

# Third Energy Package – security dilemmas

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## Third Energy Package – security dilemma

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-  **Third Energy Package introduced the idea of the balance of european gas hubs.** It was later detailed in **Gas Target Model**. **The balance was to guarantee the competition.**
-  **Third Energy Package focused on competition within the Union.** Regulations were silent on the competition of gas supplies to the Union.
-  When Third Energy package in place **political disruptions of gas supplies still occurred.** **During winter 2014/2015 Poland did not receive part of its gas volumes from Russian supplier.**
-  Big political infrastructure projects continue to be built **without european-wide political consensus** and without its proper assessment on the security of energy supplies and security of EU
-  EU institutions issued decisions **perpetuating position of dominant suppliers in CEE region.**

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Any positive change?

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Any positive change?





**2017 Regulation on security of gas supplies – solidarity principles**

**2017 New IGA decision**

## Amendment of gas directive - timeline



- 8 November 2017** the European Commission adopted a legislative proposal
- April 2018** the European Parliament endorsed the project
- 2018** difficulty of the Member States to reach a common position
- 19 December 2018** Energy Ministers call to adopt the revision
- 8 February 2019** Council adopted a general approach under the RO PREZ
- 12 February 2019** Trilogue negotiations concluded with an agreement
- April 2019** revision adopted by the co-legislators

## *Amendment of gas directive – revision details*

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Definition of an „interconnector” extended to ensure level playing field for all

**Rules on unbundling, transparency, TPA and regulated tariffs apply to all market players**

Consistency of the legal framework within the Union that helps avoiding distortion of competition

Security of supply as a new requirement for exemption of new infrastructure

No gas pipelines functioning in the legal void on the EU territory

To be implemented by  
24 Feb 2020

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# ***Amendment of gas directive – Contesters***

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## **T-526/19 Nord Stream 2 AG vs Council and European Parliament**

for the annulment of Directive 2019/692

(due to unequal treatment, unproportionality, legal uncertainty, misuse of power)



## **T-530/19 Nord Stream AG vs Council and European Parliament**

for the partial annulment of Directive 2019/692

(term of derogations for existing pipelines)



# EU Court ruling on the OPAL gas pipeline



General Court of the European Union  
**PRESS RELEASE n° 107/19**  
Luxembourg, 10 September 2019



Press and Information

Judgment in Case T-883/16  
Poland v Commission

## The General Court annuls the Commission decision approving the modification of the exemption regime for the operation of the OPAL gas pipeline

*That decision was adopted in breach of the principle of energy solidarity*

2009

First exemption

2016

BNetzA & EC decisions

16 December 2016

PL action for annulment

10 September 2019

Court's decision

# EU Court ruling on the OPAL gas pipeline - Consequences

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## → Court's first ever standpoint on what the energy solidarity principle – introduced into the Lisbon Treaty on Polish demand – actually is :

*The principle imposes not only obligations of mutual assistance where, for example following natural disasters or acts of terrorism, a Member State is in a critical or emergency situation as regards its gas supply, but also requires the European Union and the Member States to endeavour, in the exercise of their powers in the field of energy policy, to avoid adopting measures likely to affect the interests of the EU and other Member States as regards security of supply, its economic and political viability, the diversification of supply or of sources of supply, and to do so in order to take account of their interdependence and de facto solidarity. (points 71-73)*

## → Court introduced an „energy solidarity test”, which needs to be followed :

*EU institutions and the Member States are required to take into account, in the context of the implementation of that policy, the interests both of the European Union and of the various Member States and to balance those interests where there is a conflict. (77)*

## → Court links energy solidarity with competition

by annulling a decision because the EC failed to analyse how its decision will influence the conditions of supply and use of transmission services on the pipelines competing with OPAL

## EU Court ruling on the OPAL gas pipeline - Consequences

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- **Comeback to the 2009 EC decision**, following which Gazprom will be able to use only up to 50% of OPAL's capacity.
- The Court's decision may still **be set aside by the Court of Justice** if the EC will lodge an appeal. No legal possibility to appeal by other entities.
- The Court is likely to **apply similar reasoning** in other pipeline cases and the Commission in potential future capacity allocations of f.e. NS2.
- Member States should take into account when regulating gas market, that the energy **solidarity test applies**.

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Is it enough?

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Is it enough?



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It does not solve the security dilemma

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2

It is implementation that matters!!!

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**3**

It is time that matters!!!

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# 4

We continue towards oligopoly on gas market in Europe

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It is not the end of history for gas

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# 6

Gas will remain as strategic energy source for decades

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# 7

„Anticompetitive“ infrastructure still being built,  
exemptions and „regulation leakage“ occurring

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# 8

Central Europe is building its own „gas identity”

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