



RESEARCH CENTRE FOR
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EU-Russia Relations from an EU Energy Law Perspective

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1. *EC proceedings against Gazprom*

- Commission raided offices of Gazprom and several gas incumbents in September 2011 and has since been informally investigating possible breaches of Article 101 TFEU (cartel agreements)
- Commission issued formal letter of objection to Gazprom alleging breach of Article 102 TFEU (abuse of dominant position) in August 2012
- In April 2015 Commission issued a statement of objections alleging that Gazprom's overall practices amount to an abuse of dominant position and specifically, that:
 - it imposes territorial restrictions (including export bans and destination clauses) on wholesalers and industrial customers in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia;

1. *EC proceedings against Gazprom*

- these territorial restrictions result in higher gas prices and allow Gazprom to pursue an unfair pricing policy in five MS (Bulgaria, Estonia, Latvia, Lithuania and Poland) by charging prices to wholesalers that are significantly higher compared to Gazprom's costs or to benchmark prices. These unfair prices result partly from Gazprom's price formulae that index gas prices in supply contracts to a basket of oil product prices and have unduly favoured Gazprom over its customers; and
- It is leveraging its dominant market position by making gas supplies to Bulgaria and Poland conditional on obtaining unrelated commitments from wholesalers concerning gas transport infrastructure
- If no out of court settlement reached Gazprom is potentially looking at a fine of up to 10% of its annual turnover

2. *Other EC actions*

- Infringement proceedings against numerous Member States re. Internal Energy Market
- Infringement proceedings against Bulgaria re. South Stream in June 2014
- Threatened infringement proceedings against seven MS re. South Stream in June 2014

3. *Gazprom and Russia's Actions*

A. **OPAL GAS PIPELINE**

- In 2007 WINGAS (joint venture of Gazprom and Wintershall) applied for a 100% TPA exemption for both the NEL and OPAL pipelines
- BundesNetzAgentur (BNA) granted 100% TPA exemption for OPAL for 22 years after commercial activity commenced
- In June 2009 the EC overturned the BNA decision reducing exemption to 50%
- At the end of 2013 / beginning 2014 the BNA revised its decision providing that 50% of the capacity would be TPA exempt while the remaining 50% had to be made available to third parties through the PRISMA capacity platform
- EC has never come to a decision on BNA's proposal
- No uptake from any other suppliers
- In Oct. 2014 EC invoked situation in Ukraine as a reason for extra time to issue a decision; in December 2015 EC terminated the review procedure
- In April 2015 legal action brought in Germany for right to use more than 50 % capacity

3. *Gazprom and Russia's Actions*

B. **RUSSIA'S PROCEEDINGS AGAINST EU IN THE WTO RE. THIRD ENERGY PACKAGE, 4/2014**

- Russia claims that TPA and unbundling provisions violate:
 - Articles II, VI, XVI and XVII of the GATS;
 - Articles I, III, X and XI of the 1994 GATT;
 - Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM); and
 - Article 2 of the Agreement on Trade Related Investment Measures (TRIM)
- **Panel established on 11 May 2015 after request of Russian Federation**

3. *Gazprom and Russia's Actions*

CERTIFICATION OF TSO CONTROLLED BY THIRD COUNTRY OR A PERSON FROM THIRD COUNTRY (Article 11 of TEP)

- Request by such transmission system owner or TSO will be refused if IT HAS NOT BEEN DEMONSTRATED that:
 - Entity complies with effective unbundling requirements
 - Certification will not put at risk the security of energy supply of MS and Community taking into account
 - Rights and obligations of the community arising under international law, including any agreement by Community which addresses the issue of security of energy supply
 - Rights and obligations of MS with third countries, IN SO FAR as they are in compliance with Community law
 - Other specific facts and circumstances of the case and third state concerned

4. *Recent Developments*

- **Russia and Naftogaz announce transit of gas to Europe to stop in 2019**
- **Expansion of Nord Stream**
 - MOU signed on 18 June 2015 between Gazprom, E.On, Shell and OMV to expand the Nord Stream pipeline
 - Shareholder Agreement signed in September between Gazprom, BASF, E.ON, Engie, OMV and Shell
 - To bring an extra 55 billion cubic meters per year - enough to cover roughly 75 percent of the current Russian natural gas export to the EU
 - German national regulator approved creation of consortium to construct and operate Nord-Stream-2 pipeline on 22 December 2015
- **Turk Stream**
 - Talks suspended after Turkish downing of Russian plane on 24 Nov. 2015

Layout of Turk Stream gas pipeline route



Source: <http://www.gazprom.com/about/production/projects/pipelines/turk-stream/>

Nord Stream 2



Source: <http://www.gazprom.com/f/posts/29/761233/nord-streams-en-2015-11-10.jpg/>

Thank you for your attention

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