

Germany's non-paper defending Nord Stream 2 addressed to the members of the US Congress

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On 28 November, the American news website Axios reported on a non-paper that was sent on 19 November by the German government, via the embassy in Washington, to members of the US Congress concerning the Nord Stream 2 gas pipeline. Its purpose is to convince them not to impose new sanctions on the entities involved in the implementation of the project. The document includes numerous references to the *Joint Statement of the United States and Germany on Support for Ukraine, European Energy Security, and our Climate Goals* signed by Germany and the USA on 21 July 2015 (see [Deal between Germany and the US on Nord Stream 2](#)). In the note, Berlin declares its "full determination" to fulfil its provisions and gives examples of the "active fulfilment" of the obligations which it has taken on. However, the document only mentions progress in the preparation of measures to support the transformation of Ukraine's energy sector and the issue of possible sanctions should Russia use energy as a weapon. Furthermore, there is no information on the real progress related to the extension of the contract for the transit through Ukraine after 2024. The German government has also warned the US Congress that imposing new sanctions on Nord Stream 2 would constitute America violating the provisions of the intergovernmental agreement, would undermine the credibility of the US government and "would ultimately destroy the transatlantic community, which would be a success for Vladimir Putin." The German non-paper also reports on the certification process of the gas pipeline operator along with information about its suspension on 9 November by the Federal Network Agency (BNetzA) for formal reasons. July-September 2022 has been indicated for when the BNetzA is expected to pass the final decision regarding this matter.

The US Congress is considering the possibility of including further sanctions against Nord Stream 2 in the US defence budget (NDAA) for 2022. In September, its version NDAA bill which contained an amendment to impose mandatory restrictions on all entities involved in the planning, construction or operation of Nord Stream 2 was adopted by the House of Representatives. This amendment to the NDAA also removed the national interest waiver which enabled exemptions from these sanctions, for example for European companies. Currently, the Senate, the upper house of the US Congress, is debating its version of the NDAA bill, including the proposal of sanctions against NS2 put forward by a group of Republican senators.

Commentary

- The recently published non-paper confirms the political support of the current German government for Nord Stream 2 and is in line with Berlin's commitment to minimise threats to the successful completion of the project (new US sanctions could affect the entities performing the last technical works and also the operator of the gas pipeline) and its launch. The document was sent nearly three weeks before the new SPD-Greens-FDP coalition led by Olaf Scholz (SPD) is set to take power. Most likely, the outgoing government's move was consulted with its successors (the main driving power of the new coalition will be the currently co-ruling Social Democrats, who are staunch supporters of NS2) and is an expression of the distribution of the roles between the old and the new government majority. The outgoing government's task is to enable the completion of the pipeline. In turn, the new coalition, which will include the Greens and the liberals, both of whom are critical of this project, will strive to ensure full implementation of the provisions of the EU's third energy package in relation to NS2, which may as a consequence reduce the profitability of this project.
- The document includes a number of controversial or false theses. For example, the German government claims that:
 - NS2 does not pose any threat to Ukraine as long as gas transit through its territory is ensured. This is contrary to the experience of recent months (a decrease in transit through the territory of Ukraine despite the signed transit contract);
 - sanctions against a US ally would be a victory for Putin. This thesis disregards the deep transatlantic divides over NS2, existing within the EU and the USA, as well as the likely deepening of these divides after the gas pipeline is launched;
 - Russia is not largely responsible for the increase in energy prices. Gazprom's actions are in fact one of the key factors influencing the situation on the European market in recent weeks, and Russian politicians clearly make the option of increasing gas supplies to the EU dependent on the launch of NS2.
- The German non-paper was sent to Congress as the debate over the US defence budget was intensifying. Proposals for sanctions targeting NS2 generate controversy between the Republicans (who support the new restrictions) and the Democrats (most of whom are opposed to the sanctions, as they threaten transatlantic unity). They are also one of the reasons for the protracted work in the Senate and delaying the adoption of the NDAA bill. According to media reports, representatives of Joe Biden's administration have been lobbying in the Senate against including provisions targeting NS2 in the defence budget. The general message of the German document thus seems to be in line with the White House's interests.
- The content of the German document is favourable to Russia's interests. This indicates that the continued German support for the project minimises the possible risks related to the launch of the Nord Stream 2 gas pipeline (apart from possible delays resulting from the suspended certification procedure, see [The Federal Network Agency suspends the process of certifying Nord Stream 2](#)). One beneficial fact for Russia is that the non-paper confirms that the German government does not view the project as a threat to German and European energy security. Moreover, the catalogue of measures that the government

in Berlin would be ready to apply if Russia used gas supplies as an energy weapon has been formulated in very general terms and does not even mention the option of imposing a moratorium on the use of the new gas pipeline. It is also beneficial for Russia that the document does not contain any statements that might suggest that Berlin will take action to force Russia to maintain the transit of Russian gas via Ukraine after 2024. The non-paper, like the German-American joint statement adopted in July this year, is simply limited to the appointment of Germany's special plenipotentiary who will be in charge of talks regarding this matter with the Russian side (the first consultations were held this autumn). Moreover, the document shows that the German government tacitly accepts the model of certification of the Nord Stream 2 gas pipeline which is beneficial for Gazprom. It does not mention the need to subordinate the entire gas pipeline to the rules imposed by the amended gas directive. Meanwhile, the company Nord Stream 2 AG, controlled by Gazprom, is attempting to divide the gas pipeline into two sections as part of an initiated procedure, and thus make only a small part of it subject to EU law. The geographic area to which the amended gas directive applies is limited to the territorial waters of the state where the cross-border gas pipeline ends, which in the case of Nord Stream 2 refers to the short section running through German territorial waters (approx. 5% of the pipeline's length).

- The Russian side will interpret Berlin's position as a signal that even in case of a serious escalation of its aggressive (including military) actions against Ukraine, the German reaction will be limited to the rhetorical and diplomatic spheres. Moreover, the Kremlin assumes that Berlin's position will determine the response of the European Union as well. This means that when the Kremlin will choosing between various sets of measures to instigate against Ukraine, it will assume that the choice of military escalation will not entail significant costs in relations with the EU, Russia's main economic partner. Thus, the German stance outlined in the document in fact encourages the Kremlin to resort to military instruments in its policy towards Ukraine.