

11 November 2020

## Europe Decouples Energy Policy from Navalny Poisoning

### Executive Summary

Despite initial efforts to hold Russia accountable for the poisoning of opposition leader Alexei Navalny by connecting the incident with Nord Stream 2 security concerns, Europe is showing resolve to separate the two issues and continue the pipeline project. Meanwhile, US commitment to increase the scope of sanctions against the pipeline has grown, and additional, harsher measures are included in the must-pass National Defense Authorization Act (NDAA). FiveBy believes that German regulator Bundesnetzagentur (BNetzA) and German port operating company Fährhafen Sassnitz GmbH, Norwegian insurer Det Norske Veritas, as well as the Russian flagged vessels *Akademik Cherskiy*, and *Fortuna* are vulnerable to US sanctions.

### Background

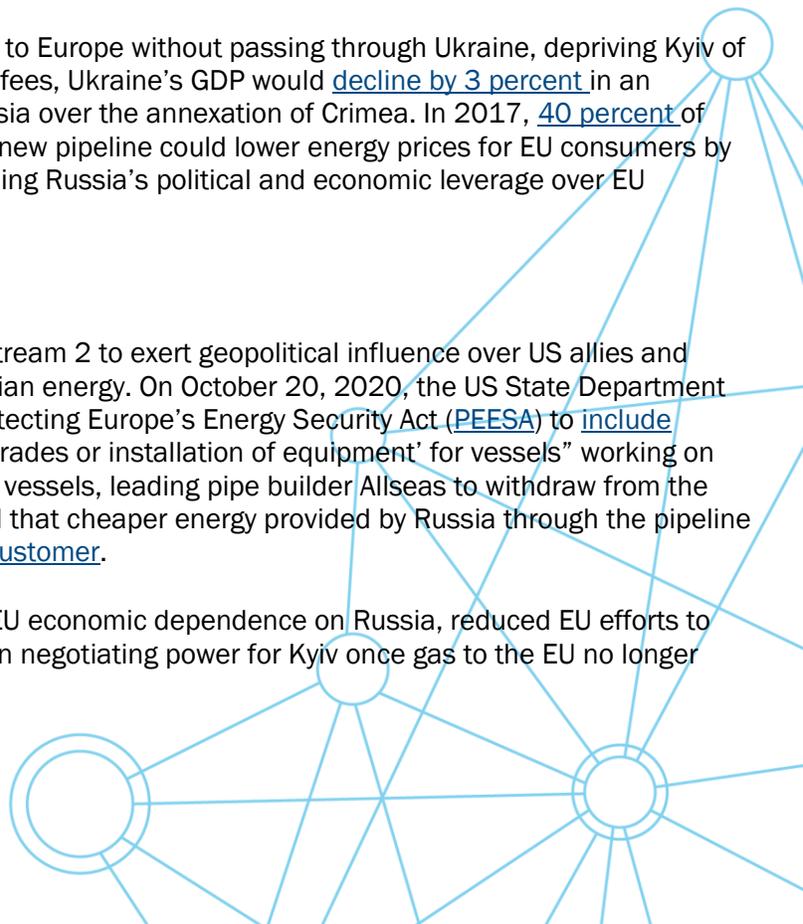
The Nord Stream 2 pipeline would [double](#) the capacity of the existing Nord Stream route, adding 55 billion cubic meters (BCM) of capacity per year to the 199 BCM that Russian state-owned company Gazprom [exported to Europe](#) in 2019. Gazprom is financing 50 percent of the project, with German Wintershall and Uniper, British-Dutch Royal Dutch Shell, French ENGIE, and Austrian OMV covering the remainder of the costs. The pipeline crosses through the exclusive economic zones of Russia, Germany, Finland, Sweden, and Denmark, with about 100 miles of pipeline to be built in Danish waters.

The new pipeline will allow Russia's Gazprom to import gas to Europe without passing through Ukraine, depriving Kyiv of \$2 to \$3 billion per year in transit fees. Without gas transit fees, Ukraine's GDP would [decline by 3 percent](#) in an economy already suffering from Ukraine's conflict with Russia over the annexation of Crimea. In 2017, [40 percent](#) of LNG from Russia to Europe transited through Ukraine. The new pipeline could lower energy prices for EU consumers by [13 percent](#), according to Gazprom, almost certainly increasing Russia's political and economic leverage over EU countries and over Ukraine.

### US Concerns About Nord Stream 2

The United States is concerned that Russia will use Nord Stream 2 to exert geopolitical influence over US allies and undermine US efforts to decrease EU dependence on Russian energy. On October 20, 2020, the US State Department expanded the scope of Nord Stream 2 sanctions under Protecting Europe's Energy Security Act ([PEESA](#)) to [include](#) "companies providing services, facilities or funding for 'upgrades or installation of equipment' for vessels" working on the pipeline. PEESA initially applied to deep-sea pipe-laying vessels, leading pipe builder Allseas to withdraw from the project in 2019. In addition, the United States is concerned that cheaper energy provided by Russia through the pipeline would hurt US LNG producers, for whom the EU is the [top customer](#).

- Nord Stream 2 [would probably result](#) in increased EU economic dependence on Russia, reduced EU efforts to stop Russian aggression in Ukraine, and a decline in negotiating power for Kyiv once gas to the EU no longer



flows through its territory, judging from Russia's previously successful efforts to use energy policy leverage against Ukraine. In 2006, two years after Ukraine elected a pro-EU government in the aftermath of the Orange Revolution, Russia cut off gas flows to Europe through Ukraine, leaving its European customers without heat in the middle of winter. Russia [again](#) shut off gas to Ukraine because of price disputes in 2008 and 2014, [delaying](#) implementation of the Ukraine-EU [Deep and Comprehensive Free Trade Area](#) agreement and successfully portraying Ukraine as an unreliable gas supplier.

- The National Defense Authorization Act includes an amendment to expand Nord Stream 2 sanctions to insurers and technical certification companies working to complete the pipeline, and US House and Senate [negotiators have agreed](#) that the new sanctions will be included in the bill. Sanctions will be extended to foreign entities providing underwriting services, insurance, or reinsurance to vessels constructing the pipeline, as well as firms that provide testing and certification and facilities and technology upgrades to the project.
- [Revisions](#) to the Countering America's Adversaries Through Sanctions Act (CAATSA) in July specifically targeted Nord Stream 2 by eliminating the explicit exemption for pipeline projects that were signed before CAATSA became law on August 2, 2017, including Nord Stream 2 and TurkStream. The relatively low \$1 million individual or \$5 million total in a 12-month period investment threshold could result in sanctions for any significant pipeline project.

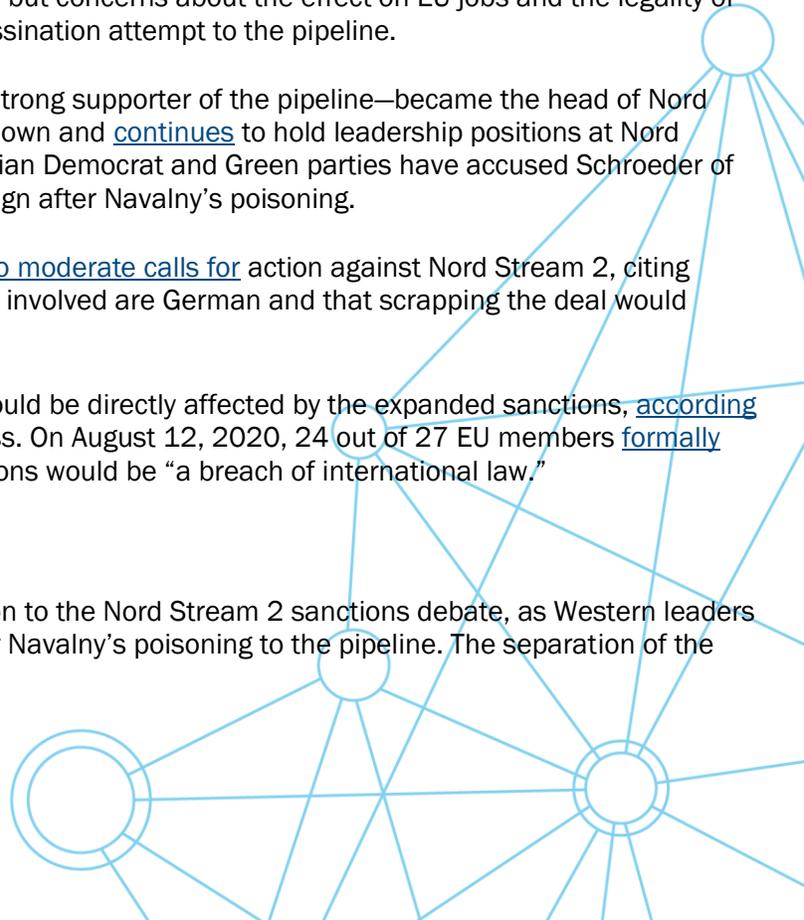
## Pressure on Germany After Navalny's Poisoning

Germany's [Energiewende plan](#) requires all nuclear plants to be shut down by 2022 and coal plants to be shuttered by 2038, making cheaper energy imports a priority. Germany has faced pressure from some political parties to scrap the Nord Stream 2 pipeline in the wake of Navalny's poisoning, but concerns about the effect on EU jobs and the legality of proposed sanctions will likely stymie efforts to tie the assassination attempt to the pipeline.

- Former German Chancellor Gerhard Schroeder—a strong supporter of the pipeline—became the head of Nord Stream AG's advisory board shortly after stepping down and [continues](#) to hold leadership positions at Nord Stream and Rosneft. Members of Germany's Christian Democrat and Green parties have accused Schroeder of "[lobbying for the Kremlin](#)" and called for him to resign after Navalny's poisoning.
- German Foreign Minister Heiko Maas [has worked to moderate calls for](#) action against Nord Stream 2, citing concerns that half of the 100 European companies involved are German and that scrapping the deal would endanger hundreds of German jobs.
- More than 120 companies from 12 EU countries could be directly affected by the expanded sanctions, [according to](#) Nord Stream 2 EU Representative Sebastian Sass. On August 12, 2020, 24 out of 27 EU members [formally complained](#) that the threat of extraterritorial sanctions would be "a breach of international law."

## Europe Decouples Pipeline from Navalny Poisoning

Navalny's poisoning initially added a new political dimension to the Nord Stream 2 sanctions debate, as Western leaders considered whether to tie new sanctions against Russia for Navalny's poisoning to the pipeline. The separation of the



assassination attempt from EU's energy policy indicates that the EU is determined to complete the pipeline project, even if companies and entities involved in the pipeline are exposed to possible US sanctions. Russia [continues to deny](#) involvement in Navalny's poisoning, despite German and UN reporting that confirms an agent from the Novichok family—a nerve agent Russia has used in the past to poison adversaries—was used in the assassination attempt.

- Despite calls to connect the Nord Stream 2 project to sanctions in the aftermath of Navalny's poisoning, the EU on October 14 [announced](#) it would sanction six Russian officials and one organization related to the poisoning, showing an effort to decouple the project from the attack on Navalny.
- In mid-October, German Foreign Minister Heiko Maas said that he “[assumes](#)” that the project will be completed, and Washington's threat to sanction any companies helping complete the pipeline has been criticized not just by Germany but [other EU countries](#).

## Russian Vessels and Associates are Primary Sanctions Targets, but Others Exposed

Russia continues to reiterate its commitment to completing the Nord Stream 2 project despite the threat of additional US sanctions, and Kremlin spokesman Dmitry Peskov [has voiced the need](#) to create a strategy that will allow Russia to finish the pipeline, with one pipe-laying ship already making a [voyage](#) from the Russian Far East to Germany, where the remainder of the pipes for the project are stored.

- Senators Ted Cruz (R-TX), Tom Cotton (R-AK), and Ron Johnson (R-WI) have been particularly vocal in their calls for additional Nord Stream 2 sanctions. On August 5, 2020, the three senators sent a letter to German port company Fährhafen Sassnitz GmbH [threatening sanctions](#) if it continued servicing ships building the pipeline—particularly the pipe layer *Akademik Cherskiy* and the pipelay crane vessel *Fortuna*. Both vessels are presently moored at German ports in the Baltic Sea.
- The *Akademik Cherskiy* and the *Fortuna* have come under additional scrutiny in recent months for their ambiguous ownership. The *Akademik Cherskiy* recently [separated its ownership](#) from a high-profile Gazprom subsidiary, likely to reduce potential sanctions exposure. The *Fortuna* has been [associated](#) with a Luxembourg company with connections to Russia, but the ultimate owner is unclear. The obscured details surrounding these vessels increase associated risks for US companies should the vessels or their owners be added to the SDN list.
- If Nord Stream 2 is completed before additional sanctions are imposed on the project, licensing and certification will need to be provided for the pipeline to become operational, which could expose German regulatory, testing, and certification authorities to US sanctions. German regulator BNetzA [is responsible](#) for the possible certification of the project, and technical tests, inspections, and certifications must be carried out during pipelaying and pre-commissioning before the Stralsund mining authority gives its final approval.
- Norwegian insurer [Det Norske Veritas](#), which would certify the pipeline for the Danish government, could also fall under the expanded sanctions covering pipeline insurers and certification companies.

