

Non-paper: Promoting Transatlantic Unity and Ukraine`s energy security in German-US relations

Germany is fully determined to successfully implement the “**Joint Statement of the US and Germany on Support for Ukraine, European Energy Security, and our Climate Goals**“ of July 21 to strengthen both Ukraine`s as well as European energy security and deter Russia from misusing the pipeline for aggressive political ends. We are concerned that renewed, unilateral action by US-Congress would undercut this joint effort and seriously weaken transatlantic unity on Russia.

There are ample reasons why we continue to asses that **swift implementation of the Joint Statement** is the best way towards safeguarding the interests of Ukraine:

➤ ***NoS2 at present no threat to Ukraine as long as a reasonable gas transit is ensured***

Implementing the “Joint Statement” allows us to put pressure on Russia to meet its obligations as a responsible supplier and to honor the current gas transit agreement with Ukraine and extend it beyond 2024 as publicly called for by the German government.

A Special Envoy for Ukraine gas transit has been appointed to that end.

➤ ***Huge opportunity for Ukraine to transform its energy sector and diversify Ukraine`s energy supplies:***

Germany and the US will support **investments aiming at USD 1 billion via the Green Fund for Ukraine**, including from third states and private-sector entities. Germany will provide an initial grant to the fund of at least \$175 million.

➤ ***Cooperation ensures that Russia does not use energy as a weapon:***

Cooperation with the US on restrictive measures ensures that Russia does not use energy as a weapon. Measures could include public messaging, political measures, economic measures and support for victims of Russian malign activities.

➤ ***Nord Stream 2 has not softened Germany`s foreign policy on Russia:***

Since Russia`s illegal annexation of Crimea and Russia's actions in eastern Ukraine as a turning point in relations with Russia, Germany has been leading the EU to align itself with the US on Russia sanctions and spearheaded the creation of several Russia-related sanctions` regimes in the EU and nationally. Germany has sent strong signals to Moscow when it found Russia breaching international law even at the cost of accepting a strain on German-Russian relations, but kept dialogue-channels open.

➤ ***Sanctions against a US-ally would only be a victory for Putin:***

US Sanctions targeting Nord Stream 2 would undermine the commitment given to Germany in the Joint Statement, weaken the credibility of the US government, and endanger the achievements of the Joint Statement, including the provisions supporting Ukraine. They would ultimately damage transatlantic unity.

➤ ***Rise in energy prices is a global phenomenon and cannot be exclusively attributed to Russia:***

Russia is currently fulfilling all delivery obligations, including the gas transit agreement with Ukraine, but it could do more: Recent announcements by Putin to increase deliveries to European gas storages are a step in the right direction.

Non-paper: Implementation of the “Joint Statement” – Paragraph 2: Options for action at the national level in Germany

Paragraph 2 of the Joint Statement stipulates: “Should Russia attempt to use energy as a weapon or commit further aggressive acts against Ukraine, Germany will take action at the national level and press for effective measures at the European level, including sanctions, to limit Russian export capabilities to Europe in the energy sector, including gas, and/or in other economically relevant sectors. This commitment is designed to ensure that Russia will not misuse any pipeline, including Nord Stream 2, to achieve aggressive political ends by using energy as a weapon.”

From the day of the publication of the Joint Statement, the German Federal Government has been actively implementing this commitment. We are in close contact with the U.S. administration to co-ordinate options for responses in the event of Russian aggression and malign activities, including Russian efforts to use energy as a weapon. As the imposition of sanctions lies within the EU’s exclusive sphere of competence, the German Federal Government is following a two-pronged approach: We are actively participating in the process to identify options for additional restrictive measures at the European level that was initiated by EU leaders at their summit on 24 and 25 June 2021 (see European Council Conclusions available at www.consilium.europa.eu/en/) and at the same time, we are working on options for measures at the national level that could complement action at the European level.

As regards options at the national level, we are thinking in **three categories: public pressure, political measures, and economic measures**. Within these categories, any measure could be either designed to put pressure on the Russian government or to support the victims of a potential Russian aggression.

1. Public pressure

- Strong public messages using all appropriate channels and fora, condemning the unacceptable Russian behavior and confirming our unwavering support for the victim(s) of this behavior. Ideally in co-ordination with the EU and the U.S.

2. Political measures

- Assessing a restriction or, where required, suspension of certain bilateral political meetings or selected co-operation formats with Russia, as far as necessary and appropriate.

3. Economic measures

- Engagement that the gas transit via Ukraine continues at a level sufficient to sustain the supply route via the Ukrainian transit network, which is also the underlying understanding for the assessment of security of gas supply of Germany and the EU by the Federal Ministry of Economic Affairs and Energy in the certification process of the independent transmission systems operator. A special envoy supports the negotiations for gas transit via Ukraine to continue beyond 2024.

Classified

- Support for countries that are victims of Russia`s use of energy as a weapon, e.g. by technical assistance and other support for “reverse flow” and/ or further increasing support for the energy transition in these countries.
- Review of possible limitations for new sovereign export credit guarantee applications concerning the Russian fossil energy sector, in co-ordination with the EU and the U.S.
- Assessing a suspension of investment guarantees for future projects in the Russian fossil energy sector, in co-ordination with the EU and the U.S.

Non-paper: Nord Stream 2 Certification – a legal process under EU rules

In mid-June 2021, Nord Stream 2 AG of Zug/Switzerland, filed an application for certification as an independent transmission system operator (ITO) for the Nord Stream 2 pipeline – insofar as this pipeline is located on EU territory and passes through EU territorial waters – with the independent regulator, the Federal Network Agency (Bundesnetzagentur, BNetzA)¹. Within this certification process, the BNetzA is required to assess compliance with all relevant legal acts.

Process started in September, but has currently been suspended by the regulator

Beginning with the receipt of all necessary documents supporting the application, BNetzA has four months to draw up its draft decision. The four-month period commenced on September 8, 2021. On November 9, the independent regulator informed the European Commission of a temporary suspension of the process: to comply with the relevant EU directive, Nord Stream 2 AG will transfer the assets and management of the part of the pipeline on German territory and in its territorial waters to a new German entity which is 100% owned by Nord Stream 2 AG. The remaining time of the four-month period shall resume once BNetzA receives all necessary documents in relation to the new company.

Once the draft decision has been adopted, the BNetzA shall issue a respective notification and will request an opinion from the European Commission, which is to be provided within a further deadline of two months (this period can be prolonged for two months if interested third parties, e.g., ACER, are heard). Once the European Commission has provided its opinion, BNetzA has a final two-month period to adopt its final decision, which shall to the greatest extent possible take into account the Commission's opinion.

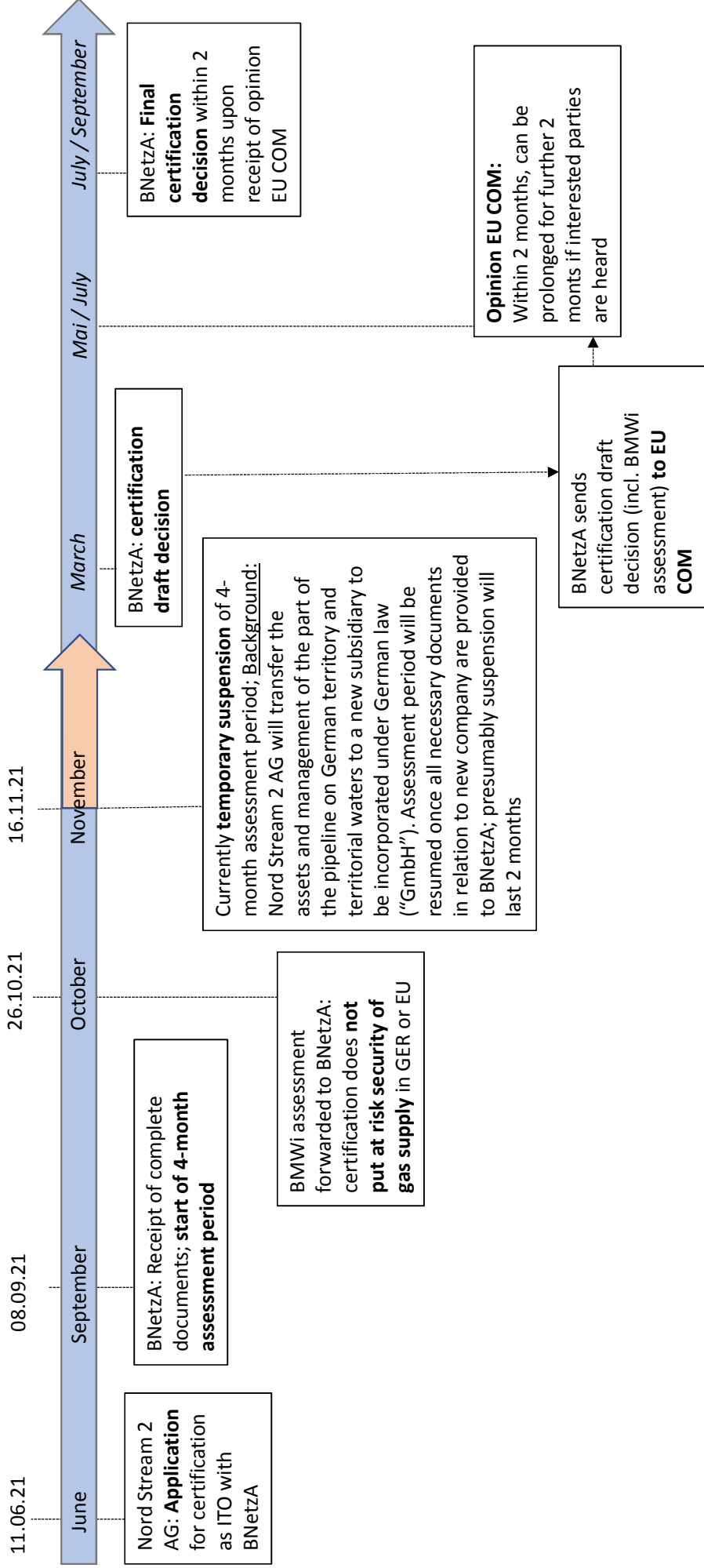
Role of the Federal Ministry for Economic Affairs and Energy (BMWi)

For a company applying for certification as an ITO which is controlled by an entity from a third (non-EU) country, BMWi is required to provide to BNetzA its assessment as to whether granting certification will put at risk the security of the energy supply of the Member State and of the European Union². BMWi has consulted the neighboring EU Member States Austria, the Czech Republic, Estonia, Hungary, Italy, Latvia, Lithuania, Poland, and Slovakia. The Polish undertaking PGNiG as well as the Ukrainian undertakings Naftogaz and GTSOU have filed applications to be admitted as third parties to the certification procedure with BNetzA. All statements made in the course of the consultation as well as statements by PGNiG, Naftogaz, and GTSOU were taken into account in the assessment. BMWi submitted its assessment to BNetzA on October 26, 2021 and concluded that the granting of the certification will not put at risk the security of gas supply in Germany and the EU.

¹ in accordance with §§ 4a, 4b, 10, 10a to 10d Energy Industry Act (Energiewirtschaftsgesetz, EnWG; the regulatory provisions transposing the EU Internal Gas Market Directive 2009/73/EC)

² § 4b EnWG, Art 11 Directive 2009/73/EC

Timeline Certification ITO Nord Stream 2 Pipeline



Non-paper: Green Fund for Ukraine

Germany is fully committed to set up a **Green Fund** to support the energy transition, energy efficiency, and energy security in **Ukraine**.

Germany is **well on track for setting up the Green Fund in an accelerated process**: The Federal Budget Bill includes the allocation of **€150 million** to the budget of the Federal Ministry for Economic Affairs and Energy with the sole purpose of creating the fund.

Germany has drafted an **initial concept for the establishment of Green Fund**. The **German development bank KfW** will establish the Green Fund on the basis of existing Ukrainian partners (e.g. the state bank Ukrgasbank). The fund will be operational in the **in September 2022** at the latest and then be able to **support projects**. The Fund will set up **promotional programmes** for the energy transition. The Ukrainian bank will administer the programmes and be able to provide grants and interest subsidies to green loans. **Financial beneficiaries** can be SME's and corporates, private households, municipalities or project developers.

The contributors to the Green Fund will determine the areas for promotional programmes and a set of criteria for applications of potential beneficiaries. The **KfW as the Project-Executing Agency** will monitor the process, provide the money for grants and set up a credit guarantee mechanism. The German Federal Ministry will transfer the budget to KfW after the fund is set up. **Other contributors (private entities or countries) to the fund** will be involved in the process accordingly.

Some countries and private entities have already signalled **their interest in financially supporting** the Green Fund. Germany is also looking forward to a possible U.S. contribution to the Fund.

The financing of initial **“lighthouse projects”** can start **even before** the Green Fund has been established. The lighthouse projects could be supported through existing instruments, e.g. the Energy Efficiency Fund or the coal transition project within the Energy Partnership. Two projects seem feasible in this respect:

- modernisation (energy efficiency, PV roof top etc.) of official and community buildings in Myrnodol, East Ukraine (affected by coal exit/mine closure).
- creation of an Industrial Zone at the former mine field through renovation and renaturation. Co-financing by private investors and the Ukrainian Regional Ministry.

These projects can start and be supported in the beginning of 2022.

Dialogue with UKR government on the topics of the Green Fund was conducted by German State Secretary Feicht during his visit to Kyiv in September 2021. **Next steps**:

- determination of promotional programmes and criteria for projects by the contributors to the Green Fund.
- consultation of Ukrainian government on concrete policy areas that should mainly profit from the Green Fund
- due diligence including assessment of existing green programmes of Ukrgasbank
- development of a detailed concept, work plan and time table by KfW
- advertising fund and integrate further contributors