

Nord Stream 2 certification hits, international and political roadblocks

Germany's energy regulator BNetzA on 16 December said the final decision on the certification of the Nord Stream 2 pipeline cannot be expected in H1 2022, which sent new bullish signals across European wholesale natural gas markets.

As the German regulator referred to the final decision on the pipeline's certification, the timeline broadly matches market expectations from earlier announcements.

Nevertheless, the Dutch TTF January '22 contract gained €3/MWh on the back of the news around 10:30am London time but receded before noon. Headlines around Nord Stream 2 certification process have been a major driver for European hubs amid low level of gas in storage sites. After reaching a new record high at Wednesday's close the TTF front month opened the Thursday session higher still, prior to the BNetzA announcement.

Initially, when the certification procedure started on 8 September, the deadline for BNetzA to make the final decision was 8 July. But the procedure was suspended in mid-November due to more administrative work and documents being required from the project's promoters.

As the procedure remains suspended since then, it was to be expected that the initial 8 July deadline could be pushed back to a later date next year.

Certification timeline

The German regulator has up to four months to make a draft decision on whether the pipeline is compliant with EU and German legislation.

With the procedure officially started on 8 September and having been suspended on 16 November, the German regulator will have roughly six weeks to make a draft decision once it resumes the procedure.

The German regulator BNetzA put the certification procedure on hold since 16 November because more administrative work and documents are required.

The section of the pipeline in German territorial waters is to be owned and operated by a Germany-based subsidiary of the entity that owns and operates the rest (and majority) of the pipeline.

When suspending the certification, BNetzA said that the new subsidiary must fulfil the unbundling requirements of an independent transmission operator (ITO) set out in the German Energy Industry Act.

According to this act, vertically integrated energy supply companies can name an independent transport network operator for a network connected to a third country for the section in German territorial waters, if the network was owned by the vertically

integrated energy supply company on 23 May 2019.

Senior fellow at the Centre for Eastern Studies Agata Loskot-Strachota said there may be a chance that BNetzA finds out that it cannot grant ITO status to the new subsidiary as neither the pipeline nor this subsidiary existed prior to 23 May 2019.

The certification procedure will resume once the creation of this subsidiary is complete and all required documents for this new entity have been submitted to BNetzA.

The suspension of the certification procedure could last several weeks to several months, according to industry experts.

There is currently no indication on when the procedure could restart. But a document sent by the German embassy in Washington to the US Congress in late November indicated that a draft decision could be made in March, followed by the European Commission issuing its position between May and July and the final decision made between July and September.

This already indicated expectations of delays well into the second half of next year, which was confirmed by the latest statement from BNetzA.

"BNetzA will not rush and will process all required documents so that later it will be more difficult for Poland to dispute the decision in court," said Igor Yushkov, an expert of the National Energy Security Fund and the Financial University under the government of the Russian Federation.

According to a [document sent by the German embassy](#) in Washington to Congress in late November, the procedure will be suspended presumably for two months. The document has a timeline showing BNetzA submitting its preliminary decision to the European Commission in March, the commission issuing its opinion between May and July and BNetzA making a final decision between July and September.

BNetzA told ICIS in mid-November that when the main assets and human resources have been transferred to the subsidiary and BNetzA is able to check whether the documentation resubmitted by the subsidiary is complete, it will resume its examination in the remainder of the four-month period.

After the German regulator makes its draft decision it must submit it to the commission.

The commission will then have two months, extendable by another two months, to issue an opinion on the regulator's draft decision.

Once the commission has issued its opinion, the German regulator has two months to make a final decision.

While the German regulator has to take into account the commission's opinion, it

does not have to follow it if it disagrees with it. The German regulator has the final word on whether to certify Nord Stream 2 compliant with EU and German legislation.

Ukrainian transit

Nord Stream 2's delayed launch might be also linked to [Germany's July commitment](#) to use all available leverage to facilitate an extension of up to 10 years of the Ukraine transit agreement with Russia.

Under the current transit deal Russia has committed to purchase 65 billion cubic metres (bcm) of transit capacity via Ukraine in 2020 and 40bcm/year in 2021-2024.

Sending more volumes via Ukraine is not commercially beneficial for Russia, Putin said in early October. In any case, the volumes and duration of any future transit deal would depend on several factors:

- EU gas demand, which is uncertain in the context of the energy transition
- EU companies' readiness to renew long-term contracts with Russia
- the competitiveness of transit tariffs proposed by Ukraine beyond 2024

ICIS calculated that Russia's long-term pipeline supply contracts with its 20 largest EU customers were set to fall to around 130bcm by 2030, down from around 176bcm in 2021.

If Europe wants Ukrainian transit to continue, then Europe must buy more Russian gas, more than what can be transported via the routes bypassing Ukraine, then Russia will be forced to send gas via Ukraine, Yushkov said. Since Germany pledged in July to help preserve transit in every possible way Russia will now say "you have pledged to help preserve transit, so buy more of our gas, this will be your contribution to preserving transit," Yushkov said adding that this is how he sees Russia's position.

The option of booking only via quarterly, monthly and daily auctions like for the Polish transit route may be attractive to Russia as it gives more flexibility, but less so for Ukraine which has a more extensive and older transit network to maintain than Poland and so might prefer longer-term guarantees of revenues.

Meanwhile, Wolfgang Peters, managing director at consultancy The Gas Value Chain, said Germany's July pledge is a best endeavour clause at best.

The European Commission's recent [proposal to reform the EU gas sector](#) to align it with the bloc's energy transition targets is, according to Peters, "another aspect which may make the respective politicians perhaps think twice" about promoting Ukrainian transit extensions.

continued on page 4

German parties approve 'traffic-light' coalition

The German "traffic-light" coalition which is likely to lead to a more green-focused attitude to energy policy could be sworn into office as early as 8 December, after the Social Democrats (SPD) and Free Democrats (FDP) decided to approve the coalition treaty at their party conferences on the weekend, with Green party members voting to approve the treaty on 6 December.

The agreement will see SPD leader Olaf Scholz become chancellor, with the Green party ministers responsible for key ministries overlooking German energy and climate change policy.

These include the Federal Ministry of Economics and Energy (BMWi), the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) and the German foreign office which the Green party leader Annalena Baerbock herself will be responsible for.

Coalition agreement

The parties agreed to "ideally" phase out coal and lignite power plants by 2030, eight years earlier than currently planned, with a review to exit coal envisaged for 2026 having its timeline accelerated to the end of 2022 at the latest.

The coalition also aims for an 80% share of renewables in the power grid by the end of the decade, with 200GW of installed solar capacity, at least 30GW of offshore wind capacity and 10GW of hydrogen electrolyser capacity.

The coalition provided some renewed support for natural gas, as they plan to construct new gas-fired power stations, alongside the expansion of renewables to meet growing electricity demand, as well as to ensure security of supply.

The coalition announced it will continue to exclude nuclear power from its plans, with no mention of policies regarding the

Nord Stream 2 pipeline and the development of LNG infrastructure.

Nord Stream 2

A key point of controversy in German and European politics for years has been the construction of the 55 billion cubic metre per year (bcm/year) Nord Stream 2 pipeline.

The pipeline certification process is currently suspended (see separate story) as regulator the Federal Network Agency (BNetzA) concluded that the certification of an operator of the Nord Stream 2 pipeline would only be possible if the operator was organised legally under German law.

This is not the case with current operator Nord Stream 2 AG, which is based in Zug, Switzerland, having opted instead to set up a German subsidiary under German law which has jurisdiction over the ownership and operation of the German section of the pipeline.

During the election campaign the SPD reaffirmed their support for the pipeline, however, the Greens called for a complete halt, with Baerbock arguing that it would be difficult to halt the project once gas begun flowing.

The FDP called for a moratorium on the pipeline and for a joint decision to be made on its future in the European parliament.

With the Greens in charge of both the German Foreign Office and Ministry of Economics and Energy, which directly oversees BNetzA, it casts a doubt on whether the pipeline will face further delays, or even go ahead at all.

Nord Stream 2 certification hits, international and political roadblocks

continued from page 3

A ban on long-term supply contracts for unabated fossil gas lasting beyond 2049 is included in the reform proposed by the commission on 15 December. According to Gazprom, sending 55bcm via Nord Stream 2 will save almost 9 million tons of CO₂ emissions/year compared to sending the same volume via Ukraine, while an independent [study from DBI](#) shows it will save 11 million tons of CO₂/year.

Political tension

Tensions between Ukraine and Russia worsened amid a recent military build-up near their common border.

On 16 December, the European Parliament passed a resolution with a vast majority condemning the Russian military build-up and urging that Nord Stream 2 should not be made operational, regardless of whether it complies with EU legislation.

On 7 December, the US president's national security adviser Jake Sullivan said in a [White House press briefing](#) that "the future of Nord Stream 2, in the context of an invasion of Ukraine by Russia in the coming weeks, is a topic of utmost priority."

During the G7 summit, on 12 December, Canada, France, Germany, Italy, Japan, the UK and the US said in a [joint statement](#) that "Russia should be in no doubt that further military aggression against Ukraine would have massive consequences and severe cost in response," without further details.

On the same day, Germany's new foreign minister Annalena Baerbock clearly indicated one possible consequence saying on German TV that in the event of further escalation, the Nord Stream 2 pipeline would not be able to proceed.

But there is no consensus on this among EU member states, as Austrian foreign minister Alexander Schallenberg indicated ahead of the EU Council meeting of 13 December saying the pipeline is finished and we should start using it. Austrian utility OMV is one of the six investors in Nord Stream 2, Germany's Uniper and Winterhall also invested in the project.

Baerbock and her party - the Greens - criticised the pipeline in the past. Now the Greens are in the new German coalition and occupy key government positions like the foreign ministry (Baerbock) and the energy and economy ministry (Robert Habeck). These positions could affect the future of the pipeline. BNetzA is supposed to be independent of government in its certification decision, but foreign policy can dictate what is bought from whom through the use of sanctions, said Michael Grossmann, managing partner at Paris-based energy consultancy Tumbleweed Partners.

A source in German government circles told ICIS that the Greens will probably do their best to prevent the pipeline's commissioning, and even if the certification was approved once all requirements are met, the pipeline's launch may be postponed because of the situation in Ukraine or elsewhere.

Diane Elijah and Amjad Khashman