



Fortuna favours the bold

US sanctions have stalled Russia's Nord Stream 2 pipeline project highlighting a conflict of interests in the transatlantic relations as well as within the European Union. The new US administration, EU politicians and the German government face difficult choices if they want to maintain old alliances without betraying investors' trust.

The German local parliament of Mecklenburg-Vorpommern in the region of Greifswald on 7 January adopted a motion to establish a foundation that aims, among other things, to help complete the Nord Stream 2 pipeline project.

The 55 billion cubic metres (bcm)/year pipeline between Russia and Germany under the Baltic Sea lands in Greifswald and has the potential to transport 27.5% of Russia's yearly piped gas supplies to Europe, based on 2018 and 2019 data. Nord Stream 2's capacity would have been sufficient to satisfy almost 11% of the EU's gas needs in 2019, data collated by ICIS showed.

The project has never been a favourite with a European Commission concerned about Russia's influence on member states. Moreover, Nord Stream 2 faces fierce opposition from the US that is competing for its global market share amid its own growing LNG production capacity.

Germany, however, continues to support the project despite its long-term energy transition plans seemingly marginalising natural gas.

According to some, the new foundation

- officially called Foundation for Climate and Environmental Protection MV - aims to find a way to bypass US sanctions that have delayed Nord Stream 2's launch by over a year and now threaten to derail the project indefinitely. It is established as a state-run entity. Other experts argue, however, that the sanctions cannot be circumvented and the foundation is intended to help Russian producer Gazprom exempt the pipeline from the EU Gas Directive in the future using environmental arguments. The pipeline could be used to transport hydrogen as



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well as natural gas, according to Gazprom and some industry experts.

The Nord Stream 2 board of directors will select the managing director of the foundation while the Prime Minister of Mecklenburg-Vorpommern will appoint the foundation's board of directors.

"The statutes were clearly written with Nord Stream 2 officials and with the goal to ensure the pipeline can be completed, by the foundation itself if needed. The governance structure also reflects this," said Jonathan Lagarde, risk manager at a UK-based energy company.

As part of the old East Germany, Mecklenburg-Vorpommern has historic ties to Russia. A project like Nord Stream 2 can bring significant economic activity and revenues to one of the least populated states in Germany.

US sanctions

In the US government's latest attempt to thwart the project led by Gazprom, on 19 January US State Secretary [Mike Pompeo announced](#) sanctions on Fortuna, the last pipelaying vessel left for Nord Stream 2.

Earlier sanctions in December 2019

forced Nord Stream 2's main pipelayers to withdraw from the project. Fortuna resumed pipelaying in German waters in December 2020 and was scheduled to restart work in Danish waters from 15 January 2021. On 22 January 2021, Fortuna and several Russian offshore supply ships moved to the construction site in Denmark, and the project promoters still indicated that pipelay would resume as planned from 15 January. As of 27 January, the vessels were still moving along the construction site, indicating pipelay restart was either ongoing or imminent. There remains around 160km to lay across the two territories.

"The EU does not recognise the extra-territorial application of sanctions adopted by third countries [...] and opposes unilateral sanctions affecting EU companies conducting legitimate and lawful business activities," EU Foreign Policy Chief [Josep Borell said on 18 January](#). The commission's objective has always been to ensure that, if built, Nord Stream 2 operates in respect of EU law, he added. Germany has notified transposition of the new EU Gas Directive, which is relevant for Nord Stream 2, he said. This indicates the commission is unlikely to impose sanctions on the project so long as it complies with EU rules.

The pipeline's promoters told ICIS on 20 January that it is up to the European governments and the European Commission to protect companies operating in Europe from extraterritorial sanctions.

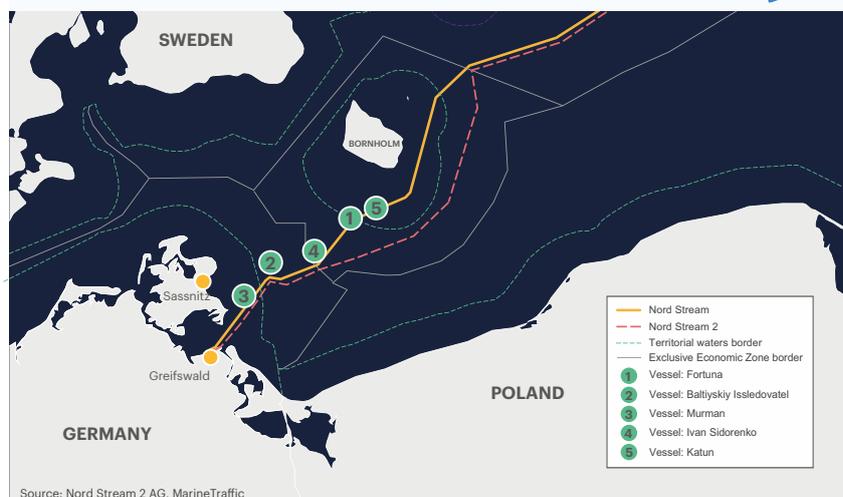
"We stand by Nord Stream 2 and are not affected by the sanctions," German utility and Nord Stream 2 stakeholder Uniper told ICIS. "We have particular hope that there is a clearly increased willingness in the US to hear the arguments of the Europeans. [...] We are still convinced that the pipeline will be completed."

Germany's fight

The US sanctions are putting a strain on the new start in transatlantic relations, Chairman of the German Eastern Business Association (Ost-Ausschuss der Deutschen Wirtschaft) Oliver Hermes [said on 19 January](#).

"We continue to see a good possibility that the German government will find a solution with the new Biden administration that will allow the pipeline's timely completion and operation," Hermes said. "Investment security is an essential achievement of the European internal market, and this should not be called into question," he added. The Association supports projects and claims of German companies and is sponsored by the Federation of German Industries, the Association of German Banks, and the Association of German Chambers of Commerce and Industry among others. Nord Stream 2 investors Uniper, Wintershall and Gazprom via its subsidiary Gazprom Germania are members.

Nord Stream 2 route in Denmark



The foundation proposed by the parliament of Mecklenburg-Vorpommern is seeking to aid Nord Stream 2 by finding a loophole in the US sanctions but sceptics say the plan has weaknesses. Experts interviewed by ICIS agree that the foundation would not be safe from falling under US sanctions.

Washington's latest sanctions adopted on 1 January 2021 do not apply to EU entities that do not operate as a business enterprise.

The foundation, although a government-run entity, would include a branch that would operate as a commercial business. This indicates the foundation's branch dedicated to Nord Stream 2 could potentially fall under US sanctions.

"Many foundations in Germany include non-profit commercial business branches. State entities may run this kind of commercial businesses, too. German law does not treat them like profit-based commercial businesses, but I am not sure if this construction will convince the US to look at the foundation in the same way," according to a German source in government circles.

The foundation is unlikely to change anything and prevent US sanctions, according to another German source close to

the matter. It is also unlikely to find a bank willing to lend it money for Nord Stream 2 because all banks have activities involving euro or dollar transactions, the source said.

It is more a sign that politicians from all parties in the Mecklenburg-Vorpommern parliament still support the project, the source added. "This foundation comes in the context of a lot of pressure coming from voters on politicians of the Mecklenburg-Vorpommern parliament to show support for the project," the source told ICIS.

Daniel Dozsa and Marcin Menkes, solicitors at Queritius, a central European-based international dispute resolution firm, also expressed scepticism of the foundation's ability to ward off the US interference.

"The [foundation]... seems to be covered by the sanctions' exception for non-business government entities. However, it appears that the [foundation] is merely supposed to pool contributions from the Nord Stream 2 consortium. Since the German [foundation] doesn't appear to exercise governmental authority, but merely channels cash and assets, the US administration may decide that it is not covered by the exception," the lawyers said.

According to Dozsa and Menkes, the foundation is unlikely to convince Nord Stream 2 contractors that have already withdrawn from the project (Swiss pipelayers owner Allseas in 2019, Norwegian certifier DNV GL in 2021) to come back, since the foundation appears to be merely an intermediary between the project's funders and contractors, both subject to US sanctions. "Unless the Biden administration reverses the US's Nord Stream 2 policy, it seems unlikely that any of the companies that have already pulled out of the project will risk coming back, and even if they did that would entail significant administrative delays," Dozsa and Menkes said.

The foundation is not guaranteed im-



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munity from US sanctions, experts agreed. There are precedents where Washington retroactively changed and applied sanctions. Such was the case in July 2020, when the US State Department deleted a key cut-off date in its sanctions legislation, which had thus far protected Nord Stream 2's EU investors (French Engie, Austrian OMV, German Uniper and Wintershall, Dutch Shell) from sanctions.

"It is a shame to see that a single state of the Federal Republic of Germany is left alone in an effort to protect municipal and other entities from illegal and self-serving sanctions imposed by the most powerful nation around the globe. Not least in the face of the recent price spikes of global LNG, the inaction of both the German government and the European Commission, the guardian of European security of supply and energy autonomy, is intolerable," said Wolfgang Peters, managing director of The Gas Value Chain Company.

But, with the status of state-organised entity, this foundation could put the Biden administration in a delicate position if they chose to sanction it at a time when they need to pick up the pieces with their European allies, as suggested by Lagarde.

"While the creation of this foundation does not absolutely shield the pipeline from US sanctions, it would force the new US administration to extend or clarify these sanctions to be able to target EU government entities. This puts the Biden administration in front of a clear choice: either to continue the Trump administration's aggressive policy and further escalate the situation, which would likely translate into a deeper political crisis with historical European allies, or back off and let Russia and Germany finish the pipeline. In my opinion, Biden will have to back off, and the pipeline will be completed in 2021," Lagarde said.

Lagarde added that the foundation aims to show Joe Biden that Germany - and more widely the EU - stands firm on its grounds and still supports the project very firmly. "In short the message to Mr Biden is: 'Mr Trump's strategy has been counter-productive, don't do the same!'"

The German source in government circles pointed out that the port of Sassnitz, in Mecklenburg-Vorpommern, was threatened with US sanctions, but since the port is owned by regional authorities it has another level of protection. "The mayor of Sassnitz is the head of port authorities. Last summer, he was under threat to be sanctioned, have his bank cards blocked and be banned from going to the US. But in December the US Congress has assured that it wants to rule out sanctions against elected officials and authorities of European partner states such as Germany," the source said. This indicates that sanctions against a state-organized foundation may be slower to come than those against Russian entities.

Certification dead end

Norwegian certifier DNV GL withdrew from the project in January 2021 in fear of falling under the last raft of sanctions.

"DNV GL will cease all verification activities for the Nord Stream 2 pipeline system in line with sanctions and while sanctions are in place. We are implementing a plan to wind down our verification support to the project. As the situation currently stands, DNV GL cannot issue a certificate upon the completion of the pipeline," DNV GL told ICIS on 12 January.

The latest sanctions target companies providing certification services necessary for the completion and operation of Nord Stream 2.

DNV GL is on the Danish construction permit so changing certification company would involve getting the Danish Energy Agency's approval. But likely also the Swedish, Finnish, German and Russian regulators' approval, which would likely further delay the start of commercial flows. "[Nord Stream 2] is very unlikely to find alternative certification company ready to brave sanctions because all such companies acceptable to regulators, even the Russian Maritime Register of Shipping, are involved internationally and so are vulnerable to US sanctions," said Morten Frisch, senior partner of UK-based Morten Frisch Consulting.

Major certification companies that could potentially replace DNV GL did not reply to confirm if they would consider certifying Nord Stream 2.

Cancellation possible?

Gazprom for the first time admitted a risk that the project may be cancelled under growing political pressure in a Eurobond prospectus in January, ICIS understands.

But experts say an arrangement could be found with the Biden administration as both the EU and Germany are keen to protect their reputation among investors.

Lagarde said Nord Stream 2's cancellation would have a double effect: First of all it would make investors "risk adverse" towards everything related to Russia and energy, at least for a while. Secondly, the EU would actively seek a way around US sanctions.

"There is a huge risk that Germany and the EU cannot show they can guarantee investors their investment is safe," the German source in government circles said. "Even politicians who are against the project, are in favour of countersanctions against Washington, because they see this risk and because they don't want Washington to interfere in European or German energy policy," the source said. Almost everyone in the German Economic Affairs and Energy Committee was in favour of countersanctions during the July meeting, the source added.

Compromise

Experts diverge when it comes to the possibility of a compromise between the new US administration and Germany.

"The language between the Biden administration and the EU in recent days has been positive," Lagarde said, noting that European Commission President Ursula von der Leyen declared that "after four long years, Europe has a friend in the White House".

Lagarde added that Trump and Pompeo's last days' policy was more led by the desire to leave the next administration with situations difficult to change. This means that even if the Biden administration is likely to want to cooperate more with the EU on Nord Stream 2, "it may find it difficult to make truce and not give the impression to go softer in front of Putin's Russia at the same time," Lagarde said.

The US bipartisan support for sanctions against Russia may also make a compromise difficult to reach. Both the House of Representatives and the Senate agreed to include sanctions against Nord Stream 2 in the National Defence Authorisation Act (NDAA) 2020, a key annual legislation setting out the US foreign policy guidelines and military budget. Both chambers reaffirmed their common stance in the NDAA 2021, which contains tougher sanctions against the pipeline.

"US foreign policy towards Russia will have no reason to be more conciliatory under Biden," said Michael Grossmann, managing partner at Tumbleweed Partners, a Paris-based energy consultancy. Grossmann recalled that Democrats hold Putin's Russia partly responsible for their 2016 electoral college defeat, and senate support for sanctions against Russia was a rare bipartisan issue in the Senate. "Biden's general desire to improve transatlantic relations would be the only factor that could change the American position, but the fallout from the Navalny poisoning affair makes it highly unlikely in the short term," he said.

Finally, German elections coming this September could change Germany's position if the Green Party came to power. The Green Party is opposed to the project although some say their stance could soften.

"[The Green Party] could eventually come around and support the project's ability to carry hydrogen as they realise the need for gas to replace coal and nuclear," a German source close to the matter said.

Grossmann, however, disagreed saying that a potential coalition between the Green Party and the CDU could postpone the project indefinitely.

"Even if it is physically possible to finish construction by then, the political risks coming from the US and from the destination market are sufficient for such a project not to take place," he said.

Diane Pallardy