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# The Ukraine war and the geopolitics of Russian gas

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## 1 Introduction

With the Russian invasion of the Ukraine the Nord Stream 2 pipeline project was shut down with almost immediate effect. Given that the project had been held as a proxy to the crucial EU-Russia-Ukraine gas transportation nexus and the geopolitics between the west and Russia more generally, this did not come as a surprise. Since its beginnings in 2015, the project had been the target of various primarily politically driven actions which aimed at slowing or stopping it. These actions included the biased application of existing laws, amendments of national and supranational laws to target the project as well as intervention by the United States through the implementation of extraterritorial sanctions targeting the project. While varied in form, the objective of these actions was the obstruction of the Nord Stream 2 pipeline project (“the project”). Delayed but not defeated by these actions, construction of the pipeline had finished in the end of 2021. Work on fulfilling regulatory requirements was ongoing when the Russian attack on the Ukraine triggered US sanctions stopping nearly all activities related to the project.

While the 2014 annexation of Crimea was followed by widespread condemnation as well as several measures of economic nature, few measures were taken by the EU to lessen dependence on imports of Russian natural gas.<sup>2</sup> The Nord Stream 2 project, which would double the capacities

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<sup>2</sup> The EU Commission send out a communication in October 2014 on the short-term resilience of the European gas system which analysed the effects of a partial or complete disruption of gas supplies from Russia. It concluded that national measures would not be effective. (COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the short term resilience of the European gas system Preparedness for a possible disruption of supplies from the East during the fall and winter of 2014/2015, Brussels, 16.10.2014 COM(2014) 654 final.) As a consequence, a new Security of Supply regulation was adopted

of direct imports to Germany, was only in the planning phase at that time. However, instead of a decisive decision by the EU not to increase import capacity from Russia, the project continued among mixed signals from EU Member States. Over the ensuing half decade, the Nord Stream 2 project would prove to be divisive not only within the EU, but also in transatlantic relations. One commercial project, supported by several EU Member States as well as major EU energy companies, would become a proxy for the political qualms between EU Member States in regard to their choice of primary energy source as well as its origin.

This contribution focuses less on the Russian invasion of the Ukraine in 2022, but primarily the geopolitics of Russian gas in the European sphere. The Nord Stream 2 pipeline project represents a relevant and contemporaneous illustration on how broader geopolitical misgivings were translated into politically driven actions against a single commercial project by state actors. By almost any yardstick, the actions of the certain EU Member States and the EU, and those of the United States placing obstacles in the way of the Nord Stream 2 project, amounted to violations of international obligations.<sup>3</sup> These actions were often justified by, or related to, either the security of energy supply to the EU or the maintenance of gas flows through the Ukraine.

In retrospect these actions appear justified, and it may even be argued that had one of these been successful in stopping the project, the world may be better off. However, can the pre-emptive application of internationally unlawful measures be justified by how events unfold *ex-post*? Can fundamental principles, such as legal certainty and non-discrimination be adapted to accommodate such pre-emptive behaviour by state actors? Would events have unfolded differently had the project been finished? This contribution does not aim to answer these questions, as it is too early to make conclusions and the spectre of questions is too broad, but instead provides a brief narrative around events relevant to natural gas trade between the EU and Russia preceding, and subsequent to the Russian military attack on the Ukraine.

## 2 EU-Russia natural gas trade: a historically interdependent relationship

Unlike any other event in the past decades, the invasion of Ukraine by Russian forces on 24<sup>th</sup> of February 2022 shook not only the world order, but it was clear that this would have significant effects on the energy markets of the European Union and beyond. With Russia being a key supplier of oil and natural gas to the EU market, the atrocious events in the Ukraine would substantially shape the internal market of the EU, both in the short term as well as into the future. With the Russian invasion, gas prices at the major EU trading hubs shot up from an already historically high level and the global price of crude oil rose beyond a hundred dollars per barrel for the first time in nearly a decade.

From an economic standpoint both effects were explicable, reflecting market realities and not simply an overreaction to unforeseen events: natural gas imports to the EU are still largely regional and dependent primarily on transportation via pipelines. The key source for natural

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in 2017. (REGULATION (EU) 2017/1938 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280/1, 28.10.2017, pp. 1–56).

<sup>3</sup>J. Voetelink, Limits on the Extraterritoriality of United States Export Controls and Sanctions Legislation, in R. Beeres et al. (eds.), *Netherlands Annual Review of Military Studies 2021: Compliance and Integrity in International Military Trade*, pp. 188–215; C. Ryngaert, The concept of jurisdiction in international law, in A. Orakhelashvili (ed.), *Research Handbook on Jurisdiction and Immunities in International Law*, pp. 50–76.

gas is Russia, and a considerable fraction is transported through the Ukraine.<sup>4</sup> Replacing these flows in the short term is simply impossible. The increase in the price of crude oil was influenced by several factors, two of which had the starkest effect. For one, Russia is the world's second largest exporter of crude oil.<sup>5</sup> For the other, gas can be substituted in some applications with products derived from crude oil. Combined with the effect of a number of multinational oil companies shunning Russian oil and oil derived products, the market was in short supply.

The above gives an overview of market as far as it discernible less than two months after the Russian attack on the Ukraine. While general predictions for future consequences on energy markets can be made, for instance a faster energy transition and rapid development of alternative primary energy sources, much of the detail will become clear only with time. However, a retrospective view on developments in EU-Russia energy relations can be made now. In the context of relations between the EU, Russia, and the Ukraine, natural gas is the obvious resource (and culprit) to look at. Over the past half century, it has created cooperation and commercial activity, but also tension and disputes.

As a primary energy resource, natural gas comes with advantages and drawbacks. Among its key advantages is the fact that from the environmental perspective it is the cleanest petroleum energy source in commercial use. This makes it an ideal candidate as a transition fuel, acting as a temporal intermediary between the past dominated by fossil fuels and the future in which energy would be derived from renewables. Its key (technical) drawback for trade is its gaseous nature, making it dependent for transportation on either pipelines or energy intensive transformation into liquefied natural gas (LNG) prior to transportation by ship or truck.

Unlike oil, much of natural gas is traded on local, not global markets. This means that shortages from a supplier cannot be met switching suppliers, as is the case with oil. Equally, buyers can also not be replaced where natural gas is transported by pipeline. This makes natural gas susceptible to be used as a means of geopolitical leverage, something that has been coined the “energy weapon” in academic literature.<sup>6</sup>

A further dimension is added to this by the circumstance that pipelines may not go directly from supplier to buyer, but that these must often traverse one or more transit countries. In the case of natural gas trade between the EU and Russia, historically the key transit country has been the Ukraine. For around half a decade, transit through the Ukraine has taken place without major interruptions and only since 2006 have some disputes and interruptions occurred.<sup>7</sup> While the interruptions were of mostly limited commercial and social impact,<sup>8</sup> these contributed to plans to circumvent transit countries to enable direct access for Russian gas to the EU

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<sup>4</sup> Almost two months into the war, gas transportation from Russia to the EU continues through Ukrainian territory. See for example: Reuters, Russia's Gazprom says it continues gas exports to Europe via Ukraine, 16 April 2022, available at: <https://www.reuters.com/business/energy/russias-gazprom-says-it-continues-gas-exports-europe-via-ukraine-2022-04-16/>, last accessed 16.2.2022.

<sup>5</sup> BP, Statistical Review of World Energy 2021.

<sup>6</sup> K. Smith Stegen, Deconstructing the “energy weapon”: Russia's threat to Europe as case study, (2011) Energy Policy, vol. 39.

<sup>7</sup> P. Högselius, Red Gas: Russia and the Origins of European Energy Dependence (New York: Palgrave Macmillan, 2013).

<sup>8</sup> J. Stern, ‘The Russian-Ukrainian gas crisis of January 2006’, (2006) Oxford Institute for Energy Studies; S. Pirani, J. Stern and K. Yafimava, ‘The Russo-Ukrainian gas dispute of January 2009: a comprehensive assessment’, (2009) Oxford Institute for Energy Studies, NG17.

market. The only practical route to access central Europe without transit would be a subsea pipeline through the Baltic Sea.

In 2011 and 2012 the Nord Stream pipelines<sup>9</sup> were commissioned and started to transport commercial quantities of gas from Russia to the EU market. This project had received strong support from both Russia and the EU, gaining status as a EU Project of Common Interest, speeding up permitting procedures in the EU. Overall, the Nord Stream project was considered a success, operating soon at full capacity, and thus fulfilling the commercial interests of its owners as well as the economic interest of both the EU and Russia. Given its success and the EU's continued demand for imported natural gas, plans for a doubling of the capacity through further pipelines were made soon after Nord Stream had been commissioned.

### 3 The Nord Stream 2 pipeline: From belligerent beginnings to a disgraced demise

In essence, the Nord Stream 2 project became the scapegoat for the qualms certain EU countries as well as the United States had with Russia and Russia's role as a major supplier of energy to the EU, almost from its beginning. The actions taken ranged from the ostensibly legitimate application of existing laws to place obstacles in the way of the project, but importantly also (illegitimate) changes to existing legal frameworks by the EU and its Member states as well as extraterritorial sanctions by the United States.

In retrospective, the timing for the Nord Stream 2 pipeline may have foreshadowed its end. Its initial name NEXT simply reflected its aim to do be an extension of the already built Nord Stream pipeline. The concept for the additional pipelines was made already in 2012,<sup>10</sup> but it was not until mid-2015 that the company that would build the Nord Stream 2 pipeline was incorporated.<sup>11</sup> By this time Russia had illegally annexed the Crimea peninsula, shaking the European security order.<sup>12</sup> What before had been a commercial project was now seen as a proxy for Russian expansionism and while circumventing transit through Ukraine could previously be seen as a purely commercial objective, a geopolitical dimension was now attached to it.

The first major obstacle placed in the way of the Nord Stream 2 project was related to its proposed shareholding structure, taking form in a Polish competition law investigation. Like the Nord Stream project, the pipeline was initially planned to have Gazprom and several EU energy entities as shareholders.<sup>13</sup> Given this competition law challenge,<sup>14</sup> Gazprom became the sole shareholder, with the EU energy entities instead taking the role of financial investors to the project.<sup>15</sup>

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<sup>9</sup>The Nord Stream and the Nord Stream 2 pipeline projects consist of twin pipelines each.

<sup>10</sup>Nord Stream 2 AG v The European Union, PCA Case No 2020-07. Claimants Memorial, 3 July 2020.

<sup>11</sup>Nord Stream 2 AG v The European Union, PCA Case No 2020-07. Claimants Memorial, 3 July 2020, pp. 41-43.

<sup>12</sup>Steven Pifer, *Crimea: Six years after illegal annexation*, available at: <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/>, last accessed 2.4.2022.

<sup>13</sup>Wintershall Nederland B.V., Shell Exploration and Production (LXXI) B.V., ENGIE SA, E.ON Global Commodities SE (now UNIPER SE), and PAO Gazprom.

<sup>14</sup>Office of Competition and Consumer Protection (2016) UOKiK issues objections to a concentration – Nord Stream 2. Available at: [https://www.uokik.gov.pl/news.php?news\\_id%12477](https://www.uokik.gov.pl/news.php?news_id%12477), last accessed 2.4.2022.

<sup>15</sup>This structure was also challenged by the Polish competition authorities which imposed penalties on all involved companies: Office of Competition and Consumer Protection (2020) Nord Stream 2 – maximum penalties

The next major challenge was mounted by Denmark and related to the route the Nord Stream 2 pipeline was planned to take. In April 2017, Nord Stream 2 had submitted a permit application to the Danish Energy Agency to construct the pipeline in Danish territorial waters, along a route similar to that of the Nord Stream pipeline. After the submission of this application, the Danish government amended the Danish Continental Shelf Act to require an evaluation of pipeline projects crossing the Danish territorial waters for their effect on Danish foreign policy, security and defence interests.<sup>16</sup> This evaluation requirement would be applied to ongoing permit application also, meaning that the decision on the route could not be made by the Danish Energy Agency without a binding recommendation from the Danish foreign minister. For the Nord Stream 2 pipeline the effect was that after waiting for a permit decision for more than a year, the permit application for the shortest and safest route through the territorial waters was withdrawn and the pipeline was rerouted to bypass the territorial waters of Denmark.

Next it was EU union law that would be changed to place obstacles in the way of the Nord Stream 2 project by way of an amendment to the so-called “Third Energy Package” in 2019. In the EU, the regulation of the domestic gas market had developed since the mid-1990’s through successive legislative packages.<sup>17</sup> The first of these had as its aim the opening of EU gas markets for competition through transparent and objective criteria for third party access, with the second energy package introducing the requirement of legal unbundling between transmission and distribution activities as well as a number consumer rights and security of supply requirements.<sup>18</sup> By 2007, the EU Commission had concluded that the unbundling requirements the Second Energy Package were insufficient to ensure a well-functioning market.<sup>19</sup> In 2009, the Third Energy Package<sup>20</sup> was introduced with the objective to achieve a higher degree of liber-

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imposed by UOKiK President [https://uokik.gov.pl/news.php?news\\_id=16818](https://uokik.gov.pl/news.php?news_id=16818), last accessed 2.4.2022.

<sup>16</sup> S. Wood and O. Henke, *Denmark and Nord Stream 2: A small state’s role in global energy politics*, (2021) *Energy Policy*, vol. 148.

<sup>17</sup> Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas (OJ L 204, 21.7.1998, p. 1–12); Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57–78); 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 L 211, 14.8.2009, pp. 94–136); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36–54).

<sup>18</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ L 176, 15.7.2003, p. 37–56); Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57–78).

<sup>19</sup> Vedder *et al.*, ‘EU Energy Law’, in M. M. Roggenkamp *et al.* (eds.), *Energy Law in Europe* (Oxford: Oxford University Press 2016), pp. 256–258; A. Johnston and G. Block, *EU Energy Law* (Oxford: Oxford University Press, 2012), paras. 2.31–2.39.

<sup>19</sup> European Commission, DG Competition Report on Energy Sector Inquiry, SEC(2006) 1724, 10 January 2007; Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas [SEC(2007) 1179] [SEC(2007) 1180]/\* COM/2007/0529 final - COD 2007/019.

<sup>20</sup> Directive 2009/73/EC, note 17 above.

alisation of European energy markets and clearer unbundling between production and transmission system owners.<sup>21</sup>

With the adoption of the Third Energy Package in 2009, the EU extended the reach of its internal gas market policy to third countries. Article 11 of the Gas Directive set out that foreign ownership of transmission assets in the EU should not put at risk the EU's energy security. The inclusion of this requirement was seen by commentators as well as Gazprom to be aimed at its assets, being consequently labelled the 'Gazprom clause'.<sup>22</sup> In the case of the Nord Stream 2 it was this article, as implemented into German law, that had required the submission of the "Security of Supply Report" which in the wake of the Russian attack on the Ukraine was withdrawn by the German government. While a side note in the current circumstances, this is evidence that the rules of the Third Energy Package, as originally adopted in 2009, had effective provisions to ensure for the security of supply of gas from third countries. This was however not the view of some EU Member States that started calls for an amendment to the Third Energy Package to also cover import pipelines.

Proposals for the amendment first aimed at expanding the scope of EU regulation to the exclusive economic zone. This was however struck down by the legal services of the EU Council as it would have violated the EU's international obligations.<sup>23</sup> The compromise that was eventually reached extended the scope of application of EU regulation to the territorial waters of the Member State where the first interconnection point to the EU network was. For the Nord Stream 2 pipeline this meant that the last 54 kilometres<sup>24</sup> would be subject to EU regulation. All other existing import pipelines received a derogation and would therefore not be subject to EU regulation. Consequently, the project company started litigation under national, EU and international law to defend its position from what it considered discriminatory and sometimes retrospective application of laws.

The Russian attack on the Ukraine in the night between the 23<sup>rd</sup> and 24<sup>th</sup> of February 2022 send ripples through the world, as the European peace, largely intact since the Second World War, was broken. Not only were the lives of millions of Ukrainians devastated, so was one commercial project: The Nord Stream 2 pipeline project ground to a halt almost immediately after being placed under US sanctions the same night Russian troops invaded Ukrainian territory.

For those familiar with the project, the sanctions did not come as a surprise. Already in May 2021, the project and its chief officers had been put on the US Treasury's "Specially Designated

<sup>21</sup> UN Economic Commission for Europe, 'The Impact of Liberalization of Natural Gas Markets in the UNECE region - Efficiency and Security' (2012), p. 48; H. Vedder *et al.*, 'EU Energy Law', in M. M. Roggenkamp *et al.* (eds.), *Energy Law in Europe* (Oxford: Oxford University Press 2016), p. 258.

<sup>22</sup> A. Willems, J. Sul and Y. Benizri, 'Unbundling as a Defence Mechanism Against Russia: Is the EU Missing the Point?', in K. Talus and P. L. Fratini (eds.), *EU-Russia Energy Relations* (Rixensart: Euroconfidentiel, 2010), pp. 227-228; S. Raszewski, 'Security and the Economics of Energy in North East Europe', in C. Kuzemko *et al.* (eds.), *Dynamics of Energy Governance in Europe and Russia* (New York: St Martin's Press, 2012), pp. 130-145; T. Cottier, S. Matteotti-Berkutova and O. Nartova, 'Third Country Relations in EU Unbundling of Natural Gas Markets: The "Gazprom Clause" of Directive 2009/73 EC and WTO Law', NCCR Trade Regulation Working Paper No 2010/06, May 2010.

<sup>23</sup> K. Talus and M. Wüstenberg, Risks of Expanding the Scope of EU Energy Law (2017), *European Energy and Environmental Law Review*, October 2017

<sup>24</sup> The pipeline does not run in a straight line from the border of the exclusive economic zone and territorial waters to its terrestrial landing. Hence the regulated section is longer than the 12 nautical sea miles the territorial sea encompasses.

Nationals and Blocked Persons list” (“SDN list”)<sup>25</sup>, the application of the sanctions however being waived for US national interests. Waiving the sanctions was at least implicitly related to the outcome of a meeting between the leaders of Germany and the United States followed by a press release in which Germany committed to take action at the national level and press for effective measures at the European level to limit Russian export capabilities to Europe in the energy sector, should Russia attempt to use energy as a weapon or commit further aggressive acts against Ukraine.<sup>26</sup> In effect, Germany had committed to fulfil policy objectives of the United States in order to defend a project that was in its policy interests.

The designation as a SDN effectively cuts off cooperation with companies that have a US nexus, in practice rendering day-to-day business impossible. Consequently, the application of a waiver to the sanctions was perceived by most of the outside world as a positive development for the pipeline project.<sup>27</sup> However, a closer look reveals that the waiver was in effect a hanging threat, as lifting the waiver was at the discretion of the President of the United States.

Following the recognition of the so-called independence of the Donetsk and Luhansk regions by Russia on 21<sup>st</sup> February 2022, Germany withdrew the “Security of Supply Report” for the Nord Stream 2 project.<sup>28</sup> This report, outlining the effects of the project on German and EU gas markets is a requirement for the certification of the pipeline and consequently its withdrawal would stop the pipeline from going into commercial operations.<sup>29</sup> While this meant that the project was on hold, the possibility of continuation was briefly there. However, the waiver on US Sanctions was nonetheless lifted on the 23<sup>rd</sup> of February 2022,<sup>30</sup> leaving only few days for wind down before an (almost) definite end to the project.

This section provided a brief glimpse at how one natural gas project was singled out and treated as a proxy for the discontent some EU Member States and the United States had with how gas markets in the EU were developing. Sentiments between Member States on this project remained split until the Russian invasion of the Ukraine after which Germany distanced itself from supporting the project.

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<sup>25</sup> US Treasury, Specially Designated Nationals And Blocked Persons List (SDN), available at: <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>, last accessed 14.4.2022.

<sup>26</sup> U.S. Department of State, Joint Statement of the United States and Germany on Support for Ukraine, European Energy Security, and our Climate Goals, 21 July 2021, available at: <https://www.state.gov/joint-statement-of-the-united-states-and-germany-on-support-for-ukraine-european-energy-security-and-our-climate-goals/>, last accessed 6.4.2022.

<sup>27</sup> Reuters, U.S. waives sanctions on Nord Stream 2 as Biden seeks to mend Europe ties, 19 May 2021, available at: <https://www.reuters.com/business/energy/us-waive-sanctions-firm-ceo-behind-russias-nord-stream-2-pipeline-source-2021-05-19/>, last accessed 14.4.2022.

<sup>28</sup> Federal Ministry for Economic Affairs and Climate Action, Press Release, Minister Habeck comments on the situation in eastern Ukraine and the discontinuation of the certification procedure for Nord Stream 2, 22 February 2022, available at: <https://www.bmwi.de/Redaktion/EN/Pressemitteilungen/2022/02/20220222-minister-habeck-comments-on-the-situation-in-eastern-ukraine-and-the-discontinuation-of-the-certification-procedure-for-nord-stream-2.html>, last accessed 6.4.2022.

<sup>29</sup> Financial Times, Scholz takes heat off Germany with decision to freeze Nord Stream 2 project, 22 February 2022.

<sup>30</sup> U.S. Department of State, Sanctioning NS2AG, Matthias Warnig, and NS2AG's Corporate Officers, 23 February 2022, available at: <https://www.state.gov/sanctioning-ns2ag-matthias-warnig-and-ns2ags-corporate-officers/>, last accessed 6.4.2022.

#### 4 Concluding remarks

With each new proposal for new limits to commerce and trade with Russia, the nuclear age equivalent of the maxim “when goods don’t cross borders, soldiers will” comes to mind. Despite breaches of international law and the hardship caused by the actions of Russia, a prospect for peaceful cooperation should be shaped already now.

One of the key means to punish Russia for its attack on the Ukraine have so far been sanctions of an economic nature, ranging from the freezing of assets of individuals close to the political leadership to blocking US Dollar payments on the sovereign debt repayments Russia must make. Through its omnipresent nature, limiting access to and use of US Dollars can be considered as the weaponization of finance<sup>31</sup> or “finance weapon” providing a fitting counterweight to the purported “energy weapon”.

To circumvent this type of financial sanctions, the Russian leadership has requested that gas supplies will be cut if payments for such supplies are not made in Roubles.<sup>32</sup> The mere threat of cutting gas supplies to the EU can be considered a major shift in gas trade relations, something Russia has not explicitly done before. At the same time, EU countries are considering curbing imports of Russian energy sources. It should be remembered that despite much rhetoric and promises,<sup>33</sup> it is next to impossible to replace Russian gas imports to the EU from any alternative source in the short term without massive damage to EU industries from inflated energy prices.<sup>34</sup>

It should be recalled that Russia supplies the EU with around one third of its gas demand as well as around a quarter its oil demand.<sup>35</sup> While the substitution of oil imports from Russia to other supplier countries appears tenable, plans to replace Russian gas supplies through alternative suppliers lacks credibility. First estimates of the economic impact on Germany, the EU’s largest economy (and largest importer of Russian gas), from cutting Russian gas supplies indicate that this would introduce a severe recession.<sup>36</sup> This raises the questions as to who would in fact suffer most from an embargo on Russian petroleum imports, in particular gas?

With the invasion of the Ukraine by Russia, oil prices rose quickly beyond the USD 100 per barrel mark and have remained there. For Russia oil and gas exports combined make up around 40–50% of the federal budget,<sup>37</sup> but gas accounts for only around one tenth of this.<sup>38</sup> Conse-

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<sup>31</sup> Financial Times, “Weaponisation of finance: how the west unleashed ‘shock and awe’ on Russia”, 6 April 2022.

<sup>32</sup> Financial Times, “Russia to switch gas invoicing to roubles for European buyers”, 23 March 2022.

<sup>33</sup> EU Commission, REPowerEU: Joint European action for more affordable, secure and sustainable energy, 8 March 2022.

<sup>34</sup> For example, R. Bachmann et al. estimate that a 30% drop in gas usage in Germany, less than the total of Russian imports, would lead to economic losses of 2.2% of GDP in Germany. R. Bachmann et al., What if Germany is cut off from Russian energy?, 25 March 2022, VoxEU.org, available at: <https://voxeu.org/article/what-if-germany-cut-russian-energy>, last accessed 7.4.2022.

<sup>35</sup> Eurostat, EU imports of energy products – recent developments, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU\\_imports\\_of\\_energy\\_products\\_-\\_recent\\_developments#Main\\_suppliers\\_of\\_natural\\_gas\\_and\\_petroleum\\_oils\\_to\\_the\\_EU](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_imports_of_energy_products_-_recent_developments#Main_suppliers_of_natural_gas_and_petroleum_oils_to_the_EU), last accessed 14.4.2022.

<sup>36</sup> Financial Times, “EU ban on Russian energy would spark ‘sharp recession’ in Germany”, 13 April 2022.

<sup>37</sup> Ministry of Finance of the Russian Federation, Federal budget of the Russian Federation, 14 March 2022, available at: [https://minfin.gov.ru/en/statistics/fedbud/?id\\_65=119254-quarterly\\_report\\_on\\_execution\\_of\\_the\\_federal\\_budget\\_starting\\_from\\_january\\_1\\_2011](https://minfin.gov.ru/en/statistics/fedbud/?id_65=119254-quarterly_report_on_execution_of_the_federal_budget_starting_from_january_1_2011), last accessed 14.4.2022.

<sup>38</sup> Reuters, Factbox: Russia’s oil and gas revenue windfall, available at: <https://www.reuters.com/markets/europe/russias-oil-gas-revenue-windfall-2022-01-21/>, last accessed 14.4.2022.

quently, Russia has in effect benefitted from high oil prices, despite several countries limiting or planning to limit purchases of Russian oil.<sup>39</sup> Moreover, for an embargo on oil to be effective, all or nearly all oil importing countries would have to take part in it. If large economies like China or India do not take part in such an embargo, its effectiveness would be curtailed.

A more effective way to increase economic pressure on Russia without severe damage to EU economies would be to place import duties on petroleum imports from Russia. Russian fuels would then have to be exported at discounted prices to be able to compete, causing economic damage on Russia and generating revenue in the EU which in turn could be redistributed to repair the material damage in the Ukraine. Another option would be to place payments for Russian energy deliveries in escrow and limiting the amount Russia can access in terms of both quantity and intended use. By doing so, a certain amount of funds could be made available for the rebuilding of the Ukraine while also ensuring that Russia does not use these funds for its war efforts. What must be remembered is that the above proposals are general and can only be applied to remedy material damage. The moral and criminal liability of Russia and its leadership are beyond the scope of this contribution.

The prospect of creating a bipolar Europe, with an economic “iron curtain” being drawn between Russia and the rest of Europe seems undesirable even at these most trying times. A realistic way forward must be found, one that does not treat breaches of international law with impunity, but nonetheless enables inclusiveness and the rebuilding of relations. Moreover, given that natural gas supplies will be next to impossible to substitute from alternative suppliers in the short term, much of the damage of an embargo on Russian gas imports will hit EU economies hardest.

The actions taken by Russia seem equally irrational as they are destructive. In the globalised world of today, separating from the rest of the world is not only unfeasible but must be considered undesirable not only for Russia but also the rest of the world.

The major commercial and economic impact for both the EU and Russia will be in the sphere of energy trade. It is this sphere in which most could also be achieved to firstly repair relations and then build toward a common future. While criticism at the long-standing German policy of *Wandel durch Handel* (change through trade) is understandably rekindling,<sup>40</sup> it must be remembered that Europe had not seen major conflict for more than 70 years. Instead of casting trade and the economic and social opportunities it brings aside, these should be reconsidered. For Russia to trade again on equal terms, changes to its political leadership need to be made. The new policy for trade relation could then be *Handel durch Wandel* (trade through change), giving Russia and Russians an incentive to change their political leadership to become part of Europe once again.

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<sup>39</sup> European Parliament, “MEPs demand full embargo on Russian imports of oil, coal, nuclear fuel and gas”, 7 April 2022, <https://www.europarl.europa.eu/news/en/press-room/20220401IPR26524/meps-demand-full-embargo-on-russian-imports-of-oil-coal-nuclear-fuel-and-gas>, last accessed: 14.4.2022; The White House, FACT SHEET: United States Bans Imports of Russian Oil, Liquefied Natural Gas, and Coal, 8 April 2022, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/08/fact-sheet-united-states-bans-imports-of-russian-oil-liquefied-natural-gas-and-coal/>, last accessed: 14.4.2022.

<sup>40</sup> Deutsche Welle, War in Ukraine: German foreign policy under fire, 11 April 2022 available at: <https://www.dw.com/en/war-in-ukraine-german-foreign-policy-under-fire/a-61436299>, last accessed 14.4.2022.