



Congress may force Biden to s' Russia's Nord Stream 2 pipelin

BY JOHN E. HERBST, OPINION CONTRIBUTOR — 05/11/21 11:00 AM EDT
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Nord Stream 2, [the Kremlin's pet project to bypass Belarus, Poland and Ukraine](#) and deliver natural gas directly to Germany, [poses a graver threat](#) than Russia's recent military buildup in the region. Russian President Vladimir Putin has consistently used gas as a political weapon, and Nord Stream 2 would make it easier to do so in the future.

Joe Biden, who [put Putin on notice](#) in his first call as president, has been reluctant to [take action](#) that would block the completion of the pipeline. [Construction has resumed](#) and, if nothing changes, it [could be finished by Christmas](#). What gives?

Biden wants warm relations with Germany, a worthy motive after [Donald Trump's damaging treatment of Chancellor Angela Merkel](#). Pipeline proponents [argue that sanctions would damage U.S.-German and even transatlantic relations](#) if the U.S. "sanctioned Germany." Thus, the administration chose not to sanction new firms — even Russian firms — involved in the renewed construction of the pipeline, though [it was legally required to do so](#).

The story isn't over. A strong [bipartisan majority in Congress](#) wants to [kill the pipeline](#) and will step in. Congress has already passed laws to halt the pipeline — the [Protecting Europe's Energy Security Act \(PEESA\)](#) and [Protecting Europe's Energy Security Clarification Act \(PEESCA\)](#) — and these laws contain mandatory sanctions. The administration cannot simply ignore them when sanctionable activity is taking place. What's more, this legislation is carefully written so that the sanctions would not

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be applied to German firms, which undercuts the notion that sanctioning Nord Stream 2 means sanctioning an ally.

The Congressional position is a serious problem for the Biden administration, given its desire to accommodate Merkel, but not the only one. The other problem is Germany. Washington has sought a way to justify its inaction. For over two months there has been contact with Berlin, which has yielded only vague pledges.

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No surprise. Berlin believes that its bogus argument that the U.S. shouldn't sanction its ally gives it the whip hand. While tough on Putin, Merkel worries about her domestic supporters, which include a business community anxious to develop lucrative deals with Russia. Plus, this would not be the first time the German business community got away with bending the rules. Germany's Siemens sold turbines in 2015 and 2016 to Russia that made their way to Crimea in violation of EU sanctions and paid no major price. Why not do it again?

Berlin's position has currency because Washington has not carefully defined its interests in Germany, Europe, and Russia, which admittedly are complicated. The problem is the unacceptability of allies making geopolitically problematic business deals with rivals who are illegally occupying the territory of neighboring countries and whose reckless behavior threatens EU partners and NATO allies. Ugly too is the sight of former heads of government serving as well paid advocates for Moscow's geopolitical ploy.

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The historical reality isn't pretty either. Cooperation between Berlin and Moscow has often come at the expense of the neighboring smaller nations. That was true when the Holy Alliance of Prussia, Russia and the Austrian Empire was on the prowl after the Congress of Vienna in 1815 against countries seeking independence, and when the Molotov-Ribbentrop Pact allowed Hitler to start World War II and Stalin to seize a good chunk of Eastern Europe. This was well understood when NATO was created, as one wag put it, to keep "the Russians out, the Americans in, and the Germans down."

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Much has changed. Germany has become the leading nation in Europe and America's most important Atlantic ally. The picture in Germany isn't one of uniform support for the pipeline either. Many in Germany, including those in the Green Party, understand the dangers of Nord Stream 2. The Green Party has officially made halting Nord Stream 2 part of its party platform and is expected to do well in the September parliamentary elections. Even if the Greens do well then, they would not become part of a new government until late in the year, and much work can be done to complete the project before then.

These are all reasons for Biden to act on his insight that Nord Stream 2 is a "bad deal" for Europe and for the US. Acting now is fully consistent with his intention to restore U.S. leadership abroad. Leadership sometimes means persuading allies to do or accept things that, for their own parochial reasons, they do not want to do.

But if this is not enough to move the administration to defend U.S. interests, there is always Congress. The Senate Foreign Relations just approved an amendment requiring the State Department to identify whether 20 ships involved in the project are subject to sanctions within 15 days of the legislation being passed. If the administration continues to dawdle, there may well be sanctions legislation targeting Nord Stream 2 AG, a wholly owned subsidiary of Gazprom based in Switzerland, which

has contracted with the already-sanctioned Fortuna vessel and virtually all other entities engaged in pipe-laying for Nord Stream 2. Sanctions against Nord Stream 2 AG could be a deathblow to the project.

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Observers looking for an historical analogy might set their sights on the Ford administration which wanted to avoid antagonizing the Soviet Union by making human rights and the right to emigration a major issue in the bilateral relationship. Congress felt otherwise, and the result was the passing of the Jackson-Vanik legislation imposing sanctions on the Soviet Union to ensure freedom of emigration.

Naturally, Republicans oppose Nord Stream 2. Democrats in Congress such as Sens. Bob Menendez (D-N.Y.) and Jeanne Shaheen (D-N.H.), who have spoken strongly against the project, are well positioned to persuade Biden to apply the mandatory sanctions laws that would stop the project once and for all.

John E. Herbst is the director of the Atlantic Council's Eurasia Center and a former U.S. ambassador to Ukraine.

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Candidate for German chancellor slams Russia's Nord Stream 2 project: report

🕒 10.05.2021 15:30

The Green candidate for German chancellor has firmly opposed the Nord Stream 2 gas pipeline being built under the Baltic Sea to her country from Russia, a Polish website has reported.



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The German politician told the US-based think tank that it was inconsistent of the government in Berlin to support Nord Stream 2 amid ongoing efforts to make Europe independent of Russian gas supplies, according to [energetyka24.com](#).

Baerbock's statement comes at a time when President Joe Biden's administration is looking for ways to stymie the nearly completed energy project, which could serve as a major financial and geopolitical boon to Moscow, according to a [report](#) last month by the Politico news service.

A high-ranking German politician in March called for a [construction moratorium](#) on the Nord Stream 2 project, according to a report at the time by [energetyka24.com](#).

US Secretary of State [Antony Blinken](#) warned in March that the Nord Stream 2 pipeline being built from Russia to Germany could undermine the interests of a number of NATO allies, including Poland.

Speaking on a visit to NATO headquarters in Brussels, [Blinken](#) said Biden "believes the pipeline is a bad idea, bad for Europe, bad for the United States."

[Nord Stream 2](#), designed to double the capacity of the existing Nord Stream undersea gas

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Naftogaz fiasco risks undermining Ukraine

UkraineAlert by Alan Riley and Suriya Jayanti

Geopolitics & Energy Security

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The Ukrainian government has sparked controversy by suspending the Naftogaz Supervisory Board in order to dismiss CEO Andriy Kobolyev. (REUTERS/Valentyn Ogirenko)

The sacking of Andriy Kobolyev as Naftogaz CEO on April 28 is not just another Kyiv squabble. In order to remove Kobolyev, Prime Minister Shmyhal suspended the Naftogaz Supervisory Board for two days. By doing so, he rode roughshod over Naftogaz's corporate governance system and the commitments Kyiv had entered into with the international community.

The consequences of this decision are far worse than just a grievous breach of corporate governance rules. By his actions, Ukraine's Prime Minister has set off a train of events that are likely to severely damage Naftogaz. These developments could undermine Naftogaz's status as the country's largest taxpayer, while also threatening Ukraine with gas shortages, higher gas prices, and rising energy insecurity.

Ever since the Maidan Revolution of 2013-2014, successive Ukrainian governments have committed themselves to complying with EU standards of corporate governance for their state-owned enterprises. Independent supervisory boards have been established with their operations protected by law.

The existence of an independent board and formal corporate governance rules have helped Naftogaz management to transform its operations. Naftogaz has gone from being a drain on the state budget to providing 13% of annual state revenue. Corruption has been flushed out of the sector and more investment has been brought in. Ukraine has fully unbundled its gas sector, encouraging greater transparency and more competition.

These reforms have reassured beneficiaries of the Ukrainian transit regime that gas can be safely transited and stored in Ukraine. It has permitted Kyiv to effectively respond to Russian claims of Ukrainian "unreliability" by pointing to the gas sector's compliance with EU liberalisation and corporate governance norms, something almost entirely absent from the Russian gas sector.

The recent decision to abuse the Naftogaz corporate governance regime in order to remove Kobolyev now threatens to bring all the gains of the last seven years crashing down. Already, a proposed Eurobond issue has been cancelled. It is

questionable whether the recent Black Sea exploration agreement will go ahead, as Western investors are likely to walk away from the deal.

Meanwhile, utilisation by foreign firms of Ukrainian storage facilities (one of Naftogaz's recent successes) is likely to drop off a cliff. There is a real danger that by so needlessly wrecking the corporate governance regime, the Ukrainian authorities have also seriously damaged Naftogaz's ability to generate revenues for the state budget.

Furthermore, recent developments have put Naftogaz on the verge of a personnel collapse. The Supervisory Board responded to its two-day suspension by resigning en masse (save one government appointee). The executive board is reportedly preparing for a similar mass resignation, along with many of the highly professional staff who have been recruited over the last seven years.

The Ukrainian authorities may seek to dismiss the problem by arguing that more staff can always be recruited. However, finding highly qualified staff who have the technical and professional skills required to run a major energy company is challenging. Trying to recruit such people to an energy company that has had its corporate governance regime overturned so publicly and comprehensively is well-nigh impossible.

In addition, one alleged immediate underlying cause of the decision to sack Kobolyev, namely the government's desire to get its hands on the reported USD 2 billion in Naftogaz accounts, may trigger further grief for Ukraine. This cash was held in reserve, partly for production development to enhance Ukraine's long-term energy security, but also so Naftogaz could buy more gas for next winter. If these funds are seized by the government, how can Naftogaz ensure there are no gas shortages (and higher prices) next winter?

THU, MAY 13, 2021

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10:00AM

Gas shortages and higher prices may not even be the worst of it. Prime Minister Shmyhal has handed Moscow a valuable argument in the ongoing dispute over Nord Stream 2. Moscow can now more credibly claim that Ukraine is an unreliable transit country. If Ukraine does not follow EU rules, then the only safe transit option for Europe is to complete Nord Stream 2. Ukraine's actions make it easier for Germany to oppose sanctions and have made the completion of the pipeline project significantly more likely.

To make matters even worse, new Naftogaz CEO Yuri Vitrenko reportedly wants to take a tougher stance against Gazprom, which could backfire by undermining the current transit contract. He is said to favor forcing Gazprom to move gas transfer points to the Ukrainian-Russian border and allowing third party gas (including Central Asian gas) into the Ukrainian market.

The problem with this plan is that it is probably in violation of the agreements Naftogaz and Gazprom entered into in December 2019. There is a non-trivial danger that any such attempt to change the transfer points will give Gazprom cause to terminate the existing transit contract. Such a termination would cost Ukraine billions of dollars in transit fees while also undermining the country's energy security.

The December 2019 transit agreement between Naftogaz and Gazprom was underpinned by the Ukrainian commitment to fully unbundle Naftogaz. Failure to unbundle had originally been cited by Gazprom as a reason to reject a deal with Naftogaz. On January 1, 2020, Ukraine fully unbundled Naftogaz and established the Gas Transmission System Operator of Ukraine (GTSO) to run the country's pipeline network. Part of the unbundling process was the establishment of a supervisory board for GTSO, which in this case, was placed in the holding company Main Gas Pipelines of Ukraine (MGU).

Unfortunately, the Ukrainian government has also shown a significant lack of commitment to corporate governance at MGU. In June 2020, the Chair of MGU, Walter Boltz, a distinguished energy specialist and one of the founders of modern European energy liberalisation, was summarily dismissed. The term of office of all the other supervisory board members finishes at the end of May with no process in place to reconfirm or replace them. This failure of full compliance with the terms of EU unbundling again threatens the transit agreement by potentially giving Gazprom cause to withdraw.

To add to these problems, it is unclear whether the new CEO designated by Naftogaz can in fact hold the position. Article 26 of Ukraine's law on the prevention of corruption prohibits for a one-year cooling off period any move by someone in a regulatory capacity into executive control of a formerly regulated entity. Yuriy Vitrenko was acting Energy Minister until the moment when the Cabinet of Ministers voted to suspend the Naftogaz Supervisory Board and fire Kobolyev. It appointed Vitrenko CEO in the same sitting, during which he was already writing his acceptance letter, a source in the Cabinet has claimed. This would seem to be a clear violation of Ukraine's anti-corruption legislation.

Irrespective of Vitrenko's personal qualifications for the job, other energy companies and investors may be less likely to partner with Naftogaz because the second part of Article 26 renders all actions taken by an appointee with a Article 26 conflict of interest subject to invalidity. Many companies will likely be reluctant to sign agreements with Naftogaz led by Vitrenko if there is a possibility that these agreements will subsequently be cancelled by Ukrainian courts or other tribunals. Additionally, political liability insurance is set to become much more expensive, if it remains available at all.

The move to suspend the Naftogaz Supervisory Board and fire Andriy Kobolyev risks undermining Ukraine's security. The government appears to have triggered a course of events which could result in Naftogaz once again becoming dependent on state subsidies to function. Recent decisions could also lead to gas shortages and higher prices, the loss of transit revenues, and greater dependence on Russian gas. It is difficult to see how this could possibly serve Ukraine's strategic interests.

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Further reading

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