



## PRESS RELEASE No 122/22

Luxembourg, 12 July 2022

Judgment of the Court in Case C-348/20 P | Nord Stream 2 v Parliament and Council

### **The Court declares the action brought by Nord Stream 2 AG against the directive extending certain rules of the internal market in natural gas to pipelines from third countries to be partially admissible**

*The order of the General Court which had originally held that the action was inadmissible is, in essence, set aside.*

In April 2019, by the adoption of a directive ('the amending directive'), the European Union legislature amended the gas directive, in order to ensure that the rules applicable to gas transmission pipelines between two or more Member States also applied, within the European Union, to gas transmission pipelines to and from third countries. Those rules provide, in particular, for the effective unbundling of the transmission system structures and structures of production and supply, as well as third-party access to transmission systems.

Nord Stream 2 AG, a Swiss subsidiary of Gazprom, is responsible for the planning, construction and operation of the gas pipeline 'Nord Stream 2'. It challenged the amending directive before the General Court of the European Union, which, by an order of 20 May 2020, <sup>1</sup> rejected its action as inadmissible. Nord Stream 2 AG lodged an appeal with the Court of Justice against the order of the General Court.

By its judgment handed down today, the Court of Justice recalls, first of all, that all measures taken by the institutions, including directives, may form the subject matter of an action for annulment insofar as, in their substance, assessed in the light of objective criteria, they are intended to have binding legal effects. In order for a person to be able to invoke that right of action against an act of which it is not the addressee, as in the case of the amending directive, which is addressed to the Member States, it is necessary to establish, *inter alia*, that the person concerned is directly affected by that act. That requires that the effects produced by the act in question directly affect the legal situation of the person concerned and that that act does not leave any discretion to the Member States for its implementation.

However, by concluding that, in the absence of transposing measures adopted by the Member States, a directive cannot by itself, in any circumstances, create obligations for an individual, or be the direct and immediate source of such obligations, or consequently directly affect the legal situation of the person concerned, **the General Court infringed its obligation to assess those effects having regard to the substance of the legal act concerned and not to its form.**

The Court also holds that the amending directive, by extending the scope of application of the gas directive to interconnectors located between Member States and third countries, such as the interconnector that Nord Stream 2 AG intends to operate, has the consequence of subjecting the operation of that interconnector to the rules laid

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<sup>1</sup> Order of 20 May 2020, Nord Stream 2 v Parliament and Council, [T-526/19](#) (see also Press Release No [62/20](#)).

down by the latter directive.

Therefore, the Court finds that **the amending directive directly affects the legal situation of Nord Stream 2 AG, with the result that, by arriving at the opposite conclusion on that point, the General Court committed an error of law.**

Next, the Court considers that, while the Member States have a margin of discretion as regards the grant of exemptions and derogations from certain provisions of the gas directive to gas undertakings which meet a set of conditions, **they have no discretion making it possible to grant any of those exemptions or derogations to Nord Stream 2 AG** as it does not meet those conditions. Likewise, even though Member States are not deprived of any room for manoeuvre for implementing, inter alia, the unbundling obligation laid down by the directive, the latter provides them with only the choice of means by which the clearly defined result, namely that of the effective separation of the structures of transmission and those of supply and production, must be achieved. Consequently, the Court considers that, by finding that the amending directive left, in several respects, a real margin of discretion to the Member States as regards the obligations imposed on Nord Stream 2 AG, **the General Court equally erred in law.**

Accordingly, the Court concludes that **the General Court was wrong to hold that Nord Stream 2 AG was not directly concerned by the amending directive and sets aside the order under appeal to the extent that the General Court declared that the action brought by that company was inadmissible for that reason.**

Finally, the Court finds that, amongst both existing interconnectors and interconnectors which are yet to be constructed, the Nord Stream 2 gas pipeline is the only pipeline to which none of the exemptions or derogations applies or could be applied. It follows that the **Nord Stream 2 AG is individually concerned** by the conditions for exemption or derogation amended or inserted by the amending directive, with the result that **its action for annulment must be declared admissible within the limits of that individual concern.** It nevertheless remains for the General Court to rule on the merits of that action, with the result that the Court refers it back before that court for that purpose.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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