

Sanctions against Nord Stream 2 in the US defence budget

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The US Congress adopted the defence budget (National Defense Authorization Act, NDAA) for 2020 which envisages sanctions concerning the Nord Stream 2 (NS2) gas pipeline. On 9 December, the document was passed by the House of Representatives (377 votes for and 48 against), and on 17 December it was approved by the Senate (86 votes for and 8 against). President Donald Trump has 10 days to sign the act.

The regulations imposing the sanctions are included in the part of the document entitled *Protecting Europe's Energy Security*. These concern "the provision of certain vessels for the construction of Russian energy export pipelines" and are imposed on foreign entities that have knowingly sold, leased, provided, or facilitated (for example, by way of financial transactions) the provision of vessels that engaged in pipe-laying at depths of 100 feet (30 metres) or more below sea level for the construction of the Nord Stream 2 and TurkStream gas pipelines. The measures envisaged include freezing the assets and blocking the transactions of such entities and denying US visas to individuals engaged in such activity. The US Secretary of State and Secretary of the Treasury are expected to submit a report within 60 days of the enactment of the NDAA which will identify such entities and vessels.

The president may not impose sanctions with respect to a given identified entity if it has engaged in good faith efforts to wind down operations that would otherwise subject it to the imposition of sanctions under the act and has done so within 30 days of the enactment of the NDAA. The regulations imposing the sanctions also envisage that the president may waive the application of sanctions, if he determines that the waiver is in the national security interest of the United States (however, he must provide good reasons for this to the US Congress).

Commentary

- The US sanctions on Nord Stream 2 put the seal on America's critical stance regarding the NS2 project which was seen already during the presidency of Barack Obama. A significant section of the Congress and the US administration are opposed to the project. President Trump has also expressed a negative opinion on NS2, but his final stance on the sanctions is unclear. Making the regulations against NS2 part of the text of the US defence budget for 2020 was a move intended at minimising the risk of President Trump vetoing the sanctions. (The NDAA is a vital act for the operation of the US defence sector next year and when approved by the Congress must be signed before the end of 2019). Nevertheless, as shown by the history of previous sanction proposals (which were not

adopted despite a high level of support in the Congress), this is quite a controversial issue and is strongly entangled in the domestic political game (at least in connection with the upcoming election and the impeachment proceedings into President Trump). The sanctions that are part of the US defence budget are milder than the regulations which US congressmen proposed earlier. Nevertheless, it cannot be ruled out that the president will make attempts to block the application of the regulations imposing the sanctions even if he signs the act. He might do this, for example, by resorting to the mechanism suspending the implementation of the sanctions, but he would not be able to do this without going through the Congress.

- The US sanctions will be imposed too late to prevent the completion of the Russian projects. The NS2 gas pipeline is around 90% complete, and the construction of the submarine sections of TurkStream is already over. The opening ceremony has been scheduled for 8 January. As a consequence, the regulations included in the NDAA will not affect TurkStream and will not lead to NS2 being blocked. However, they may impede the smooth finalisation of NS2's construction to some extent by delaying and increasing its costs. The regulations imposing the sanctions would adversely affect the Swiss-Dutch firm Allseas, the owner of the special ships used for pipe-laying at the Baltic Sea bed and would discourage other non-Russian entities which have similar ships at their disposal from replacing this company.
- The possible impact of the sanctions on the construction of the last offshore section of NS2 will depend on how quickly the sanctions are implemented and how quickly the pipeline's missing fragment in Danish waters is constructed, and also on how Allseas reacts to the sanctions. Since 28 November, Nord Stream 2 AG has stepped up pipe-laying in the Danish exclusive economic zone. An approximately 100-kilometre section in Denmark's territorial waters and one over ten kilometres-long in German waters are yet to be finished. According to previous ambitious Russia estimates, this could take between five to six weeks. According to other commentators, it could take four months. The current weather conditions in the Baltic Sea make it difficult to maintain a good tempo – the pipe-laying ships have already halted their work several times due to storms. It is also unclear whether the terms of the environmental permit for building the gas pipeline in German territorial waters will be altered (Nord Stream 2 AG requested this in early September). According to the currently applicable permit, it would be possible to do the work in German waters (for example, the necessary connection of the German and Danish sections) only between 15 May and 31 October.
- In case the most optimistic scenario for NS2 opponents turns out to be true, where the sanctions become effective soon, Allseas would be forced to withdraw its engineering ships within one month and at the same time to withhold construction work. At present, it is unclear when the Russian side will be able to cope with the difficult construction work linked to building NS2 by itself and to replace the specialist ships of Allseas with its own. The only Russian pipe layer, *Akademik Cherskiy*, is to be modernised in 2020, and it is uncertain whether it will be able to do the work at the depths where NS2 is being laid. In turn, if the process of implementing the sanctions envisaged in the NDAA is extended, they will not only fail to cause a delay in building NS2, but will even have the opposite effect to the one intended. They will lead to stepping up the pipeline's construction, a

trend which has already been underway over the past few weeks, most certainly due to the US Congress's work on sanctions.

- The US sanctions against NS2 are becoming a problem in transatlantic relations and are emphasising the divides existing inside the EU, for example, in connection with efforts from some EU member states aimed at imposing the sanctions while others are attempting to block them. This is another factor that adversely affects German-US relations, which have been in crisis since the beginning of Trump's presidency. The announcement that the sanctions will be imposed has met with criticism in Germany – the minister of Foreign Affairs, Heiko Maas, has said that decisions concerning the European energy policy should be made in Europe rather than in the USA, and that Berlin rejects any external interference with European projects and sanctions with an extraterritorial impact. The Congress's decision was also criticised by the new co-leader of the SPD, [Saskia Esken](#), who appealed to Chancellor Angela Merkel's government to respond accordingly. Merkel emphasised in the Bundestag that she did not accept extraterritorial sanctions and promised to hold 'decisive talks' with Washington regarding this issue. She also made it clear that the sanctions might adversely affect the talks on the Russian gas transit via Ukraine. Representatives of German business circles in Russia (the German-Russian Chamber of Foreign Trade and the German Eastern Business Association) appealed for measures to be taken to protect the interests of German firms and take retaliatory action. According to an internal document of the Ministry for Economic Affairs and Energy quoted by the *Bild* daily, even though the sanctions are not directly targeted against German firms, they might impede the completion of the Nord Stream 2 project. In response to this, instead of taking unilateral action, Germany will try to lobby for the development of a common EU response, seeking broader support inside the European Union. The French minister of Economy and Finance criticised the US sanctions in his speech on 10 December. The European Commissioner for Trade, Phil Hogan, who comes from Ireland, did not rule out a response from the European Commission but he also failed to provide assurances that it would certainly respond. Any decision from the EU regarding the sanctions should be preceded by an analysis of the content of the documents after the National Defense Authorization Act has been adopted and published.