



First pipes for Nord Stream 2 being transported. © Nord Stream 2
Photo: Axel Schmidt

U.S. Sanctions Law and Western Coordination on Russia Policy

By Dominik Tolksdorf

The United States and the European Union have coordinated their sanctions against Russia for more than three years. In July 2017 the U.S. Congress overwhelmingly passed additional sanctions against Russia, Iran, and North Korea that were signed into law by President Trump on August 2. The legislation was drafted in the context of the alleged Russian interference in the U.S. presidential election and the investigations into whether President Trump's campaign colluded with Russia, and was heavily driven by Congress's desire to prevent Donald Trump from unilaterally lifting the sanctions against Russia. While the Russian administration criticized the new law, the draft legislation also led to surprisingly

harsh reactions in Germany. While U.S. lawmakers addressed some of the European concerns in the final version of the law, questions remain over the future of transatlantic coordination in implementing sanctions on Russia.

U.S. and EU Sanctions on Russia since 2014

In response to Russia's occupation and annexation of Crimea in 2014, the U.S., the EU, and other allies have implemented a series of sanctions against the Russian Federation. The sanctions specifically

target the Russian energy, financial, defense, and intelligence sectors as well as entities and individuals that are suspected of being involved in Crimea's annexation and Russian actions in eastern Ukraine. Measures include travel bans and asset freezes for individuals; restrictions on Russian entities seeking to conduct business and to access capital in the U.S. and the EU; and an embargo on arms, dual-use goods, and specific technology and equipment for the Russian oil industry. The list of targets has been expanded over the years. Sanctions relief is tied to Russia's implementation of the Minsk Agreements to resolve the conflict in Ukraine.

While the Russia sanctions are believed to have had a significant impact on the Russian economy,¹ their effectiveness remains debatable among experts. For example, it is unclear whether the sanctions have increased opposition to the Kremlin or whether they have instead increased the popularity of President Vladimir Putin in a "rally 'round the flag" effect.² Although some European governments have long only half-heartedly supported the sanctions, and although the sanctions so far have not led to significant changes in Russia's behavior with regard to Ukraine, the U.S. and the EU have successfully upheld the sanctions for more than three years and thus shown transatlantic unity on the matter. The Kremlin has responded to the sanctions by imposing sanctions of its own by, for example, banning the import of certain food products from the EU.

After major U.S. intelligence agencies concluded that individuals with links to the Russian government had interfered in the 2016 presidential election, the U.S. Congress gave almost unanimous support to expanding sanctions against Russia. The motivation behind the sanctions law was to

punish Russia for its alleged interference in the U.S. election, its policies in Ukraine, and its involvement in the Syria conflict. At the same time, the law was intended to deprive President Trump of the ability to unilaterally lift the sanctions on Russia and to signal that Congress will watch Trump's Russia policies closely. By codifying into law the U.S. sanctions on Russia, which hitherto had been based on executive orders signed by President Obama, Congress gained the ability to block efforts by President Trump to ease or lift sanctions.

The law expanded the previous U.S. sanctions by adding new targets in the Russian defense, intelligence, financial, and economic sectors. More than with previous sanctions, the new law enables the U.S. administration to penalize foreign companies that partner with Russian firms in developing new offshore, deep-water, Arctic, and shale oil projects, as well as those companies that are involved in the development and modernization of Russia's energy export pipelines. The law could thus have a significant impact on Western companies that are involved in energy projects

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with Russia. Previous sanctions on Russia that the EU and the U.S. had coordinated since 2014 took European energy security concerns into account, especially with regard to Russian gas supplies. In contrast, the bill that was hastily drafted in June 2017 contained some imprecise language and led to a diplomatic row with Europe, particularly with

the German government. By addressing some of these concerns in the second draft of the bill, U.S. lawmakers reassured European partners that they will seek coordination in Russia sanctions policy.

European Concerns over the New U.S. Sanctions

Given Trump's ambitions to improve relations with Russia, some European governments were concerned that his administration might lift some of the U.S. sanctions on Russia. The bill that President Trump signed into law in August enables Congress to veto a removal of sanctions by the president. Nevertheless, some European policymakers harshly criticized the first draft of the new legislation and interpreted it as U.S. interference in European energy policies, promotion of U.S. economic interests in Europe, and as an attempt to obstruct the Nord Stream 2 pipeline project.

Despite efforts to reduce their reliance on Russian energy resources in recent years, EU member states still import almost a third of their natural gas and oil from Russia, especially through Ukraine, Belarus, and the offshore pipeline Nord Stream (which brings gas from Russia to Germany under the Baltic Sea). European policymakers are concerned that the new U.S. law might not only target new energy projects between European and Russian companies but could also target activities not previously subject to sanctions and put current energy supplies at risk. By potentially targeting companies that are involved in the maintenance, repair, and modernization of existing pipelines, the sanctions could lead to penalties for European companies that are involved in joint European-Russian energy projects. According to the new law, the U.S. could also impose sanctions on companies

that are only indirectly involved by providing supplies, services, and the like to the pipelines. Particularly German and French policymakers have therefore criticized the "extraterritorial scope" of the new U.S. law.

In addition, some German policymakers are frustrated that the U.S. law explicitly refers to Nord Stream 2, a planned expansion of Nord Stream, when it states that "it is the policy of the U.S.... to continue to oppose the Nord Stream 2" pipeline.³ While Russia's Gazprom holds 50 percent of the consortium, several European companies each plan to finance 10 percent of Nord Stream 2. The project, which has many opponents in Europe, has long been criticized by U.S. policymakers on the grounds that it makes Europe more dependent on Russian energy supplies, increases Russian influence in Europe, and weakens Ukraine's position as an energy transit country. Indeed, Gazprom in 2014 announced that it plans to stop transiting gas through Ukraine at the end of 2019; a completed Nord Stream 2 pipeline would therefore surely increase the pressure on Ukraine to reduce transit fees. However, the governments of Germany and Austria argue that Nord Stream 2 is a commercial and not a geopolitical project and regard the U.S. law as a political strike at the construction of the new pipeline.

Besides members of the German government, the Austrian and the French governments voiced concerns over the U.S. bill. They were backed by the European Commission's president Jean-Claude Juncker, who took a strong stance against what he considered U.S. interference in European affairs. Juncker warned that the EU "stands ready to act appropriately within a matter of days" if European concerns were not sufficiently taken into account.

Arguing that “America First cannot mean that Europe’s interests come last,” Juncker warned that the EU might file a complaint with the World Trade Organization against the U.S.

Reactions in Germany Shortly before the Bundestag Elections

Just a few weeks before the September 24 elections to the German Bundestag, reactions to the U.S. sanctions bill were particularly harsh in Germany, where several senior policymakers showed their frustration over what they perceived as unacceptable American interference in European affairs and its lack of coordination with European partners. Following the U.S. Senate’s approval of the draft bill in June 2017, German foreign minister Sigmar Gabriel and Austria’s chancellor Christian Kern issued a statement accusing the U.S. of threatening Europe’s energy supplies and warned that Europe’s energy supplies were “a matter for Europe, not for the United States.” Brigitte Zypries, Germany’s minister for economic affairs and energy, argued that the U.S. sanctions were intended to hurt European business interests in Russia and violated international law. Other politicians argued that the bill could jeopardize many jobs all over Europe. The spokesperson for Chancellor Angela Merkel, whose Christian Democratic Union (CDU) is still in a coalition with the Social Democratic Party (SPD), confirmed that Merkel shared Sigmar Gabriel’s concerns regarding the U.S. bill. In contrast to Gabriel, however, Merkel was not very outspoken on the issue.

Gabriel criticized the bill as intended to promote U.S. exports of liquefied natural gas (LNG) to Europe, secure U.S. jobs, and squeeze Russia out of the European market. The final version of

the U.S. sanctions law indeed states that the U.S. government should prioritize the export of U.S. energy resources in order to create American jobs.⁴ In recent years the U.S. has increased its LNG exports to Europe, especially after two LNG import terminals were opened in Poland and Lithuania. In August 2017 the White House proudly announced that the U.S. was “rapidly becoming a net exporter of natural gas for the first time in 60 years.”⁵ In reality, the share of U.S. LNG in Europe is still rather small, and U.S. LNG exports to Europe are not yet competitive with cheaper Russian gas. But some German politicians see a direct link between U.S. plans to increase LNG exports to Europe and Washington’s opposition to Nord Stream 2.⁶

The strong reactions in Germany were partly a result of the election. While the SPD and the CDU

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primarily criticized the bill as U.S. interference in European affairs that could potentially affect the German economy, other German politicians used the controversy over the bill to voice their general opposition to the sanctions against Russia, which the EU’s foreign ministers had just renewed in June. For example, Sahra Wagenknecht of the Left Party called on the German government to lift the EU sanctions on Russia overall, and Christian Lindner, chairman of the German liberal Free Democratic Party (FDP), argued that the EU’s sanctions on Russia could be gradually lifted without Russia’s full implementation of the Minsk Agreement.⁷



Trump and Putin meet at the G20, July 7-8, 2017. Photo: wikimedia.org

Lindner is distinctly aware of the positions held by representatives of the German economy who have criticized the sanctions for years and fear that the U.S. law will further obstruct trade with Russia. For example, the Association of German Chambers of Industry and Commerce (DIHK) argued that the U.S. bill would put projects that are important for European energy security at risk and could have a serious impact on the German economy. The existing EU sanctions on Russia would significantly affect German-Russian trade and European exports to Russia. The FDP has recently reentered the German Bundestag; negotiations over the formation of a government coalition between the CDU, FDP and the Green Party recently failed.

U.S. Congressional Accommodation of European Concerns

Once the first draft of the U.S. sanctions bill

was released, European officials and diplomats, arguing that the bill could undermine transatlantic coordination in the sanctions regime, lobbied U.S. lawmakers to revise it. The tensions eased after Congress took some of the European concerns into account by modifying the wording of the section that deals with companies that support the construction, repair, or modernization of energy pipelines. According to the altered version of July 2017, the U.S. president, "in coordination with allies of the United States," *may* (my emphasis) impose new sanctions to punish sanctions violations.⁸ The law thus encourages the U.S. president to coordinate with allies before his or her administration decides to apply penalties. In addition to this modification, the wording "may" is less strong than the wording "shall," which is used in many other paragraphs of the law and which does not give the U.S. president much leeway in (mandatory) decisions on sanctions implementation.

The German Foreign Ministry showed relief that European concerns were taken into account with these changes, and Jean-Claude Juncker appreciated that Congress had “committed to only apply sanctions after the country’s allies are consulted.” But while the changes reduced the risk of confrontation between the U.S. and Europe, sections of the new law remain vague and leave room for flexibility on when and how to implement and enforce sanctions. Although EU officials hope that their concerns will be taken into account, in reality, much depends on the U.S. president’s discretion as to when and how to implement sanctions. It also remains to be seen to what extent the president will be willing to coordinate his decisions with U.S. allies. Juncker has already warned that the European Commission retains the right to take “adequate measures” in case the U.S. sanctions disadvantage EU companies.

Transatlantic Coordination on Russia Sanctions in Jeopardy?

The close coordination between the U.S. and the EU on Russia sanctions has been a prime example of transatlantic cooperation on foreign policy in the past few years. The new U.S. law has the potential to erode this unity. As the Russian government would be the main beneficiary of transatlantic frictions over the implementation of the new U.S. sanctions, Kremlin-controlled media outlets have reported extensively on the harsh responses by German policymakers to the U.S. bill. American officials and congressional staffers who followed the discussions argue that U.S. lawmakers, who primarily wanted to target the Kremlin and constrain Trump’s room for maneuver in his Russia policies, did not intend to create tensions with Europe,

and were therefore open to altering the bill. The changes, which were also the result of pressure from U.S. corporations that do business in Russia, led to relief in Europe and restored trust in the U.S. However, there are concerns over the sustainability of coordinated transatlantic actions in the future.

First, analysts and European diplomats are concerned that because of the prominent role the U.S. Congress will play in the implementation of the sanctions regime, transatlantic coordination on the matter might become more difficult in the future. With the sanctions now codified into law, Congress has gained oversight over the implementation of the sanctions and can veto sanctions relief.⁹ Experts are concerned that this could come at the expense of flexibility in managing and adjusting the sanctions to new circumstances.¹⁰ For example, it might become more difficult to reward positive steps from the Russian side if Moscow executes its obligations under the Minsk Agreement. Sanctions relief would then require approval by Congress, which might veto such steps if it is not convinced that the Kremlin is a cooperative actor in other international arenas. This is somewhat reminiscent of the Congress-initiated Jackson-Vanik amendment, which for many years limited U.S.-Russia trade.¹¹ Inflexibility on the part of the U.S. in adjusting the sanctions might in turn lead to frustration in Europe and further strengthen those voices that want to remove the Russia sanctions entirely.

Second, discussions over Nord Stream 2 have the potential to produce transatlantic friction, especially between the U.S. and German governments. A majority in Congress opposes Nord Stream 2, but the new law does not automatically impose

sanctions on European companies that are involved in the project; it leaves this decision to the U.S. administration. This uncertainty originating on the U.S. side can have a chilling effect on companies with business relations with Russia. One of the most interesting questions will be the position of the German government on Nord Stream 2 once a coalition is formed. After the failure of exploratory talks between the CDU/CSU, FDP, and the Green Party on the formation of a government coalition, a renewed coalition between the CDU/CSU and the SPD would be possible. The future of Nord Stream 2, which is a controversial topic in Germany as well, might become a contentious topic in the coalition negotiations.

An avenue of escape from this dilemma would be to give the European Commission a stronger role in negotiating the future of Nord Stream 2. Critical voices within European institutions have long argued that Nord Stream 2 contradicts the EU's goal of reducing its reliance on Russian energy resources and creating a diversified and competitive gas market within Europe. Among the EU member states, Poland, the Baltic States, and Denmark oppose Nord Stream 2 (and have therefore also welcomed the new U.S. law). To mediate, the European Commission has proposed negotiating with the Russian Federation on the key principles for the operation of Nord Stream 2, a solution that so far has been rejected by the German government. While EU legal experts concluded in a recent opinion that the European Commission has no legal basis to seek such a mandate, a final decision on the issue has not yet been made. In case the EU member states decide on a mandate for the European Commission, Germany could theoretically be outvoted with a qualified majority vote.¹² If the European Commission indeed became responsible

for negotiating Nord Stream 2, construction of the pipeline might start much later than scheduled, if at all. Such a development, which would be the result of European concerns over the pipeline project rather than U.S. pressure, would ameliorate potential transatlantic friction on the issue for the time being.





The opinions expressed in this article are those solely of the author.

Endnotes


- 1 See, for example, International Monetary Fund, "Russian Federation: Staff Concluding Statement of the 2017 Article IV Mission," May 19, 2017, <https://www.imf.org/en/News/Articles/2017/05/19/Russian-Federation-Staff-Concluding-Statement-of-the-2017-Article-IV-Mission>. See also Daniel Ahn and Rodney Ludema, *Measuring Smartness: Understanding the Economic Impact of Targeted Sanctions*, Working Paper 2017-01 (Washington, DC: U.S. Department of State, Office of the Chief Economist, December 2016), <https://www.state.gov/documents/organization/267590.pdf>.
- 2 See, for example, Timothy Frye, "Are Sanctions Pushing Russians to 'Rally around the Flag'? Not Exactly," *Washington Post*, June 2017, https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/15/are-sanctions-pushing-russians-to-rally-around-the-flag-not-exactly/?utm_term=.03b36a8c197c.
- 3 U.S. Congress, *Countering America's Adversaries Through Sanctions Act*, H.R. 3364, sec. 257(a) 9, 115th Cong. (2017).
- 4 *Ibid.*, sec. 257(a) 10.
- 5 White House, "ICYMI: 'The United States Is Rapidly Becoming a Net Exporter of Natural Gas for the First Time in 60 Years,'" press release, August 9, 2017, <https://www.whitehouse.gov/the-press-office/2017/08/09/icymi-united-states-rapidly-becoming-net-exporter-natural-gas-first-time>.
- 6 On November 28, 2017, US Secretary of State Rex Tillerson reiterated that the U.S. continues to view the development of Nord Stream 2 as "unwise." He also stated that the U.S. will continue to support LNG-receiving facilities in Europe.
- 7 In addition, Lindner argued that the public should be prepared for Crimea's status to remain a "permanent provisional arrangement." Lindner's statements were immediately criticized by politicians from the CDU, SPD, and the Green Party. The German government clarified that it regards Crimea's annexation as an unacceptable violation of international law and that it continues to fully support the EU's sanctions on Russia.
- 8 U.S. Congress, *Countering America's Adversaries Through Sanctions Act*, H.R. 3364, sec. 232(a).
- 9 As a first indication of the U.S. administration's lack of commitment to coordinating the implementation of sanctions with the U.S. Congress, the White House missed a first deadline on October 1 to give guidance on which entities it plans to sanction in Russia's defense and intelligence sectors and how it plans to impose the measure. On October 29, following sharp criticism from Congress, the State Department released a list of Russian companies and government organizations that could be sanctioned.
- 10 See, for example, Elizabeth Rosenberg, Neil Bhatiya, and Edoardo Saravalle, "New Russia Sanctions from Congress: Contents and Significance," Center for a New American Security, August 1, 2017, <https://www.cnas.org/publications/reports/new-russia-sanctions-from-congress/>.
- 11 See, for example, Joseph Dresen and William Pomeranz, eds., *The Legacy and Consequences of Jackson-Vanik: Reassessing Human Rights in 21st Century Russia: Conference Proceedings* (Washington, DC: Kennan Institute, February 2010), https://www.wilsoncenter.org/sites/default/files/op305_legacy_consequences_jackson_vanik_pomeranz_2010.pdf.
- 12 Georgi Gotev, "Commission Passes the Nord Stream 2 Buck to Member States," Euractiv.com, June 9, 2017, <http://www.euractiv.com/section/energy/news/commission-passes-the-nord-stream-2-buck-to-member-states/>.

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