Warsaw, 19 October 2021

PRESIDENT
ENERGY REGULATORY OFFICE
Rafał Gawin, Ph.D.

DRG.DRG-1.070.124.2021.TA

Mr.
Uwe Schroeder-Selbach
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Dear Mr. Schroeder-Selbach,

In response to your e-mail of 28th September, 2021 concerning the Consultation on potential security of supply risks related to the certification of Nord Stream 2 AG, please find enclosed position of the President of Polish Energy Regulatory Office.

Sincerely yours
Rafał Gawin

Appendix

1. Position of the President of Polish Energy Regulatory Office

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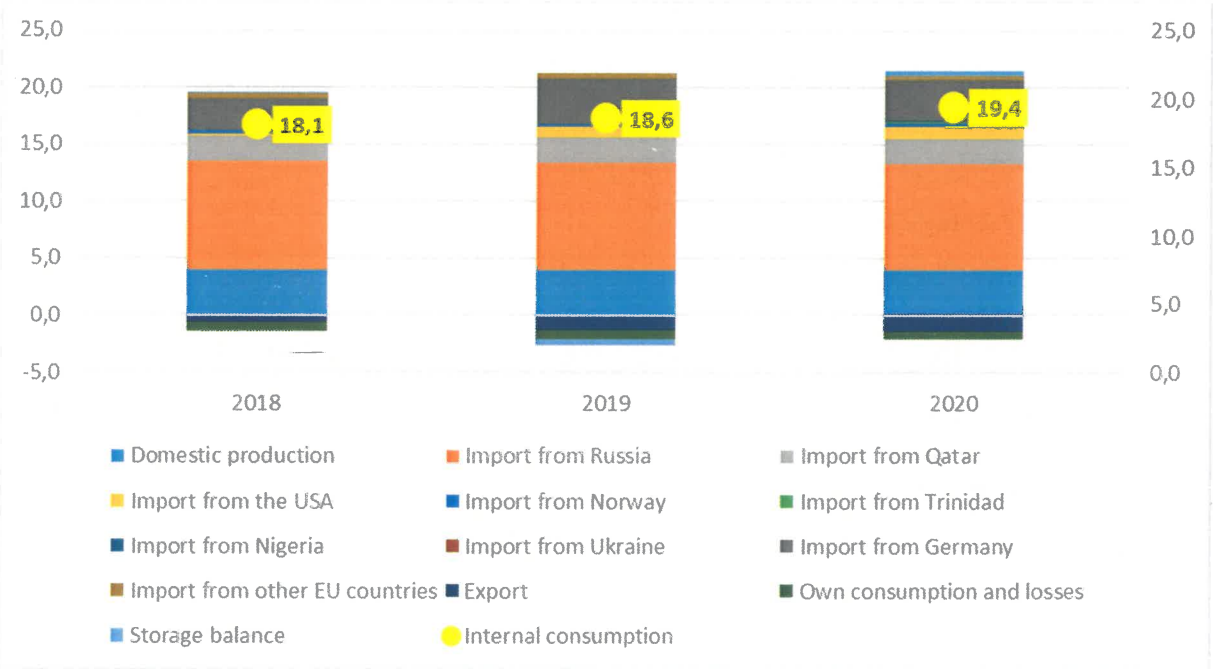
Which import and transit routes for natural gas is your country using currently and in the future (including for LNG), in relation to consumption, domestic production, imports and exports of natural gas?

I. Polish market

1. Natural gas balance – consumption, import, export.

Polish market is supplied mostly by imports, mainly from Russia, European Union, Qatar, USA, and internal production. Despite COVID-19 pandemic, total consumption grew by 4,43% to approx. 19,4 bcm (assuming 10,972 kWh/m³ conversion factor).

Natural gas consumption and sources [bcm]



Source: Calculations based on „Sprawozdanie z wyników monitorowania bezpieczeństwa dostaw paliw gazowych za okres od dnia 1 stycznia 2020 r. do dnia 31 grudnia 2020 r." (access 2021-10-11),[1] „Sprawozdanie z wyników monitorowania bezpieczeństwa dostaw paliw gazowych za okres od dnia 1 stycznia 2019 r. do dnia 31 grudnia 2019 r." (access 2021-10-11).[2]

Please note that this chart presents net imports from Russia and **does not include transit of Russian gas to Germany via Yamal pipeline**, which is presented below. It also

[1]https://bip.mos.gov.pl/fileadmin/user_upload/bip/Energetyka/Sprawozdania_z_wynikow_monitorowania_bezpieczenstwa_dostaw_paliw_gazowych/1._Sprawozdanie_MKIS_z_monitorowania_bezpieczenstwa_dostaw_paliw_gazowych_za_2020.pdf

[2]https://bip.mos.gov.pl/fileadmin/user_upload/bip/1_Sprawozdanie_z_wynikow_monitorowania_bezpieczenstwa_dostaw_paliw_gazowych_za_okres_od_dnia_1_stycznia_2019_r._do_dnia_31_grudnia_2019_r..pdf

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includes customers' consumption (through TSO and DSO grids) supplied directly from production facilities, which is not included below, in Polish NRA and TSO data.

Natural gas is produced mostly in south-eastern (H-gas) and western Poland (mostly L-gas, partially denitrated and upgraded to H-gas). Two denitration facilities are located in Grodzisk Wielkopolski and Odolanów.

Gas imported from Russia is delivered to four points on Poland's eastern border:

- Kondratki (PL-BY, Yamal-Europe pipeline entry point),
- Wysokoje (PL-BY),
- Tietierowka (PL-BY, delivery to a local gas grid),
- Drozdowicze (GCP Gaz-System/UA TSO) (PL-UA).

Gas imported from Germany and other EU countries is delivered to three points:

- Mallnow (PL-DE, Yamal-Europe pipeline reverse flow),
- Gaz-System/Ontras GCP (PL-DE),
- Cieszyn (PL-CZ).

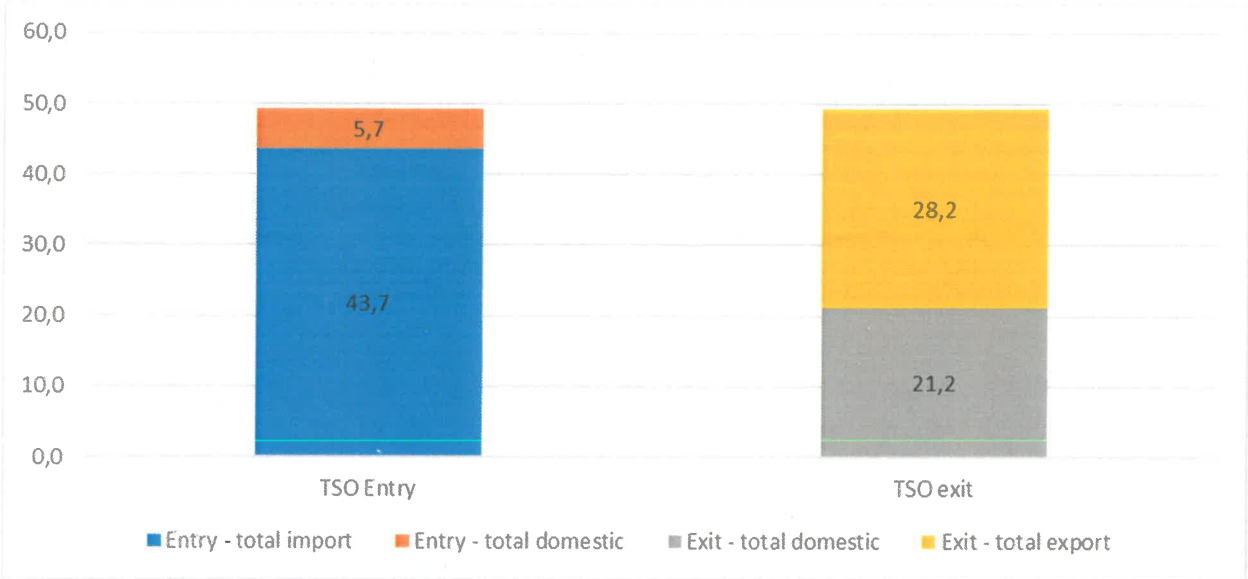
All LNG imports are delivered to LNG Terminal in Świnoujście (deliveries from Qatar, USA, Norway, Trinidad and Nigeria).

Exports to Ukraine flows through Hermanowice point (PL-UA), merged with Drozdowicze entry point into virtual point (GCP Gaz-System/UA TSO).

Apart from gas delivered into the Polish market, substantial amount of gas is transported to Germany via Yamal-Europe pipeline, which 685 km section crosses Poland from Kondratki to Mallnow. The pipeline capacity from Eastern direction is approx. 33 bcm per year at Kondratki entry point, of which approx. 2,9 bcm is used to deliver gas to Poland via PWP exit point (connection point between Yamal pipeline and Polish transmission system). Yamal pipeline is also being used to supply Polish market via virtual and physical reverse flow on Mallnow point. That gas also enters Polish transmission system via PWP point.

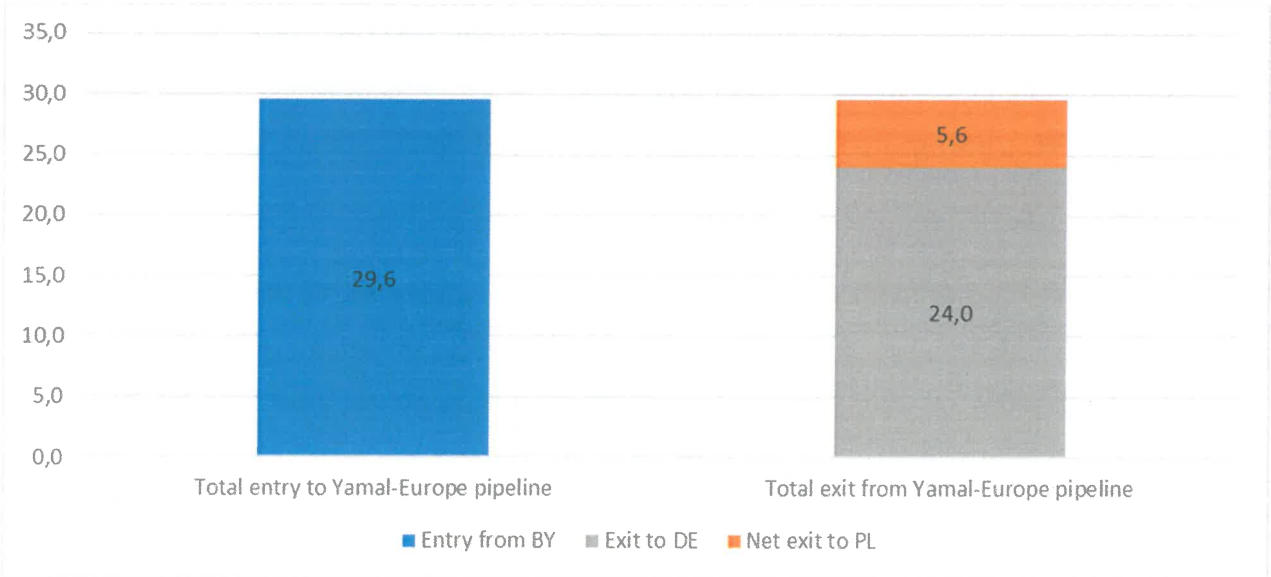
Flows through Polish gas grid are presented below. Please note that it may differ from data presented above, as it includes only flows through TSO-operated grids and is based

on OGP Gaz-System S.A. and SGT EuRoPol Gas S.A. data. Out of 43,7 bcm transported in 2020, 28,2 bcm was exported, majority of which was transited through Yamal pipeline.



Source: Sprawozdanie z działalności Prezesa Urzędu Regulacji Energetyki w 2020 r., table 67, p. 185 (access 2021-10-11).[3]

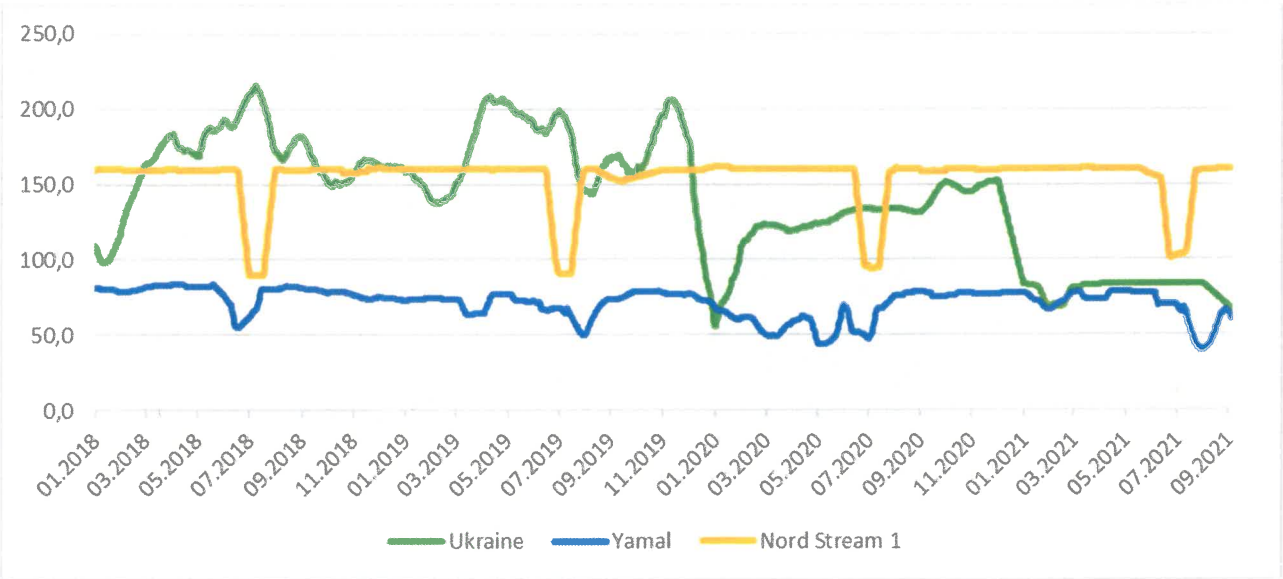
Flows through Yamal pipeline in 2020 are presented below. The pipeline plays a major role in natural gas transit from Russia to Germany and further to Western Europe. [bcm]:



Source: Calculation based on OGP Gaz-System S.A data.

Flows through Yamal pipeline in comparison to other transit routes used by Gazprom is presented below [mcm/d, 30-day moving average]:

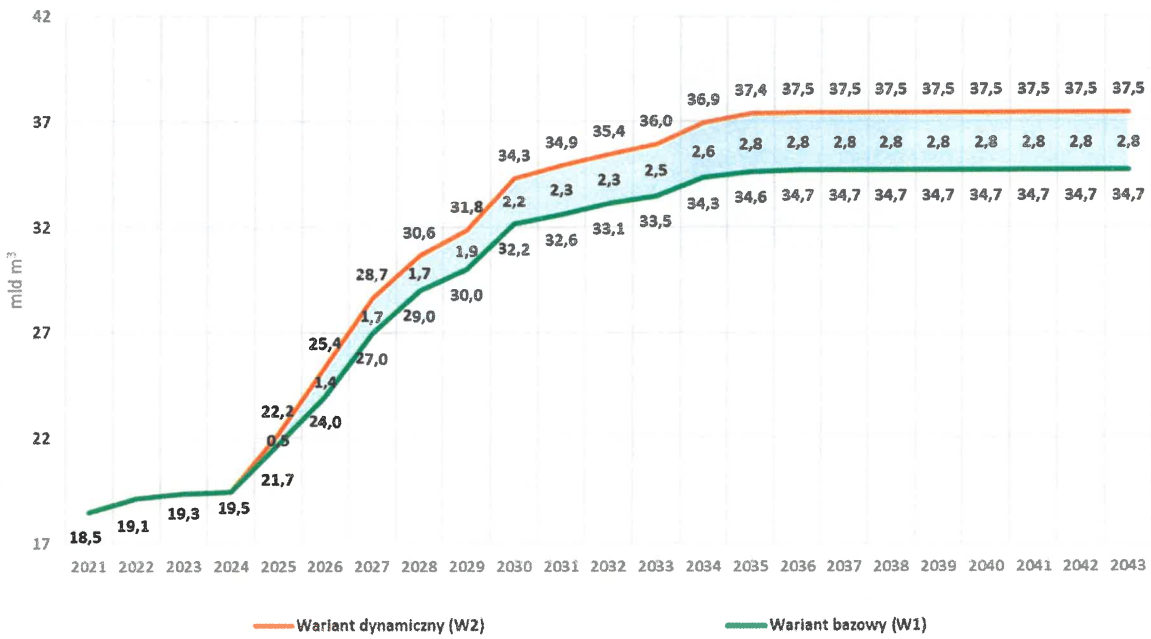
[3] https://bip.ure.gov.pl/download/3/13451/Sprawozdanie2020.pdf



Source: Calculation based on TSO's data.

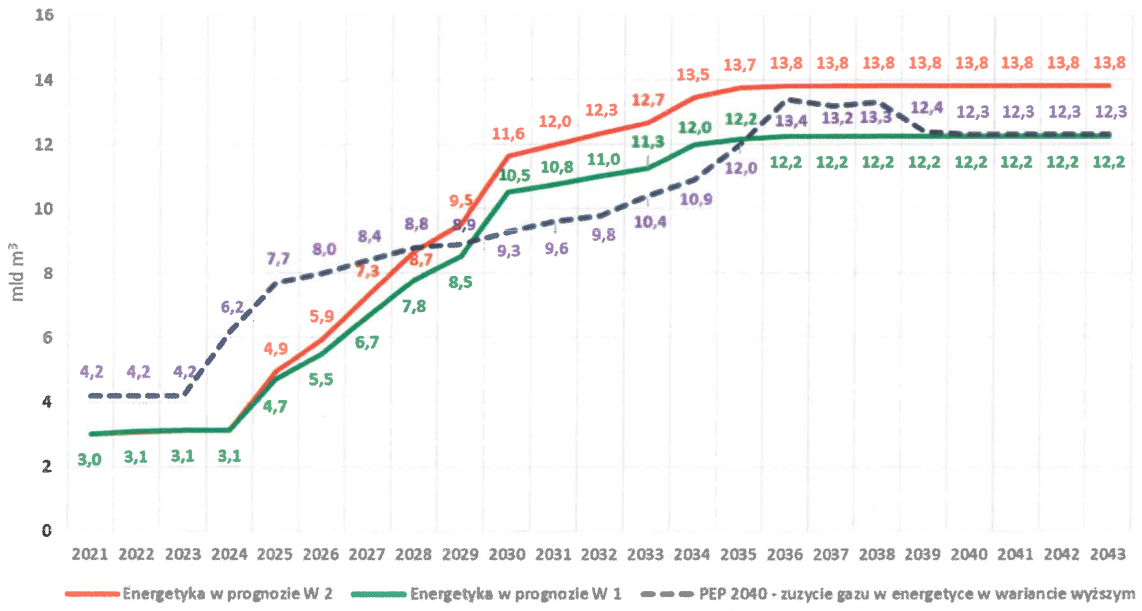
2. Future market development.

It is expected that the Polish gas market will grow as a result of energy transition that leads to massive investments in energy sector, driven by major increase of the gas fired power plants in Polish electricity system. Predictions regarding the future gas consumption in Poland have been presented in the TSO OGP Gaz-System's Ten Years Development Plans which is currently under public consultations (green line – base forecast [W1], orange line – dynamic growth forecast [W2]; all data in bcm):



Source: Krajowy Dziesięcioletni Plan Rozwoju Systemu Przesyłowego. Plan rozwoju w zakresie zaspokojenia obecnego i przyszłego zapotrzebowania na paliwa gazowe na lata 2022-2031. Część A. Wyciąg do konsultacji, chart 1, p. 15 (access: 2021-10-11).[4]

The Plan also includes comparison of energy sector consumption growth with recently adopted Polish Energy Policy until 2040 [PEP2040], where PEP forecast is shown as a dashed purple line:



Source: Krajowy Dziesięcioletni Plan Rozwoju Systemu Przesyłowego. Plan rozwoju w zakresie zaspokojenia obecnego i przyszłego zapotrzebowania na paliwa gazowe na lata 2022-2031. Część A. Wyciąg do konsultacji., chart 2, p. 16 (access: 2021-10-11).[5]

Please note that both charts above only include natural gas flows through TSO's grid.

3. Capacity booking on major transit routes.

It needs to be noted that Gazprom, who is *de facto* the only possible buyer of capacity at Kondratki point, did not take part in capacity auction on June 5th, where firm capacity products for gas years 2021/2022, 2022/2023, 2023/2024, 2024/2025 and 2025/2026 were offered, and, as a result, no capacity has been sold:

[4] https://www.gaz-system.pl/fileadmin/centrum_prasowe/Aktualnosci/20210413_KDPR_2022_2031_wyciag_do_kosultacji.pdf

[5] https://www.gaz-system.pl/fileadmin/centrum_prasowe/Aktualnosci/20210413_KDPR_2022_2031_wyciag_do_kosultacji.pdf

Auction ID	Status	End date	EIC code	Point name	Product					Surcharge	Direction	Operator	Bids sum	Free cap	Operations
					Capacity	Period	Capacity type	Tariff	Type						
654790	Finished (1.0)	2021-07-05 12:00	21Z0000000000066	SGT Kondratki	34 071 510	2021-10-01 06:00 2022-10-01 06:00	Firm	0.0014292	Y	0	Entry	GAZ-SYSTEM ISO		34 071 510	
634791	Finished (1.0)	2021-07-05 12:00	21Z0000000000066	SGT Kondratki	24 330 600	2022-10-01 06:00 2023-10-01 06:00	Firm	0.0014292	Y	0	Entry	GAZ-SYSTEM ISO		24 330 600	
634817	Finished (1.0)	2021-07-05 12:00	21Z0000000000066	SGT Kondratki	24 330 600	2023-10-01 06:00 2024-10-01 06:00	Firm	0.0014292	Y	0	Entry	GAZ-SYSTEM ISO		24 330 600	
634762	Finished (1.0)	2021-07-05 12:00	21Z0000000000066	SGT Kondratki	24 330 600	2024-10-01 06:00 2025-10-01 06:00	Firm	0.0014292	Y	0	Entry	GAZ-SYSTEM ISO		24 330 600	
634801	Finished (1.0)	2021-07-05 12:00	21Z0000000000066	SGT Kondratki	24 330 600	2025-10-01 06:00 2026-10-01 06:00	Firm	0.0014292	Y	0	Entry	GAZ-SYSTEM ISO		24 330 600	

Showing 1 to 5 of 5 entries

Show 10 entries

Source: GSA Platform, auction for Kondratki entry point on July 5th 2021 (access: 2021-10-11).

Gazprom also did not participate in quarterly product auction on August 2nd, which was also closed without any booking:

Auction ID	Status	End date	EIC code	Point name	Product					Surcharge	Direction	Operator	Bids sum	Free cap	Operations
					Capacity	Period	Capacity type	Tariff	Type						
649452	Finished (1.0)	2021-08-02 12:00	21Z0000000000066	SGT Kondratki	38 351 203	2021-10-01 06:00 2022-01-01 06:00	Firm	0.0015721	Q	0	Entry	GAZ-SYSTEM ISO		38 351 203	
649487	Finished (1.0)	2021-08-02 12:00	21Z0000000000066	SGT Kondratki	38 351 203	2022-01-01 06:00 2022-04-01 06:00	Firm	0.001603	Q	0	Entry	GAZ-SYSTEM ISO		38 351 203	
649485	Finished (1.0)	2021-08-02 12:00	21Z0000000000066	SGT Kondratki	38 351 203	2022-04-01 06:00 2022-07-01 06:00	Firm	0.001603	Q	0	Entry	GAZ-SYSTEM ISO		38 351 203	
649484	Finished (1.0)	2021-08-02 12:00	21Z0000000000066	SGT Kondratki	38 351 203	2022-07-01 06:00 2022-10-01 06:00	Firm	0.001603	Q	0	Entry	GAZ-SYSTEM ISO		38 351 203	

Showing 1 to 4 of 4 entries

Show 10 entries

Source: GSA Platform, auction for Kondratki entry point on August 5th 2021 (access: 2021-10-11).

Gazprom has booked only 1/3 of offered capacity in auction organized in October 2021 for firm capacity auction, with very limited bids for approx. 1/3 of offered capacity:

Auction ID	Status	End date	EIC code	Point name	Product					Surcharge	Direction	Operator	Bids sum	Free cap	Operations
					Capacity	Period	Capacity type	Tariff	Type						
661923	Finished (1.0)	2021-09-20 12:00	21Z0000000000066	SGT Kondratki	38 351 203	2021-10-01 06:00 2021-11-01 06:00	Firm	0.001858	Q	0	Entry	GAZ-SYSTEM ISO	13 521 200	24 830 003	

Showing 1 to 1 of 1 entries

Show 10 entries

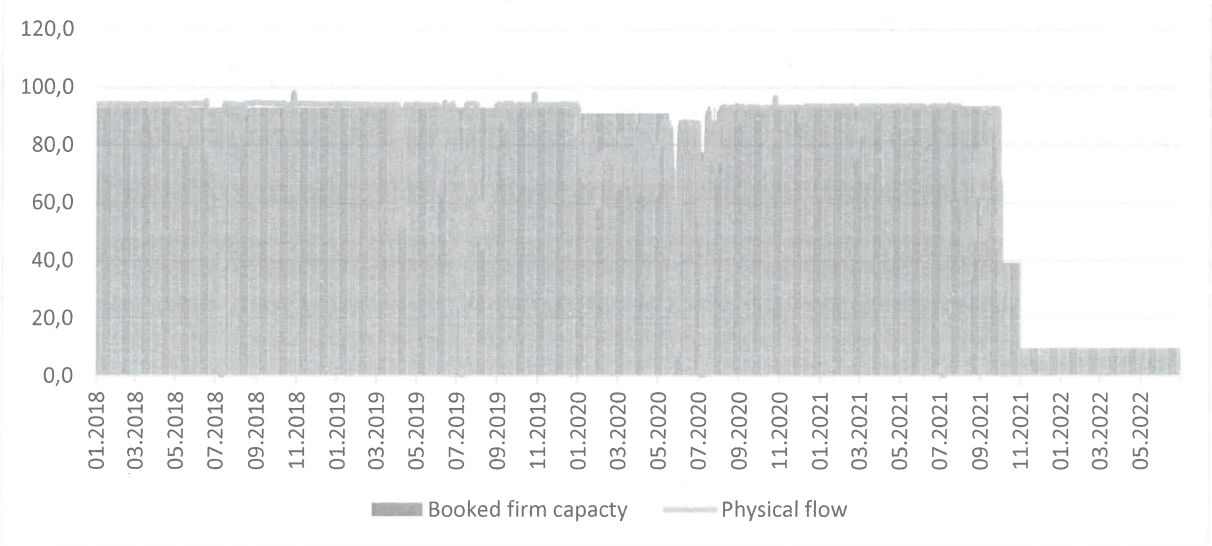
Basing on Argus data for October 2021 auctions on other points, used by Gazprom for transit and delivery to its customers, Gazprom is clearly reluctant to book additional capacity, even though there is a large capacity available and European market prices are extremely high:

Russian export route monthly bookings, Oct	Booked	Offered
Through Ukraine (mn m³/d)		
Sudzha (entry)	0.0	9.8
Sokhranovka (entry)	0.0	5.2
Poland-Ukraine GCP (exit)	1.8	2.7
Poland-Ukraine GCP (Polish entry; GWh/d)	13.6	13.6
Bereg VIP (exit)	0.5	19.3
Bereg VIP (Hungarian entry; GWh/d)	26.9	490.7
Oleksiivka (exit)	0.0	5.9
Virtual exit point to Moldovan customers (entry)	0.0	0.5
Kaushany (entry)	0.0	26.8
Grebynyky (exit)	0.0	22.5
Through Turkish Stream/linked to Turkish Stream flows (GWh/d)		
Strandzha-2 (entry)	0.0	52.0
Negru Voda (bundled; to Romania)	57.5	153.8
Kulata (bundled; to Bulgaria)	0.0	0.6
Other – not Russian export routes (GWh/d)		
Dravaszerdahely (bundled; to Hungary)	2.4	51.7

– RBP, GSA platform

Source: Gazprom books little extra capacity to Europe. Argus Media, 2021-09-21 (access: 2021-10-11).[6]

As a result, flows through Kondratki entry point were reduced significantly, starting from October 1st [mdm/d]:

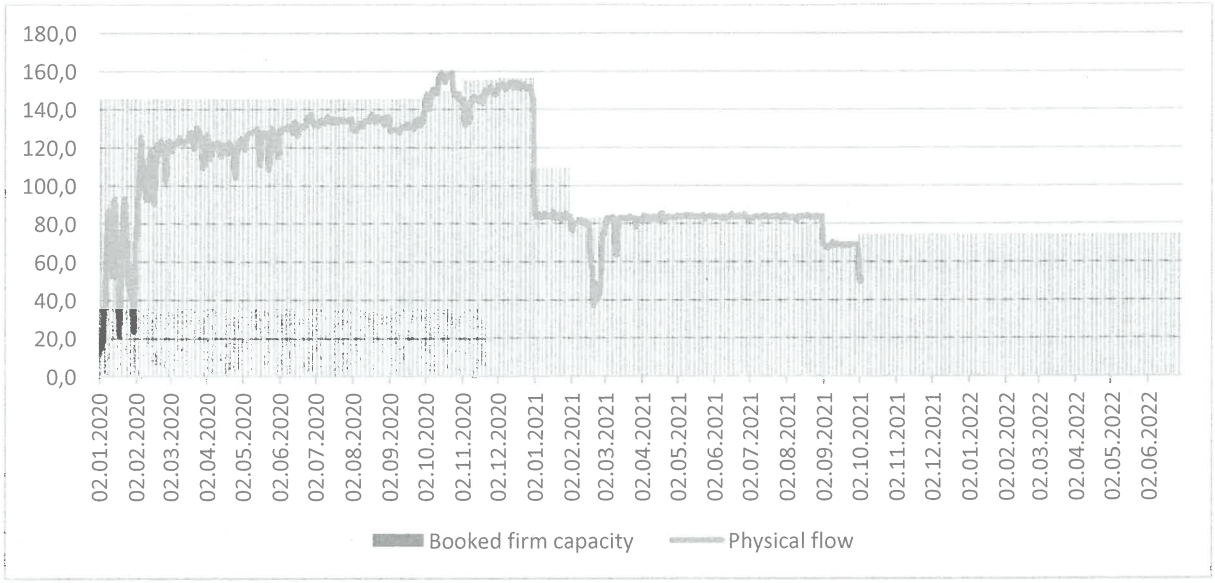


Source: Calculations based on ENTSO-G data.

The same pattern was observed on Sudzha entry point, which is major entry for Russian transit flows into Ukraine. Gazprom booked a fraction of firm and interruptible capacity

[6] https://direct.argusmedia.com/newsandanalysis/article/2255906

offered by OGTSU. As a result, flows are basically in line with long term commitments from December 2019 transit agreement (transit of 60 bcm GOST in 2020 and 40 bcm GOST in 2021-2024, equally divided on each day of a year). Sharp reduction was observed in January 2021 [mdm/d 10,972 kWh/m3]:



Source: Calculations based on ENTSO-G data.

II. Ukrainian market

The issues raised in question no. 1 in relation to the Ukrainian market are presented in the attached document of 13th October 2021, prepared by the Ukrainian NRA – National Energy and Utilities Regulatory Commission (NEURC) - *vide* pages 1-4 of NEURC's letter. An argument that Nord Stream 2 with capacity of 55 bcm/year *de facto* will replace the Ukrainian transmission system with a capacity of 146 bcm/year deserves special attention.

Which effects and risks for the security of supply of the EU and your country would you expect from the operation of such an additional import capacity, where the pipeline is operated by a TSO which is controlled by an entity in a third country, more specifically the Russian Federation?

1. **Regulatory framework.**

Article 11 para. 3 let. b of Gas Directive[7] states clearly that *the regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months from the date of notification by the transmission system operator. It shall refuse the certification if it has not been demonstrated to the regulatory authority or to another competent authority designated by the Member State that granting certification will not put at risk the security of energy supply of the Member State and the Community.* Additionally, it is pointed out *that in any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State (article 11 para. 8).* Obviously, abovementioned provisions were reflected in the relevant regulations in the German law.

2. **The principle of energy solidarity.**

The Lisbon Treaty strengthened the cooperation between Member States in the energy area. Article 194 (1) of Treaty on the Functioning of European Union (hereinafter: **"TFEU"**) defined the framework for development of energy sector within the Community based on the spirit of solidarity between Member States.

Article 194 TFEU

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

a) ensure the functioning of the energy market;

b) ensure security of energy supply in the Union;

[7] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

c) *promote energy efficiency and energy saving and the development of new and renewable forms of energy; and*

d) *promote the interconnection of energy networks.*

The Court of Justice of the European Union clarified[8] the recognition of the principle of energy solidarity as a general rule which belongs to EU primary law. It does not require any further implementation into secondary law – it is directly applicable due to its status of general EU principle.

The principle of energy solidarity should be understood as an obligation imposed on Member States and European Union to assess whether specific decision does not harm energy interest of other Member States or European Union as a whole. These interests need to be assessed and balanced in case where significant differences exist (so-called energy solidarity test).

The principle of energy solidarity directly impacts each decision made by Member States or EU bodies relating to natural gas sector. There is no doubt that certification process of Nord Stream 2 AG should be proceeded in accordance with that general rule. EU Treaties are directly applicable which means that both BNetzA and BMWi need to take the principle of energy solidarity into consideration within their decision-making process.

3. Security of supply in the context of energy solidarity.

Article 11 of Gas Directive focuses on concerns regarding security of supplies, as it has been decided by the EU legislators that certification of operators from third countries needs to be a subject to the more detailed, case-by-case assessment. However, it is important to emphasise that the impact of the specific decision on the security of supply of each Member State shall be considered as an obligatory part of the assessment. The Gas Directive, as well as German national legislation which transposes article 11 of Gas Directive, should be applied and interpreted consistently with the principle of energy solidarity reflected in art. 194 (1) TFEU.

As it stems from the TFEU and from the Gas Directive , German authorities responsible for certification process (BNetzA and BMWi) shall take into account the interest of the

[8] Case C-849/19 P Germany vs Poland.

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Republic of Poland in the process of Nord Stream 2 AG certification. The examination process needs to follow the principle of the energy solidarity referred to in the Article 194 of TFEU and be applied within the procedure referred to in Article 11 of Gas Directive. In particular, regulatory authorities need to perform the energy solidarity test which covers also the obligation to take into account the interest of other Member States (including the Republic of Poland) and balance them in case of any differences. This step is mandatory for each and every authority both at the national and EU level.

Secondly, the scope of the examination should focus on security of energy supplies, but also other factors defined in art. 194 (1) TFEU – such as functioning of internal energy market, should be taken into account. The principle of energy solidarity should cover not only the security of supplies from the perspective of physical gas flows (including utilisation of Yamal and Brotherhood pipelines), but also the impact on internal energy market. It is important to emphasise that recent Gazprom actions have negative impact on the functioning of the whole internal energy market and also specifically on Polish and German markets.

4. ITO certification breaches the EU *acquis* and endangers the security of supply to European Union and Member States.

The relevant assessment of transmission system owner or a transmission system operator controlled by a person or persons from a third country or third countries depends individually on both the third country concerned as well as the level of state control of a given company. In case of Nord Stream 2 AG, the control by state-owned entity (Gazprom) established in the Russian Federation creates particularly high risks for the security of supply. In particular the history of gas crisis triggered by this country and this particular entity, and current manipulations on gas market (incl. price manipulations) breaching the EU competition and market rules need to be taken into account. In such circumstances the most important risk is that both the transmission system (Nord Stream 2 pipeline) and the product (natural gas) are in the hands of one entity, i.e. Gazprom.

Gazprom has been the major gas exporter to the European Union. Having significant market power, Gazprom is in position to singlehandedly jeopardize the security of gas supplies of certain Member States, regions and even the whole European Union. This statement is substantiated by the other disruptions which took place in the past. Gas deliveries disruptions caused by the Gazprom in 2009 abruptly disrupted the gas markets

in several Member States and posed an existential threat for many households in the European Union. These events were the main reason behind a quick reaction on the EU level resulting in the enactment of regulation concerning measures to safeguard security of gas supply.[9] It was not the only time when flows of gas from the Russian Federation were disrupted. Disruptions of supplies happen regularly. It suffices to mention that gas supplies disruptions to Poland took place in 2004, 2006, 2009, 2014-2015 or 2017.

Particular concern needs to be given to the historical attempts of Russian Federation/Gazprom to reap benefits from the gas shortages or market manipulations. Supplies of additional volumes to Poland, essential for securing gas deliveries to Polish customers, were made conditional subject to financial benefits and gaining control over Polish section of Yamal pipeline. The history of abuses committed on the Polish gas market was described in details by the European Commission in its statement of objections against Gazprom.[10] Bulgaria witnessed similar practices consisting of making gas supplies conditional upon obtaining infrastructure-related commitments. The objections issued by the Commission are a clear example that Gazprom, the sole shareholder of Nord Stream 2 AG, repeatedly intermingled its activities as gas supplier with the role of the owner or operator of infrastructure. Regardless of the unbundling requirements, Gazprom seems to perceive gas supplies and infrastructure related operations as one and the same activity. Against this background, EU regulations adopted in order to address distortion linked to vertical integration need to be strictly applied to companies such as Gazprom and its subsidiaries. Any deviations in this regard will hamper the functioning of the EU gas internal market and will be a clear violation of the EU rules.

Gazprom is a state owned company controlled by the Russian Federation. Therefore, the actions of Russian government and Gazprom are closely coordinated in terms of means and goals to be achieved. Gazprom is the mere reflection of the political will of the Russian government. To prove this point it suffices to analyse the configuration of members of the Board of Directors of Gazprom – the main executive body of this company. Among its 11 member, representatives of Russian government play prominent roles. Minister of Energy

[9] Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, OJ L 295, 12.11.2010, p. 1–22.
[10] https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_4829

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of the Russian Federation, Deputy Prime Minister of the Russian Federation, Minister of Industry and Trade of the Russian Federation or Russia's Special Presidential Representative for Cooperation with the Gas Exporting Countries Forum are all members of the Board of Directors of Gazprom. In such set-up, both the company and the government are inclined to use the second party in order to strengthen their actions on respectively commercial or political level. Therefore, the Russian Federation directly influences all of the important activities of the company. Subsequently, any activities of Nord Stream 2 AG, should it persist as a member of vertically integrated company, act in accordance with their political need and disrupt the supplies to the EU. In other case, the company, in case of significant commercial disputes between Gazprom and its customers, will be in good position to put unlawfully political pressure. Any political tensions between Russia and the EU or any Member States might result in such practices as limiting the gas flows through the Nord Stream 2, and in consequence will pose a significant threat to the EU energy security and safety of its citizens. Therefore, it is of crucial importance to ensure full ownership unbundling of Nord Stream 2 AG which would alleviate this risk of political interference from third country into the functioning of gas import routes to the EU.

Risks described above are not just issues of the past. On the contrary, they can be observed even currently, exacerbated by the huge spike in gas prices taking place in recent weeks. The unprecedented increase in gas prices might be, at least partially, caused by the unilateral conduct of the Russian Federation.

Nord Stream 2 AG certification in the ITO model strongly endangers security of gas supplies, but also leads to infringement of the principle of energy solidarity. The process of ITO certification can be handled only in case where the entity which controls transmission system operator does not generate any threats for security of gas supplies and efficient functioning of energy markets. It is clear that specific regulation included in Article 11 of Gas Directive was purposely dedicated to ensuring that only companies controlled by reliable partners from third countries should be enabled to cooperate in the process of internal energy market construction. The transmission system is a backbone of the EU energy market bringing benefits to all Europeans – gas companies, member states and their citizens. The reliability of transmission system, with special regard to import pipelines between European Union and third countries is essential for the

stabilisation of EU economies and energy markets as well as for the sustainable energy transition towards climate targets.

Gazprom recent actions has shown that the dominant gas supplier is able to undertake actions which strongly influence security of gas supplies or European gas and energy prices. Gazprom has generated multiple market signals which negatively influenced energy market in Poland and other Member States. First of all, Gazprom does not offer gas contracts for 2022 and removed the offer from its own internet auctioning platform. Gazprom representatives clearly stated that only long-term contracts can secure its contracting parties, which is contrary to the assumptions of internal gas market which base on short-term, liquid products.

Secondly, Gazprom did not book annual transmission capacities at the Yamal and Brotherhood pipelines. It decided to book 1/3 of Yamal capacity, but only within the frame of monthly products which are more expensive than yearly. It additionally generated unease in market reactions and strongly increased gas prices on the European markets. It also creates a strong risk that the Polish transmission system operator will be obliged to deal with sunk costs – i.e. operation on the infrastructure which will not be utilised due to anticompetitive behaviour of one market participant, i.e. Gazprom.

Thirdly, we observed that Gazprom injected significantly lower volumes of gas into underground gas storages controlled by that entity and located mainly in Germany. It generated additional, negative impact on investors and gas traders because of decreasing level of security.

All these factors have led to current problems which can be observed on wholesale and retail markets. Gazprom generated strong price increase which has already been observed on the price peak at the wholesale market. The certification of Nord Stream 2 pipeline will probably increase that problem because Gazprom will be able to impact European markets even stronger. The price arbitrage and abuse of its dominant position on the EU market as a whole (not only on certain national markets, as described in Commission's case AT.39816 Upstream supplies to Central and Eastern Europe) is a powerful tool which will be available to Gazprom in case of ITO certification of Nord Stream 2 AG. The increased influence on specific gas route will ensure Gazprom that it can

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act in contrary to market needs in order to reach particular goals. This strategy is confirmed in the statements of Alexander Novak[11] and Dmitry Peskov[12].

Gazprom impact on current crisis related to enormous gas prices was raised by Members of the European Parliament calling the European Commission to investigate Gazprom's price manipulations.[13] At the same time, Spanish Minister for the Economy and Digital Transformation, French Minister for the Economy, Finance and the Recovery, Czech, Greek and Romanian Ministers of Finance in their common statement urged the EU to reduce its dependency on gas exporting countries as fast as possible.[14] The Russian Federation with its significant gas reserves and production capacities can easily interfere with the price levels in the EU. In any event, leveraging of this position threatens the goals of European Energy Union, including energy transition, as well as poses risk for the smooth economic development of the European Union depending on energy prices. The EU and member states need to seek for the actions aimed at lowering impact of the Russian Federation, and the correct implementation of the Gas Directive to the Nord Stream 2 pipeline could be a first step towards this direction.

The current situation on the European gas market strongly justifies concerns regarding security of gas supplies to the Republic of Poland. The predicted decrease of Yamal pipeline utilisation (as the result of ITO model certification) will lead to additional costs for the functioning of transmission system operator in Poland. The possible impact of the Nord Stream 2 needs to be assesses also in the context of dropping gas transit through Ukraine (the Brotherhood pipeline). Significant part of south-eastern Poland strongly relies on gas supplies via Drozdowicze interconnection point (PL-UA IP) - this issue will also be discussed in point 5 below. In case of significant decrease of gas transit through Ukraine, the gas supplies to these end users (including to protected customers within the

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[11] https://www.reuters.com/world/europe/europe-made-mistake-ditching-long-term-gas-deals-putin-2021-10-06/

[12] Kremlin: Nord Stream 2 start will help cap gas prices in Europe

[13]https://www.reuters.com/business/energy/group-eu-lawmakers-seeks-probe-gazproms-role-gas-price-surge-2021-09-17/

[14]https://www.minfin.gr/en_US/web/guest/deltia-typou/-/asset_publisher/4kjvD0lBldee/content/d-t-koine-delose-ton-ypourgon-oikonomikon-tes-ispanias-tes-gallias-tes-tsechias-tes-elladas-kai-tes-roumanias-gia-tis-times-sten-agora-energeias?inheritRedirect=false&redirect=https%3A%2F%2Fwww.minfin.gr%2Fen_US%2Fweb%2Fguest%2Fdeltia-typou%3Fp_p_id%3D101_INSTANCE_4kjvD0lBldee%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1

meaning of the Regulation 2017/1938) may be endangered. The fact that one of the inherent elements of security of supply is fair price cannot be overlooked.

Back in 2007 the European Commission embarked on the two-pronged strategy to liberalise energy markets. First of the prongs consisted of adopting further regulations, exemplified by third energy package. EU competition law enforcement was the second prong of this strategy. While investigating the compliance of practices on the energy market with art. 101 or 102 TFEU, the Commission frequently found examples of using transmission systems by vertically integrated undertakings to the detriment of competition on the internal market. Manipulating the costs of the transmission system utilization leading to margin squeeze on the downstream market was one of the objections issued by the European Commission.[15] Some of the commitments adopted in order to address the competition concerns expressed by the European Commission resulted in ownership unbundling of the transmission system.[16] Nevertheless, the European Commission perceived regulatory framework as a better way to introduce structural changes such as ownership unbundling in the energy sector.[17] Therefore, in order to *ex ante* prevent market distortions related to operating transmission systems in a manner harmful to the competition on internal market, the relevant requirements in Gas Directive have to be met. Only strict compliance with both letter and spirit of the unbundling rules envisaged in Gas Directive would protect gas internal market from tariff manipulations, margin squeezes or market segmentation, which could be deployed by vertically integrated undertakings, such as Gazprom and Nord Stream 2 AG, specifically in ITO model sought by Gazprom.

Russian Federation still remains very important and natural source of supplies for the region (up to 1/3 of imported gas). Mentioned certification as it stands causing significant accumulation of powers and functions in hand of an entity influenced by Russian Federation may disrupt future EU multiregional cooperation in the field of gas supplies.

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[15] AT.39402 RWE gas foreclosure.
[16] Case COMP/39.388 – German Electricity Wholesale Market.
[17] P. Lowe, I. Pucinskaite, W. Webster, P. Lindberg, *Effective unbundling of energy transmission networks: lessons from the Energy Sector Inquiry*, Competition Policy Newsletter, nr 1, spring 2007.

5. Effects and risks for the security of supplies noticed by the Ukrainian NRA

The issues raised by the Federal Ministry for Economic Affairs and Energy in question no. 2 in the context of the risks and effects for the security of supplies to the Ukrainian market and the markets of other Central and Eastern Europe countries are also presented in the attached NEURC's letter (*vide* pages 4-8 of the Ukrainian NRA's letter). These issues should also be taken into account while assessing the certification of Nord Stream 2 AG under procedure stipulated in art. 11 para. 3 of Gas Directive.

Please indicate specifically which effects and risks could result in your view from such certification as outlined above under internal market rules (directive 2009/73/EC).

1. **Without consideration of the entire length of Nord Stream 2 fundamental internal market rules of the Gas Directive are breached.**

The Nord Stream 2 pipeline has single entry and exit points which makes it one unit that cannot be divided from a technical and economical perspective. Consequently, it is impossible to have two different legal regimes regulating the pipeline and to undertake an assessment required in the certification procedure under the Gas Directive 2009/73/EC without taking into account the entire length of the pipeline. Full implementation of the EU energy law and its effective operation in the EU territory requires that the entire length of Nord Stream 2 is in compliance with the EU rules.

Without assessing the entire Nord Stream 2 pipeline, the EU rules on ownership unbundling, transparent, non-discriminatory and cost-reflective tariff setting, and third party access will be breached. It would amount to creating an obstacle for the functioning of the energy market. On the one hand, it would violate Article 194 (1) TFEU, whereby EU policy is obliged to 'ensure the functioning of the energy market'. It would also violate the provisions of the Directive 2019/692 of 17 April 2019[18] revising Gas Directive 2009/73/EC, which explicitly aims to address obstacles to the completion of the EU gas market. Moreover, other aims of Directive 2019/692 would be infringed: consistency of the legal framework within the Union would be undermined, competition in the internal gas market would be distorted, security of supply would be negatively impacted, and transparency and legal certainty to market participants would be ignored.

The fact that the entire length of Nord Stream 2 forms one unit and cannot be divided has clear legal consequences. Ownership unbundling has to be guaranteed for the whole length of the pipeline. Noteworthy in this context, Directive 2009/73/EC specifically underlines a broad understanding of a term 'control'. Its recital 10 states that 'the definition of the term 'control' is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger

[18] Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas

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Regulation)'. Furthermore, Article 2 (36) defines control as 'any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking'. The broad understanding is well visible in the words: 'other means', 'in combination', 'consideration of fact or law', and 'possibility of... influence'. As for transparent, non-discriminatory and cost-reflective tariff setting, it needs to be ensured in relation to the entire length of Nord Stream 2 as only then the tariff could transparently reflect gas transport costs, as required by Regulation 2017/460 (NC TAR[19]). Finally, third party access can only be guaranteed if there is a real access of various market participants not limited by artificial legal barriers to the single entry point to the entire pipeline.

The situation in which the TSO and a gas supplier with a dominant position, not only registered in a third country, but under the control of that country, have a common economic interest resulting from belonging to one capital group is particularly harmful to the security of supply.

2. Certification of Nord Stream 2 AG under ITO model violates Article 9 (8) of Directive 2009/73/EC.

Certification of Nord Stream 2 AG under ITO model is incompliant with the provision of the Gas Directive. Its Article 9 (8) explicitly states: *[a]s regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1* [paragraph 1 sets requirements for ownership unbundling].

Firstly, it was not constructed on 23 May 2019 and therefore cannot be considered as transmission system being in place before this date. Moreover, there is no legal ground to accept that any investment decision made before that date could be considered as establishing the transmission system. Such an understanding was confirmed by Higher Regional Court of Düsseldorf in its judgement on 25 August 2021. When dismissing the

[19] Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

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appeal of Nord Stream 2 AG from the BNetzA's decision in a case based on Gas Directive 2009/73/EC, the court stated that Nord Stream 2 was not completed on 23 May 2019.

Secondly, on that date the non-existing Nord Stream 2 pipeline could not fit the required definition: *part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network.* The non-existing pipeline was not *connecting a Member State with a third country.*

Finally, this understanding is in line with the intention explicitly stated in recital 4 of the Directive 2019/692 clearly stating that: *Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such gas transmission lines which are completed before the date of entry into force of this Directive. The relevant date for the application of unbundling models other than ownership unbundling should be adapted for gas transmission lines to and from third countries.*

Ownership unbundling is a target model set out in the Gas Directive 2009/73/EC and any exemption from this model needs to be a subject to narrowing interpretation. Other models (ITO and ISO) are formulated as exceptions to it. Article 9 (8) of the Gas Directive 2009/73/EC states that implementation of other models is only possible if transmission system belonged to a vertically integrated undertaking on 3 September 2009. Similarly, these models are available to a transmission system connecting a Member State with a third country only when the transmission system belonged to a vertically integrated undertaking on 23 May 2019. Since exceptions should not give ground to a broad interpretation how they should be understood, there is hence no basis to understand application of ITO model in any broader sense.

Therefore, application of ITO model to Nord Stream 2 AG as the operator of Nord Stream 2 pipeline is inadmissible in the light of Art. 9 (8) of Gas Directive. The ITO model is applicable only in the event of fulfilling the stipulated conditions. According to art. 9 of Gas Directive one of such conditions is the existence of the transmission system on the relevant date. As mentioned before, the Nord Stream 2 pipeline does not meet this condition. This circumstance is a sufficient ground for refusing certification of Nord Stream 2 AG under ITO model.

The issue of the admissibility of the ITO model has already been the subject of the European Commission opinions issued under the certification procedures in the EU countries. In these opinions the EC unambiguously stated that: *According to Article 9(8) Gas Directive, the ITO model may be applied in cases where, on 3 September 2009, the transmission system belonged to a Vertically Integrated Undertaking ("VIU")*. For example, such statements can be found in the opinion on CRE's draft certification decision for TIGF (C(2011) 8572; 002- 2011-FR)[20], opinion on e-Control's draft certification decision for Gas Connect (C(2012)3734)[21], opinion on BnetzA's draft certification decision for Nowega (C(2012)6256)[22] and many others. In these opinions EC agreed with the National Regulatory Authorities that the choice for the ITO model, in cases described in these opinions, was legitimate, considering that the transmission system concerned did belong to a VIU on the relevant date. It means that the crucial and basic criterion taken into account when assessing the admissibility of certification under the ITO model is whether the transmission system existed and belonged to the VIU on the specific date.

In addition, the EC opinion on the certification of the Operators of the Nordeuropäische Erdgas- Leitung (NEL) C(2013) 7019 deserves special attention. In this opinion EC has stated: *The main reason for allowing only existing TSOs to opt for the ITO-model was to prevent a situation in which VIUs would have no choice but to sell off their transmission assets. These companies could, through implementing legislation, be given the option to unbundle by means of implementing a pillar of behavioural rules in order to ensure effective independent operation of their transmission assets. To future TSOs however, the legal framework is clear: they have to comply with the ownership unbundling rules.*

Secondly, as of the adoption of the Gas Directive in July 2009 and its subsequent entry into force on 3 September 2009, the applicable legal framework has been clear in stipulating that only the OU-model is available for new transmission systems. Therefore, NEL GT being a separate new TSO created after 3 September 2009 should apply for an OU instead of an ITO model.

Article 11 para. 3 of Gas Directive specifies cases when certification shall be refused. Article 11 para. 3 letter a) of Gas Directive concerns the issue of non-compliance with the

[20] https://ec.europa.eu/energy/sites/ener/files/documents/2011_002_tigf_en.pdf
[21] https://ec.europa.eu/energy/sites/ener/files/documents/2012_022_at_en.pdf
[22] https://ec.europa.eu/energy/sites/ener/files/documents/2012_034_de_en.pdf

requirements of Article 9 of Gas Directive. Certification of Nord Stream 2 AG under the ITO model will be inconsistent with the provisions of Art. 9 para. 8 of Gas Directive. For this reason it should be stated that there is a premise referred to in Art. 11 para. 3 letter a) of Gas Directive to refuse certification.

3. Certification of Nord Stream 2 AG under ITO model breaches Article 17 (3) of Directive 2009/73/EC.

Nord Stream 2 AG cannot be certificated in the ITO model since it was not established in the form required by the European law. Nord Stream 2 AG is a company headquartered in Zug, Swiss Confederation, and therefore operating under Swiss law. Article 17 (3) of the Gas Directive 2009/73/EC requires from a transmission system operator to have a legal form in accordance with Article 1 of Council Directive 68/151/EEC. However, Annex II to the Directive (EU) 2017/1132,[23] which repealed Directive 68/151/EEC, does not include types of companies that exist in Switzerland. Noteworthy, the list of legal forms has a closed character guaranteeing that a potential operator will be functioning in the legal form recognized by EU regulations.

Notably, exercising regulator's controlling function in relation to the company headquartered outside the EU territory could be highly challenging or even impossible, for example in the proceedings concerning setting transmission tariffs, leaving room for potential uncompetitive behavior of the owner of the pipeline operator.

4. Certification of Nord Stream 2 AG under ITO model jeopardizes competition in the EU gas market.

Ownership unbundling is based on the idea that the same company that supplies gas should not have control over transmission system. Unless supply and transmission are separated, the operator of the transmission system is in a position to likely favour undertaking suppling gas to which it is linked to. Ownership unbundling allows to establish fully independent operator that would guarantee access to all market participants on equal terms.

Certification of Nord Stream 2 AG under ITO model would create a serious risk to the EU gas market. As the independence of Nord Stream 2 AG as an operator could not be

[23] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law.

guaranteed, Gazprom would gain a privileged position as a gas supply company. In particular, it could also use its ownership over Nord Stream 2 AG in order to unfairly compete with other supply routes. It is likely that Gazprom would prefer to pay transit fees to Nord Stream 2 AG as it could later partly receive them back.

Nord Stream 2 gas pipeline may distort the market competition to the level that the security of supply would be undermined. Gazprom will have better control of the supply side of the relevant market. The Nord Stream 2 gas pipeline may strengthen the position of Gazprom as a primary supplier of gas, and as a consequence undermine the security of supply. The dominant supplier might also have more options to impose higher prices on customers, introduce discriminatory practices and in some cases even cut-off the consumers from the supply of gas.

5. Restriction of supply routes to the EU not controlled by the dominant supplier

The information provided by NEURC (page 4 of the Ukrainian NRA's letter) shows that due to expected reduction of gas flows via the UGTS following the launch of NS2, the Ukrainian operator will be compelled to downsize its system and adjust it for the needs of local consumers only. Thus, the new pipeline in real terms will replace 146 bcm of existing transmission capacity in UGTS with just 55 bcm/year.

In such a situation, the possible certification and operation of such "interchangeable" import capacities, where the gas pipeline is operated by a TSO, which is controlled by an entity in a third country, and more specifically the Russian Federation, will pose a significant threat to the energy security of the European Union, because:

- as a result, supply routes to the EU that are not controlled by the dominant supplier will be limited,
- both the transmission system and the product (natural gas) will be controlled to a greater extent by one and the same entity, such as Gazprom.

6. Discrimination against other operators.

Certification under ITO model will lead to discrimination against companies which act as Transmission System Operators on other pipelines and are obliged to fulfill requirements stemming from the Gas Directive.

7. Cross-subsidisation and lack of transparent tariffs.

The importance of the diligent process of setting transmission tariffs as well as the role of the national regulatory authority in this process, was recently emphasised by the Court of Justice of the European Union[24] and Higher Regional Court of Düsseldorf. Transmission tariffs play crucial role in the functioning of the EU internal market. For TSOs transmission tariffs constitute a primary source of income. In order to ensure that tariffs are transparent, non-discriminatory and cost-reflective, detailed rules on the EU level have been introduced, in particular through NC TAR.[25]

The existing rules can be meticulously enforced to ensure adequate tariffs setting only in case of fully unbundled TSOs. When ownership unbundling is in place, a TSO does not have any incentive to favour one company, act in discriminatory way or set up costs in a non-transparent manner. The ownership unbundling model significantly prevents cross-subsidisation between transmission and activities related to gas production or trading because it ensures full separation of entities responsible for these types of activities within gas value chain.

This is not the case under ITO model. Should Nord Stream 2 AG and Gazprom belong to the same capital group, Nord Stream 2 AG is financed fully by Gazprom. Once Nord Stream 2 is operational, Gazprom (parent company) would be the only shipper using the infrastructure due to its export monopoly enshrined in Russian Federation's law. Such situation creates a clear incentive to manipulate tariffs depending on particular interest of company or its owner (Russian Federation). In this way, Gazprom would be in the position to eventually recover its costs thanks to a corporate dividend paid by Nord Stream 2 AG to Gazprom or just economise costs if the tariffs were at artificially low level.

In case of ITO model, the low tariffs (incentivizing gas importers to use this route) could be recovered by the increased costs of gas (which would be imposed to the customers by monopolist). This solution would simultaneously distort any incentives on the shipper's (Gazprom's) side to optimise the costs of delivery routes. Since any costs borne by using Nord Stream 2 AG would be finally recovered in the form of dividend, Gazprom would be

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[24] Judgment of the Court of 2 September 2021 in Case C-718/18, *European Commission* v *Federal Republic of Germany*, ECLI:EU:C:2021:662.

[25] Commission Regulation 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas, OJ L 72, 17.3.2017, p. 29–56.

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naturally incentivised to omit more cost-effective routes through Poland or Ukraine and make a full use of Nord Stream 2.

Moreover, the ITO model enables Gazprom to have impact on activities undertaken by Nord Stream 2 AG due to the construction of supervisory body which is responsible for some financial activities of the transmission system operator. According to Article 20 of Gas Directive, transmission system operator certified as ITO shall have a supervisory body in charge of decisions having a significant impact on the value of shareholders' assets, in particular decisions regarding the approval of the annual and long-term financial plans, the level of debts and the amount of dividends distributed to shareholders. Gazprom would be entitled to designate majority of supervisory body members, which will guarantee strong influence on Nord Stream 2 AG as well as access to sensitive information.

This situation would be reverted once Nord Stream 2 AG was fully unbundled. This would deprive Gazprom and Nord Stream 2 AG from described incentives. Consequently, Gazprom would be forced to choose routes of deliveries based on relevant cost and levels of tariffs, while the operator of Nord Stream 2 would aim at maximising its profits based on the main source of income, i.e cost-reflective tariffs. This would ensure that transmission tariffs could play its crucial role. Simultaneously, the role of national regulatory authorities, the guardians of transmissions tariffs, would be enhanced in accordance with the recent judgement of the Court of Justice of the European Union[26].

8. Start of operation of Nord Stream 2 without certification.

In the context of the impact of certification on the internal market and the possible functioning of the pipeline, we would like to note crucial problem concerning commissioning Nord Stream 2 without certification. Such possibility is clearly indicated in the newest press release published in the German press.[27] It raises serious concern that according to the public information, the German regulatory authority *would not exclude* (ger. *ausschließen*) and *consider (*ger. *erwägen*) the possible functioning of the pipeline without certification. Such behavior should be treated as a direct contradiction to German and the EU regulations.

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[26] Judgment of the Court from 2 September 2021, in case C-718/18 European Commission v. Federal Republic of Germany, ECLI:EU:C:2021:662.

[27] Energate Messenger, *Netzagentur schliesst kurzfristige Inbetriebnahme nicht aus*, 5th October 2021.

According to the § 95 para. 1 (1a) EnWG *potential administrative offence is acted by anyone who intentionally or negligently operates an energy supply network without authorization.* The administrative offence in such case may be punishable by a fine of up to one million EUR. Such regulations do not provide disincentive effect for the market players. From the regulator's perspective allowing entity to operate without legally required certification and limiting itself only to imposing a fine of one million EUR would constitute a serious breach of the EU regulations and a dangerous precedent for the future. We would like to underline clearly that the primary purpose of the financial penalty should be to stop the illegal activity, especially if the maximal amount of the fee is many times lower compared to the potential operating income.

The above observations are also applicable during the period after adopting and notifying to the Commission the draft decision by the Bundesnetzagentur in the certification proceedings based on Article 11 of the Gas Directive. The EU and German regulations do not constitute a legal fiction of issuing a permit to operate after a four-month period. The literal wording proves the opposite: *the regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months from the date of notification by the transmission system operator.* It is unthinkable to allow the company to operate during the proceedings of the certification in the ITO model without an opinion of the European Commission and without examining if granting certification does not create a risk in terms of security of supply. Such behavior of the German regulatory authority should be perceived as an infringement in the meaning of Article 258 TFEU.

From a regulatory authority perspective the possible inactive behavior of the German regulatory authority resulting in the factual granting the pipeline right to operate would be perceived as inconsistent with the rules obliging regulatory authorities to mutually cooperate and to control whether operators meet their obligations. In this context one should recall Article 40 (a) of Gas Directive: *[i]n carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 41, in close consultation with other relevant national authorities, including competition authorities, as appropriate, and without prejudice to their competencies: (a) promoting, in close cooperation with the Agency, regulatory authorities of other Member States and the Commission, a competitive, secure and environmentally sustainable internal*

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market in natural gas within the Community, and effective market opening for all customers and suppliers in the Community, and ensuring appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives and Article 41 of this directive: *[t]he regulatory authority shall have the following duties ensuring compliance of transmission and distribution system operators, and where relevant, system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Community legislation, including as regards cross-border issues.*

9. Position of the Ukrainian NRA

The issues raised by the Federal Ministry for Economic Affairs and Energy in question no. 3 are also presented in the attached NEURC's letter (*vide* pages 8-13 of the Ukrainian NRA's letter). The comments of NEURC are worth paying attention to them while assessing the certification of Nord Stream 2 AG under procedure stipulated in art. 11 para. 3 of Gas Directive.

Appendix: NEURC's letter

УКРАЇНА

НАЦІОНАЛЬНА КОМІСІЯ, ЩО ЗДІЙСНЮЄ ДЕРЖАВНЕ РЕГУЛЮВАННЯ У СФЕРАХ ЕНЕРГЕТИКИ ТА КОМУНАЛЬНИХ ПОСЛУГ (НКРЕКП)

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№ 1999/13/5-21 от 13.10.2021

на №

Energy Regulatory Office of Poland

Dear Mr. President,

We, the National Energy and Utilities Regulatory Commission of Ukraine ("**NEURC**"), present our comments to you and the Energy Regulatory Office, and hereby provide our response to your letter DRG.DRG.-1.070.115.2021.KF dated 5 October 2021 ("**ERO Letter**").

Having carefully considered your request in the ERO Letter for provision of commentaries regarding the impact of certification of Nord Stream 2 AG ("**NS2 AG**") as an Independent Transmission System Operator ("**ITO**") for the Nord Stream 2 pipeline, below we provide our understanding of the legal framework applicable to and the effect from the certification of NS 2 AG, including its impact on the security of natural gas supplies in the region of Central and Eastern Europe.

1. Which import and transit routes for natural gas is your country using currently and in the future (including for LNG), in relation to consumption, domestic production, imports and exports of natural gas?

Ukraine imports natural gas for covering the needs of its domestic consumption, in the volumes not covered by our own production of gas. The volume of import equals to circa 10-15 bcm of natural gas annually. Also, the Ukrainian gas transmission network is used by international traders to deliver additional gas volumes from the EU to accumulate gas in Ukraine's vast underground gas storages (UGS). In 2020, non-resident traders stored 10 bcm of gas in Ukraine.

Starting from 2015, Ukraine imports natural gas exclusively from the EU, in particular from Slovakia, Poland, and Hungary. A significant volume of imported gas is imported through the

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virtual reverse, *i.e.,* netting the natural gas quantities contracted for transmission in the two opposite directions. In order to ensure security of gas supply, there are legal restrictions on gas supply from one source - no more than 30%.

While the total capacity of reverse flows to Ukraine amounts to nearly 150 mcm/day (55 bcm/year), only 27 mcm/day (9 bcm/year) of this capacity is firm, via the Ukraine-Slovakia interconnection point Budince. The rest is interruptible and conditional on physical transit flows via Ukraine: imports are possible only if there is transmission of gas through the UGTS to Europe.

For 9 months of 2021, imports amounted to 2.381 billion cubic meters of gas, of which 86% came from the Hungarian direction (virtual reverse, which first became available in early 2020), the rest - from the Slovak and Polish directions. In total, in 2020, imports amounted to 15.9 billion cubic meters of gas: from Slovakia - 10.2 billion cubic meters. m, from Hungary - almost 4.2 billion cubic meters. m, from Poland - almost 1.5 billion cubic meters. m. In particular, virtual reverse imported 45%. But, virtual reverse from Hungary is no longer available, since Gazprom terminated transit of gas to Hungary through the territory of Ukraine starting from 1 October 2021 following the completion of the onshore extension of Turkstream to Hungary. Importantly, Gazprom is paying for the transmission capacity to Hungary via Ukraine. The capacity of 24.6 mcm/day is booked until at least September 2022 and will cost Gazprom over US$270 million during this period.

Similar cases are observed in other European countries where Gazprom does not use capacities it pays for in existing networks and constructs superfluous new pipelines to redirect gas flows from the traditional routes. For instance, in Slovakia Gazprom currently uses less than 50% of the capacity it has booked.[1] In Bulgaria, Gazprom has booked transmission capacities until 2030, however is not using the pipeline after the launch of the Turkstream in 2020.[2]

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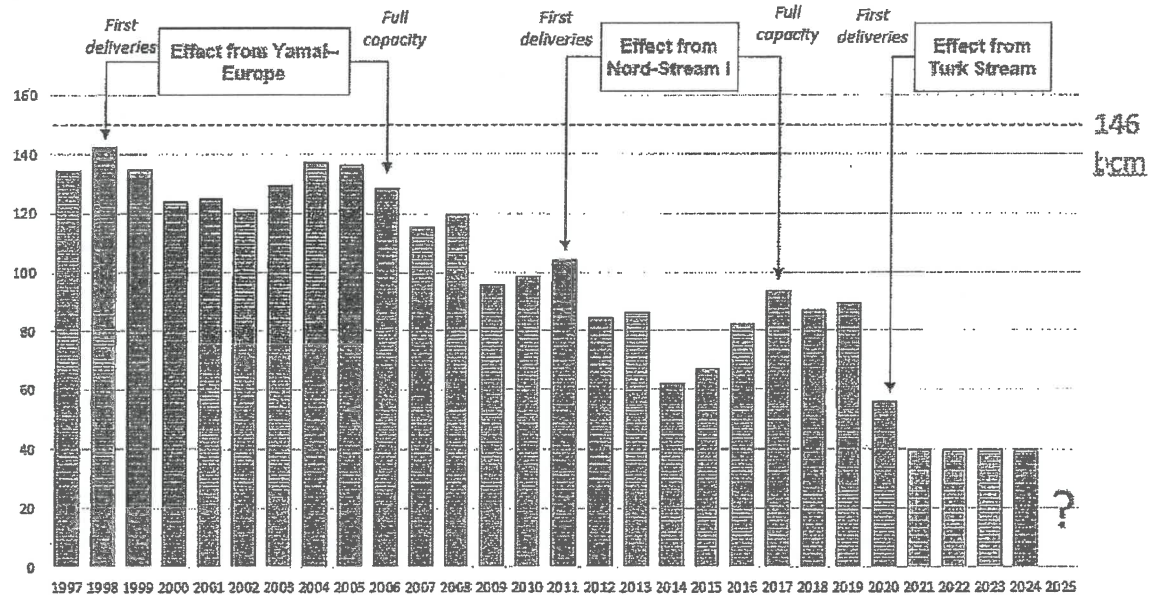
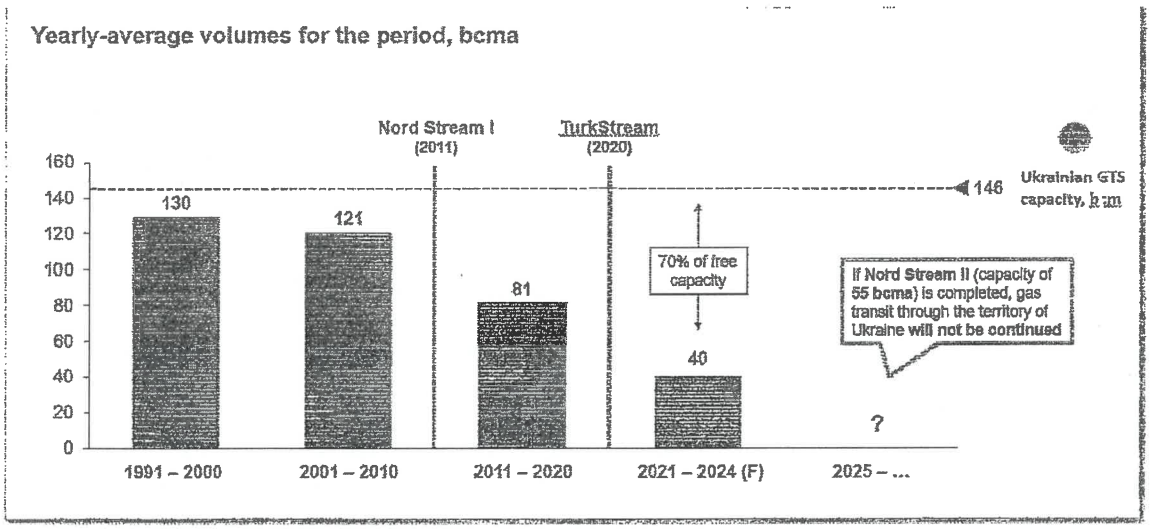
1 Eustream and GTSOU corporate websites. Accessed at https://tis.eustream.sk/TisWeb/#/?nav=bd.cap, https://tsoua.com/prozorist/test-platformy/, 13 October 2021.

2 Gazprom Export corporate website. Accessed at http://www.gazpromexport.ru/partners/bulgaria/ on 13 October 2021.





Source: GTSOU

Historically, opening of new transit routes by Gazprom has led invariably to a reduction of flows via Ukraine.

Therefore, a certification of Nord Stream 2 AG creates significant risks that Gazprom will cease using the UGTS and Ukraine will not only lose revenues from transit, but also a number of import options.

As regards the transit, the UGTS operated by "Gas Transmission System Operator of Ukraine" LLC, consists of three main transit corridors, namely; (i) the central corridor, including the "UPU" (Urengoi-Pomari-Uzhgorod) and "Progress" pipelines, (ii) the "Bratstvo" (Brotherhood) pipelines and (iii) the "Soyuz" ("Union") pipeline. The total annual capacity of the UGTS is 146 bcm of natural gas, out which Gazprom currently contracts only 40 bcm.

We also note that other than the UGTS, Russia currently supplies gas to Europe through three other routes:

- The Nord Stream pipeline from Vyborg in Russia to Greifswald in Germany, under the Baltic Sea, with an annual capacity of 55 bcm;
- The Yamal pipeline through Belarus and into Poland, with an annual capacity of 33 bcm; and
- Turkstream from the Krasnodar Region in South-West Russia under the Black Sea and through Turkey to Bulgaria, with an annual capacity of 15.75 bcm dedicated to supply Europe (another 15.75 bcm is dedicated to Turkey)

In the case of the launch of the Nord Stream 2 gas pipeline with a capacity of 55 billion cubic meters per year, there is a risk for Ukraine to completely stop transit through the gas transmission system of Ukraine.

Given the expected reduction of gas flows via the UGTS following the launch of NS2, the Ukrainian operator will be compelled to downsize its system and adjust it for the needs of local consumers only. Thus, the new pipeline will replace 146 bcm of existing transmission capacity in UGTS with just 55 bcm/year.

To ensure security of natural gas supply to Ukraine, the GTS Operator of Ukraine is working to increase the guaranteed capacity for physical transportation of natural gas from EU countries (including liquefied natural gas from terminals in Poland, Lithuania, Croatia, Greece, Turkey, etc.), to create guaranteed capacity in the direction from Poland and Hungary and increase of guaranteed capacities in the direction from Slovakia. But this requires time and significant cost.

2. Which effects and risks for the security of supply of the EU and your own country would you expect from the operator of such and additional import capacity, where the pipeline is operated by a TSO which is controlled by an entity in a third country, more specifically the Russian Federation?

- ***Gazprom's activity in the European market in 2021 contradicts commercial logic and points at increased risks to security of supply caused by the EU's overdependence on a single supplier***

Gazprom has demonstrated non-commercially driven behaviour on a number of occasions, with some alarming events unfolding in the recent weeks. The Russian monopoly rejects additional

supplies to countries ranging from Moldova[3] to Germany[4], even when it has pre-booked the transmission capacities or they are readily available.

Gazprom has historically several times refused to unilaterally supply gas to Ukraine, which caused an emergency. For example, in March 2018, Gazprom refused to supply gas to Ukraine at the last minute, even after receiving full prepayment, which led to a shortage of gas in Ukraine and the need to take emergency measures.

The minimum contract volume for gas transit via Ukraine in 2021 is 40 bcm, a 40% reduction compared to 2020, when the minimum volume was set at 65 bcm. Despite being able to book more capacity this year, Gazprom opted against transporting more gas to Europe and generating additional profits from the sale of this gas.

Thus, compared to 9 months 2020, Gazprom reduced transit via Ukraine by 6.7 bcm, or by 17%. Compared to the same period of the pre-COVID 2019, transit has halved – by 33.6 bcm. Moreover, since October 1, 2021, Russia further reduced transit to the EU through gas pipelines that are not under its control. Thus, the transit via the Ukrainian GTS decreased by 22% to 86 million cubic meters (mcm) per day. Therefore, Gazprom currently does not use nearly 10% of transit capacity it has already paid for. Increasing transit now to the contracted volume will reduce Gazprom's costs for pumping every cubic meter of gas to the EU.

Also, transit via the Yamal-Europe gas pipeline through Belarus and Poland to northern Germany has fallen by more than 70% since October 1, 2021, compared to mid-September, to just 30 mcm per day.

Had Gazprom desired to bring gas transit volume to the EU to the 2020 level, the company's additional transit costs would have been about USD 250 million. By selling this amount at market prices, the Russian monopoly could earn an additional USD 3 billion. Hence, Gazprom refuses to make significant additional earnings, obviously not for commercial reasons.

Launching the 55 bcm Nord Stream 2 pipeline seems to be at the very least superfluous, while Gazprom does not use more than 100 bcm of already available capacity of the UGTS. The apparently political motivation behind Gazprom's commercially unreasonable behaviour points at increased risks for the security of supply of the EU and Ukraine should the certification be granted.

- ***The certification of NS2AG will negatively affect Ukrainian traders in the European and German gas market in a significant manner***

[3] https://www.icis.com/explore/resources/news/2021/10/11/10693384/moldova-asks-consumers-to-cut-gas-consumption-due-to-supply-deficit
[4] https://www.reuters.com/business/energy/russia-says-gazprom-has-begun-using-gas-stockpiles-stabilise-market-2021-10-12

As described above, Ukraine sources large volumes of natural gas from the EU. The certification of NS2AG will result in increased dominance of Gazprom and the Gazprom group in Germany and Europe, as confirmed by the European Commission in the investment treaty arbitration between the EU and NS2AG under the Energy Charter Treaty.[5] Similarly, the European Parliament has indicated that NS2 "*threatens the EU internal market*".[6] NS2 is likely to result in an increase in the price of gas in Central and Eastern Europe.[7] Ukraine, which sources gas in the European markets, including in Germany, will be significantly affected commercially. Given that gas prices will be determined based on transportation "forward" from Germany through Slovakia to Ukraine, the increased gas prices will in particular affect Ukraine.

- ***The certification of NS2AG will impact negatively on Ukrainian gas storage operator ability to offer gas storage services to European traders in a significant manner***

Naftogaz operates over 30 bcm of gas storage capacity that is primarily located near the Western border of Ukraine.[8] Since 2019, European gas market participants have been storing significant amounts of gas in these facilities, where storage is significantly cheaper than in neighbouring Slovakia and Hungary.

The limited physical reverse import capacity of 9 bcm/year at Budince, loss of transit flows through Ukraine, and hence the loss of virtual reverse flow capacity, will significantly impact on the ability of European traders to import gas into Ukraine for storage. Also, European traders' costs of using Ukrainian gas storages are likely to increase significantly, as firm and scarce physical entry capacity into Ukraine will be more expensive than the currently available interruptible and abundant virtual entry capacity, to the detriment of European consumers. The majority of the 9 bcm physical import capacity will also have to be used to secure supplies to cover the need of Ukrainian consumers.

- ***The certification of NS2AG will negatively impact security of supply in Ukraine and in Poland in a significant manner***

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5 European Union Counter-Memorial on the Merits in Ad Hoc Arbitration between Nord Stream 2 AG and the European Union, 3 May 2021, § 25. Accessed at https://pcacases.com/web/sendAttach/27447 on 7 October 2021.

6 European Parliament Resolution of 12 March 2019 on the state of EU-Russia political relations (2018/2158(INI), para 29,see https://www.europarl.europa.eu/doceo/document/TA-8-2019-0157_EN.html.

7 See e.g. The impact of the construction of the Nord Stream 2 gas pipeline on gas prices and competition, by Péter Kotek, Adrienn Selei and Borbála Takácsné Tóth, at the Regional Centre for Energy Policy Research, published 24 February 2017, at https://rekk.hu/research-paper/63/the-impact-of-the-construction-of-the-nord-stream-2-gas-pipeline-on-gas-prices-and-competition and https://rekk.hu/downloads/academic_publications/NordStream2_REKK.pdf

8 Oxford Institute for Energy Studies, European gas storage: backhaul helps open the Ukrainian safety valve, page 2, https://www.oxfordenergy.org/publications/european-gas-storage-backhaul-helps-open-the-ukrainian-safety-valve/.

As explained above, virtual reverse flows to Ukraine rely on gas being transported physically through Ukraine from East to West. Such physical transportation has already been reduced as Gazprom has stopped applying its opportunity to book additional capacities, and will most likely become impossible as Gazprom stops using the UGTS for gas deliveries to Europe.

In order to secure supplies to Ukrainian consumers, Ukraine will be dependent on physical reverse flows. As described above, physical flows into Ukraine from Europe are currently only possible through the Budince interconnection point between Slovakia and Ukraine with very limited capacity.

In addition, if transit through Ukraine ceases completely, this will result in the termination of gas supplies to five Ukrainian towns at the Ukrainian-Russian border, namely Voievodske and Troitske (in the Luhansk region), and Vovchansk, Muravske and Guriv Kozachok (in the Kharkiv region). These towns are supplied through local gas distribution networks straddling the border, with the gas accounted for as transit gas. Restoring supplies in the absence of transit will require a new supply agreement with Gazprom to be concluded for these towns. Supplies to Mogyliv-Podilsk in the Vinnytsia region, at the Ukrainian-Moldovan border will cease completely, as this town is physically supplied directly from the transit pipeline. Finally, due to bottlenecks in the Polish gas transmission system, customers in Southern Poland may not be supplied in full without flows from Ukraine, and these bottlenecks may not be fully removed before 2023.[9]

This may force Ukraine to again rely on Russian, and more specifically Gazprom supplies, giving rise to further security of supply concerns, as Gazprom has a long history of cutting and restricting supplies to Europe and Ukraine for political reasons and/or to restrict competition:

In 2006, 2009 and 2014, Gazprom cut supplies to Ukraine as punishment for Ukraine's pro-European policies pursued after the 2005 Orange Revolution, for Ukraine's support to Georgia during Russia's 2008 war of aggression against Georgia, and for the pro-European policies pursued after the 2014 Revolution of Dignity. In March 2018, Gazprom breached an agreement to resume supplies to Ukraine because it was unhappy with its loss in the Stockholm arbitration against Naftogaz concerning the gas sales and transit agreements concluded in 2009. In the arbitration, which commenced in June 2014 and ended in February 2018, Naftogaz's take-or-pay obligations under the 2009 gas sales agreement were invalidated because they were contrary to competition law and market practice, and Gazprom was found liable to pay USD 4.6 billion in damages to Naftogaz for breaches of its obligations to transit gas through Ukraine under the 2009 transit agreement. As described above, Gazprom also immediately stopped

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9 USAID, Increased Integration of Ukrainian and Polish Transmission Systems and Gas Markets, Final Report, Energy Security Project (ESP), March 10, 2021

deliveries of gas for transit to Hungary on 1 October 2021, once deliveries through Turkstream and its onshore extensions to Hungary commenced.

Consequently, certification of NS2 AG as operator of NS2 will significantly affect security of gas supply to Ukraine.

- ***Certification of NS2AG will negatively impact on Ukraine's national security in a significant manner***

NS2, which was initiated in June 2015, is an integral part of the Russian Federation's campaign of political, military and economic aggression against Ukraine, starting in early 2014, with the Russian Federation's assault on Crimea and the destabilisation of the Lugansk and Donetsk regions in Eastern Ukraine.

The transit flows through Ukraine currently function as a deterrent against further Russian aggression. So far, the Russian Federation has not engaged militarily in areas where transit pipelines are located, simply because the Russian Federation will avoid military action that may damage pipelines and hence cause losses of Gazprom gas. With the certification of NS2AG and the operation of NS2, transit flows will be reduced and this deterrent would therefore be removed. In light of the recent examples of Russian military accumulation and breaches of the agreed ceasefire, there is a valid concern that Russian aggression towards Ukraine will escalate.

3. Please indicate specifically which effects and risks could result in your view from such certification as outlined above under internal market rules (directive 2009/73/EC), in particular in terms of security of natural gas supply in the region of Central and Eastern Europe?

We believe that certification of Nord Stream 2 AG as an ITO contradicts the Energy Community Treaty, the previous position of the Energy Community Secretariat, as well as poses a threat to the European gas market and supply security, and should be conducted through the ownership unbundling (OU) model, if at all.[10]

The certification of NS2AG will result in increased dominance of Gazprom and the Gazprom group in Germany and Europe, as confirmed by the Commission in the investment treaty arbitration between the EU and NS2AG under the Energy Charter Treaty.[11] Similarly, the

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10 OU implies ownership of the natural gas transmission system by the designated TSO and the TSO's independence from any natural gas and/or electricity production and supply activities.

11 European Union Counter-Memorial on the Merits in Ad Hoc Arbitration between Nord Stream 2 AG and the European Union, 3 May 2021, § 25.. Accessed at https://pcacases.com/web/sendAttach/27447 on 7 October 2021.

European Parliament has indicated that NS2 "*threatens the EU internal market*".[12] NS2 is likely to result in an increase in the price of gas in Central and Eastern Europe.[13] Ukrainian suppliers (e.g. Naftogaz), which sources gas in the European markets, including in Germany, as well as other gas traders will be significantly affected commercially. Given that gas prices will be determined based on transportation "forward" from Germany through Slovakia to Ukraine, the increased gas prices will in particular affect Ukrainian consumers.

- ***The certification of NS2AG will restrict competition in Europe and jeopardize security of gas supply for the Member States in Central and Eastern Europe.***

The current contract between Gazprom and Naftogaz does not contain an obligation for Gazprom to deliver physical gas volumes for transit to the EU. Provided that Gazprom continues to pay, it can stop sending gas for transit without violating the contract.

The contract would therefore not prevent Russia from cutting supplies via Ukraine to put pressure on German and the EU authorities in an attempt to get regulatory concessions for NS1/NS2/OPAL/EUGAL, especially in the case of a rough winter. If that happens, Ukraine may face difficulties having access to sufficient network capacity and gas.

A number of EU Member States, incl. Germany, France, Italy, Switzerland, Austria, Slovakia, Slovenia, Poland, Hungary, Moldova and Romania rely on availability of gas in the Baumgarten area this winter. There are effectively only two ways to deliver gas to this cluster of the European gas grid: via Ukraine-Slovakia and via NS1/NS2/OPAL/EUGAL. Should Russia halt supplies via the Ukraine-Slovakia route, the capacity of the NS1/NS2/OPAL/EUGAL will not be sufficient to deliver all the needed gas volumes to the Baumgarten area.

In case of launching additional import capacity, Gazprom will be able to redirect all gas transit to European countries to fully controlled Nord Stream 1, Nord Stream 2, and Turkish Stream pipelines bypassing independent routes, such as the Ukrainian route. Accordingly, the maintenance of the Ukrainian GTS, in case of termination of transit through Ukraine, will be financially burdensome, which may lead to the need for significant optimization of GTS facilities that will not be involved in gas transportation, and the release of technical specialists and engineers. Without system optimization, this will lead to an increase in the GTS Operator's tariff for gas transportation by **3-4 times** for the maintenance of the GTS at the expense of exclusively local consumers.

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12 European Parliament Resolution of 12 March 2019 on the state of EU-Russia political relations (2018/2158(INI), para 29,see https://www.europarl.europa.eu/doceo/document/TA-8-2019-0157_EN.html.

13 See e.g. The impact of the construction of the Nord Stream 2 gas pipeline on gas prices and competition, by Péter Kotek, Adrienn Selei and Borbála Takácsné Tóth, at the Regional Centre for Energy Policy Research, published 24 February 2017, at https://rekk.hu/research-paper/63/the-impact-of-the-construction-of-the-nord-stream-2-gas-pipeline-on-gas-prices-and-competition and https://rekk.hu/downloads/academic_publications/NordStream2_REKK.pdf

In case of significant optimization of the Ukrainian GTS, the EU will lose the opportunity to use the services of the Ukrainian GTS even in case of emergency, such as cessation of gas transportation by bypass pipelines due to repairs or a sharp cooling and growing demand for gas, as the Ukrainian GTS will not remain backup option in case of termination of transit by Gazprom routs.

As recently confirmed by the Grand Chamber of the European Court of Justice in its judgment of 15 July 2021 in case C-848/19 (the "**Opal judgment**"), the energy solidarity principle as expressed in Articles 122 and 194 TFEU is generally applicable and enforceable primary EU law, also outside of the scope of specific secondary legislation. The energy solidarity principle requires the competent German authorities to take into account security of supply also for other Member States, which, as explained above, speaks against certification of NS2AG. Similarly, the competent German authorities are obliged to secure effective and undistorted competition in the field of gas supplies, hereunder to implement and enforce European Community law in the field of network-bound energy supplies[14]. The effects on competition throughout the European gas market should therefore be considered.

In light of the above, NS2AG cannot be certified unless the following obligations under European law are complied with:

First, European and German law require full ownership unbundling of the operator of gas transmission systems from a parent company active in the production and supply of natural gas, cf. Section 8 of the EnWG. Ownership unbundling means that gas producers and suppliers are completely cut off from the operation of gas pipelines, preventing any preferential treatment of one pipeline user by the operator. This is necessary to safeguard effective competition. NS2AG cannot be certified as operator as long as it is wholly owned by Gazprom, which is not only active in the production and supply of gas but also is the largest single supplier of natural gas to the EU, accounting for 43% of the Union's natural gas imports in 2020[15]. Unbundling through the ITO-model is only available if the gas transmission system was owned by a vertically integrated undertaking on 23 May 2019. However, NS2 was only mechanically completed on 10 September 2021. There was consequently no gas transmission system in place which could be owned on 23 May 2019.

Second, even if NS2AG alleges that it is eligible for the ITO unbundling model it has applied to be certified for, which it is not, NS2AG does not fulfil the conditions in terms of independence and corporate structure in Chapter IV of the Third Gas Directive to be certified as such. In

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14 Energiewirtschaftsgesetz, § 1(1) und (3).

15 Quarterly Report on European Gas Market, Market Observatory for Energy, DG Energy, Vol. 13. Accessed at https://ec.europa.eu/energy/sites/default/files/quarterly_report_on_european_gas_markets_q4_2020_final.pdf on 13 October 2021.

respect of corporate structure for instance, a Swiss AG is not on the list of entities which can be certified as transmission system operator pursuant to the Third Gas Directive. Certifying a Swiss AG as TSO will also make it difficult for the German regulator to monitor and enforce the applicable rules in relation to the TSO. In terms of independence, the Third Gas Directive requires that any commercial and financial relations between the vertically integrated undertaking and the transmission system operator shall comply with market conditions. NS2AG fails to meet the independence requirement, as the European financiers of NS2 in reality are co-owners of NS2AG, and apparently have entered into loan arrangements with NS2AG which are not market based.

Third, the rules on third party access and non-discriminatory, transparent and cost-reflective regulated tariffs should be applied to NS2. Any other decision by competent German authorities, tasked with the enforcement of the rules in relation to NS2, would amount to an infringement of European Union law by Germany.

Fourth, the rules on ownership unbundling, third party access and non-discriminatory, transparent and cost-reflective regulated tariffs should be applied to NS2 in its entirety. NS2 is one continuous pipeline, and for unbundling, third party access and transparent tariffs to be effective, they have to apply to the full distance of the pipeline. Effectively, therefore, unbundling, third party access and transparent tariffs should apply from the NS2 starting point at Ust-Luga in the Russian Federation, allowing other Russian gas producers than Gazprom to access NS2 on transparent and non-discriminatory terms. To treat the parts of NS2 in and outside German territorial waters differently would be an exercise in artificial legal formalism inconsistent with European law. Gazprom and NS2AG have chosen to operate a pipeline passing through the territorial waters and territory of a Member State. The EU is then free to permit the operation of that pipeline only on condition that the operator comply with criteria that have been established by the EU and which are designed to fulfil the fundamental objectives of security of supply and competition which the EU has set for itself.[16]

Fifth, to ensure security of supply to the EU via a diversification of routes, the alternative transportation corridor from Russia to the EU through Ukraine should remain operational. For the Ukrainian transportation corridor to the European Union to remain operational if and when NS2AG is certified and Gazprom consequently will abandon it, the Ukrainian gas transportation corridor has to be opened for use by non-Gazprom parties for gas transportation between Russia and Europe. The energy solidarity principle requires Germany to take into account the interests of the EU Member States bordering Ukraine. These Member States are supplied through

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16 See Judgment of the Court (Grand Chamber) of 21 December 2011 in Case C-366/10, recitals 127-129, on the parallel case of the EU's powers to require the operator of an aircraft arriving at or departing from an aerodrome in a Member State to surrender emission allowances calculated in the light of the whole of the international flight that the aircraft has performed or is going to perform from or to such an aerodrome.

continuous pipelines through Ukraine, and, like NS2, the requirements to unbundling, third party access and transparent tariffs should be applied from the starting points of these pipelines at the Russian-Ukrainian border.

Sixth, Gazprom's denial of third party access at the starting points of the pipelines to EU Member States through Ukraine has direct and significant effects on competition in the Common European Gas Market, by artificially reducing the number of suppliers of gas from Russia at the ending points of those pipelines to one. An opening of the UGTS to third parties at the Russian-Ukrainian border is therefore also required to fulfil the competition law objectives which the EU has set for itself. European competition law also requires that the UGTS is put on an equal footing with an NS2 which has been opened up for use by non-Gazprom parties for gas transportation between Russia and Europe. Otherwise, NS2 will effectively be given preferential terms, and competition between the two transportation routes will be distorted.

Thus, for the fifth and the sixth reasons above, before the certification of NS2AG as operator of NS2 it should be required the UGTS is effectively opened up for use by third parties on the Russian-Ukrainian border.

The EU has extended the energy solidarity principle to Ukraine through the EU-Ukraine Association Agreement, where it is expressed in Article 338. Article 338 Association Agreement – like Article 122 TFEU –, refers to the energy solidarity principle in the context of potential crisis situations. In the present case, as explained above, certifying NS2AG will significantly reduce the EU's and Ukraine's ability to handle potential crisis situations in a spirit of solidarity, as certification in combination with Gazprom's and the Russian Federation's blockade of the UGTS for use by other Russian producers and suppliers of Central Asian gas, will lead to the total loss of the largest existing transport route for gas from Russia to Europe. As clarified by the European Court of Justice in C-814/19, the energy solidarity principle must be understood as *"not dealing with emergencies when they arise, but also adopting measures to prevent crisis situations"*.

In this context, it is also highly relevant to the interpretation of Articles 122 and 194 TFEU and Article 338 Association Agreement that Articles 122 and 194 were included in the TFEU after the East European Member States had suffered a first energy supply crisis in the winter of 2006/2007 due to Russian supply interruptions, [17] also affecting Ukraine. The importance of the principle to the East European Member States and Ukraine has since been confirmed by

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17 Der Grundsatz der Energisolidarität als justiziable Vorgabe des europäischen Energierechts, Zugleich Bespr. Von EuGH, Urt. V. 15.7.2021 – Deutschland/Polen (c-848/19 P), EuZW 2021, 766, by Professor Dr. Jörg Gundel Bayreuth, p. 760

Gazprom's gas supply interruption in 2009 and the Russian Federation's aggression against Ukraine since 2014.[18]

Finally, the construction of NS2 is part and parcel of the Russian Federation's aggression against Ukraine since 2014, and hence in breach of public international law. The operation of NS2 should be in line with obligations under European law that also was implemented by Ukraine.

As it shown above, currently Gazprom does not use more than 100 bcm of spare annual gas transport capacity available in Ukrainian Gas Transmission System (the "UGTS") and artificially increases prices in Europe by withholding supplies. At the same time Nord Stream 2 is planned to provide only 55 bcm of annual gas transport capacity.

In summary, we strongly believe that the certification of Nord Stream 2 AG in ITO model will negatively impact the security of natural gas supplies in the region of Central and Eastern Europe.

We hope that the above fully covers your concerns and questions set forth in the ERO Letter. NEURC is ready to provide you with any additional information and will be of your assistance in presenting the view of our countries in the process of certification of Nord Stream 2 AG as an Independent Transmission System Operator in Germany.

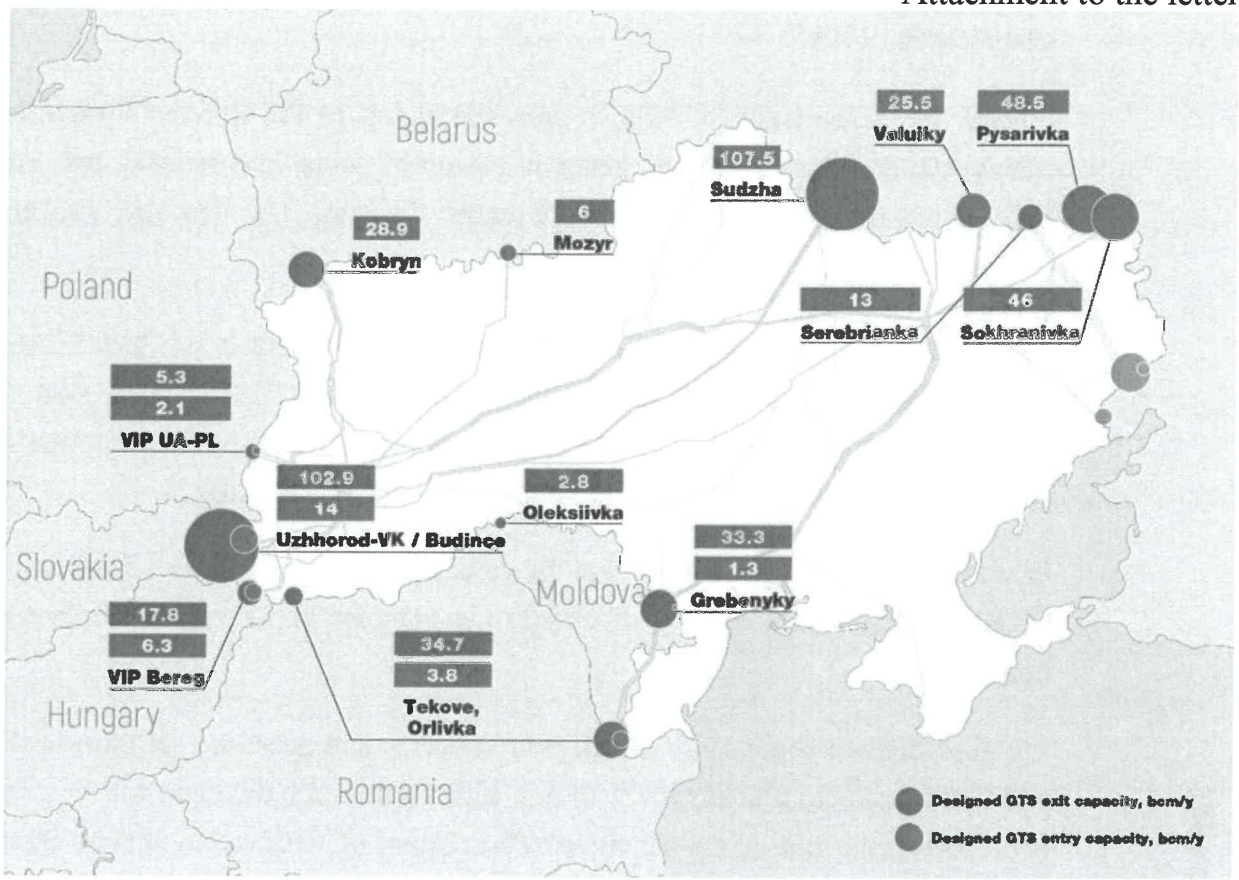
Sincerely yours,

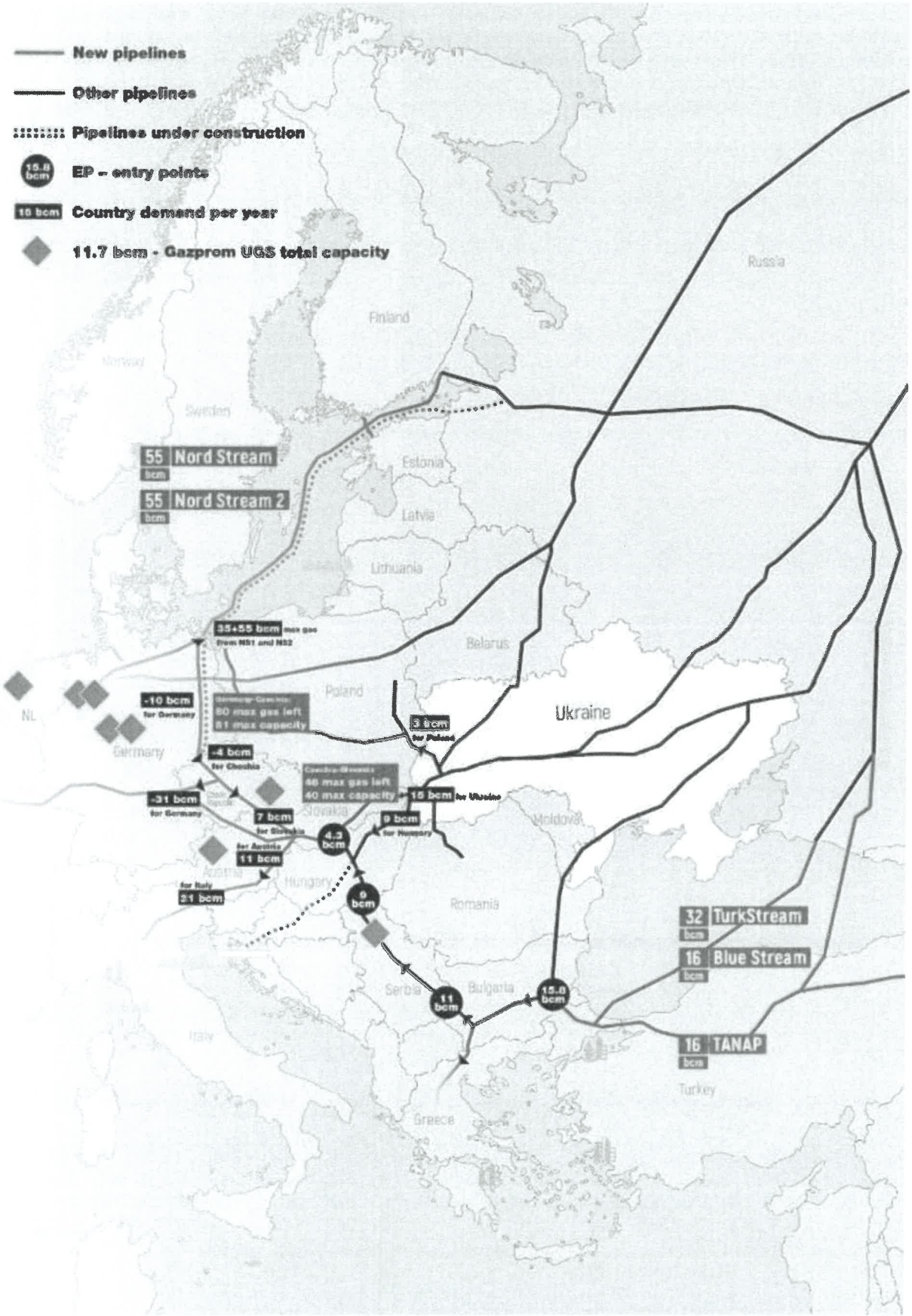
Commissioner Olha BABII

Attachment on 2 pages.

[18] Ibid.

Attachment to the letter




New pipelines
Other pipelines
Pipelines under construction
15.8 bcm
EP – entry points
15 bcm
Country demand per year
11.7 bcm - Gazprom UGS total capacity
Russia
Finland
Norway
Sweden
55 Nord Stream
bcm
55 Nord Stream 2
bcm
Estonia
Latvia
Lithuania
Belarus
35+55 bcm max gas from NS1 and NS2
Poland
Ukraine
NL
-10 bcm
for Germany
80 max gas left
81 max capacity
3 bcm
for Poland
Germany
-4 bcm
for Czechia
46 max gas left
40 max capacity
15 bcm for Ukraine
-31 bcm
for Germany
7 bcm
for Slovakia
9 bcm
for Hungary
Moldova
4.3 bcm
for Austria
11 bcm
for Italy
21 bcm
Hungary
6 bcm
Romania
32 TurkStream
bcm
16 Blue Stream
bcm
Serbia
11 bcm
Bulgaria
15.8 bcm
16 TANAP
bcm
Turkey
Greece

Jawi'7