

Gas Pipeline Wars: The EU Threatens to Obstruct Gazprom's South Stream Project

The European Commission has indicated it will obstruct the building of a new gas pipeline to bypass Ukraine.

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The European Commission has indicated it will obstruct the building of a new gas pipeline to bypass Ukraine. South Stream is a Russian sponsored natural gas pipeline. As planned, the pipeline would run under the Black Sea to Bulgaria, and continue through Serbia with two branches to Bosnia and Herzegovina and to Croatia. From Serbia the pipelines crosses Hungary and Slovenia before reaching Italy. Its planned capacity is 63 billion cubic metres per year.

The key partner for Russia's Gazprom in the South Stream project is Italy's largest energy company, ENI.

Russia signed intergovernmental agreements with Bulgaria, Serbia, Hungary and Greece as far back as 2008 and with Slovenia in 2009 and Croatia and Austria in 2010.

Now the EU energy chief, German Gunther Oettinger has claimed to the German media that EU objections to the South Stream project are both political and legal.

"With civil war-like conditions in eastern Ukraine and without Moscow's recognition of the Kiev government, we will certainly not arrive at a political conclusion of our negotiations," he said.

He added that talks in a special EU-Russia "working group" on South Stream can continue, but only if Russia is "ready for constructive co-operation on the basis of our energy law".

The EU's so-called third energy package forces energy firms to separate production and distribution assets and to allow competitors access to infrastructure.

Legal threat against Bulgaria

The Commission cannot force member states to abandon the project, but it can obstruct progress by launching legal cases against the contracts which underpin its future. It already threw one spanner in the works this week by launching "infringement proceedings" against Bulgaria on alleged non-compliance with EU public procurement law in its handling of tenders.

Last December, the Commission said that all bilateral agreements (IGAs) for the construction of South Stream gas, signed between Russia and Bulgaria, Serbia, Hungary,

Greece, Slovenia, Croatia and Austria, are all in breach of EU law and need to be renegotiated from scratch. Klaus-Dieter Borchardt, director for energy markets at the European Commission, speaking in the European Parliament said the deals were in breach of EU law.

“The Commission has looked into these intergovernmental agreements and came to the conclusion that none of the agreements is in compliance with EU law,” Borchardt said.

The Commission official highlighted at least three major issues about the deals:

First, the EU’s so-called network ownership “unbundling” rules need to be observed, he said. This means that Gazprom, which is both a producer and a supplier of gas, cannot simultaneously own production capacity and its transmission network;

Secondly, non-discriminatory access of third parties to the pipeline needs to be ensured. There cannot be an exclusive right for Gazprom to be the only shipper; and

Thirdly, the tariff structure needed to be addressed.

EU challenged over claim that its rules should prevail over international law

Russian deputy minister for energy Anatoly Yankovski, who delivered a speech shortly afterwards made the obvious point that Russia could not accept that EU rules should apply to trans-boundary projects such as pipelines, which are not stationed solely on EU territory. He added that EU law could not prevail in EU-Russia relations, which are governed only by international law. In other words, the intergovernmental agreements concluded by Russia over South Stream were prevailing over other legal norms, Yankovski said.

Commission President José Manuel Barroso upped the ante by warning Bulgaria that the EU executive would impose infringements on Bulgaria regarding pipeline declaring that its construction is in breach of EU laws.

The total value of the construction works on Bulgarian territory will be 3.5 billion Euros, with 20 to 30% of the implementation being sub-contracted to Bulgarian firms.

The Commission has objected precisely on the grounds that the Bulgarian-Russian bilateral agreement on South Stream gives preference to companies from Bulgaria and Russia, which is against EU competition rules.

Despite the Commission’s position that the IGA violates EU law, Gazprom CEO Alexey Miller confirmed last month that the building of the Bulgarian and Serbian portions of the pipeline will begin in July.

In end-April, Russia filed a lawsuit with the World Trade Organisation (WTO) against the European Union over the EU’s Third Energy Package.

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