the 2014 level (around 58.9 bcm/y), the new strings of Nord Stream (even if only half its capacity is used, due to constraints

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<sup>9</sup>Agata Łoskot-Strachota, 'The case against Nord Stream 2', Energyposst.eu, 23.11.2015, <http://www.energypost.eu/case-nord-stream-2/>.

<sup>10</sup> 'Gazprom and ENGIE Modify Nord Stream 2 Shareholdings' [fn. 4].

arising from the so-called Third Energy Package – for details, see below) would allow a reduction in transit through Ukraine to around 30 bcm of gas per year. The effect of this would not only be a reduction in Ukraine’s transit income, but also, and more importantly, it would become unprofitable for Kiev to maintain the Ukrainian pipeline network (according to estimates, the lower limit of profitability is the transit of at least 35-37 bcm of gas annually). Ukraine, therefore, stands to lose some \$2 billion a year in transit fees.<sup>11</sup>

This, however, is not where the problems would end. Nord Stream 2 would undermine the economics of investments in Ukrainian infrastructure that are badly needed for proper functioning of the system. If Ukraine were to lose its significance as a transit country, its gas infrastructure would lose all meaning for Europe. There would be much less chance of securing external financing for the modernisation of Ukrainian gas pipelines. There would also be much less European interest in the integration of Ukraine’s gas sector with that of the EU, especially if the current gas market reforms were not going to be substantially advanced and effectively implemented. The project, therefore, would substantially undermine the policies conducted thus far in Ukraine within the bilateral cooperation framework or under the auspices of the Energy Community, as well as the credibility of EU gas policy in other neighbourhood countries.<sup>12</sup>

### **The Proponents: Germany et al.**

The German government’s stance has been consistent throughout the controversy. It continues to cling to the position that Nord Stream 2 is a “commercial project” involving “private investors” and that the government, therefore, should refrain from interfering.<sup>13</sup> Gernot Erler, the German government’s special coordinator for Russia policy, even claimed that “the additional capacities will result in better energy security in Europe.”<sup>14</sup>

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<sup>11</sup> Kardás, Łoskot-Strachota and Popławski, ‘Gas Business as Usual?’ [fn. 5].

<sup>12</sup> Arguments as advanced by Łoskot-Strachota, ‘The case against Nord Stream 2’ [fn. 7].

<sup>13</sup> Merkel in a press conference on 18 December 2015, the second day of the European Council meeting, as quoted by Gabriele Steinhauser, ‘Germany’s Merkel Defends Russian Gas Pipeline Plan’, *Wsj.com*, 18 December 2015, <http://www.wsj.com/articles/germanys-merkel-defends-russian-gas-pipeline-plan-1450447499>.

<sup>14</sup> Interview with the German radio station WDR 5, as reported by the Russian internet news portal Sputnik News (<http://de.sputniknews.com/politik/20151221/306654426/Erler-ostsee-pipeline-mehr-versorgungssicherheit.html>) and by the TASS news agency (<http://tass.ru/en/economy/845901>). Sputnik News, as the television channel and namesake RT (formerly Russia Today), forms part of the Russian government-controlled International News Agency Rossiya Segodnya (Russia Today) founded in December 2013. Golos Rossii (The Voice of Russia) and the news agency Ria Novosti were also integrated into Rossiya Segodnya.

Chancellor Merkel, Vice-Chancellor, SPD chairman, and economics and energy minister Sigmar Gabriel, Erler, and other German government representatives have averred that, “should Nord Stream 2 be built, a solution should be found that would maintain Ukraine as a transit country for Russian gas” (Merkel); that the implementation of the project was “conditional” on Russia making sure that the project would not spell the end of Ukraine as an important gas transit country (Gabriel);<sup>15</sup> and, in short, that it was necessary to “prevent the project from becoming a unilateral anti-Ukrainian policy” (Erler).<sup>16</sup> The German government, however, thus far has offered no suggestions as to how Gazprom’s goal of reducing the transit of gas through Ukraine to “zero” could effectively be undercut.

Gabriel, furthermore, went beyond the standard “commercial project” position. He made a case not only for the construction of the Nord Stream 2 gas pipeline per se, but also for using it as a lever for the improvement of German-Russian relations, proclaiming that “a different and better relationship with Russia” should begin with the construction of the pipeline and end in the lifting of sanctions against Russia.<sup>17</sup> Finally, in “private” conversation with Putin, he assured his Russian host that he would do everything to ensure that all the legal issues connected with the project would “remain under the competence of the German authorities” and that any “opportunities for external meddling” and “political interference” would be limited – a clear commitment de facto to subvert both EU policies and law as set down in the organization’s Third Energy Package.<sup>18</sup>

It is understandable that the minister responsible for economic and energy issues in the government would support the project and try to keep as much regulatory authority as possible. Germany is the exclusive designated recipient of Nord Stream gas. This casts Germany in a new role, on top of Germany’s familiar position as Europe’s leading importer of Russian gas. Nord Stream 2 promises the much-coveted status of an “energy hub” for Germany. It opens up the prospect for Germany to become the main center for the transit and storage of Russian gas and its onward distribution in

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<sup>15</sup> That “condition” was reported by a German newspaper specializing in economic affairs, “Gas-Lieferungen: Widerstand gegen die neue Ostsee-Pipeline,” *Handelsblatt*, 6 November 2015, p. 10. However, it does not appear in the Russian transcript of what was described by Gabriel as a “private” meeting with the Russian leader: “Transcript of the Meeting Between Russian Federation President Vladimir Putin and Vice-Chancellor and Minister of Economic Affairs and Energy of Germany Sigmar Gabriel, Novo-Ogaryovo, Moscow Region,” *Kremlin.ru*, 28 October 2015, <http://en.kremlin.ru/events/president/news/50582>.

<sup>16</sup> Erler Interview [fn. 12].

<sup>17</sup> “Gabriel schlägt Ende der Sanktionen gegen Russland vor,” *Zeit.de*, 25 September 2015, <http://www.zeit.de/politik/ausland/2015-09/sigmar-gabriel-russland-sanktionen-syrien>.

<sup>18</sup> Transcript, Gabriel-Putin meeting [fn. 13].

Western Europe. This would mean higher sales revenues for German energy companies, as well as a potential windfall from transit fees and taxes accruing to the German federal and state budgets.<sup>19</sup>

The German government and the European companies that are part of the Nord Stream 2 project also argue that the venture is sound because European demand for natural gas is set to increase from 445 bcm in 2014 to 500 bcm in 2020, before reaching 505 bcm in 2025, Norway's gas production will decrease, African gas will stay at current levels, and Caspian potentials will stumble upon the lack of infrastructure in South-Eastern Europe and Central and Eastern Europe. Russia, therefore, will remain Europe's main gas supplier.<sup>20</sup>

It is not surprising to see a leading member of the SPD adopt such a position, but it is more difficult to understand why the Chancellor, who has been adamant in her position that the EU policy of sanctions should be maintained until the full implementation of the Minsk 2 peace agreement, would publicly adhere to the notion that Nord Stream 2 is primarily a commercial, rather than political, undertaking. According to majority opinion among experts in Germany, there are four possible, non-mutually exclusive, explanations. First, Merkel may be quite aware of the political nature of the project, but may want to let the EU Commission unhinge or constrain it. Second, Nord Stream 2 is the only project of major proportions that may serve to keep alive at least part of the political philosophy of *Wandel durch Verflechtung* (change through interlocking) and the previously special German-Russian relationship. Third, to oppose the project may, in the Chancellor's view, undercut the strength of her position vis-à-vis Putin on other issues, notably Ukraine. Fourth, the Bavarian "sister parties" of the Christian Democrats (CDU) and the Christian Social Union (CSU), under the leadership of Horst Seehofer, have together been a vociferous critic of Chancellor Merkel both on the refugee crisis and on sanctions. She may feel that she has enough intra-coalition party conflict on her hands so that she does not want to add yet another issue.

## **Opposition to the Project**

The project and the German government's "commercial project" position have elicited a storm of protest in Ukraine, EU member countries, and the United States on political, economic, and legal grounds. The often highly emotional criticism is reminiscent of the outcry by then-Polish defence

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<sup>19</sup> This is a point aptly made by Socor, "Nord Stream Two: Implications for Europe" [fn. 3].

<sup>20</sup> Figures and analysis according to Martin Bachmann, Head of Exploration & Production Europe and Middle East at Wintershall; see "E.ON Makes Case for TPA Exemption for OPAL Extension," *Naturalgaseurope.com*, 18.2.2015, <http://www.naturalgaseurope.com/e.on-makes-case-for-tpa-exemption-for-opal-extension-25484>.



minister Radosław Sikorski in 2006, who compared the first Nord Stream pipeline project to the Molotov–Ribbentrop Pact of 1939, under whose secret protocol Eastern Europe was partitioned between Nazi Germany and the Soviet Union. In November 2016, in a letter to European Council President Donald Tusk, Poland and Slovakia, with the support of Hungary, Romania, Lithuania, Latvia, and Estonia, petitioned the EC to block the pipeline and demanded that the issue be put onto the agenda of the December 2015 EU summit meeting. Jacek Saryusz-Wolski, a Polish MEP and member of the centre-right leadership in the European Parliament, expressed one of the currents of criticism when he charged that “Nord Stream 2 would be, above all, detrimental in geopolitical terms,” for it would allow Russia to “exert more political pressure and apply blackmail on the EU, its eastern member states, and its eastern neighbours.”<sup>21</sup> This is a perspective that is also shared by the U.S. government.

The opposition to Nord Stream 2, however, is not limited to Ukraine and other eastern and east-central European countries, but extends to southern and south-eastern Europe, in particular to those EU member states that were either directly involved in the South Stream project or stood to benefit from it. To that extent, the opposition is also economically founded. This was evident at the December 2015 summit where, among others, the prime ministers of Italy, Bulgaria, and Hungary openly questioned the rationales of the project. Italy’s Matteo Renzi found it “surprising that South Stream was blocked, while now we are discussing a doubling up of Nord Stream,” and Hungary’s Viktor Orban wanted to hear “a reasonable argument why South Stream was bad and Nord Stream is not.”<sup>22</sup> At the bottom of such criticisms evidently lies the imputation that there is one rule for Berlin, and another for everyone else.

Yet another current in the torrent of criticism concerns the circumvention of EU rules, regulations, and policies, notably the provisions of the Third Energy Package and the European Commission’s strategic documents about the Energy Union, and the Strategy for Energy Security. There are three major issues that derive from the so-called Third Energy Package, a set of laws and regulations for the liberalisation of the gas and electricity market in the EU, especially deriving from Directive

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<sup>21</sup> Quoted by Henry Foy, “Eastern EU States Seek to Halt Russian Gas Pipeline,” *Financial Times*, 30 November 2015, p. 4.

<sup>22</sup> For both quotes and analysis see Steinhauser, “Germany’s Merkel Defends Russian Gas Pipeline Plan” [fn. 11]. The criticisms may have been connected, among other factors, to the fact that the Italian energy company Eni held a 20 percent stake in South Stream; that Bulgaria failed to get necessary permissions from the EU, Sofia thereby foregoing about US\$400 million in transit fees; and that Hungary would have been connected to the South Stream pipeline.

2009/73/EC concerning common rules for the internal market in natural gas.<sup>23</sup> First, pipeline owners are required to give *third party access* to the pipelines. However, as the only entry point for Nord Stream 2 is on the Russian side and Gazprom clings to its gas export monopoly on the project, to meet that condition is not possible. Second, all new energy infrastructure is subject to full *ownership unbundling*, that is, the generation or production of gas must be separated from transmission and distribution. Gazprom and its partners, however, are all gas suppliers, and thus they cannot own and control a pipeline – at most they can hold passive minority shares. Third, energy projects are subject to *certification*. This applies to the requirement that an assessment has to be made as to whether a pipeline enhances or, as the case may be, undermines EU or individual member state supply security.

A particularly vexing legal issue concerns the Nord Stream pipeline extensions, OPAL and NEL. These pipelines are subject to full EU liberalization rules – unless the companies involved are able to negotiate exemptions.<sup>24</sup> Corresponding attempts have been made. NEL, however, was not exempted, as it is not a cross-border pipeline. OPAL Gastransport only received a partial exemption from the third party access rule in 2009, allowing it to keep half of the pipeline capacity for its sole use for 22 years. The company has repeatedly applied for a 100 percent exemption, but the European Commission has repeatedly prolonged deadlines for issuing a decision. The limitation on OPAL is one of the reasons why Nord Stream has not been able to operate at full capacity. Gazprom may try to overcome the limitation, for example, through the use of auctions. However, when the company conducted a first-ever auction of natural gas in September 2015, there was little interest. Gazprom only managed to sell 1.23 bcm of natural gas of the total of 3.24 bcm offered.<sup>25</sup>

There is no unified response from EU institutions, including the European Commission. The EC officials dealing with energy questions, however, have made their position clear. Thus, the EU’s climate and energy commissioner, Miguel Arias Cañete, has stated that building Nord Stream 2 would

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<sup>23</sup> 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, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0073>.

<sup>24</sup> OPAL, the Baltic Pipeline Extension, and NEL, the Northern European Pipeline (abbreviations as explained in fn. 2) were connected to Nord Stream in August 2011 and November 2012 respectively. Their combined capacity amounts to 55 billion cubic meters, of which OPAL is able to transport 35 bcm and NEL 20 bcm. The operating companies are NEL Gastransport, with Gazprom and the German Wingas jointly controlling 51 percent of the shares, E.ON Ruhrgas 10 percent, Gasunie 20 percent, and Fluxys 19 percent. OPAL Gastransport is jointly owned by Russian Gazprom and Germany’s Wintershall.

<sup>25</sup> “E.ON Makes Case for TPA Exemption for OPAL Extension” [fn. 18].

concentrate 80 percent of the bloc's gas imports from Russia into a single route, thus undermining the EU's diversification goal.<sup>26</sup> European Council President Donald Tusk agreed. At the December 2015 summit, he said that "Nord Stream does not help diversification, nor would it reduce energy dependence."<sup>27</sup>

Opponents of the project have not only used legal arguments to challenge Nord Stream 2, but have charged that the new pipeline is simply unnecessary. They take into account the current demand for Russian gas among European customers (138.8 bcm in 2012; 161.5 bcm in 2013; 146.6 bcm in 2014) and argue that, even with a possible increase in demand, the existing infrastructure would be fully sufficient to meet Russia's export obligations: 55 bcm via the existing Nord Stream legs; around 33 bcm via the Yamal-Europe pipeline; theoretically 179 bcm along the Ukrainian route (around 142 bcm in real terms, due to the network's current technical state); and 16 bcm via Blue Stream.<sup>28</sup> Another study comes to the conclusion that, if the EU were to continue to construct gas pipelines and LNG terminals as planned, it would risk building up huge over-capacities. It asserts that, in its estimate of likely future demand, the EU got its figures wrong. Even as of today, only 35 percent of the existing LNG terminals are being used and only 58 percent of gas pipeline capacities. Furthermore, if the EU wants to achieve its climate goals, that would automatically lead to additional reductions in demand. In sum, demand has been overstated at a level of between 30 and 55 percent.<sup>29</sup>

## **Conclusion**

Is Nord Stream 2 just a "commercial project?" The case for such a perspective is unconvincing. True, the European corporations engaged in the venture – E.ON, Wintershall, OMV, and Royal Dutch Shell – are joint stock companies of private ownership. Only in Engie does the government hold a significant share of the stock, amounting to one-third of the total. Gazprom, however, if only for the fact that the state controls more than 50 percent of the stock, must be regarded as an instrument of the Russian government. In fact, it considers the oil and gas industry as a whole to be part of the "strategic sector of the economy," where foreign ownership has had to be severely restricted.

The view that Gazprom is more than a mere commercial enterprise is justified also by the close interconnections between the corporations and top government officials past and present (for instance,

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Kardás, Łoskot-Strachota and Popławski, 'Gas Business as Usual? [fn. 3].

<sup>29</sup> Study of the European and global gas market commissioned by the Agora Energiewende Foundation and the World Wildlife Fund, "Bau von Nord Stream 2 überflüssig," *Frankfurter Allgemeine Zeitung*, 3 March 2016, p. 16.

before becoming President of Russia, Medvedev was chairman of the board of directors at Gazprom); by the fact that in the past years, in relation to the countries in the common EU-Russia neighbourhood, Gazprom set its price policies according to political criteria, i.e., low prices for compliance with the Kremlin's demands, and high or exorbitant prices for failure to do so; and by the design of projects that are commercially non-viable, the most prominent example having been that of South Stream with its estimated cost of more than US\$50 billion.<sup>30</sup>

The Kremlin's "strategic" purpose of the project is connected with Gazprom CEO Miller's commitment to bring the transit of Russian gas through Ukraine "down to zero." There are economic aspects to the purpose, but it also forms part of Russia's "zero sum" approach to its relations with the West over Ukraine, that is, to make sure that the implementation of the EU-Ukraine association agreement with its deep and comprehensive free trade regime will not work, and that Ukraine, as Putin's aide for Eurasian integration, Sergey Glazev, has repeatedly warned, will be driven into bankruptcy.<sup>31</sup> In such circumstances, any "win-win" solutions, such as, for instance, trilateral cooperation between Brussels, Moscow, and Kiev for the modernisation of the Ukrainian gas infrastructure, have no chance of realization.

Contrary to the German government position, therefore, the question of whether to build the Nord Stream 2 is mainly a political one. That conclusion is warranted not only because of the primarily strategic purposes pursued by the Kremlin through Gazprom, but also because vast changes in the global energy markets of the past year have made Nord Stream 2 obsolete. For all of these reasons, too, pursuing the project would damage European unity even further.

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<sup>30</sup> Estimates in 2013-2014, see Robert W. Kolb, *The Gas Revolution: At the Pivot of the World's Energy Future* (Upper Saddle River, NJ: Pearson, 2014), p. 176 and "Full Cost of South Stream to Exceed \$50 billion," *Eegs.com*, 31 January 2013, [http://eegas.com/S-Stream\\_cost\\_en.htm](http://eegas.com/S-Stream_cost_en.htm). – Nord Stream 2, in comparison, is cheap at its projected cost of about US\$10 billion. This, however, is a sum nevertheless now more difficult for Gazprom to raise, with Western economic sanctions and the drastic fall in the price of oil. For the corresponding calculations see Riley, *Nord Stream 2: Too Many Obstacles* [fn.1].

<sup>31</sup> At a conference in Yalta in September 2013, for instance; see Alex Spillius, "Russia Threatens Ukraine with Bankruptcy over Plans to Sign EU Agreement," *Telegraph.co.uk*, 22 September 2013, <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10327027/Russia-threatens-Ukraine-with-bankruptcy-over-plans-to-sign-EU-agreement.html>.