



Nord Stream 2

Committed. Reliable. Safe.

## Statement

# Company Response to the European Commission Initiative for Negotiations Between the EU and Russia on an Intergovernmental Agreement

- > There is no need for an international agreement between the EU and the Russian Federation on Nord Stream 2. A comprehensive legal framework governing Nord Stream 2 and other import pipelines is already in place. There is no legal void, contrary to the European Commission's politically motivated claims.
- > A specific framework just for Nord Stream 2 would discriminate against an individual commercial investment, based on political sentiment. It is unacceptable that among other comparable pipeline projects the European Commission, as the guardian of the EU Treaties, has singled out Nord Stream 2 for a special political treatment. This infringes against the principle of equal treatment, which is a constituting element of the EU Founding Treaties.
- > The implications of the Commission's approach go far beyond Nord Stream 2. It provokes legal uncertainty where there is none and undermines a market based approach that the Commission claims to be advocating. This sort of political cherry-picking sets a dangerous precedent for any commercial infrastructure investment in the EU.
- > Nord Stream 2 permit procedures are conducted by the competent national authorities in compliance with applicable legislation. The procedures are based on clear legal criteria and they are progressing normally. The applicable laws make no reference to an agreement between the EU and the Russian Federation as a requirement for the permits.

**“Nord Stream 2 believes that this initiative is entirely unnecessary. The German regulator already confirmed that there is no legal void that needs to be addressed. Our permitting procedures have been launched successfully and are being conducted by the competent authorities in full compliance with all applicable laws. As part of these procedures, Nord Stream 2 is now actively engaging in open and transparent consultations with stakeholders in all countries around the Baltic Sea” - Sebastian Sass, EU Representative Nord Stream 2 AG**



**[Zug, Switzerland – 9-Jun-17]** | The European Commission “has today adopted a request to the Council of the European Union for a mandate to negotiate with the Russian Federation the key principles for the operation of the Nord Stream 2 gas pipeline project”.

**The reasoning of the Commission is flawed and based on misperceptions**

The Commission seeks a “special legal framework” that would be applied only to Nord Stream 2 and not to any of the six comparable import pipelines that exist or are planned for transporting gas to the EU from outside the internal market.

The Commission recognises correctly that the internal energy market laws (Third Energy Package) cannot be applied to any of the pipelines outside the internal market, like Nord Stream 2. However, the Commission fails to acknowledge the existing legal framework that applies to such pipelines. Furthermore, the Commission’s initiative is based on a misperception of the impacts of Nord Stream 2 on the EU’s internal market.

**A comprehensive legal framework is in place**

The Nord Stream 2 project is subject to a comprehensive legal framework based on EU law, international conventions, and national legislation of the countries along the route of the pipeline.

In Europe, there are six comparable import pipelines that are subject to the same legal regime. The principle of equal treatment is a constituent element of EU law. A “special legal framework” for only one pipeline would infringe upon this fundamental principle. The German regulator Bundesnetzagentur has duly informed the Commission of the risk of a “discriminatory practice” associated with unequal application of legal requirements.

**Effective rules are in place to let the market decide whether to buy Nord Stream 2 gas**

The Commission ignores the contribution of Nord Stream 2 to the internal market of the EU. Thanks to the efforts of the EU, considerable progress has been made over recent years in creating an internal energy market. Reports by respected and neutral institutions such as the Agency for the Cooperation of Energy Regulations (ACER) have shown that gas does flow to where it is needed, irrespective of the route through which it enters the internal market. The EU’s gas supply was never more diverse than today. Consumers in the EU have more options than ever to source gas. More and more gas, including from Russia, is priced on a spot market basis, and nothing prevents Central and Eastern European markets from booking capacity to access hubs. Capacity is sold via an open auction process. Customers in EU countries can now buy gas from whoever they want and ship it to wherever they want. Nord Stream 2 will offer an additional supply option for European consumers. In view of the variety of supply options it cannot lead to a dominant position on the EU gas market for any supplier.

**Market dynamics clearly demonstrate the need for Nord Stream 2**



## Statement: Company response to the initiative of the European Commission

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Gas fields in Western Europe are depleting rapidly, while gas consumption in the EU is expected to remain stable for the next decades. Within the next 20 years, gas production in the EU will drop by around 50%. Even when running at full capacity all the time, Nord Stream 2 will only cover around half of the additional volumes needed by European consumers by 2035. It is therefore wrong to assume that Nord Stream 2 will replace the Ukrainian or any other existing transport route.

In accordance with the principles of the internal market, operators must compete to offer capacity to customers economically. All operators must themselves ensure that the technical state of their systems and their tariff structures enable them to make a competitive offer to the market. As an efficient, state-of-the-art transportation system, Nord Stream 2 is well placed to succeed.

It is important to note that five leading Western European energy companies from Germany, Austria, France, and the Netherlands have already committed to providing long-term financing for up to 50 % of the total cost of the project, which is estimated to be €9.5 billion.

### **Next steps**

The Commission's request to the Council is a first step to starting a formal procedure during which the EU member states, represented in the Council, will discuss whether they see any reason at all to equip the Commission with a mandate for such negotiations with Russia, and what the content, objectives, and boundaries of such a mandate would be. The process would normally involve deliberations on a technical as well as a political level in the Council. At the end of this process, the EU member states would decide if and in which form a mandate will be approved. Only in case of approval, the Commission could then approach the Russian government to explore their interest and readiness to enter in such negotiations. In case negotiations would be conducted, the possible results of such negotiations would need to be approved by the member states and the European Parliament. At the end of this process, an agreement could be signed and ratified.

From a legal and procedural viewpoint, this political development at EU level is distinct from the permit procedures of Nord Stream 2 which are conducted by the competent national authorities of those countries whose jurisdiction applies to Nord Stream 2. Those procedures are defined in detail by legal criteria based on a regulatory framework of EU law, international conventions, and national legislation. None of the applicable permitting laws require an international agreement between the EU and Russia. Therefore, the political procedure at EU level is unconnected to the national permit procedures.

The permit procedures are progressing normally, and Nord Stream 2 is now actively engaging in open and transparent consultations with stakeholders in all countries around the Baltic Sea. We will continue the implementation of the project on this basis, firmly in compliance with all applicable laws, environmental criteria, and technical standards.



### **About Nord Stream 2**

Nord Stream 2 is a planned pipeline through the Baltic Sea, which will transport natural gas over 1,200 km from the world's largest gas reserves in Russia via the most efficient route to consumers in Europe. Nord Stream 2 will largely follow the route and design of the successful Nord Stream pipeline. With Europe's domestic gas production projected to halve in the next 20 years, Nord Stream 2's twin pipeline system will help Europe to meet its future gas import needs, with the capacity to transport 55 billion cubic metres of gas per year, enough to supply 26 million European households. This secure supply of natural gas with its low CO<sub>2</sub> emissions will also contribute to Europe's objective to have a more climate-friendly energy mix with gas substituting for coal in power generation and providing back-up for intermittent renewable sources of energy such as wind and solar power.

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