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REPORT - Don't Cross the Streams: Why the Ghost of Putin's Pipeline Continues to Haunt Transatlantic Security

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Benjamin L. Schmitt, Ph.D.
Postdoctoral Research Fellow, Harvard University
Former European Energy Security Advisor, U.S. Department of State
Twitter: @BLSchmitt

Executive Summary

- Russia's 2020 energy strategy has so far inverted its longstanding 'oil for revenue, gas for influence' external engagement model, with the Kremlin's oil cutoff of Belarus and OPEC+ actions as central examples. Putin's looming revival of the ghost of Nord Stream 2 would be a return to form.

- EU regulatory legislation and U.S. sanctions actions have been thus far successful in halting the completion of Nord Stream 2, but vigilance is required on both fronts to ensure that the project remains suspended and Ukrainian and broader Transatlantic strategic security interests are protected.

- The Kremlin may attempt a number of technical maritime configurations to resume construction of Nord Stream 2, but the technology-calibrated sanctions that came into force as a part of the 2020 U.S. National Defense Authorization Act could lead to the addition of Kremlin-controlled Gazprom or its subsidiaries to the U.S. Department of the Treasury's Office of Foreign Assets Control specially designated nationals (SDN) list. The threat of an SDN designation could be a deterrent for the economically hard-hit Gazprom to think twice about resuming the physical construction of the pipeline.

- Given the severity of an SDN designation for Gazprom, it remains a dubious proposition to assume that if Nord Stream 2 were completed by a designated subsidiary or vessel, the project would be able to operate according to plan. The global financial crimes compliance sector is highly risk averse, and Western companies may ultimately decide that the entire Nord Stream 2 pipeline enterprise is simply too radioactive to continue any future business with the project.

- The May 2020 rulings by Germany's Bundesnetzagentur and the EU General Court, denying Gazprom's attempts to circumvent EU regulations should be commended. Gazprom is likely to now attempt to deploy a legal contingency scheme to appear to comply with the Gas Directive without being subject to the intended impact of the law, which if allowed to move forward, would undermine the great strides the EU has taken toward energy market liberalization in the past decade. Thus, these rulings should not be viewed in the context of a settlement under which the project could be allowed to proceed – especially given the risks the pipeline presents to Transatlantic security interests, and the wide array of nations across Europe and North America that have opposed the project since its announcement in 2015.

Introduction

Vladimir Putin's coronation year just hasn't gone to plan. Even in the absence of the global COVID-19 pandemic, the Kremlin's 2020 energy strategy has been a central factor leading to this reality. Right out of the gates, the Kremlin inverted the longstanding 'oil for revenue, gas for influence' scheme it has relied on to coerce its neighbors, and create global turmoil. Echoing Gazprom's 2009 cutoff of the Ukrainian gas transmission system (GTS), in early January Kremlin-controlled Transneft suspended oil deliveries to

neighboring Belarus, which for decades has been almost fully-dependent on the Russian Federation for crude imports. The hardball move was the climax of Moscow's increasing pressure campaign on Minsk to form a political and economic union state with the Russian Federation – an arrangement on which Kremlin insiders pinned their hopes to solve the long-lingering uncertainties associated with Putin's post-2024 succession plan. The idea of the scheme was that a political – or at the very least economic – union between Russia and Belarus could offer Putin a guise of legitimacy to extend his rule beyond the current Presidential term limits set forth in the Russian Constitution, by allowing him to preside over the merged (and therefore 'new') state.

For its part, Belarus and its president, Alexander Lukashenko have long resisted such an arrangement, but given the country's heavy dependence on Russian oil, Moscow calculated that the cutoff would force Minsk to the negotiating table. Instead, Belarus' notoriously insular and autocratic leadership appears to have at least learned about the importance of energy diversification from its non-Russian neighbors: Ukraine, Poland, and the Baltic States have all dealt with energy coercion from Putin's Kremlin. Minsk rapidly signed deals for oil imports from Norway in January and from Azerbaijan (via Ukrainian pipelines operated by Ukrtransnafta) in February, which, along with an official visit by U.S. Secretary of State Mike Pompeo (that has since led to an agreement for historic U.S. oil exports to Belarus) helped to break the logjam with Moscow. Transneft abandoned the cutoff on April 6.

As this struggle dragged on, Putin appeared to have jettisoned his earlier plan to use energy-led economic integration with Minsk as a pretext to solve his succession jam. Instead, he seized the opportunity of a global community preoccupied by its response to COVID-19, opening a brute-force path to simply reset the constitutional clock on term limits. Such a scenario would allow Putin to extend his rule until at least 2036, pending a final constitutional referendum that is – ironically enough – currently delayed due to COVID-19. The failure of the Kremlin's Belarusian energy gambit was mirrored by its inability to make good on its ploy to flout proposed OPEC+ production cuts in early March, in a strategy allegedly aimed at ending the U.S. shale industry. For Russia, engaging in long-term unconstrained crude production would have required the Kremlin to subsidize Russian domestic producers to the tune of $1.7 billion per month by drawing on $570 billion in foreign currency reserves and a $150 billion national wealth fund according to its own Ministry of Finance. The realities of economic stabilization spending that would be required to respond to COVID-19, in addition to social spending already promised by Putin earlier in the year, appear to have driven Moscow to abandon this plan as well. This led to the agreement between OPEC+ members and other oil producing states for unprecedented production cuts on April 12.

Russian Diversionary Pipelines Beyond the Capacity of TurkStream Would Hurt Ukrainian National Security

Missing among Moscow's oil misfires has been the outsized role that a decade-ending natural gas crisis was supposed to play in 2020. After all, Gazprom's many politically motivated gas cutoffs of the Ukrainian GTS over the past 15 years were long predicted to find their climax with the Kremlin gaining the technical capability to end or significantly diminish gas transit via Ukraine by the end of 2019, when the previous long-term contract for gas transit between Ukraine's Naftogaz and Russia's Gazprom was set to expire. Such a capability would have been made possible through the successful completion of its

diversionary pipeline proposals – the 55 billion cubic meter per year (bcma) Nord Stream 2 pipeline in the Baltic Sea, and the 15.75 bcma second string of TurkStream in the Black Sea.

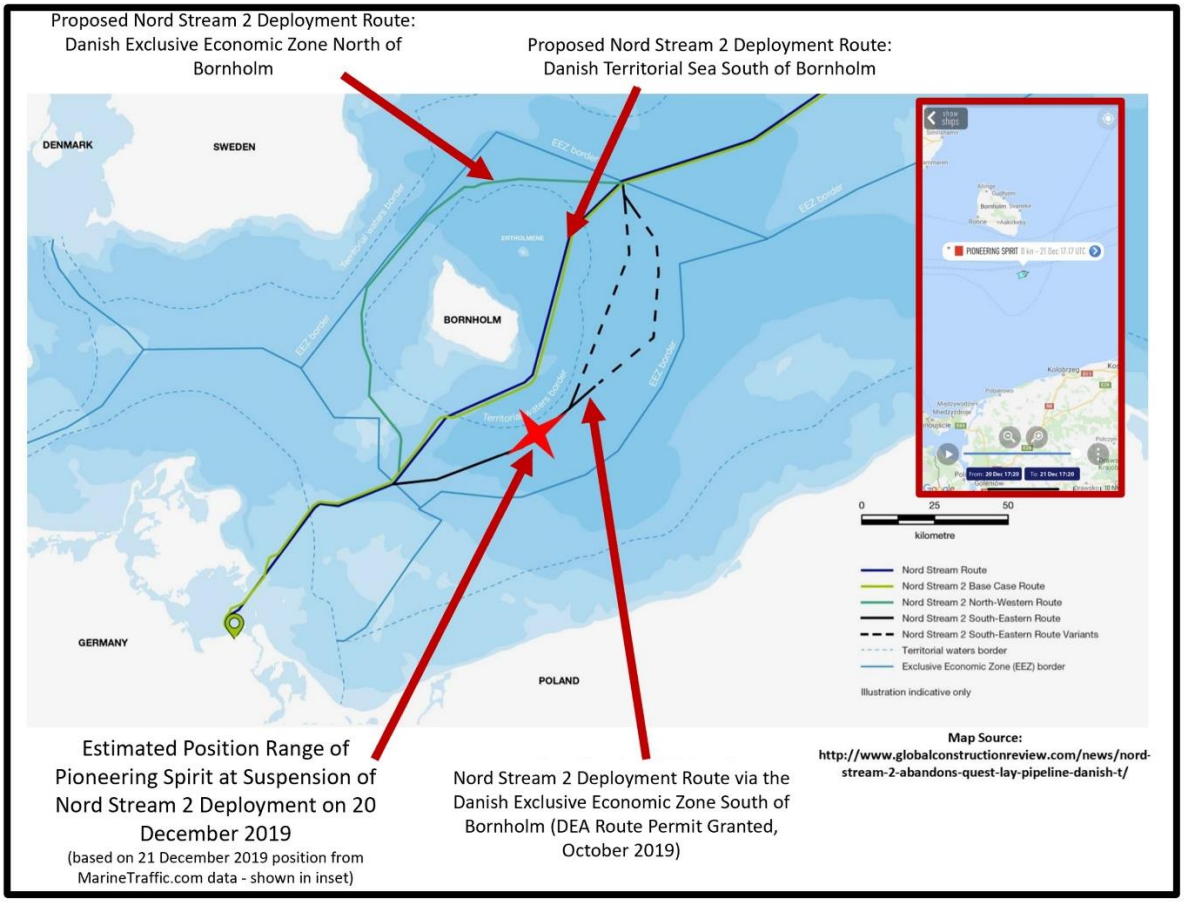

FIGURE 1: The estimated position range of *Pioneering Spirit* at suspension of Nord Stream 2 deployment operations on December 20, 2019, based on December 21, 2019 position from MarineTraffic.com data. Also shown: the planned Nord Stream 2 deployment route via the Danish Exclusive Economic Zone south of Bornholm that was ultimately approved by the Danish Energy Agency (DEA) for pipeline construction on October 30, 2019, after Copenhagen de facto blocked Gazprom's preferred route option through the Danish territorial sea south of Bornholm earlier in 2019.

Of the two pipelines, only TurkStream has been completed, and its operation has illustrated exactly the plans that the Kremlin has long had for these dual pipeline proposals. Instead of bringing significant *new* volumes of Russian gas to European markets (as European project promoters have falsely argued), these pipelines have been developed to allow Gazprom to maintain existing gas deliveries to downstream consumers in Europe while avoiding the Ukrainian GTS. Case in point: instead of providing new volumes to the Balkan region via the Black Sea, over the first quarter of 2020, the second line of TurkStream has resulted in a 70 percent drop in gas volumes transiting the Ukrainian GTS from Russia via the traditional Trans-Balkan route to southeastern Europe, with the volume transited via the Orlovka compressor and metering station on the Ukraine-Romania border dropping to just 0.3 bcm, or a 90 percent drop compared to the same period in 2019. Thankfully, given TurkStream's limited capacity, Moscow has not been able

to entirely diminish Ukrainian gas transit, but the completion of the much larger Nord Stream 2 would enable the Kremlin to make good on its threat. Such an eventuality would eliminate gas transit payments to Kyiv, and hence provide Moscow with an economic cudgel to use in its ongoing campaign of aggression toward Ukraine. The hard security implication of the move is more ominous: if Moscow is able to eliminate its own dependence on existing Ukrainian pipeline infrastructure – some of which sits physically adjacent to the current line-of-contact in Donbas – there would be one less strategic deterrent to an extension of Russian aggression in eastern Ukraine.

The concerns for Ukrainian security, along with the Kremlin's tradition of using large-scale energy infrastructure projects as a vehicle for its malign influence and elite capture practices in the West – which I detailed for the Harvard International Review in November – led a broad majority of nations on both sides of the Atlantic to express overt opposition or significant reservations with the project since its announcement in 2015. Such opposition was not limited to NATO Eastern Flank countries, but many others including Canada, the United Kingdom, Sweden, and Denmark. Noting the broad Transatlantic security risks that would extend from providing Russia a tool to make the Ukrainian GTS redundant, and reflecting the concerns of nearly 20 nations in the Transatlantic space, late last year the 2020 United States' National Defense Authorization Act (NDAA) was passed on an overwhelmingly bipartisan basis and stopped Nord Stream 2 in its tracks, owing to the inclusion of limited, technology-calibrated sanctions against firms engaging in the development of the pipeline. As the sanctions package came into force on December 20, the principal Nord Stream 2 pipelaying vessel, *Pioneering Spirit*, owned and operated by Swiss-based firm Allseas suspended pipelaying operations near the Danish island of Bornholm, and no project deployment has since taken place.

Putin Asks Gazprom to Complete Nord Stream 2: Will It Say Yes?

The positive knock-on effect for European energy security was immediate. Within a week, a new five-year gas contract between Naftogaz and Gazprom was signed – including an agreement for Gazprom to pay $2.9 billion in damages to Naftogaz from the February 2018 Stockholm Tribunal ruling for Gazprom's non-delivery of gas transit volumes under the two firms' 2009 long-term gas transit contract. In addition to the decisive sanctions action by Washington, Brussels also took action in 2019 that would possibly blunt the impact of the monopolistic business model Gazprom intended for Nord Stream 2 – should it ever come online – through an update to the Gas Directive of the EU Third Energy Package that came into force in April 2019. Perhaps hoping to counter these gains for the national security interests of Ukraine and the Transatlantic community more broadly, in spite of his woeful energy track-record thus far in 2020, Putin seems primed to direct Gazprom to forge ahead with actions to revive the ghost of Nord Stream 2. Russia's strategy encompasses both attempting to resume physical construction activities that would inevitably lead to a U.S. sanctions designation and challenging EU regulatory statutes that are destined to fail.

To properly characterize the current sanctions implications of any activity that might be undertaken by Moscow to complete the construction of Nord Stream 2, one must understand the technical requirements for project completion, the deployment instrumentation available to the pipeline's developers, and what activities the US NDAA sanctions package specifically targets. At the suspension of

pipelaying operations by *Pioneering Spirit* on December 20, roughly 100 nautical miles of pipeline remained to be laid in order to complete Nord Stream 2, mostly in the Danish Exclusive Economic Zone (EEZ) south of the island of Bornholm in the southwestern Baltic Sea. **Figure 1** shows the estimated position range of *Pioneering Spirit* at the suspension of Nord Stream 2 deployment operations on December 20, 2019, based on the vessel's December 21, 2019 position from MarineTraffic.com data. Also shown is the planned Nord Stream 2 deployment route via the Danish EEZ south of Bornholm that was ultimately approved by the Danish Energy Agency (DEA) for pipeline construction on October 30, 2019, after Copenhagen de facto blocked Gazprom's preferred route option through the Danish territorial sea south of Bornholm earlier in 2019.

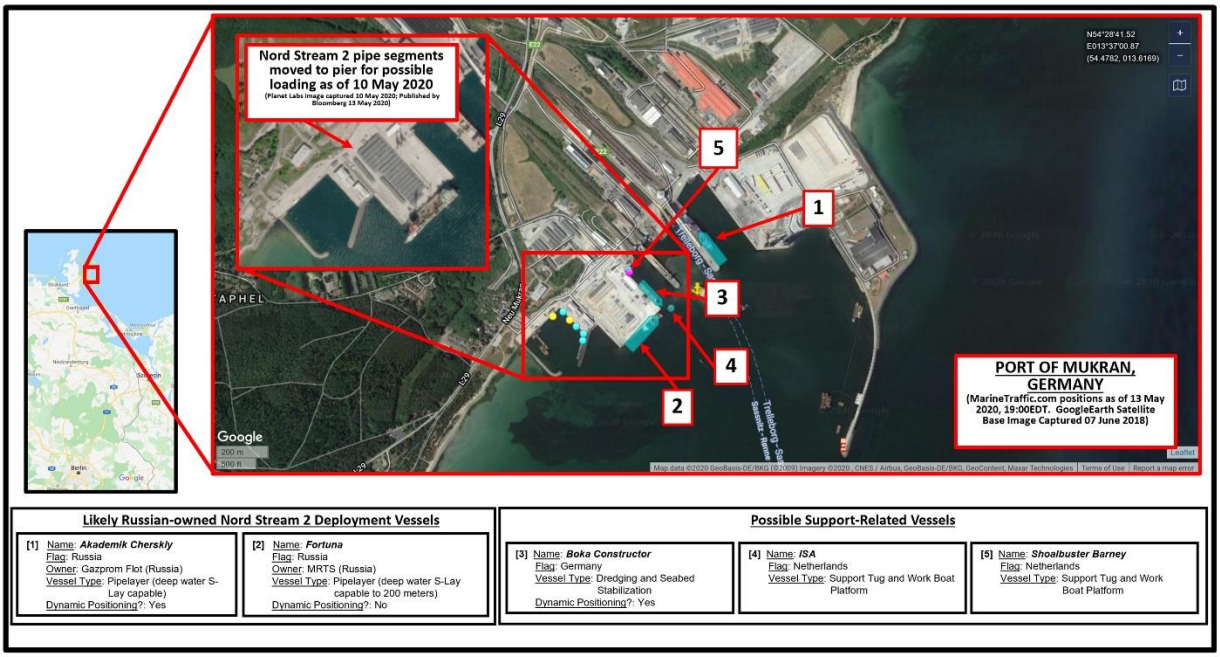

FIGURE 2: The May 13 positions of the two Russian-flagged pipelaying vessels currently in the Port of Mukran: the Gazprom Flot-owned *Akademik Cherskiy* and the MRTS'-owned *Fortuna.* The vessels were also joined by the German-flagged dredging and seabed stabilization vessel *Boka Constructor*, owned by the Dutch-firm Boskalis (that in the past been hired for rock placement by Nord Stream 2 AG), and flanked by two Netherlands-flagged support tugs: *ISA* and *Shoalbuster Barney*. Also is satellite imagery taken by Planet Labs on May 10 and published last week by Bloomberg, which highlighted that Nord Stream 2 pipe segments have been moved to a pier adjacent to *Fortuna*, rather than the *Cherskiy*. Due to this configuration, a technically challenging skin-to-skin pipelaying operation might be in the works, in which the DPS-lacking *Fortuna* would lay pipe segments while tethered to the DPS-enabled *Cherskiy* (see FIGURE 3).

As a critical stipulation in the Danish EEZ construction permit for Nord Stream 2, the DEA stated that "it assumed that the pipe-laying will be carried out using a lay-vessel with dynamic positioning [DPS] […] due to the greater risk of contact with UXO [unexploded ordinance] if a lay vessel with anchors is used." As I wrote for the Jamestown Foundation in March:

> *"The German Federal Maritime and Hydrographic Agency, the BSH, reported that 58,300 tons of chemical munitions were dumped on the Baltic seabed east of the Danish island of Bornholm alone, with the seabed surrounding Bornholm designated as a "risk area" by the Baltic Marine Environment Protection Commission, HELCOM. The threat posed by the dumped munitions around Bornholm is well-documented – HELCOM reported Danish records that showed hundreds of chemical-munitions related incidents related to maritime operations east of Bornholm. These are precisely the areas in which Nord Stream 2 would need to attempt to complete the pipelaying operations in the Danish EEZ."*

Given the departure of Allseas' *Pioneering Spirit* from the project in December, the Russian Federation would need to call upon its only DPS-enabled pipelayer, the Gazprom Flot-owned *Akademik Cherskiy*, which until February 2020 was stationed at the Port of Nakhodka, near Vladivostok in Russia's far east. For technical context, a DPS is an advanced nautical technology that incorporates a fully-integrated control system with the ability to provide real-time ship motion data resulting from current, wind, and sea state to a central computer system. That computer platform is in turn able to calculate the forces necessary for application by the vessel's stern propeller and rudder, as well as port, starboard, and azimuthal thrusters to hold the position of the vessel within a required positional tolerance for precision maritime operations, such as offshore pipelaying activities where anchorage or mooring are prohibited.

My March article documented the curious, and near-Magellanic voyage of the *Akademik Cherskiy*, as it slowly made its way from the north Pacific, rounding the Cape of Good Hope in late March before its arrival offshore the Russian enclave of Kaliningrad on May 3. Even with DPS, the *Cherskiy* has been widely reported to require upgrades to its pipe-welding equipment, and other instrumentation deployments in order to be able to successfully engage in Nord Stream 2 construction. Thus, analysts predicted that the *Cherskiy* would undergo these refurbishments when at Kaliningrad, especially given announcements that Gazprombank's Electronic Trading Platform showed that relevant technical equipment for such an upgrade had been sent to the Russian port.

In a surprise to observers, however, on May 7, the *Akademik Cherskiy* departed its anchorage at Kaliningrad and sailed to the German Nord Stream 2 pipe logistics center at the Port of Mukran, Germany, arriving on May 9. Given that the *Cherskiy* was not in Kaliningrad long enough to undergo significant upgrades, nor did it enter and dock at the Russian port itself, the move was all the more puzzling, begging the question: if the *Akademik Cherskiy* is really the sole Russian-flagged-and-owned DPS-enabled pipelayer, why would it have foregone reportedly vital upgrades that would allow the ship to complete Nord Stream 2 on its own?

Assessing the Tools and Talent Needed to Complete Nord Stream 2

For now, observers will need to consider the potential options that Gazprom may be considering to attempt Nord Stream 2 deployment on their own. This is because Nord Stream 2 AG declined to respond to a request from S&P Global Platts on May 11 regarding "any technical, commercial, or schedule detail in the light of the ongoing threat of sanctions." Nevertheless, the technical capabilities of the vessels in and around Mukran may shed light on Gazprom's potential future plans. The most straightforward

explanation of the *Cherskiy's* recent activities, which would enable Gazprom to continue with Nord Stream 2 deployment with the fewest technical challenges – though at a sizeable schedule delay – would be for the *Cherskiy* to simply undergo upgrades to its welding equipment while at Mukran. These retrofits have hit a major roadblock, however: for the fourth consecutive month, *Cherskiy* owner Gazprom Flot has had to extend its deadline seeking an insurance provider for the upgrades as insurance firms continue to avoid covering the project given the U.S. NDAA sanctions law.

FIGURE 3: An illustrative rendering of what a skin-to-skin pipelaying configuration could look like. In such a configuration, a DPS-enabled vessel could be tethered to a pipelaying vessel without DPS, with sea-fenders deployed between the vessels while coupled. Cargo vessels would continuously deliver pipe segments to the nominal pipelayer for welding of the segments into a pipeline string, which would then be deployed in an s-lay profile to the seabed, via the ship's rear 'stinger' gantry system. Given the strong weather-sensitivity of such a configuration, support tugs would need to stand ready to pull the vessels apart should the sea state rapidly deteriorate. (*Figure for illustrative purposes only*)

From an engineering perspective, delays associated with upfront retrofits to the *Cherskiy* would minimize technical risk in the long run. From a geopolitical perspective, however, in recent days Russian officials have speculated that Washington might be too distracted by the ongoing COVID-19 crisis to properly enforce mandatory NDAA sanctions designations (an assumption that has not borne out given public statements warning of sanctions risk by U.S. officials in recent days). Thus, given what appear to be active preparations to resume pipelaying as soon as possible in the Port of Mukran, Gazprom might ultimately undertake a more immediate, though technically challenging construction configuration. **Figure 2** shows the May 13 positions of the two Russian-flagged pipelaying vessels currently in the Port of Mukran: the *Akademik Cherskiy*, which has the required DPS, but lacks the required welding equipment,

and the MRTS'-owned *Fortuna*, which does not have the required DPS, but does have the required onboard facilities for s-lay pipeline deployment up to a depth of 200 meters. The vessels were also joined by the German-flagged dredging and seabed stabilization vessel *Boka Constructor*, owned by the Dutch-firm Boskalis (that was previously hired for rock placement by Nord Stream 2 AG), and flanked by two Netherlands-flagged support tugs *ISA* and *Shoalbuster Barney*. Figure 2 also includes satellite imagery taken by Planet Labs on May 10 and published last week by Bloomberg, which shows that Nord Stream 2 pipe segments have been moved to a pier adjacent to *Fortuna*, rather than the *Cherskiy*.

This latest satellite imagery, when combined with the current position of the potential Nord Stream 2 deployment and support-related vessels in the Port of Mukran, may indicate that the necessary pipe segments will be loaded on the *Fortuna*, which has necessary welding equipment but no dynamic positioning system, instead of the *Akademik Cherskiy*. Ultimately, this could mean that Gazprom may attempt to fast-track the pipelaying activity by tethering the *Fortuna* to the *Cherskiy* in a skin-to-skin maritime coupling configuration. Skin-to-skin configurations have been used for ship-to-ship transfers of bulk cargo and containers and are a technically challenging operation that requires sea fenders deployed between vessels. If extended to an extremely weather-sensitive operation like pipelaying – with the DPS from the *Akademik Cherskiy* used to stabilize the entire tethered ship system sufficiently so that the *Fortuna* could deploy the pipeline without a DPS – ocean-going tugs would need to be immediately available to decouple both vessels and bring them under tow if the sea conditions deteriorated, so that the vessels do not damage one another. **Figure 3** provides a rendering of what a possible skin-to-skin, s-lay pipe deployment operation might look like for Nord Stream 2, should this ultimately be Gazprom's preferred construction configuration.

Will U.S. Sanctions Continue to Halt Expected Results for Pipeline Completion?

With these potential technical scenarios in mind, we can now ask what their potential limitations might be with respect to sanctions risk. Section 7503 of the 2020 U.S. NDAA, indicates that the target of these mandatory statutory sanctions authorities are "…vessels that engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project," as well as "foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly sold, leased, or provided those vessels for the construction of such a project, or facilitated deceptive or structured transactions to provide those vessels for the construction of such a project."

From a practical perspective, these definitions may mean that the sanctions authority could be tightly focused on vessels engaged in the deep sea pipelaying – in which the vast majority of the seabed in the Danish EEZ south of Bornholm exceeds the 100 foot depth threshold set forth in the NDAA, according to data from the Baltic Sea Hydrographic Commission. Even though the pipe would ultimately be physically-deployed from a single vessel, it is unlikely that sanctions designation would be limited to a single-vessel, since by definition, a number of critical support vessels are required to enable the physical deployment activities. For example, should the skin-to-skin pipelaying configuration described above be undertaken, it is likely that both the MRTS' *Fortuna* and Gazprom Flot's *Akademik Cherskiy* could be designated, along

with other vessels that are taking part in activities that are technically-required to support deep sea pipelaying associated with the Nord Stream 2 construction process.

An interesting corollary to this argument is the case of the Norwegian-flagged *Stril Explorer*, an offshore survey and ROV vessel owned by the Swedish geotechnical service provider MMT that was hired by Nord Stream 2 AG to complete subsea monitoring work south of Bornholm in January. Since departing the port of Karlskrona, Sweden on May 5, it has spent several days conducting roughly 14-hour round trip passes along the proposed Nord Stream 2 route in the Danish EEZ. Right now, one can reasonably expect that the *Stril Explorer* is currently undertaking seabed environmental remediation surveys with respect to Nord Stream 2, which is excluded from NDAA sanctions, especially given that active pipelaying work is not under way. However, if the vessel were to continue to engage in subsea survey or ROV work in tandem with one of the Russian pipelaying vessels, it would raise the question of whether it would risk a designation. Like Allseas, which withdrew from Nord Stream 2 pipelaying activities to avoid sanctions given its significant operations within U.S. jurisdictions, the *Stril Explorer* might follow suit should pipelaying resume, especially since on May 1 Equinor Wind US announced that it hired the vessel to complete subsea geotechnical survey work for its planned windpark between the waters of Massachusetts and New York beginning in mid-2020. **Figure 4** shows the May 17 positions of the aforementioned Nord Stream 2 pipelaying vessel candidates, and possible support vessels, as well as the 14-hour round-trip path that the *Stril Explorer* has been traversing over the past week.

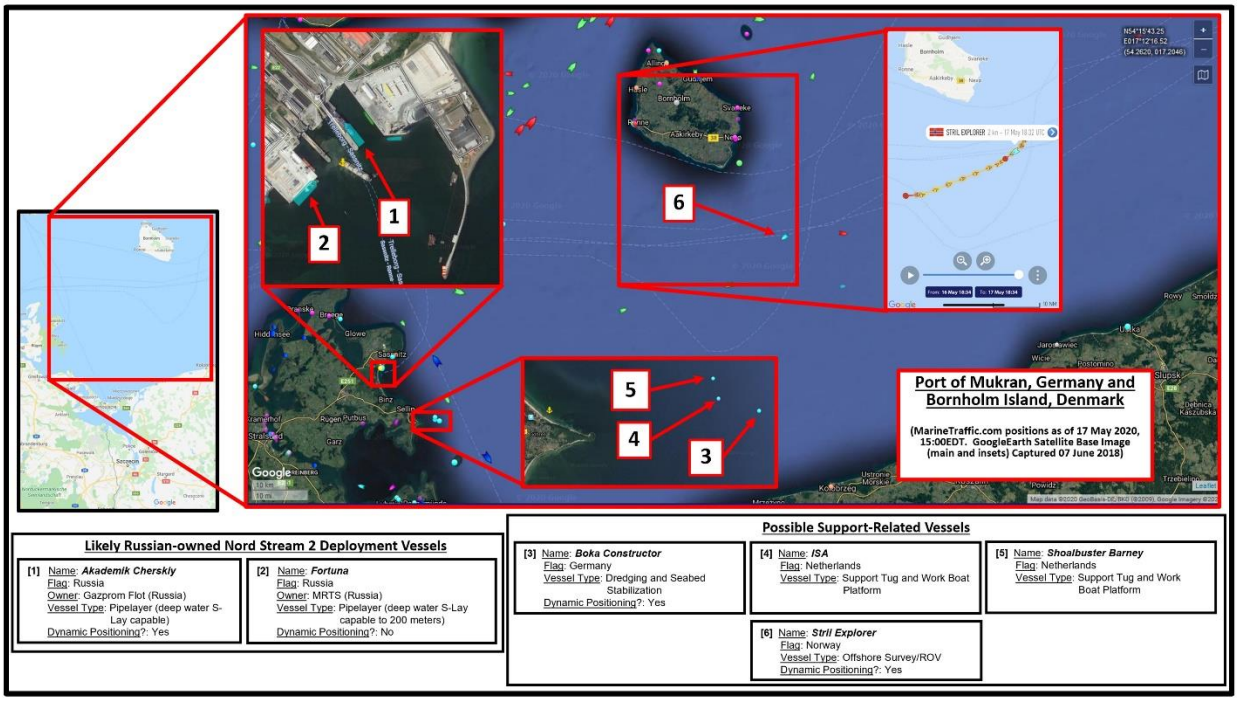

FIGURE 4: The May 17 positions of all of the aforementioned Nord Stream 2 pipeling vessel candidates (*Akademik Cherskiy* and *Fortuna*), and possibly support vessels (*Boka Constructor*, *ISA*, and *Shoalbuster Barney*). Also shown is the 14-hour round-trip path that the Norwegian-flagged offshore survey and ROV deployment vessel *Stril Explorer* has conducted along the proposed pipeline route of Nord Stream 2, following its departure from the port of Karlskrona, Sweden on May 5.

Analysts might argue that the case of the *Stril Explorer* is entirely separate from the *Akademik Cherskiy* and *Fortuna*, given that the former is owned by a Western company likely with lower sanctions risk tolerance and exposure to U.S. financial markets than the Russian firms, and especially the *Cherskiy*, owned by Kremlin-controlled Gazprom Flot might simply proceed irrespective of the sanctions risk. Moreover, analysts have recently argued that Gazprom Flot is already 'sanctioned' and thus evidently not limited in its operations. The missing detail with this argument is that Gazprom Flot, a subsidiary of Gazprom, currently resides on the U.S. Department of the Treasury's Office of Foreign Assets Control sectoral sanctions identifications (SSI) list rather than on the specially designated nationals list (SDN). SSI sanctions involve restrictions on new debt that can be extended to a targeted entity or individual by U.S. persons. Designation as an SDN results in a total cut off from the U.S. financial system, which would be a much more significant blow. Given the severity of an SDN designation impact for Gazprom Flot, it remains a dubious proposition to assume that if Nord Stream 2 were completed by a designated vessel, the project would be able to operate according to plan. The global financial crimes compliance sector is highly risk averse, and Western companies may ultimately decide that the entire Nord Stream 2 pipeline enterprise is simply too radioactive to continue cooperation with the project. Clearly, the sanctions are already having an impact given the difficulty that Gazprom Flot continues to have finding an insurer for the upgrades to the *Cherskiy*'s onboard welding facilities.

Gazprom's own sanctions risk tolerance might also be impacted by its current economic health. Last week, reports surfaced that Gazprom's natural gas exports dropped by 19 percent over the first quarter of 2020, while further reports indicated that the Russian state owned enterprise was set to report a quarterly loss for the first time in its history, perhaps by more than 306 billion rubles ($4.2 billion USD) driven in part by the drop in demand connected to the COVID-19 crisis. Given this financial reality, the Kremlin might ultimately think twice about rushing into a pipe deployment scheme that would almost certainly result in a designation of Gazprom or one of its subsidiaries, especially in support of a project that a 2018 Sberbank analysis reported was significantly "value destructive" for its shareholders. Ultimately this economic reality may have little bearing since the Kremlin's main motivation is the geopolitical impact of diverting gas transit from the Ukrainian route; economics have never been the central concern for a project that is, in reality, not just a commercial deal.

Not Ready to Believe in EU Regulatory Checkmate for Gazprom

On top of sanctions and economic considerations, on May 15, the German national energy regulatory authority, the Bundesnetzagentur (BNetzA), appeared to serve Nord Stream 2 AG a fresh roadblock in its ongoing fight to avoid the impact of the April 2019 update to the Gas Directive of the EU Third Energy Package. Furthermore, on May 20, the EU General Court rejected a challenge by Nord Stream 2 AG at the European level to avoid compliance with these core EU energy regulatory statutes. Since 2019, Nord Stream 2 AG has argued that the Nord Stream 2 pipeline should not be subject to the full force of the Gas Directive, given that the update that would ensure the project complies with core EU market liberalization rules, including ownership unbundling and third party access, took place after the project was "economically complete." As I wrote for the Atlantic Council in December 2019, such an argument was a legal fiction that would vitiate the amended EU Gas Directive to which all EU member states agreed, especially since at the time of entry into force, Nord Stream 2 was not physically complete, did not hold

all necessary construction permits, and was operationally incapable of conveying natural gas along its extent.

Germany's independent BNetzA should be commended for rejecting this brazen attempt by Nord Stream 2 AG to avoid EU regulations. However, this does not represent a major concession by Berlin or a terminal setback to the pipeline, as some project opponents have been hoping for. Some experts have recently argued the attempt could be a 'bait and switch' maneuver by which Gazprom would apply for a clearly untenable exemption position (e.g. the legal fiction of 'economic completion'), and then appear to accept a 'compromise,' which would in fact be a legal contingency scheme to appear to comply with the Gas Directive without being subject to the intended impact of the law. This is not idle speculation – a November 2019 report in Germany's Handlesblatt described such a potential configuration by Gazprom, about which in December I wrote that:

> *"This scheme would involve creating a shell company under which Gazprom could sell the last 12 nautical miles of the pipeline as it enters the German territorial sea to avoid having to comply with ownership unbundling requirements. In this scenario, Gazprom would be the sole owner-operator for the remaining more than 90 percent of the pipeline through the Baltic Sea, allowing Gazprom to argue that the gas offtake point could simply be identified as on the Baltic seabed at the boundary of the German exclusive economic zone (EEZ) and territorial sea. This despite the fact that, physically, the pipeline is still one continuously operating infrastructure installation. That a single continuous pipeline could effectively operate under two regulatory regimes—one Russian and one EU—is a legal fiction carried a little too far and would set a precedent that would undermine the core objectives of the EU's own energy market liberalization policy."*

The BNetzA should continue its exemplary record thus far and hold firm by rejecting any such scheme that would not fully curtail Gazprom's traditional monopolistic business model. The BNetzA will also need to come to terms with the manner by which Article 11 of the Gas Directive requires the regulator to withhold certification to the project should it be shown to harm the energy security of the host member state or the European Union as a whole – a metric that Nord Stream 2 and its onshore extension pipeline, EUGAL, clearly exceed, with the September 2019 OPAL decision standing as a stark precedent.

Conclusion

Should Nord Stream 2 ever operate in a manner that flouts the EU Gas Directive, it would directly challenge the great strides taken by the European Union over the past few decades to bolster its market-liberalized energy community. More broadly, whether Moscow can pull off the project on its own using the *Akademik Cherskiy*, *Fortuna,* or any of the other vessels possibly waiting in the wings remains to be seen. But one thing is for sure: the project will have an immediate and detrimental national security impact on Ukraine and the EU should it come online, as the operation of TurkStream has already shown us this year. And for Putin, the EU regulatory and U.S. sanctions consequences of any such movement by Gazprom to avoid EU law or complete the physical construction of the pipeline will only exacerbate the structural issues with Russian energy plans for 2020 and the decade to come – whether or not he is able solve his own succession woes and chart a political path to stay at the helm of the Kremlin for that long.

About the Author

Dr. Benjamin L. Schmitt, is a Postdoctoral Research Fellow and Project Development Scientist at the Harvard-Smithsonian Center for Astrophysics, where he focuses on the development of instrumentation and infrastructure for next-generation Antarctic experimental cosmology facilities at the South Pole. From 2015-2019 Benjamin served as European Energy Security Advisor at the U.S. Department of State where he advanced diplomatic engagement vital to the energy and national security interests of the Transatlantic community, with a focus on supporting Ukraine and other nations along NATO's Eastern Flank facing Russian malign energy activities. Benjamin has been an invited lecturer on European energy security and horizonal energy technologies, most recently with the Harvard Ukraine Research Institute, Harvard Davis Center for Russian and Eurasian Studies, and National Defense University. He continues to publish energy security analysis, including with the Atlantic Council, Harvard International Review, and Center for European Policy Analysis. Schmitt regularly provides expert transatlantic security policy commentary for both print and television media, including with the New York Times, Foreign Policy, the Daily Beast, Voice of America, Germany's Bild Zeitung, and Ukraine's Kyiv Post. Benjamin is the current Amicus Poloniae Award laureate, a recognition by the Government of the Republic of Poland for outstanding efforts to promote development of cooperation between the Republic of Poland and the United States of America, and has received both Superior and Meritorious Honor Awards from the U.S. Department of State. Before entering government, Schmitt served as a NASA Space Technology Research Fellow while pursuing doctoral research at the University of Pennsylvania, focusing on direct imaging of the Cosmic Microwave Background, for which he received both M.A. and Ph.D. degrees in experimental physics. Schmitt has also previously served as a U.S. Fulbright Research Fellow to the Max-Planck-Institute for Nuclear Physics in Heidelberg, Germany.