

Client's Assignment to Student Research/Consulting Group

Nord Stream 2: Would the EU's internal gas market apply to the pipeline or allow some exemptions?

I. Client Institution

Institut für Europäische Politik (IEP) e.V., Bundesallee 23, 10717 Berlin

a. Client Representative

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II. Client's Abstract

a. Topic's Significance

Of particular interest in the analysis is the question of whether there is any leeway in German national legislation with regard to Directive 2009/73/EC that could allow the Nord Stream 2 pipeline to circumvent the EU Gas Directive.

In April 2019 the European Parliament plenary voted in favor of an amendment to the Directive 2009/73/EC concerning common rules for the internal market in natural gas. The overall objective of the amendment to the Gas Directive is to ensure that the rules governing the EU's internal gas market apply also to pipelines to and from third countries up to the border of the EU's jurisdiction.

Among the main elements of EU gas market regulations are ownership unbundling, third-party access, and transparency requirements. The EU directive must also be transposed into national law by all EU member states. At the same time the member state in which the pipeline's first entry point is located can decide on an exemption based on EU rules. In the case of Germany, the Federal Network Agency, *Bundesnetzagentur*, is responsible for the procedure and a possible exception.

The EU directive directly affects the Russian energy company Gazprom as a company from the third country, as well as all companies that are involved in the construction of the pipeline Nord Stream 2. In July 2019 the Nord Stream 2 AG headed by Gazprom announced that it had filed a lawsuit at the European Court of Justice arguing that the new rules discriminate against the project. It took the position that the amendment provides for pipelines completed before the date of entry into force of the amendment (May 23, 2019) to be eligible for an exemption.

In order to implement the EU directive, in November 2019 the German coalition government introduced amendments to the Energy Industry Act, *Energiewirtschaftsgesetz*. However, shortly before voting on this Act in the Bundestag, the ruling coalition had made changes to the draft law which led the opposition to accuse the German Federal Government of helping Nord Stream 2 bypass the EU Directive, and not simply passing an Act in strict adherence to the EU directive, as required of all Member States. However, the available analyses do not give a clear view whether the changes to the Act which was passed by the *Bundestag* could lead to an exemption from the EU legislation or not.

Following this, in January 2020, Nord Stream 2 AG applied for an exemption from the EU regulations from the German Federal Network Agency, *Bundesnetzagentur*, and the latter's decision is expected by 24 May 2020.

b. Particular Questions &/or Goals

Questions

1. Could amendments to the German Energy Industry Act, *Energiewirtschaftsgesetz*, passed by the German Bundestag in November 2019 allow Nord Stream 2 AG to circumvent the EU Gas Directive?
2. What decision could be expected from the German Federal Network Agency "Bundesnetzagentur" and why?

Develop 2 scenarios

Develop 2 scenarios for either case with policy recommendations for the German Federal Government:

1. **Scenario 1:** The German Federal Network Agency, *Bundesnetzagentur*, provides an exemption for the pipeline Nord Stream 2. This would mean that the Member state's assessment differs from that of the Commission. Would the Commission have a possibility to appeal against the decision? What would it mean for the EU energy market and for the EU as political community at all? Would it have any amplification on the role of Germany in the EU?
2. **Scenario 2:** The German Federal Network Agency, *Bundesnetzagentur*, does not provide an exemption for the pipeline Nord Stream 2. What would it mean for the whole construction of the pipeline Nord Stream 2, for the Russian, European, and in particular German companies that are involved in the project?

IV. Client's vision of interaction, advice & supervision

2-3 personal meetings at the IEP and discussion of the work in progress.

a. Anticipated oversight/viewing of “Project Research Notebook”; frequency & forms of other interactions?

To be discussed generally at the first meeting, in class 6 February.

b. Contact protocols, methods, frequency, etc.

Same.

V. Deliverables & Deadlines

a. Written Report

The analysis should not exceed 20 pages. It should conclude analysis, scenarios, conclusions and policy recommendations for the German Federal Government.

Deadline: 10 April 2020 (subject to upcoming disc. with professor)

b. Presentation &/or Executive Consultation

20. April (subject to upcoming discussion with professor)

VI. Background Materials &/or References from Client

None

VII. Models from Previous Work (if applicable)

None