

Ukraine non paper rebuts admin's Nord Stream 2 factsheet that was distributed on Capitol Hill (point-by-point)

Daniel Vajdich <dvajdich@yorktownsolutions.com>

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To: Daniel Vajdich <dvajdich@yorktownsolutions.com>

Friends of Ukraine --

We know there's enormous debate right now about the upcoming vote on Nord Stream 2 sanctions (S.3436). Many of your offices have received a factsheet from the administration that attempts to provide justifications for voting against the sanctions legislation. These justifications are not grounded in reality. Below is a non paper assembled by Ukraine's energy federation and consistent with the positions of the Government of Ukraine, as expressed by President Zelensky, Prime Minister Shmygal, and Speaker of Parliament Ruslan Stefanchuk.

If you've read the administration's factsheet or have been briefed by administration officials on Nord Stream 2 sanctions this week, please take the time to fully read the Ukraine non paper below.

We are happy to answer any specific questions you may have or to appropriately direct you to official stakeholders in Kyiv to answer these questions and explain why Ukraine is pleading with all Senators, both Democrats and Republicans, to vote in favor of S.3436 Protecting Europe's Energy Security Implementation Act. Only S.3436 imposes immediate sanctions to stop Nord Stream 2. Another piece of legislation has been filed and may be voted on soon, but Ukraine is fully aware that this legislation imposes no sanctions on Nord Stream 2 unless there is a formal invasion and Russian tanks enter Kyiv. In other words, if Russia doesn't invade Ukraine, Nord Stream 2 is allowed to proceed. This rewards Russia for its military hostility and for threatening Ukraine, and Moscow will be sure to repeat these tactics to achieve similar victories in the future.

For Ukraine, a country that knows Russia better than any other, was already invaded by Russia in 2014, and continues to be occupied by Russia -- this is not deterrence.

We hope you'll seriously consider Ukraine's perspective on the upcoming Nord Stream 2 sanctions vote and the facts provided below. As Deputy Secretary Wendy Sherman said two days ago, "no decisions about Ukraine without Ukraine."

Nord Stream 2 Pipeline – FACTS ON THE GROUND

Administration Talking Point #1: Immediate Nord Stream 2 sanctions will not “counter further Russian aggression or protect Ukraine.”

Ukrainian President Volodymyr Zelensky, Prime Minister Denys Shmygal, the Speaker of the Ukrainian Parliament Ruslan Stefanchuk, and leaders of Ukrainian civil society disagree with this statement. All have called for the immediate imposition of sanctions to stop Nord Stream 2. Prime Minister Shmygal made clear on January 8, that Nord Stream 2 is “no less an existential threat to [Ukraine's] security & democracy than Russian troops on our border.” In a January 11 letter written by respected members of Ukrainian civil society and published by the Atlantic Council, they correctly state that, “Since late October 2021, Russia has amassed more than 120,000 troops close to the Ukrainian border along with the logistical support for a major new offensive. This menacing build-up had been accompanied by increasingly belligerent rhetoric from senior Russian officials. We believe the green light given to the Nord Stream 2 pipeline in

May 2021 served as one of the key triggers for the current crisis and must be urgently revised.” To deter further Russian aggression against Ukraine, Congress should correct this dangerous mistake and impose immediate sanctions on Nord Stream 2.

Administration Talking Point #2: NS2 sanctions at this time would undermine Transatlantic unity and split the Alliance:

The Transatlantic community broadly opposes the Nord Stream 2 pipeline and has demonstrated so by votes in the European Parliament, US Congress, UK & Canadian Parliaments, Poland, Ukraine, Baltic States, Nordic Countries on numerous occasions. In August 2021, the Chairs of Foreign Affairs Committees in nine countries opposed the US-German agreement to allow completion of the NS2 pipeline – among them: Estonia, Czech Republic, Ireland, Latvia, Lithuania, Poland, Ukraine, United Kingdom, and the United States. Those objections have consistently been ignored by the previous German government and are now being ignored by the current U.S. Administration.

Administration Talking Point #3: We are working on a package of sanctions:

The right time to sanction NS2 and Russia is while they threaten Ukraine and Europe, not after they have acted. In fact, the Russian illegal annexation of Crimea and its illegal war waged in Donbas prove that **threatened** sanctions **ARE NOT A DETERRENT**. The Kremlin only responds to strength and to actual sanctions. Moreover, in the wake of aggressive action by Russia, the collective West has a poor track record of responding with strength. For instance, threats to cut off SWIFT international banking access has been stated many times but has never been implemented. The Kremlin does not believe the US nor Europe are serious, and therefore the threat is not a deterrent.

Administration Talking Point #4: Potential NS2 Sanctions are leverage:

Actual NS2 sanctions are real leverage. Rather than threatening to deploy them in response to aggressive Russian actions, we can offer to remove or moderate them in the event of constructive Russian behavior. Once Russia moves against Ukraine, leverage has lost its threat potential.

Administration Talking Point #5: Germany has made clear commitments to take action should Russia use gas as a weapon:

The German Government led by Angela Merkel turned a blind eye to the construction of the NS2 pipeline since 2015. Only during the last year in office did she recognize its potential geopolitical threat to Germany, Ukraine and all of Europe. The current German government coalition is divided on the NS2 pipeline, primarily because the Social-Democratic majority in the coalition favor the commercial benefits of the pipeline and continue to avoid recognizing the geopolitical risks and Russian use of natural gas exports to Europe as a political weapon. Despite the US-German Joint Statement on European and Ukrainian energy security, and record rising gas prices in Europe due to curtailed Russian exports, neither Germany nor the United States Governments have recognized publicly that the Kremlin is using gas as a weapon. Despite its commitments to Ukraine under the joint statement, Germany has done nothing to help prolong Ukraine’s gas transportation agreement with Russia for another ten years, because it possesses no instruments nor leverage to bring Russia to the bargaining table. The “Schroderization” of Germany and the current social-democratic government led coalition have compromised Germany’s ability to act against Russia and have undermined its commitments to the United States, Ukraine and Europe. Social-democrats believe their Ostpolitik ended the Cold War and not the Reagan-era policies of strength.

Meanwhile, the head of the International Energy Agency Fatih Birol said Russia has throttled gas supplies to Europe at a time of “heightened geopolitical tensions.” He claims Russia was holding back at least one-third of the gas it could feasibly sent to Europe, while draining

Russian-controlled storage facilities on the continent to bolster the impressions of tight supplies.

Administration Talking Point #6: The Administration approach is working with the new German government on NS2 rather than sanctioning them now if more effective and is showing results:

This is an inaccurate suggestion. These sanctions would not sanction the German government. Rather, the sanctions target the operator of the pipeline [REDACTED], which is a wholly-owned subsidiary of Russia's [REDACTED]. These are Russia sanctions, not Germany sanctions. Moreover, the Administration approach shows that Germany is acting in its own interests, while the United States is compromising on its interests in Europe to demonstrate a fig-leaf of alignment with Germany. Over the past forty-years Europe has become more dependent on Russian gas. Making the NS2 pipeline operational will dramatically shift the balance of European energy security in the direction of monopolization and in favor of Russia. Germany is the conduit to this monopolization. Therefore, the United States should align and be in solidarity with those players who are fighting for diversity in energy flows to Europe and promoting a security of supply that sustain balance and flexibility. Concentrating too much gas supply in Germany has already proven that Berlin cannot be an honest broker in European energy relations with Russia.

Administration Talking Point #7: A waiver option allows the U.S. to continue its engagement with Germany:

Many Germans, including two of the minority parties in the current social-democratic led coalition, oppose the NS2 pipeline for geopolitical and reasons that run counter to the country's climate change agenda. US sanctions may upset those who stand to gain commercially from NS2 coming online; but they will not upset those who have oppose the pipeline on principle. Foreign Minister Annalena Baerbock; Defense Minister Christine Lambrecht; and Economy Minister Robert Habeck have all been particularly outspoken on the dangers posed by NS2; it is hard to imagine that they would be opposed were the U.S. to move now to sanction the pipeline.

Administration Talking Point #8: Germany will help Ukraine through a "Green Fund" and thru a renewal of a transit agreement with Russia for some gas to be shipped thru Ukraine:

Currently, Ukraine spends \$2 billion annually from its state budget on subsidies for its green transition tariff for solar and wind energy. The financing for this government subsidy comes directly from the gas transit fees it receives from the Gas Transit System Operator of Ukraine (GTSOU) that facilitates the East-West flow of Russian natural gas to Europe. Germany's commitment to finance a \$175 million "Green Fund" is a welcome initiative but it falls short of making any real difference. Keeping Russian gas flows through the GTSOU is not only in Ukraine's and Europe's security interests, it also helps finance the country's green transition. As the European green deal takes shape natural gas will remain an important transition fuel for the continent.

Germany also committed to help Ukraine prolong by ten years its existing gas transit contract with Russia that expires in 2024. To date, German talks with the Russians have not shown any results, despite Russian commitments to open its transit points on Ukraine's eastern border. Germany has no leverage to bring Russia to the table and Russia insists it's too early to begin negotiations – notwithstanding its military build-up of 100,000 troops on Ukraine's eastern border.

Administration Talking Point #9: European energy law applies:

German Foreign Minister Baerbock is right. [REDACTED] must meet the EU Gas Market Directive rules before the pipeline can be certified for operation. This means [REDACTED] must

become a registered European company ([REDACTED]); it must undergo **ownership unbundling**, meaning that the operator cannot be owned by an undertaking which is active in gas production and/or supply. It must provide **third party access**, meaning that all gas producers and suppliers can access the pipeline on equal terms, providing a level playing field for competition between different suppliers. And, it must show **non-discriminatory, transparent and cost-reflective tariffs** to provide a level playing field between different suppliers. Currently, [REDACTED] violates all of these rules and has gone to European court on four separate occasions to change or exempt itself from the rules. The best way to ensure [REDACTED] becomes compliant with the rules is to sanction it now and require Russia and [REDACTED] to make the required changes.

Daniel P. Vajdich
Yorktown Solutions
601 13th Street NW Suite 900S
Washington, D.C. 20005

[REDACTED]
www.yorktownsolutions.com



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