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Judgment of the General Court in Case T-526/19 RENV | Nord Stream 2 v Parliament and Council

Nord Stream 2 gas pipeline: the General Court dismisses the action by Nord Stream 2 contesting the directive extending the internal market rules on natural gas to cover gas pipelines from third countries

In April 2019, through the adoption of a directive ('the amending directive'), ¹ the EU legislature amended 'the gas directive' in order to ensure that the rules applicable to gas transmission pipelines connecting two or more Member States were equally applicable, within the European Union, to gas transmission pipelines to and from third countries. Those rules provide, in particular, for the unbundling of transmission systems from those of production and supply, as well as for third party access to transmission systems. However, as regards pipelines between a Member State and a third country completed before the date of entry into force of the amending directive, namely 23 May 2019, the amending directive provides that **the Member State where the first connection point of such a pipeline with that Member State's network is located may decide to derogate from those rules** for the sections of that gas pipeline located in its territory and territorial sea.

Nord Stream 2 AG, a Swiss subsidiary of Gazprom, is responsible for the planning, construction and operation of the gas pipeline Nord Stream 2. It challenged the amending directive before the General Court of the European Union which dismissed that action as inadmissible by an order of 20 May 2020. ² Nord Stream 2 AG then brought an appeal before the Court of Justice against the order of the General Court. By judgment of 12 July 2022, ³ the Court held that the action brought by Nord Stream 2 AG was partially admissible: it annulled, in essence, the order of the General Court and referred the case back to it to rule on the substance of the action.

The General Court **dismisses the action.**

The Court explains that Nord Stream 2 AG made and continued its investments in its gas pipeline during a period within which it had no assurance that EU law would continue not to be applied to its pipeline. On the contrary, Nord Stream 2 AG could foresee that the EU institutions and a number of Member States, which had long since adopted positions to that effect, would use their power in order to extend the internal market rules to cover gas pipelines from third countries, such as the Nord Stream 2 pipeline.

Furthermore, taking into account the state of progress of the works relating to its pipeline at the time that the proposal for the amending directive was submitted by the Commission in November 2017, Nord Stream 2 AG was in a position to foresee that it would not be able to benefit from the derogation envisaged for gas pipelines completed before the date of entry into force of the future amending directive.

The Court also considers that the fact that Nord Stream 2 AG could not benefit from that derogation did not prevent it from operating the Nord Stream 2 gas pipeline under economic conditions and obtaining an appropriate return on its investments.

Consequently, **the EU legislature did not infringe the principle of legal certainty or the principle of the protection of legitimate expectations**, when it provided that only pipelines between a Member State and a third country completed before 23 May 2019 could benefit from the derogation in question.

Next, the Court finds that **the derogation in question is not contrary to the principle of equal treatment.**

Pipelines completed before 23 May 2019 and pipelines not completed before that date, such as the Nord Stream 2 pipeline are not in a comparable situation. Thus, the fact that the Nord Stream 2 pipeline cannot benefit from the derogation in question leads to the different treatment of different situations. The Court adds that, even if the Nord Stream 2 pipeline were in a comparable situation to that of pipelines completed before 23 May 2019, that difference in treatment would be justified.

Finally, having regard to the EU legislature's margin of discretion, the fact that the Nord Stream 2 gas pipeline cannot escape the extension of the internal market rules is not manifestly inappropriate for the attainment the objectives pursued by the amending directive. **The principle of proportionality has not therefore been breached by the legislature.**

In that regard, the Court observes in inter alia that the application of internal market rules to the section of the Nord Stream 2 gas pipeline situated onshore or offshore in the territory of a Member State is appropriate for preventing distortions of competition and negative impacts on security of supply. Moreover, in the light of the elements before the Court, the constraints borne by Nord Stream 2 AG do not appear to be manifestly disproportionate to the importance of the objectives pursued by the EU legislature.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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.

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.

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The full [text and, as the case may be, the abstract](#), of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ [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.

² Order of 20 May 2020, *Nord Stream 2 v Parliament and Council*, [T-526/19](#) (see also [Presse Release No 62/20](#)).

³ Judgment 12 July 2022, *Nord Stream 2 v Parliament and Council*, [C-348/20 P](#) (see also [Presse Release No 122/22](#)).