

Estonian Naturalists' Society
Att.: Ivar Puura
P.O. Box 43
Struve str. 2
TARTU 51003

Frederiksborggade 15
1360 København K
Besøgsadresse:
Linnésgade 18, 3. sal
1361 København K
Tlf 3395 5785
Fax 3395 5799
www.ekn.dk
ekn@ekn.dk

Sent by e-mail to ivar.puura@gmail.com and elus@elus.ee

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This present document is a translation.

The Danish version is the valid document, e.g. regarding interpretation; the English version alone is included as a provided service.

Complaint against the Danish Energy Authority's decision (hereinafter "DEA") of October 20th 2009 regarding permit for laying of a part of pipeline of Nord Stream natural gas pipeline in Danish waters - stay of execution

By letter dated November 16th 2009 you have on behalf of the Estonian Naturalists' Society brought the DEA's decision of 20 October 2009 for the Danish Energy Board of Appeal (hereinafter "DEBA") regarding permission to lay part of pipeline of Nord Stream natural gas pipeline in Danish waters.

You have on the 18th of December 2009 announced to the DEA that Estonian Naturalist' Society has requested the complaint granted a stay of execution.

The decision of DEBA

DEBA has decided not to grant the complaint a stay of execution. The background, comments received and a further reason for DEBA's ruling is specified below.

The background

The DEA has on October 20th 2009 granted permission to part of pipeline of Nord Stream natural gas pipeline in Danish waters. Permission is granted based on Nord Stream AG's application of March 3rd 2009. The permission includes two parallel gas pipelines in the Danish waters of the Baltic Sea to the east and south of Bornholm.

In 2000 The European Commission approved a northern natural gas pipeline through the Baltic Sea as part of the Trans-European Gas Network.

DEA's permission to pipelines in the Danish waters is part of a major pipeline project. The pipelines are 137.1 kilometers in the Danish continental shelf and territorial waters out of a total length of 1200 km.

DEA and the other Danish authorities have made an assessment of the safety and environmental conditions. By- og Landskabsstyrelsen (Agency for Spatial and Environmental Planning) has determined that the studies conducted of the requested alignment show that the pipeline can be laid without the harm to the Baltic marine environment. This is also true with regards to chemical munitions.

The Danish authorities have had no comments to Nord Stream AG's assessment of the pipeline project's impact on Natura 2000, Ramsar areas and Baltic Sea Protected Areas.

The permission contains conditions of insurance policy, decommissioning, and monitoring program for the design phase and for the operational phase and supervision during the construction phase and during operation.

Complainant's comments on stay of execution

In letter dated December 18th 2009, it is indicated that the request of the complainant granted a stay of execution shall allow a careful examination of the completeness and quality of the EIA statement (Environmental Impact Assessment), and this study will be conducted by a multidisciplinary international expert group to be set up by governments or the EU.

It is the complainant's view that if the complaint is not granted a stay of execution, the right of appeal will be illusory.

The complainant states a number of examples of the harmful effects of the permission, which can not easily be restored:

- There is no accurate and published documentation with an adequate evaluation of trans-boundary environmental impact to Estonia.
- There is no adequate assessment of the potential impact of dumped conventional and chemical munitions.
- There is no accurate and published monitoring program discussed with the states affected.
- There is not a sufficient emergency preparedness discussed with the states concerned.

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- There is not a satisfactory insurance for the project.

In letter dated February 11th 2010, the complainant stated that the EIA statement is of poor quality and that it is necessary to conduct further scientific studies on environmental impact. It lists a number of specific reasons to grant the complaint a stay of execution:

- Data from the Nord Stream AG has been inadequate and misleading. Cited as examples are models of sediment transport and statistical interpretation of toxic substances' influence on the sea bed presented to the Finnish authorities.
- The risk analysis shows lower risks than those estimated by independent experts. Analysis by Norske Veritas may not be regarded as reliable.

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Nord Stream AG's comments on the complainant's request of the complaint granted a stay of execution.

Nord Stream AG's attorney has in letter dated January 15th 2010 indicated that there is no such specific grounds that the complaint should be granted a stay of execution.

It is stated that Nord Stream AG is investing DKK 7.4 billion in the project and that delays in the timetable would weaken the economy of the project considerably.

It is stated that the project according to the European Parliament and the Council's Decision No 1364/2006 regarding guidelines for trans-European energy networks is a priority project of European interest.

It is stated that a delay could jeopardize the timely supply of natural gas to Denmark. According to the timetable the installation of the first of two pipelines and construction of land lines in Germany and Russia begin in early April 2010. The first of the two pipelines will begin transporting natural gas in the autumn of 2011. A limited number of months delay in the permission process may lead to a postponement of the project for a whole year. Nord Stream AG will experience a delay of its revenues from the transportation of natural gas.

Regarding the substance, it is indicated that the permitted pipelines have been recommended by the Danish authorities.

It is stated that EIA assessments are conducted in each of the 5 countries of origin and enquiry is conducted in accordance with both national regulations

and the rules of the Espoo Convention. The Estonian Naturalist Society has put forward a statement about the potential impact of conventional and chemical munitions. This statement is taken into account in the DEA's permission.

It is stated that Nord Stream AG are discussing the handling of plumbing in the area east of Bornholm with the Navy Operational Command, which has expertise in chemical ammunitions. Nord Stream AG is viewing that these issues can be addressed during the construction phase without any harmful environmental impact.

The DEA's statement

The DEA has in the memorandum of January 15th 2010 stated that the complainant generally allege that the authorities of the countries that have given permission to the Nord Stream pipelines have not been able to adequately treat the data underlying the permissions. Therefore the complainant would like the possibility to deal with environmental impacts and risks "from the scientifically sound perspective" and are asserting that such a reassessment can "contribute to saving of lives and help to maintain sustainable life quality and condition of environment."

The DEA finds, the complainant did not provide tangible evidence of its claims and in general the allegations are unsubstantiated.

The DEA has in letter of December 18th 2009 documented how the procedure in the assessment of the Nord Stream pipeline is carried out by the Danish authorities involved. Proceedings are conducted in accordance with applicable legislation. Largely this is internationally agreed conventions and EU legislation which is implemented in Danish legislation.

According to this legislation, it is the national authorities who handle applications for permissions for the construction of natural gas pipelines in pursuant to the rules laid down in statutes of the legislation. It also provides what is required for the content of the environmental assessment of the pipeline project.

Complainant specifically claims as grounds for stay of execution, the authorities have not had enough time to deal with Nord Stream AG's documentation. The DEA states that the Danish authorities since early 2006 has had ongoing access to and made requirements to Nord Stream AG's documentation.

The DEA does not find that complainant at any time has shown tangible evidence that there has been a procedure which does not comply with legal requirements; complainant has only made unsubstantiated allegations.

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The DEA refers to what was presented in the DEA's memo of December 18th 2009, that the Danish authorities have found Nord Stream AG's application-material sufficient both regarding quantity and quality. This implies, that the authorities have found, there is sufficient scientific certainty to estimate the risk that might come from placement and operation of the Nord Stream pipelines in Danish waters.

The DEA believes there is no basis for invoking the Precautionary Principle as a basis for granting the complaint a stay of execution. Reference is made to the Communication from the Commission regarding The Precautionary Principle KOM (2000) 1. It follows that there must be a situation "...when there are reasonable grounds for concern that potential hazards may affect the environment or human, animal or plant health, and when at the same time the available data precludes a detailed risk evaluation...", cf. section 3, The Precautionary Principle in the European Union. And furthermore "Recourse to The Precautionary Principle presupposes that potentially dangerous effects deriving from a phenomenon, product or process have been identified, and that scientific evaluation does not allow the risk to be determined with sufficient certainty, cf. Summery, point 4, of the above mentioned Communication.

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It is the DEA's opinion that there is no basis for believing that stay of execution would "...contribute to saving of lives and help maintain sustainable life quality and condition of environment..."

The DEA's lists that there is no reasonable basis to allow the appeal to grant stay of execution.

The DEA states that there is no legal basis to establish an "...interdisciplinary expert group that can be nominated by the government or by the EU...." Validation of permits for the Nord Stream AG, given by the authorities in Russia, Finland, Sweden, Denmark and Germany, must be made according the legislative rules.

Information on chemical munitions and radioactive waste

DEBA became aware through a newspaper article in Politiken, February 6th 2010 that the Swedish TV, February 3rd 2010 sent a documentary "Survey", which allegedly claimed that the Soviet defenses in the early 1990's dumped unknown quantities of chemical munitions and radioactive waste in the waters east of Gotland. The munitions/waste could have been be dumped in the area where the pipelines are to be laid. It is argued that the Swedish government has long suspected this, but the Swedish government considers the information as a state secret.

The DEBA has obtained the DEA, Nord Stream AG and the complainant's comments on this.

The DEA's letter of February 12th 2010 states that it is known that both chemical and conventional munitions have been dumped in the Baltic Sea, and one of the dumping areas is east of Bornholm. This has been the subject to extensive studies, and the information in the media does not give rise to the DEA to revise its evaluation. The DEA has no knowledge of dumped radioactive waste in Danish waters.

The DEA reports that the Swedish documentary shows that the permitted alignment (trace) of the pipelines is located outside the dumping areas and is unaffected by these.

Nord Stream AG's attorney has in letter of February 18th 2010 indicated that extensive inspection of the entire Bornholm area has been conducted, and none of these inspections have shown evidence of any radioactive waste in the area.

The results of the geophysical munitions screening inspections have not identified any munitions in the installation corridors. Outside these corridors three discoveries of chemical munitions are made. Admiral Danish Fleet (SOK) has assessed that these will not pose any risk to the pipelines or the environment.

The result of sediment and pore water samples show that only from very few test stations, evidence of substance from chemical munitions is found, and the content of these substances is low. There are not measured levels of mustard gas in any of the samples.

The complainant's e-mail of February 22nd 2010 indicates the EIA inspections of chemical munitions and possible radioactive material are not sufficiently conducted. They point out that radioactive substances can be brought up in the sea by the sea currents and led in the direction of Estonia's territorial waters. At the same time it is indicated that it is unlikely that it will affect the Danish territory.

The complainant finds that Nord Stream AG has not dealt with incoming data scientifically correct. The complainant states with regard to inspections conducted in the Finnish and Russian territory, the results are not scientifically substantiated and are misleading.

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The complainant finds that the DEA did not examine the risk of chemical munitions sufficiently.

The complainant claims that experts taken on by Nord Stream AG have said that it would be dangerous to lay pipeline number 2 after the first pipeline is in operation.

Cause of action

The rules of how to complain about DEA's decision is stated in the Law of Continental Shelf § 6a, as follows:

"[...]

§ 6a. Anyone with a substantial and individual interest in the decision may appeal to the DEBA regarding the environmental aspects of decisions under §§ 4 and 4 b.

Clause 2. Local and national associations and organizations whose main purpose is protection of the natural environment may complain about the decisions listed in clause 1. The same applies to local and national associations and organizations who according to their purpose attend to essential recreational interests when a decision is affecting those interests.

Clause 3. Local and national associations and organizations send simultaneously the complaint and the regulations (articles of association) of their organizations to the DEBA as proof, they are local or nationwide and that their purpose is within the clause 2 specified requirements.

Clause 4. Complaint must be submitted in writing within 4 weeks after the decision is publicly announced. If the appeal period expires on a Saturday or a holiday, the deadline is extended to the following working day.

Clause 5. A permit must not be used until the appeal period has expired.

Clause 6. Complaint against a permit for a project covered by clause 1 has no stay of execution unless the DEBA determines otherwise.

Clause 7. DEBA's decisions can not be appealed to another administrative authority.

"[...]"

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DEBA's grounds for decision

The DEBA will decide whether the complaint should be granted stay of execution. In general a permit can be utilized, and only if the DEBA decides so, the complaint is granted a stay of execution, cf. § 6 a, clause 6, Law of the Continental Shelf.

According to DEBA it must be taken into account when determining whether the complaint should be granted a stay of execution, to emphasize whether after a preliminary assessment, it is more likely that the DEA's permit is granted without observing the rules for environmental assessment in § 4a, the Law on the Continental Shelf and regulations on environmental assessment of the Espoo Convention (Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991).

Furthermore, the emphasis on whether a use of the permit will entail adverse environmental effects which are not possible to or only with difficulty could be remedied, and emphasis should be placed on Nord Stream AG's interest in the permit may be utilized without delay.

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After a preliminary assessment, the DEBA does not find that it can be considered highly likely that the permission granted is inconsistent with the rules for environmental assessment. A weighing out of the possible risk of irreversible effects on the environment against Nord Stream AG's interest in the project not being delayed cannot lead to a different result.

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The DEBA does in this context not meet the request to grant the complaint stay of execution.

The decision was made by the President of the DEBA on behalf of the Board after § 6, clause 3, the Danish Energy Board of Appeal Rules (Regulation No. 664 of June 19, 2006).

The decision can not be brought before another administrative authority.

The decision is published on the Danish Energy Board of Appeal's website: www.ekn.dk.

The DEBA expects to hear the case at the board meeting in May 2010. The DEBA will in this context decide whether the complainant is entitled to file a complaint. If the complainant is entitled to file a complaint, the DEBA will also decide on the merits of the case.

Sincerely

Poul K. Egan
President of the Danish Energy Board of Appeal