



Press and Information

General Court of the European Union

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Orders of the General Court in Cases T-526/19 and T-530/19
Nord Stream 2 AG and Nord Stream AG v Parliament and Council

The General Court of the European Union declares that the actions brought by Nord Stream AG and Nord Stream 2 AG against Directive 2019/692, which extends certain rules of the internal market in natural gas to pipelines from third countries, are inadmissible

The operators of the Nord Stream 1 and Nord Stream 2 pipelines are not, in any event, directly concerned by that directive

The Swiss company Nord Stream AG, in which the Russian company PJSC Gazprom has a 51% shareholding,¹ owns and operates the Nord Stream (commonly known as Nord Stream 1) pipeline which ensures the flow of gas between Vyborg (Russia) and Lubmin (Germany), near Greifswald (Germany). The construction of that pipeline was completed in 2012, and it is to be operated for a period of 50 years.

The Swiss company Nord Stream 2 AG, which is wholly owned by the Russian public joint stock company Gazprom, is responsible for the planning, construction and operation of the Nord Stream 2 pipeline, which runs parallel to the Nord Stream 1 pipeline. In January 2017 works began to recover, in concrete, pipes intended for use as part of that pipeline.

On 17 April 2019 the Parliament and the Council adopted Directive 2019/692² ('the amending directive') amending Directive 2009/73 concerning common rules for the internal market in natural gas.³ That directive entered into force on 23 May 2019 and was, in principle, to be transposed by the Member States into their national law by 24 February 2020 at the latest. On the date of its entry into force, works to recover, in concrete, the pipes of the Nord Stream 2 pipeline were, according to the statements made by Nord Stream 2 AG, 95% complete.

From the entry into force of the amending directive, pipeline operators such as Nord Stream AG and Nord Stream 2 AG now have, potentially, a part of their gas transmission lines, in this instance the part located between a Member State and a third State up to the territory of the Member States or the territorial sea of that Member State, made subject to Directive 2009/73 and the provisions of national legislation transposing that directive. This means that those operators have, inter alia, an obligation to unbundle transmission systems and transmission system operators and to introduce a system of non-discriminatory third-party access to gas transmission and distribution systems on the basis of published tariffs.

¹ The remaining 49% of the shares are held by four Swiss companies, two of which, each of which is indirectly owned by a German company, hold 15.5% each, and the other two of which, one being indirectly owned by a French company and the other being the subsidiary of a Netherlands company, hold 9% each.

² Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (OJ 2019 L 117, p. 1).

³ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).

Nord Stream AG and Nord Stream 2 AG have brought actions⁴ before the General Court, the first seeking partial annulment of the amending directive and the second seeking annulment of that directive in its entirety.

Nord Stream 2 AG argues that the new obligations will lead to significant changes in its case since, in order to comply with them, it must sell the whole of the Nord Stream 2 pipeline or entirely alter its organisational and business structure, which fundamentally weakens the basis for funding that infrastructure, funding with which, moreover, European undertakings have been associated.⁵

Nord Stream AG, which is seeking annulment of a new provision requiring the national regulatory authorities to decide on certain requests for derogation by 24 May 2020 at the latest, argues that the new obligations arising from that provision will entail, in its case, significant changes to the shareholder's agreement concerning it, to its articles of association, and to the gas transmission agreement which it has concluded with Gazprom export LLC.

By today's orders, the General Court dismisses those actions as inadmissible.

Concerning **both Nord Stream 2 AG and Nord Stream AG**, the General Court finds that they **are not directly concerned by the amending directive**.

Indeed, it is only through the intermediary of the national measures transposing that directive that the Member States will adopt or have adopted that operators such as those who have brought the actions in question will be or are subject (under the conditions agreed on by those Member States) to obligations under Directive 2009/73, as amended.

Regarding the national transposing measures which are intended, as from 24 February 2020, to make the obligations under Directive 2009/73, as amended, binding with regard to operators, the Member States have a margin of discretion.

Moreover, according to the amending directive, the national regulatory authorities may, under certain conditions, decide to grant exemptions or derogations from certain provisions of Directive 2009/73, as amended, to major new gas infrastructure, on the one hand, and to gas transmission lines between the Member States and third countries completed before 23 May 2019, on the other. For the purposes of implementing those provisions, the national regulatory authorities have a wide discretion as regards the grant of such exemptions or derogations and any specific conditions to which those exemptions or derogations may be subject.

Regarding **Nord Stream AG**, the General Court finds, in addition, that it **is also not individually concerned by the amending directive**.

In that regard, the General Court notes, inter alia, that Nord Stream AG did not have a right to operate and/or continue to operate the Nord Stream dual pipeline system free from any regulatory constraints of the EU, at the very least as regards the part of that gas transmission line located in the territory of the EU, in this instance in the territorial sea of a Member State.

Thus, the fact that, when the amending directive was adopted, Nord Stream AG was part of a limited, identified or identifiable, circle of operators concerned by the extension of the territorial and/or material scope of Directive 2009/73 does not permit a finding that it is individually concerned by the amending directive. Indeed, it is common ground that the amending directive is applied by virtue of objective criteria defined by the EU legislature, including the criterion requiring gas transmission lines in respect of which certain derogations have been requested to have been completed before 23 May 2019, the date on which the amending directive entered into force.

⁴ The Commission, Estonia, Latvia, Lithuania and Poland have applied for leave to intervene in support of the Parliament and the Council. Given that the orders delivered today have concluded the proceedings, there is no longer any need for the General Court to give a ruling on those applications.

⁵ 50% of the funding, amounting to €9.5 billion, is provided by the companies ENGIE SA (France), OMV AG (Austria), Royal Dutch Shell plc (Netherlands and UK), Uniper SE (Germany) and Wintershall Dea GmbH (Germany).

As regards the **right to an effective judicial remedy** relied on by Nord Stream 2 AG, the General Court adds that it is open to that operator to request a derogation or exemption from the German regulatory authority and, as the case may be, to challenge that authority's decision **before a German court** by claiming that the amending directive is invalid and causing that court to put questions to the Court of Justice by way of a reference for a preliminary ruling regarding the validity of the amending directive.

Furthermore, at the Council's request, the General Court decides that **four documents produced by Nord Stream 2 AG** in connection with its action **without the authorisation of the institution concerned**, whether as author or addressee, **are removed from the file** and that account should no longer be taken of the passages of the application and the annexes in which extracts of those documents are reproduced. Those documents include an opinion given by the Council's Legal Service and addressed to the permanent representatives of the Member States and recommendations made by the Commission and addressed to the Council for the adoption of a decision concerning international negotiations with a third country. Relying, in particular, on the recent judgment of the Court of Justice in *Slovenia v Croatia*⁶ and also drawing on the regulation regarding public access to European Parliament, Council, and Commission documents,⁷ the General Court finds, regarding those documents in respect of which the Council had refused a request for access made by one of Nord Stream 2's employees, that the Council is fully entitled, first, to rely on the protection of legal advice, and, second, to consider that disclosure of those documents would specifically and actually undermine the protection of the public interest as regards the international relations of the EU.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

Unofficial document for media use, not binding on the General Court.

The full text of the orders [T-526/19](#) and [T-530/19](#) are published on the CURIA website.

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⁶ Case: [C-457/18](#) *Slovenia v Croatia*, see also Press Release No. [9/20](#).

⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).