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Germany: attempt to circumvent US sanctions on Nord Stream 2

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On 6 January, the state government of Mecklenburg-Vorpommern (MV) decided to establish the Foundation for Climate and Environmental Protection. This project had taken on particular urgency due to the threat of US sanctions against the Nord Stream 2 (NS2) gas pipeline. The plans were approved by the state parliament on 7 January. The parliamentary approval paved the way to mobilise public resources for the initial fund (€200,000) and finance the process of establishing and organising the foundation (up to €50,000). At great haste, on 8 January, the foundation was recognised by the state Justice Ministry, thus gaining legal personality.

The MV government justified its commitment to completing of NS2 in its proposal to the national parliament and in the preamble to the statute in terms concerning the role of NS2 in ensuring gas supplies, which are important in connection with the climate protection and energy transformation policies in Germany and Europe. In the MV government's opinion, the gas power plants need to continue operating for a longer transitional period. Moreover the new foundation, by completing NS2, will prevent the investments on the border of the federal state from being abandoned, which would harm the Baltic ecosystem and the economic development of MV. According to the information provided by the national government, Nord Stream 2 AG will contribute €20 million to the foundation's basic assets. Furthermore, the company has pledged that it will provide annual support for the Foundation's activities after the gas pipeline is launched. The *MV* authorities estimate that the company's total financial involvement will reach €60 million.

Pursuant to the statute for the implementation of the goals set and for the management and multiplication of assets, the foundation may initiate and conduct business operations, establish or acquire subsidiaries, act as a shareholder in companies, and commission contracts. It can become involved in completing NS2 through business operations conducted in accordance with the criteria of efficiency, effectiveness and profitability, and also possibly in the form of establishing one or more legally independent companies. The preamble to the statute stipulates that the business operations related to the gas pipeline's construction is to be transitional in nature, as a secondary goal of the foundation, but the completion of this activity will require the consent of Nord Stream 2 AG. In addition, the foundation may take over activities and projects imposed on other entities as compensation for the encroachment on the natural environment connected with these entities' activities. The foundation can also purchase and manage real estate, lease and rent it; this also applies to hardware. The income from these business operations and subsidiaries will

finance the foundation's goals.

In accordance with the statute, the foundation's tasks are to be financed with the revenues generated by the basic assets, the planned business activity and other donations, unless these have been expressly allocated to increasing the foundation's capital. This financing also covers administrative costs, including the expenses incurred by economic activity. In justifying its plans, the national government argued that the economic operations should generate additional funds for climate protection, especially in view of the limited expenditure from a state budget which is burdened by the costs of the pandemic. The possibility of making donations for the foundation's capital was emphasised.

The first chief executive officer of the foundation's business operations will be appointed by the board as proposed by Nord Stream 2 AG for a period of three years. This also applies to the possible dismissal of the CEO. The rules governing his independent operation are to be adopted by the board in consultation with Nord Stream 2 AG. For the first three years after the foundation is established, the company is also entitled to two places on the advisory board which will advise the foundation board on matters concerning climate and environmental protection.

The former MV prime minister, Erwin Sellering (SPD), was appointed chairman of the foundation. Besides him, the other two members of the board are Werner Kuhn (CDU), a former member of the state parliament, the Bundestag and the European Parliament, and Katja Enderlein, *an entrepreneur*. They have been appointed to the board for four-year terms.

Commentary

- Although the MV government is presenting the foundation as an entity which will undertake a wide range of activities to protect the climate and the environment, its main task is to circumvent the US's restrictions on NS2 by taking over the role of intermediary in relation to the suppliers and contractors involved in constructing the gas pipeline. The intended method for financing the acquisition of the items necessary to complete the investment is not yet known.
- The MV politicians have considered the risk of the US imposing sanctions on the foundation and its board. The choice of foundation as the legal form is intended to ensure that the activities of its representatives will not be formally attributed to persons presently performing public functions in the state political and administrative structures.
- The foundation is being established in cooperation with Nord Stream 2 AG, as evidenced by both the company's financial commitment and the provisions of the statute ensuring its influence on the foundation's activities. The State Chancellery in Schwerin has confirmed that there have been talks between the MV government and the investor in recent months; these have usually been conducted by energy minister Christian Pegel (SPD), in some cases together with Prime Minister Manuela Schwesig.
- Both the gas pipeline and the prospect of actively supporting its completion enjoy broad support in Mecklenburg-Vorpommern. At the federal level, though, political reactions to the foundation's establishment have been more varied. In addition to the voices in favour (from the SPD and *Die Linke*), others are adopting a more distanced approach (the federal foreign minister Heiko Maas [SPD], and Norbert Röttgen [CDU], the chairman of the

Committee on Foreign Affairs in the Bundestag). The Greens have been openly critical of the foundation; the party's co-chair Annalena Baerbock is demanding that the initiative be blocked. Alexander Graf Lambsdorff, deputy chairman of the FDP parliamentary caucus in the Bundestag, has accused Prime Minister Schwesig of following in Gerhard Schröder's footsteps.

- Environmental and climate protection organisations, including the Fridays for Future movement, are protesting against the foundation. *Deutsche Umwelthilfe eV* has announced that it will challenge its formal recognition by the state Justice Ministry in court.