



Työ- ja elinkeinoministeriö  
Arbets- och näringsministeriet

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**Unofficial translation**

to: Nord Stream 2 AG

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## **CONSENT TO EXPLOIT FINLAND'S EXCLUSIVE ECONOMIC ZONE**

### **1 Initiation of the matter**

On 19 September 2017, the Ministry of Economic Affairs and Employment received Nord Stream 2 AG's application (Ministry's register no 1810/08.08.01/2017) for the Finnish government's consent to build a natural gas pipeline system within Finland's exclusive economic zone as part of a pipeline system running from Narva Bay, Russia, to the Gulf of Finland, traversing the Baltic Sea and ending in Germany's Lubmin district.

The application documents contain the applicant's contact information, domicile and nationality; a description of the nature and aim of its operations; the methods and tools to be used in the project, the geographical zone where the operation would be carried out, and the operation's estimated start date and duration.

The Ministry of Economic Affairs and Employment considers the application to comply with section 2 of the Government Decree on the Finnish Exclusive Economic Zone (1073/2004), on the basis of which it has examined the application. Consent by Finland's government (as a decision of principle) is required of a project that exploits the country's exclusive economic zone. In addition, the construction of two parallel pipelines, as described in the application, requires a construction permit in accordance with the Water Act (264/1961). The project developer filed an application for this permit, for the construction of the natural gas pipeline, with the Western Finland Environmental Permit Authority, on 19 Sept 2017.

### **2 The application letter**

Nord Stream 2 AG (hereinafter referred to as "the applicant") has applied, with reference to the provisions of section 6 of the Act on the Finnish Exclusive Economic Zone (1058/2004) for the government's consent for the construction in the economic zone of two gas pipelines of some 374 kilometres in length and of 1.15 metres in inside diameter, including research work, system upkeep and constant use.

The consent of the Council of the State applies to the routing presented in Appendix 2. Although the pipeline is inside the economic zone, it is not in Finnish territorial waters. The application covers research work prior to the laying of pipes, the preparation of seabed (including disposal of any wartime munitions found there), the laying, and the further seabed preparation and finishing afterwards, the activities

connected to a dry start of the pipeline's exploitation, the start and final launch of its actual exploitation, the required monitoring program, the research work required by the construction work and the use of the pipeline system as well as the maintenance, repair, technical monitoring and control activities, described in more detail in the application; and the supplementary documents.

The expected economic life of the pipeline system is at least 50 years.

The Nord Stream 2 system consists of approximately 200,000 tubes, length 12 m, weight 24 tonnes, and lined with concrete. They would be installed with a tolerance of some 7.5 metres in the sections that are straight, and some 15 metres in curved sections, but minor deviations to the planned routing may be required during the construction phase, for reasons including detours around wartime explosive ordinances and other obstacles, and because the need to move embankment rock can be reduced in certain locations. The applicant requests that the Government grant its consent for routing the pipelines as defined in Appendix 2 to the application, and that the pipelines may be installed in the security corridor of pipelines where explosive ordinances have been disposed of, that is, in a corridor at a distance of +/- 35 metres from the routing described above.

The applicant additionally requested immediate enforcement of the Council of State's consent under the provisions of section 31, Administrative Judicial Procedure Act (586/1996), regardless of any appeal that might be lodged against the consent.

### **3 Grounds for the application**

#### **3.1 Consent given by the Council of State**

The applicant refers to the United Nations Convention on the Law of the Sea, according to which a state may not impede the laying or maintenance of pipelines. To lay pipeline transport systems is one of the fundamental freedoms relating to the ways of utilizing an economic zone.

The applicant states that it has made an effort to find the best alternative in environmental terms for the implementation of its project. This way, the routings and construction phases were projected so as to minimise any negative impact on the environment. The application contains an Environmental Impact Assessment (hereinafter referred to as the EIA). It points out that the pipeline route presented in the application is the best alternative from the perspectives of safety, economy, and the environmental point of view. This optimisation of the route is the best alternative, which minimises any environmental impact as it reduces the total cost of the project, however, without jeopardizing the fulfilment of the project's legal obligations and other requirements and considerations. The continuous process of optimisation of the route is based on the know-how and experience collected during earlier pipeline construction projects, during research work in the Baltic Sea, and it is also based on the feedback received from the authority in charge of controlling the applicant's EIA.

Highest technical standards are to be maintained during the construction work, which helps reduce the effects of the placement of rocks for embankments, the disposal of wartime munitions and the laying of the pipes. The two assessments within the framework of the Natura 2000 program, requested after the EIA stage by the applicant, have taken in a conclusion that the project does not cause significant impact against environmental values. The Natura 2000 network was expanded to the same geographical area where the project will operate in order to ensure protection of these environmental values. The project's effects on the environment are, according to the applicant, mostly insignificant or small, with the exception of some impact on the general feeling of confidence of the public (concerns and expectations) during the project's planning and construction stages.

In the applicant's view, no sufficient justification, arising from the coastal states' rights concerning the prevention, reduction and control of pollution caused by the pipeline, exists for denying consent to exploit Finland's exclusive economic zone as referred to in section 6 of the Act on Finland's Exclusive Economic Zone. In addition, the applicant draws the permit authority's attention to the fact that the project also requires a water permit in accordance with the Water Act, which, in turn, must include specific permit conditions in order to minimise any negative impact arising from the project.

According to the applicant, the routing of the pipelines would have no or only minor impact on the current or future exploitation the exclusive economic zone, including the mineral deposits located in the seabed, other oil and gas pipeline transport systems, cables, mining activities, quarries for the extraction of gravel, disposal of soil, wind parks, wave energy systems and tunnels under the sea. The applicant estimates that its pipeline system may have an impact, by its sheer existence, on the technological design requirements of any future projects because intersections would have to be planned. However, future cabling and pipeline building could be realisable above the Nord Stream 2 pipelines. The pipelines would not impede the construction of an undersea tunnel across the Gulf of Finland, since the rock material between the pipelines and the tunnel should be sufficient to safeguard the integrity of both constructions. As for the method of building any future tunnels, if it were to be based on the sinking of tubes, the applicant emphasizes that it would in that case be important to carry out a careful assessment on how undersea tunnels across the Gulf will affect its existing infrastructure and the future development of the infrastructure.

According to the applicant, the Nord Stream 2 project is invaluable for safeguarding reliable supplies of gas to Europe in a cost-effective and sustainable way, so as to avoid an import deficit in this sector of the European economy. It offers a fully cost-effective, low carbon-footprint alternative to the conventional methods of protecting the climate in Europe because today's estimates have pointed towards a stable development of the demand for natural gas. At the same time, the proprietary European production of natural gas will shrink significantly in the nearest 20 years.

Additionally, the applicant refers to the project's status as a key project for supplying gas to Europe. Nord Stream 2 will create a new, shorter, quite reliable import route, which is also an alternative to LNG (liquefied natural gas) as a method of transporting gas from the world's richest deposits, located in the Russian Federation, to the European internal market. It will create competitive pressure against other methods of natural gas transportation; this will ensure that the tariffs charged for gas supply service will remain reasonable. To increase the availability of natural gas, as opposed to supplies of coal, is a cost-effective way to help producers of electric power to reduce their pollution, the applicant explains. Nord Stream 2 may also render assistance in circumstances that involve insecurity of deliveries due to transportation risks, delivery risks and demand risks because it will maintain the overall security of energy supply.

The application letter is enclosed with a research report, furnished by Prognos AG and commissioned by the applicant, that addresses the European balance of gas supply and demand (the 28 EU states), projected future demand of gas (for the 2020 to 2050 period) and the feasible sources of gas that will be capable to satisfy the demand. This research work was based on several scenarios of reference, which contain a risk factor that represents the probability of failure to reach the current, quite ambitious, goals of protecting the climate.

In addition, the applicant draws attention to the project's EIA report, which promotes environmental research by making information on the circumstances prevailing in the Gulf of Finland public. As part of the project, the applicant plans to dispose of wartime explosive ordnances from the pipeline route. Thus, the general safety of

maritime traffic, fishing and other activities will be promoted. The project will also have an employment impact on Finnish subcontractors.

The applicant has made an agreement with the Finnish trade association of fishermen – Suomen Ammattikalastajaliitto SAKL, which sets out the provision that those fishermen who are professionally active in the Finnish waters and suffer damage due to the pipeline will be financially reimbursed. In the same way, the questions relating to compensation to be paid to the fishing sector will also be addressed during the water permit process, under the provisions of Water Act. The negative impact resulting from the laying of pipes will be mitigated by the applicant through the distribution of weekly, detailed information to fishermen on the planned movements of the pipe-laying vessel and through remaining in contact with fisher associations, in order to be capable of taking action at short notice if anything unexpected were to occur.

According to the applicant, the effects of Nord Stream 2 on military exclusion zones will be minor during the construction phase. During the operational phase, the pipeline will have no impact on military exclusion zones or exercises in the Gulf of Finland, or on the activities of the Finnish armed forces.

The applicant has made agreements with the owners of the cables lying in the seabed along the pipeline's route. Cable crossing plans will be based on these agreements. The fact that the pipeline system is being built is not an impediment to the continuous use of the other cables and pipelines; it does not prevent any repair or maintenance work, either. According to the applicant, the pipelines will have no impact on the future construction of pipelines or cables because widely applied technical solutions for constructing crossings are available. There are some cables under the sea of which the owners have not been identified and for this reason, the applicant has not been able to ascertain that the cables are no longer used, or out of order because they are damaged. The applicant has prepared conventional cable crossing plans for them. The Regional State Administrative Agency of Southern Finland will validate the plans and prepare the relevant decisions in connection with the water permit process. If the owner of a cable is unknown, the applicant must lay a cover consisting of pieces of concrete on it. The cover makes up a protective layer between the pipeline and the cable.

According to the applicant, if wind parks were to be constructed in the future within the vicinity of the pipelines, the total negative impact of the pipes would remain insignificant because they cause little restriction to wind park areas.

A description of the risks that relate to both the building stage and the system's utilisation stage is included in the EIA report. According to the applicant, the project's management plan serves as the guideline when construction is to be carried out and when the pipeline system is in use. This plan takes the environmental and safety requirements into account. Upkeep and utilisation of the pipeline transport system will be based on appropriate standards, the results of investigations and research, and verification processes. The system is strong and its design withstands any disturbance that fishing equipment could cause; it is unlikely that any fishing vessel or recreational boat could use an anchor that would damage the pipeline system when coming to contact with it. At the construction stage, a small increase in the theoretical risk of collision damage will be present as other ships sail in the waters.

According to the applicant, it is obvious that the advantages of the project are significant in comparison to the disadvantages, negative impact and other lost benefits caused by it, and that the project will not cause any significant negative impact that would justify the application's rejection.

### 3.2 Grounds for immediate enforcement

The applicant invokes section 31, Administrative Judicial Procedures Act, according to which an administrative decision may be enforced before it has become final if the decision is of a nature requiring immediate enforcement, or if its enforcement cannot be delayed for reason of public interest. According to the applicant, the immediate enforcement of the decision must be considered justified for reasons of public interest. The applicant also invokes the case-law emanating from Supreme Administrative Court rulings, which helps define the concept of public interest. The applicant also refers to other enforcement orders given by the Council of State in matters that have related to economic zones; several of these cases have involved much weaker effects vis-à-vis the public interest than the submitted application filed by Nord Stream 2 AG.

The requested immediate enforcement has significant economic importance for the project. In the applicant's opinion, an immediate enforcement of the consent would have no de facto impact on the environment or the rights of third parties because construction work cannot be started before the water permit has been granted.

Natural gas is a combustible, used in EU-28 countries in a number of different applications including heating, production of electric power, industrial production and road traffic. The stable development of its demand taking place concurrently with a significant decrease of its European production in EU-28 are the two factors that will cause a stronger demand for its importation. If the Nord Stream 2 project were not to progress, there would be a deficit in the imports of natural gas, according to the applicant's estimate. Among fossile fuels, natural gas is the one that generates the least greenhouse gases, and the least other pollutants due to combustion – especially compared to oil and coal. It may be used as the source of energy during various transition periods, which permits an increasing parallel use of renewable resources; it may also be a reserve source of energy that can provide a safe supply of energy. For this reason, natural gas has a role as a transitional source of energy that supports and promotes the continued activities that aim towards the creation of economies that no longer rely on coal. In the coming decades, natural gas will continue to have an important role in the EU-28 countries' production of energy.

The applicant has observed that the concept of public interest has historically had a very important role in the activities of Finnish public authorities. Reference is made to studies of law that describe an administrative tendency to treat public interest as one of the most important criteria when various official decisions are made. Although it is impossible to provide an exact definition of 'public interest' because it is dynamic and subject to change, one way to describe it might be that it is the opposite of 'private interest', and it is also an overall aim toward promoting the public good.

The applicant points out that some effects of the project will benefit the interests of Finland significantly. In Kotka, the subcontractor company of Nord Stream 2 AG named Wasco has started the installation of concrete linings for the pieces of tube. Its production facilities are located in the port district known as Hamina-Kotka. The plans envisage that approximately one half of the 200,000 tubes at the Kotka facilities. For the entire duration of the Nord Stream 2 project, there will be a boost to the district's local economy because of the lining, installation, and logistic activity. The predictions show that Wasco will have as many as 300 employees working for it in this production process. Additionally, some 100 people will have work that relates to support functions such as factory maintenance, warehousing, and logistics of the port. The lining production for Nord Stream 2 is expected to continue almost to the end of 2018. With the concrete lining being in place, part of the tubes will be stored in Wasco's warehouse in Kotka; the rest will be transported to Koverhar, Hanko where another warehouse is located. The logistics in Koverhar will have some 50

employees working. In addition, some 100 people are expected to obtain employment in the indirect support operations connected to logistics.

Accordingly, the applicant maintains that it is quite obvious that the Nord Stream 2 Project should be considered a project in the public interest within the meaning of section 31 of the Administrative Judicial Procedure Act. Any delays in its implementation would consequently work against the public interest, in Finland as well as elsewhere in Europe.

#### **4 Preparation of the matter**

##### **4.1 Request for comments from public authorities, from concerned parties, and request for a reply with additional information made to the applicant**

The Ministry of Economic Affairs and Employment is the competent authority in matters that relate to the issuance of permits for research and construction in Finland's Exclusive Economic Zone under the relevant Act (laki Suomen talousvyöhykkeestä 1058/2004) and Decree of the Council of State (1073/2004). In addition, the Regional State Administrative Agency of Southern Finland is the permit authority, competent under the Water Act (587/2011) in matters that concern Finland's Exclusive Economic Zone. The ELY Centre of Uusimaa is the authority in charge of controlling the EIA report, and will accordingly issue a statement on the EIA report that concerns the Exclusive Economic Zone. The Ministry of the Environment will present the Finnish standpoint for the other states in order to discuss the impact of the entire project, and to also address the impact caused by other countries and affecting Finland.

The Ministry of Economic Affairs and Employment requested on 29 September 2017 that by 1 December 2017, the Ministry of Transport and Communications, the Ministry of Agriculture and Forestry, the Ministry of Defence, the Ministry of the Interior, the Ministry for Foreign Affairs, the Ministry of the Environment, the Geological Survey of Finland, the Energy Authority, the National Emergency Supply Agency, the Finnish Transport Agency, the Finnish Transport Safety Agency, the Finnish Heritage Agency (formerly the National Board of Antiquities), the Defence Command, The Finnish Border Guard, the Finnish Environment Institute, and the ELY Centre of Uusimaa to provide comments on the application. Similar requests were made to Balticconnector Oy, C-Lion 1 Oy, Fingrid Oyj, Nord Stream AG and ZAO Perspective Technologies Agency.

The Ministry of Economic Affairs and Employment reserved an opportunity for the applicant to give a response to the requirements and requests for further details by 18 January 2018. The applicant complied with the deadline and provided the Ministry of Economic Affairs and Employment with such a response. Supplementary documentation dated 5 February 2018 and 9 March 2018 was also furnished by the applicant, and appended to the submitted application letter.

The applicant thanked all the parties that gave statements in the matter and observed that the contents of the statements were usually affirmative. They demonstrate that the experience from the previous, comparable project Nord Stream 1 was given a lot of attention, and the experience has proved that the environmental impact of a pipeline construction project is relatively small. Some authorities have also given suggestions for improvement, requested some elaboration of the details included in the application letter, and the details of the monitoring plans.

The applicant has taken note of the suggestions and requests for further elaboration of the details, stating that they provide still more opportunities to mitigate the project's impact, and help improve the process of control and monitoring of the construction

work. When the applicant had received the statements it arranged a number of meetings with the officials who represent different authorities, discussing the statements and the relevant comments with them. The results of these discussions were taken into account when the applicant's commentary was prepared; the applicant presents it as part of its response to the statements.

## 4.2 Public notification of the parties

The Ministry of Economic Affairs and Employment published a notice in Helsingin Sanomat, Hufvudstadsbladet, Turun Sanomat, Ålandstidningen and Kymen Sanomat on 2 October 2017, and in Åbo Underrättelser on 3 October 2017, and in the Official Gazette on 4 October 2017, stating that the application documents were to be kept available in the Ministry's register office until 1 December 2017 and that the parties must submit their claims and clarifications on the matter by 1 December 2017 at the latest, in default of which the claims and clarifications would not be taken into account in decision-making. Service by public notice means that the matter has been brought to the attention of all parties upon the publication of the public notice in the Official Gazette, and consequently, any concerned parties have been able to use their right to influence the process within the meaning of the provisions of Administrative Procedure Act (434/2003).

## 4.3 Statements of Authorities on the Application, and the applicant's responses to them

### 4.3.1 Ministries

**The Ministry for Foreign Affairs** gave a statement that refers to the consent given in 2009 by the Council of State to the pipelines of Nord Stream AG (Nord Stream 1). The Ministry noted that the principles for assessing the matter at hand and the application submitted by Nord Stream 2 AG must remain the same as previously. According to the Ministry, the project pursued by Nord Stream 2 AG must primarily be treated as a commercial endeavour in which special emphasis must be given to the environmental aspects that relate to the construction work. The Ministry asserts that construction must be projected in such a way that the requirements of international law, EU law and national legislation are met.

The Ministry points out that criticism from the European Commission and certain Member States has been raised by the project. Opponents to the project have called attention to the project's objectives, which do not match up with the EU energy union's objectives, which means that it is bound to make the European Union more dependent on Russian natural gas than it is today. The project is also portrayed as a threat to Ukraine's national economy because transit charges on gas transport can no longer be collected and Ukraine's political position will weaken as well, compared to that of Russia. In addition, Sweden and Denmark have voiced their concerns regarding the project's impact on national security policies in the Baltic Sea region. Further criticism exists due to factors relating to the climate and the policies aiming to protect the climate: the project may encourage the use of natural gas in Europe during several decades into the future. Many of the countries that present opposing views are also active in the gas market, and have important financial interests that are related to the outlook of their future position in that market.

In the opinion of the Ministry for Foreign Affairs, it is understandable that the project's opponents may have major concerns. However, Finland does not have specific national interests that would make it imperative to give support to the project – or to become its opponent. Nord Stream 2 AG's construction work, and future use of the pipeline that will run parallel with the existing Nord Stream pipeline will not, according to relevant estimates, have an impact on Finnish energy security, and the project is also otherwise seen as having no impact on Finland's security interests.

It is the Ministry's understanding that the concerns relating to deliveries of gas from Russia making Europe dependent on them can be alleviated, and the best way to do so would be to improve the European energy infrastructure in order to make the internal energy market more efficient. This is in line with the EU energy union's strategy. Important steps forward have been taken in this regard, not only through a newly adopted EU legislation but also by the performance of the pipeline transport infrastructure and the LNG infrastructure. As the EU now has an energy union, and as the global LNG market is growing rapidly, to become dependent on Russian natural gas is no longer as common as before. However, dependency will not disappear completely. Russia is able to counteract the European competition by lowering the price of gas. This will ensure that Russian gas continues to command a significant share of the market during several decades into the future.

When Russian gas maintains its position, the good effect is that European consumers and European industrial production will benefit from the price competition in the gas sector. After the Finland–Estonia pipeline project is completed by Baltic Connector Oy, and Finland has joined the EU's internal market for natural gas, the impact of the Nord Stream 2 AG's project on the development of prices in the EU will perhaps also be felt by Finnish buyers of gas.

The Ministry considers it important that Ukraine's status will remain in the future as an important transit country for gas supply. This requires that the technical state of Ukraine's gas pipeline transport system is improved through modernisation, and that the Gas Directive of the EU can become applicable on the transit route. As a member of the international energy community, Ukraine is actually committed to this.

The Ministry's statement also noted that neither one of the European Commission's proposals (the mandate for talks between the EU and the Russian Federation, or the extension of scope of the EU Gas Directive) has an impact on the project's construction phase. Instead, the purpose of the Commission is to present a proposal that helps to ensure that when the pipeline is finished, it will be used in an acceptable way from the perspective of the EU's legislation on energy and the EU energy union's goals. At present, work is in progress with the amendment to the Directive, and for this reason, the other proposal, regarding the mandate, is postponed.

The Ministry also mentions the new law adopted by the Danish government, which could provide a legal basis for preventing a construction project in its territorial waters. If this were the actual outcome and if Nord Stream 2 AG were to suggest a revised delineation through the exclusive economic zone of Denmark, the Danish permitting procedure would be delayed.

In its statement, the Ministry for Foreign Affairs described the special character of the economic zone as an international territory and the coastal states' rights and obligations. Because the project and its implementation will affect the current and future use of the economic zone, the Ministry finds it very appropriate that the Finnish government's consent was requested with reference to the provisions of section 6, the EEZ Act. Because the technological approach does not seem to entail installations of other machinery and equipment or erections of structures at the bottom of the sea, the Ministry considers that the project is probably outside of the scope of section 7 of the EEZ Act.

Moreover, the Ministry for Foreign Affairs emphasized that it would be important for the gas pipeline project not to impede other, future infrastructural projects in the area. The Ministry's understanding is that the applicant should be required to notify the authorities of its activities of maintenance, repair or monitoring well in advance, which would make it possible to ensure the coordination of these activities with other activities within the exclusive economic zone and to ensure that the possible requirements laid down under Finnish legislation are fulfilled.

The Ministry also noted that Nord Stream 2 has endeavoured to mitigate the project's environmental impact by deciding on alternative delineations of the routing, through optimization processes, and by engaging the services of a dynamically positionable vessel. In the Ministry's opinion, good cooperation with other concerned parties (the owners of the other infrastructure) will be an important element.

The Ministry considers that the Council of State could give its consent for the construction of Nord Stream 2 pipelines as referred to in the EEZ Act, provided that the routing defined in the application is deemed acceptable in view of the protection of the marine environment and other exploitation of the exclusive economic zone. According to the Ministry, the official decision must enumerate a set of conditions that are found necessary for safeguarding the national rights relating to security or to the provisions of the EEZ Act. Those provisions allow for reviewing of the consent in case the main implementer's activities turn out to be different from what had been agreed and defined in the official decision. The consent may also be subject to revocation.

The Ministry observed that the question of giving or withholding consent has environmental significance, and this must be treated as the primary focus. Consequently, the deliberations prior to giving consent must involve the environment, and it would be advisable to require the applicant to carry out a number of measures following the recommendations given by the body that deals with the EIA report. Along with that, it will also be of importance that sufficient attention is given to the opinions voiced by the other coastal states of the Baltic Sea. The permitting procedure must include this requirement.

The Ministry's understanding is that the applicant should be required to make sure of an operation that follows the rules of maritime safety, considering that the Gulf of Finland has special circumstances in this regard because of the heavy maritime transport activity that traverses it. The official decision should additionally enumerate the exact requirements for how to communicate with public authorities when the pipeline is being built, and also later, when it has started to operate. The applicant must be required to notify the authorities of its activities of maintenance, repair or monitoring, which makes it possible to ensure the coordination of these activities without delay, and to ensure compliance with Finnish legal rules. The decision must additionally contain a statement referring to the necessity to obtain a water permit within the meaning of the Water Act.

According to the Ministry, the provisions of section 31, paragraph 2 of the Administrative Judicial Procedure Act provide the basis for the assessment of whether the Government's consent can be enforced immediately. Those provisions list the reasons for derogation from the general rule that requires that appealable decisions must not become enforceable until they gain legal force i.e. are final. Specifically, despite the fact that the Council of State has allowed other decisions to be immediately enforced in the exclusive economic zone several times before, each case should be separately decided and the provisions of section 31, paragraph 2 must always be considered carefully. The project must also obtain a water permit within the meaning of the Water Act. For this reason, the immediate enforcement of the decision would not de facto eliminate or restrict the right of appeal with respect to the decision.

For the above reasons, it is the Ministry's view that there are no special grounds for objecting to immediate enforcement in such way that commencing the actual construction work would not be enabled until the Supreme Administrative Court has given its ruling on any appeals that might be lodged against the consent.

In a final note, the Ministry maintains that compensation must be paid if a damage were to be caused to other cabling or pipeline during the laying of subsea cables or pipelines, or during construction or installation work. Attention is drawn to the fact that although the applicant has assessed the project's risks, the application letter contains no elaboration on how liability for damages should be distributed during the operation of the pipeline. Occurrences of gas leaks cannot be eliminated completely, and this means that ships may be sailing in an area of the Gulf of Finland where such an accident may happen, bearing in mind the high frequency of maritime transport. The Ministry is of the opinion that a consent given by the Council of State cannot be invoked as a basis for demanding the State of Finland pay damages.

**The applicant** refers to the fact that there has been a debate at EU level about the project, involving both favourable and opposing views. The applicant also points out that although the debate has been interesting, its content has little to do with the matters that are important for the permitting procedure in Finland.

In addition, the applicant stated that it agrees with the Ministry's observation that the question of giving or withholding consent has environmental significance, which must be the primary focus. The environmental dimensions of the project will be controlled by the permit to be granted in accordance with the Water Act. The applicant also wishes to point out that the ELY Centre of Uusimaa issued a positive statement in response to the applicant's EIA report and Natura 2000 assessment and Natura 2000 means test. In the same way, the ELY Centre of South-East Finland also gave a positive statement in the framework of Natura means test. The applicant adds that the ELY Centres of Uusimaa, Finland Proper, and South-East Finland have all affirmed when giving their opinions for the water permitting procedure that the building of the pipeline transport system does not affect the pursuit of the goals set out by the EU Water Directive and Maritime Strategy Directive, with reference to how Finnish national legislation implements these two Directives.

According to the applicant, the comment from the Ministry for Foreign Affairs on the subject of immediate enforcement is similar to the comment received previously with Nord Stream 1 when the requested enforcement order was finally granted. As the text of the application affirms, the start of the construction work will additionally require that the permit within the meaning of the Water Act is also received. Even if the Council of State gives its consent under the provisions of the Finnish EEZ Act, it does not yet entail an authorisation to start building the pipeline.

On the subject of damage risk to third parties' cable and pipeline systems, the applicant affirms that agreements either have already been signed or are in the process of being concluded with the owners, and they include clauses covering the question of compensation should any damage or accident occur.

**The Ministry of the Environment** is of the view that, when discussing the application for the Government's consent, a stand should be taken whereby the proposed project must also be assessed on the basis of the Act governing the economic zone but also with Finland's international legal commitments and obligations in mind. This Ministry issued a statement that concerns only the specific consent, which is being requested of the Council of State. The statement points out that under section 2 of the Act governing the economic zone, the State of Finland has the right to preserve and protect its natural resources located in the zone. The fact that it is in the jurisdiction of Finland to protect the maritime environment is based on international law, specifically the UN Convention. The estimate regarding the project's impact on the development of that environment is based on the EIA report made available in the framework of the project.

The Ministry deems that, considering the ecological vulnerability and the alarmingly deteriorated state of the Baltic Sea, the main implementer of the project should follow

the principle of greatest possible care. To ensure that the State can meet its obligation to protect its maritime environment located in the zone, it would also be in order that the applicant carry out all the further investigation suggested by the ELY Centre of Uusimaa, the authority acting as the EIA contact. The investigative measures should be carried out during the permit issuance process required by the Water Act. As for the presence of underwater noise, the Ministry continues to emphasize its preference that pipeline building must be correctly timed. Periodically, when the natural environment is very sensitive to noise, construction should be suspended for a certain time in locations where species are found that are known to be sensitive, and where endangered species are found.

As for the claim for immediate enforcement, the Ministry of the Environment states that when the matter is considered, the concept of the public interest within the meaning of section 31, Administrative Judicial Procedure Act (586/1996), is not unambiguous. However, bearing in mind that the project must in addition to the government consent also be granted a permit provided by the Water Act, and bearing in mind that even if the Council of State gives its consent it does not entail an authorisation to start building the pipeline, the Ministry does not object the issuance of immediate enforcement. This way, it would be feasible to carry out an immediate enforcement on the condition that actual constructions works would not even partly be permissible by virtue of the enforcement alone.

**The applicant** notes that in response to the application letters submitted to them, the ELY Centres of Uusimaa, Finland Proper, and South-East Finland have stated that the building of the pipeline transport system does not affect the pursuit of the goals set out by the EU Water Directive and Maritime Strategy Directive, with reference to how the legislation of Finland has implemented these two Directives of the European Union. The applicant also refers to the positive opinions stated by the ELY Centres of Uusimaa and South-East Finland in connection with the Natura 2000 assessments and means test conducted in Finland.

The applicant shares the Ministry's views regarding the necessity to ensure that the results of what is known as the Espoo Process must be taken into account when the official decision is being prepared. Section 4.7 contains more details about the conclusion of the Espoo Process. The applicant is in agreement with the Ministry's note about the fact that before construction may be started, it is not only necessary to obtain the consent of the Council of State but also to have a permit referred to by the Water Act.

**The Ministry of Transport and Communications** has noted that it joins the Finnish Transport Agency that issued a statement on the matter on 15 Nov 2017 with points of view that the Ministry shares. For this reason, the Ministry of Transport and Communications does not give any other comment.

**The applicant** responded to the Transport Agency's statement (see 4.3.2 below).

**The Ministry of Agriculture and Forestry** wishes to refer to its previously issued statements and opinions on Nord Stream pipelines. The Ministry has emphasized the importance of taking into account all the existing conventions and agreements, programs and guidelines in the sector of environmental protection, in addition to meeting all legal requirements, because the project deals with the Baltic Sea and multiple environmental aspects. This must be borne in mind when assessing the environmental impact of the pipeline system when it is being constructed and also when it will be in use in the future. What the Ministry stated previously and continues to attach importance to is that the Ministry's predictions of negative impact on fishing, fish stocks, mammals living in the sea must be taken into account also when discussing the proposed construction project and its effects in Finland; including the project's construction stage as well as the stage when the pipeline operates.

With respect to its administrative sector, the Ministry of Agriculture and Forestry sees no impediments to granting the Government's consent for constructing the gas pipelines to Nord Stream 2 AG, provided that the consent mention the assessment of negative impact on the public interest concerning the fishing industry. In addition to the compensation paid to currently active fishermen, the damage and harm which are estimated to be caused by the project, and which are verified later, should be considered during the permit procedure under the Water Act. This must be done in the same way as in Nord Stream 1, the previous project, where the conclusion was that a penalty charge had to be imposed.

**The applicant** wishes to present before the Council of State, and the Ministry of Agriculture and Forestry, when the impact on commercial fishing and the public interest relating to the fishing industry is in focus, the opinion prepared by ELY Centre of Finland Proper. This statement was received in response to an application submitted by the applicant and it affirms that the ELY Centre share's the applicant's views about the impact on commercial fishing and about the calculation of a penalty charge that relates to the said public interest. The applicant has noted that the ELY Centre's opinion will be observed when the permit under the Water Act is processed. In addition, the applicant has noted that agreements were made with professional fishermen on the subject of compensation to be paid to them.

**The Ministry of the Interior** forwarded the statement of Finnish Border Guard's headquarters, instead of giving a proprietary statement. The headquarter has jurisdiction as the Ministry's unit in charge of supervision of the national border. The Ministry of the Interior gave no other comment.

**The applicant** refers to its response to the statement from the Finnish Border Guard (see section 4.3.2 below).

**The Ministry of Defence** has additionally referred to the provisions of the Territorial Surveillance Act (755/2000) and called attention to the strategic location of the Baltic Sea. Certain aspects of national security (Security category IV) are to be addressed.

#### 4.3.2 Other public authorities

**The Geological Survey of Finland, GSF**, noted in its statement that it participated as an expert in the EIA process of the Nord Stream 2 project, when a dialog between the public authorities and the applicant was ongoing, stating its opinion to the authority in charge of environmental permits on the subject of environmental impact. The Geological Survey makes reference to the ELY Centre of Uusimaa's statement, dated 26 July 2017, issued in response to the project's EIA report. This report also contains the Geological Survey's commentary about the project.

The Geological Survey stated that the application, with its supplement, is extensive because it not only contains a national EIA report for Finland, but also an international EIA report with reference to the Espoo Convention. Similarly as it was noted in the national Finnish EIA, there are locations in Finland's economic zone where because the construction phase is short and the affected area is limited, the substances will not cause permanent damage for the sensitive ecosystem of the surface sediment contains relatively high amounts of harmful substances. However, based on the EIA, because the construction phase is short and the affected area is limited, the substances will not cause permanent damage for the sensitive ecosystem of the sea. Another observation is that the applicant has decided on using a dynamically positionable vessel for the pipe-laying work. This work method will cover the entire Gulf of Finland, and it will considerably reduce the effects on the seabed because it is no longer necessary to use anchors.

According to the statement of the GSF, the delineation of the future pipeline must be determined so that no harm to existing infrastructure on the seabed can be caused, and so that they pose as little obstacles as possible to future use of Finland's exclusive economic zone. The building work should aim to minimize the surface that the existing and the new pipelines cover at the bottom of the sea. This is due to the fact that restrictions on the exploitation of the zone will apply in the future, partly preventing all infrastructural project work. The same principle should be followed with regard to any future exploitation of the seabed's raw-material resources.

In a final note, the GSF Geological Survey wishes that geological, geotechnical and geochemical material gathered during the project's EIA should be freely available and stored in national databases, respectively for every participating organization that has offered its expertise. The GSF is of the opinion that the application is extensive and describes the project well. In conclusion, the GSF sees no impediments to the implementation of the project and to the giving of the consent.

**The applicant** has asserted that the existence of a finished pipeline transport system does not pose an obstacle to the construction of other, extended infrastructure at a later stage, and does not cause any impediment to the infrastructure of today. The applicant affirms that it will deliver the requested documentation to the Geological Survey if the Council of State or the Ministry of Economic Affairs and Employment were to demand this. The project's currently valid permission for research work has set out the condition that the documentation must be handed over to the Ministry of Economic Affairs and Employment after conclusion of the research.

**The Energy Authority** is not giving a statement on the matter.

**The National Emergency Supply Agency** called attention to the fact that the pipelines that run parallel do not prevent or make it unreasonably difficult to keep Finland's existing and future connections of gas supply, electric power transmission, and data transmission in operation. Additionally, the building and future maintenance work of the pipelines should ideally be carried out so that as little negative impact as possible would be caused to maritime transport between Finland and other countries. Otherwise, the National Emergency Supply Agency refrained from further comment.

**The applicant** called attention to the contents of the application and its supplemental document where the observation can be found that the Nord Stream 2 pipeline system is only expected to have very small impact on future infrastructure projects. The most important impact would be caused by the necessity to construct intersections and crossings, and the need to comply with the rules of explosive ordnance disposal when munitions must be dealt with at the bottom of the sea. As for today's infrastructure, the applicant affirms that agreements either have already been signed or are in the process of being concluded with the owners of the systems located in the Gulf of Finland. The matter was addressed above in 3.1.

**The Transport Agency** indicated in its statement that it was a participant of the Nord Stream 2 project's EIA process, and maintained contact with the project during its research and planning stages. By virtue of the already completed Nord Stream 1 pipeline project, extensive and sufficient information was available to the unit in charge of the participation. The construction and operational phases were described in detail, and this was useful when the unit made its appraisals on the project's impact on maritime transport during each phase.

According to the Transport Agency, the requirement to establish a zone of safety around the pipe-laying vessels will cause a certain impact on maritime transport. The Agency is the competent authority that deals with VTS, and is also the cartographer carrying responsibility for Finnish sea charts. In order to ensure that no impediment is caused with regard to maritime safety and in order to establish good

relations of collaboration, it will be necessary to arrange mutual negotiations between the management of the project and the Agency. The arrangements of information exchange and detours of sea routes must be addressed well in advance. The Agency notes that the applicant has the obligation to follow the International Regulations for Preventing Collisions at Sea 1972 (COLREG). It also points out that exact requirements regarding charting and maritime transport were listed when the Agency prepared a statement for the permitting procedure related to the water permit of the project.

The planned pipeline will run under the Transport Agency's sea route called Mussalo Route in Finland's exclusive economic zone, intersecting its external part and running partly along the Gulf of Finland's route distribution systems, which are areas designated for through traffic for the ships heading for the Gulf. The principle of route distribution serves the purpose of reducing the risk of collision. This is achieved by directing the vessels to use a set of precisely defined lanes. It was noted that the planned delineations of the pipeline are not too near the zones reserved for anchored vessels, and they are also at a sufficient distance from the floating safety devices located in the economic zone.

The Transport Agency's statement puts forward the demand that the actual future location of the pipeline must not prevent any future improvement work or changes to be made to the Mussalo Route. For this reason, the Agency demands a minimum depth for pipelines, which is at least 20 metres counting from the average water level and including all the relevant structures. At the same time, the Agency observes that if the application letter specified the locations correctly, the gas pipeline will lay in the depth of 40 metres. This would ensure that they do not pose obstacles for future action aiming to improve, maintain, or make changes to the Mussalo Route.

The delineation is located some three kilometres away from the shallow water northeast of the Kallbådagrund Lighthouse and the zone that divides the route distribution sectors. The Traffic Agency has brought up the possibility of having to dredge the shallow water when issuing its statement relating to the Nord Stream 2 project's EIA report.

In addition, the Transport Agency noted that it is a participant of the FinEst Link, a feasibility study that looks into the prospects of having an undersea tunnel constructed for a railway between Tallinn and Helsinki. The question of the tunnel was also addressed briefly in the documentation that relates to the permitting procedure. At present, the preliminary planning envisages the use of a drilling technology, which would cause no consequences for the Nord Stream 2 pipeline. The FinEst Link tunnel study has encompassed the idea of building two artificial islands, one outside Helsinki, the other outside Tallinn. The island near Helsinki would be located near the shallow area known as Helsingin matala.

From the point of view of its own activities, the Transport Agency does not see impediments to giving consent for the project, provided that the depth requirement specified above for the Mussalo Route will be met in the pipeline's final planning and construction, that attention is paid to the fact that the shallow water near the Kallbådagrund Lighthouse may be dredged at a later date, that the twin gas pipes of the pipeline will be properly indicated in charts, that an exchange of information during research and construction stages is established properly, including mutual processes of sharing information well in advance with the Transport Agency, and that the International Regulations for Preventing Collisions are complied with. In addition, effective communication processed must be established also for the future activities of upkeep and use of the pipeline when checks and maintenance work is performed.

**The applicant** stated that it has negotiated with its subcontractors and the Transport Agency about the appropriate ways to communicate and exchange information. The

consensus has been that the already established routines, set up for Nord Stream 1, should be implemented for the purpose. The applicant had a meeting with the representatives of the Transport Agency, the VTS Centre of Helsinki, the Finnish Border Guard, and the Transport Safety Agency on 14 November 2017 in order to address the routines for notifying about the placing of rocks and the laying of pipes. There was an agreement that a follow-up meeting must be arranged in order to continue the negotiations on the subject. A corresponding meeting for the question of notifying of disposal of munitions will also be arranged when the building contractor has been hired. This will take place before start of construction.

**The applicant** is aware of the Transport Agency's notice regarding the possible dredging of the shallow water near the Kallbådagrund Lighthouse. The location is 3.1 kilometres from the pipeline. The applicant received the Agency's preliminary information on the subject but the applicant's conclusion has been that such dredging will have no effect on the integrity of the Nord Stream 2 pipeline. However, the applicant has asked for specific informative meetings to learn more about the precautions that will be necessary when the planned dredging begins.

As for the Mussalo Route, the applicant pointed out that pipe-laying in the area concerned by this sea route will allow a clearance of water of more than 20 metres above the pipeline and above all the rock ballasting and embankment around it. Normally the embankment rises no more than two metres above the highest point of the pipeline components, so consequently the entire system will lay below 20 metres of depth. The water of Mussalo Route is deeper than 20 in the locations around the future pipeline. The applicant had performed a chart study of the depths one metre by one metre for the entire length of the Mussalo section. The results indicate that the shallowest place near the 'A' pipeline has 47.5 metres, and respectively, near 'B' it has 41.3 metres of depth. The currently valid technical planning and the above information on depths can be combined in a calculation, the result of which indicates 38.9 metres of clearance. This way, the applicant is able to affirm that the entire system will lay below 20 metres of depth in the waters of the Mussalo Route.

**The Transport Safety Agency, Trafi** thanked for the opportunity to give a statement but explained that it refrains from doing so.

**The Finnish Heritage Agency** gave its statement where it informs our Ministry that it studied the application letter from the perspective of how the cultural heritage found under the sea can be conserved. This Agency is the competent authority in matters relating to the cultural milieu and the expert organisation in the field. It participated in the EIA process with a specific mission to ensure that the undersea heritage will be taken into account in the planning of the Nord Stream 2 project.

The important legal basis for considerations regarding the archaeological cultural heritage located in Finnish territory and the territorial waters is the Antiquities Act (muinaismuistolaki 295/63). It provides that wrecked ships and parts of wrecks may be treated as artefacts if they are likely to have lain at the bottom for more than a hundred years. Additionally, other structures that show evidence of historical settlements and historical events can also be treated as artefacts. Although the said Act is not applied on Finland's exclusive economic zone, the Finnish Heritage Agency attached great importance to the protection of cultural heritage that must be kept up when the Nord Stream 2 project progresses, in the same very appropriate way as this was done during the earlier Nord Stream 1 project.

The general provisions of the UN Convention on the Law of the Sea have established rules that require member countries to conserve the artefacts found in the sea if they are of archaeological and historical value, and collaboration between the member countries may be called for. Other provisions of the UN Convention on the Law of the Sea obligate member countries to conserve such artefacts if they are

found outside the geographical areas of national jurisdiction, at the bottom of the sea, because this may be beneficial for mankind. Additionally, the Convention adopted by UNESCO in 2001 regarding the protection of this type of cultural heritage, which Finland did not ratify but gave its vote to in the UN General Assembly of 2001, attaches importance to the conservation of artefacts located outside national jurisdictions i.e. under the sea at international waters.

In the opinion of the Finnish Heritage Agency, a large-scale building site such as Nord Stream 2, to be operated in the central part of the Baltic Sea, may have an impact on the cultural heritage, especially, it may affect the wrecks of ships. The relatively favourable environmental conditions at the bottom of the Baltic make it possible to find artefacts that are exceptionally well-preserved. No exhaustive information is available on exact locations of the artefacts that may be concerned. However, it is shown by the experience in the field that the Baltic Sea contains many of them in submarine locations that cannot be ascertained precisely on the basis of written documentation, maps, charts and other archive sources.

Because it is possible that unexpected discoveries will be made at the construction stages although the projected area underwent a thorough mapping when important objects were pinpointed, the applicant should have a plan outlining what must be done to notify the authorities of a discovery and what further action to take. The mapping described above, aimed at gathering information and pinpointing the area's cultural heritage, provided a quantity of data that can be taken advantage of when assessing whether inspections should be conducted after construction is finished. The question that will have to be ascertained is whether the completed construction phase had caused any alteration to the objects and artefacts.

According to the Finnish Heritage Agency, the "Cultural Heritage Management Policy" that is included in the application letter's documentation shows that the project made a commitment to follow the international, generally accepted principles of protecting cultural heritage, avoiding all action that might have negative impact. The Policy document enumerates the recommended principles for taking cultural heritage into account when working under the sea, including the preparation, planning, and operational phases. The Policy covers a wide range of tasks including how relevant objects should be mapped, how to cooperate with others, how to share information with the authorities, how to ensure that subcontractors will respect the safety zones, and how disposal work of explosive ordinances must be organised so as to avoid causing damage.

Nord Stream 2 has had a report made during the EIA process on the subject of the cultural heritage located in the economic zone. It is therefore known that the surrounding area, at a distance of some 250 metres, contains three objects of value. They include one wreck-artefact in the Eastern section of the Gulf, and two objects of cultural heritage relating to World-War-II events. The Agency agrees with the applicant's approach that the likelihood of damage to be caused is significantly reduced as the project is going to use a dynamically positioned pipe-laying vessel. The report has also located other objects of cultural heritage, located from 250 to 1,000 metres from the planned route. For this reason, they are not at risk. The overall conclusion is that the total impact on objects will probably be insignificant or quite small because the objects will remain almost intact.

In conclusion, the Agency's statement informed our Ministry that the preparation and the application letter gives reason to believe that due attention is given to the cultural heritage. Enough information on the objects was obtained during the preparation phase; consequently, the planning of the exact routing was adjusted accordingly. In the same way, the Nord Stream 2 project has kept the Agency up to date, and shared information openly about the heritage. Estimates of expected impact were prepared as required. The use of a dynamically positioned vessel has significant

advantages from the perspective of protection. For the most part, the applicant has successfully listed all the action to be taken, for the protection of cultural heritage, in its application letter, as is required by the Agency as a prerequisite for granting the water permit.

According to the Finnish Heritage Agency, there is no impediment from the perspective of protection of cultural heritage regarding the granting of consent to implement the project in Finland's exclusive economic zone.

**The applicant** affirmed that the action to be taken was already listed in the monitoring plan and it does not necessitate any changes to it.

**The Defence Command** informed our Ministry that it already gave its statement on the matter, addressing it to the Ministry of Defence.

**The Finnish Border Guard's headquarters** gave a statement indicating that Nord Stream 2 will primarily impact the legally required functions of the Border Guard from the perspective of rescue activity at sea, and additionally when the crew members of the pipe-laying vessel and transport vessels change their work shifts. Nord Stream 2 AG has had its representatives contact the Gulf of Finland Coast Guard, subordinated to the Finnish Border Guard. The application letter does not give rise to a need to make remarks against it, however, the Border Guard will also in the future require the Nord Stream 2 AG company to be an active counterpart, because an agreement must be concluded on how the vessels should make their mandatory notifications. Although the Finnish Border Guard is the competent authority in charge of controlling the geographical area in question, it is not giving a statement on this because the Ministry of Defence and the Defence Command were also requested to issue their statements.

**The applicant** assures to the Finnish Border Guard that it will also in the future keep informing it of the movement of its ships in Finland's exclusive economic zone.

**The Finnish environmental institute, SYKE**, refrained from giving a statement.

**The ELY Centre of Uusimaa** refrained from giving a statement.

#### 4.4 Claims and statements presented by others

##### 4.4.1 Statements by owners of cable and pipeline systems

**Baltic Connector Oy** has noted that Nord Stream 2 AG's routing of pipelines contains a point of intersection with the planned Balticconnector gas pipeline in the Gulf of Finland. Baltic Connector Oy's statement emphasized the importance of its own Balticconnector project for the Finnish and for the EU-level strategies concerning energy. Balticconnector will strengthen the local security of supply, making a diversified sourcing of gas more viable than what it has been so far. It will also create a framework that will help open up the gas markets, help prepare for growth, for alternative sourcing, which may include liquefied natural gas (LNG) and bio-gas.

Construction will be ongoing in 2018 and 2019 for building the Balticconnector. Under the provisions of the new Act governing the natural gas market, the opening date for this Finnish market will be 1 January 2020, and the availability of the Balticconnector as a working pipeline will be necessary in order to ensure that the gas market operates as intended. This will ensure that Finland can become a fully fledged participant in the EU internal market for natural gas. Under the circumstances, it is the conclusion drawn by the Baltic Connector Oy company that Nord Stream 2 AG must build its intersections with the Balticconnector pipeline in such a way that no delays to the time schedule are caused, and that no additional

expenses are required. Finally, Baltic Connector Oy notified our Ministry that it does not have any other comment regarding the submitted application letter.

**C-Lion 1 Oy** thanked for the request. C-Lion 1 Oy is aware of the plans made by Nord Stream 2 AG to build a twin pipeline for natural gas transport. It will have an intersection with C-Lion 1 Oy's undersea cable, and the two business enterprises have signed a mutual agreement on this. In conclusion, C-Lion 1 Oy notified our Ministry that it does not have any other comment.

**Fingrid Oyj** noted in its statement that it runs the electric power line systems EstLink 1 and EstLink 2 between Estonia and Finland, providing transmission of direct current. Both cables must be intersected so that generally accepted principles of cable crossing are followed: a 90-degree angle between the cable and the pipeline must be provided for, both an external protective system and an internal one between the cable and the gas pipe must be constructed properly. The point of intersection must have a construction that alleviates the effects of any disturbance caused by the cable, or the gas pipe, and alleviates the effects of corrosion. If the setup were to contain any sections that run parallel with the electric power cable, the distance must be at least 1.5 kilometres between the nearest one of the twin gas pipes and the cable. This ensures that all repair work can be performed without problems. It will be necessary to deliver the plans indicating the delineation of Nord Stream 2 to Fingrid Oyj for inspection and approval. The plans should contain a schedule of dates of construction, a technical description of the crossing, and information on the examined characteristics of the seabed in its vicinity.

Fingrid Oyj stated that the methods of seabed research and the locations where research is conducted must be selected so that all potential damage to the cable systems is avoided. If it turns out to be necessary to clear out wartime munitions in locations less than 100 metres away from the cable, the Nord Stream 2 project must prepare a plan that outlines the clearance work and deliver it to Fingrid Oyj for inspection and approval. If the munitions to be disposed of are more than 100 metres away, but it may be expected that the disposal work will cause impact, the Nord Stream 2 project must prepare a plan that outlines the clearance work and deliver it to Fingrid Oyj for inspection and approval. In addition, an agreement that provides for the intersection or crossings must be concluded with Fingrid Oyj before the planned pipe-laying work can begin.

**Nord Stream AG** thanked for the opportunity to give a statement and informed our Ministry that Nord Stream AG and Nord Stream 2 AG have, as business companies, agreed to sign a mutual agreement providing for crossings between Nord Stream 1 and Nord Stream 2 pipeline systems. Nord Stream AG indicated that it is prepared to furnish further information for the permit authority if this would be necessary.

**ZAO Perspective Technologies Agency** did not respond to the request for a statement, and gave no statement.

**The applicant** affirms that it has entered into agreements that provide for intersections and crossings with the businesses that gave the above statements, and that attention to the received feedback was paid when preparing the agreements.

#### 4.4.2 The statement from a private individual

**KS** has pointed out in his statement that he has not given permission to the applicant to lay pipelines in Finland's economic zone and that he will give no such permission. KS makes it clear that he occupies a territory located in Finland's economic zone because he erected a number of poles there in the Gulf of Finland. KS presents the idea that a territory that has no owner may always be occupied. In addition, any land that belongs to someone else cannot be used for construction purposes without

requesting the owner's permission. Finally, KS maintains that he must be regarded as a concerned party when this matter is addressed until the stage is reached that a resolution obtains legal force with regard to his having occupied the territory.

**The applicant** cordially informs the Council of State that the party for which KS is the representative also protested against the construction of the Nord Stream 1 pipeline transport system. At the time, the method of protesting involved a reference to the old, now repealed Act governing mining: a section should have been claimed in the economic zone for purposes of mining. In due course, the Supreme Administrative Court gave a ruling that rejected the request for the claimed area. Prior to the Supreme Administrative Court's ruling, the public authority in charge of mining had rejected the request, too.

The applicant notes that on 26 June 2017, the Land Survey authority rejected KS's request for obtaining title to the area marked with the erected poles. The applicant has communicated that KS submitted an appeal to the District Court of Vantaa against the Land Survey's decision of rejection. This Court is the competent court of law that can deal with cases that involve land ownership. The Court rejected the appeal on 30 November 2017. The Court's reasoning contained the observation that the Land Survey should not even have made a decision on the matter at all because it lacks legal grounds. However, the Court did not in any case find any reason for referring the request back to the Land Survey for re-processing.

KS has requested leave to appeal, and lodged an appeal against the Court's ruling to the Supreme Court. Under section 238 of the act on the outlining of real estate (kiinteistönmuodostamislaki 554/1995), a ruling or decision handed down by such a Court must be enforced in such a way as the legal rules require when a ruling is being enforced after it has gained legal force. For this reason, the Court's ruling is enforceable. Because of the facts and information presented above, the applicant believes that KS must not be regarded as a concerned party in the matter at hand, and consequently, any statement KS might give should not be considered when addressing the applicant's request to obtain permission.

#### 4.5 EIA Competent Authority's comment

The need for an EIA procedure to assess the project is grounded on the Finnish Act on Environmental Impact Assessment Procedure (the EIA Act, 468/1994) and the Decree on Environmental Impact Assessment Procedure (the EIA Decree, 713/2006). According to section 4 a of the EIA Act, the Act applies to the Finnish EEZ as referred to in section 1 of the Finnish Act on the Exclusive Economic Zone (1058/2004). According to the project list given in section 6, paragraph 8 b of the EIA Decree, the EIA procedure applies to gas pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres. In addition, the UN Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention, Finnish Treaty Series 67/1997) also applies to the project. Finland and Estonia also have a bilateral treaty on EIA (Finnish Treaty Series 51/2002).

On 25 March 2013, Nord Stream AG initiated an Environmental Impact Assessment (EIA) procedure by submitting an EIA program for the Nord Stream 2 project to the Economic Development, Transport and the Environment Centre of Uusimaa (ELY Centre of Uusimaa). On 4 July 2013, the ELY Centre issued a statement on it.

On 3 April 2017, Nord Stream 2 AG submitted an impact assessment in a transboundary context, assessing the environmental conditions in Finland's exclusive economic Zone and all other project areas (an Espoo report) to the ELY Centre of Uusimaa, which released a public notice regarding EIA on 7 April 2017. The end date of the hearing was 5 June 2017. Finland's official statement regarding the impact of

the project for other concerned states and vice versa was published 30 June 2017 by the Ministry of Environment.

On 26 July 2017, marking the closure of the national EIA process, the ELY Centre of Uusimaa issued its statement regarding the EIA report and an opinion as to whether it is treated as being sufficient for its purpose. The ELY centre let the applicant know that it considers the assessment sufficient in its fundamental aspects and that it fulfils the requirements laid down in section 10 of the EIA Act. The report was processed as required, and written as the legislation on EIA provides, and it takes account of the need for further elaboration, referring to the contact authority's statement issued on 4 July 2013. However, further investigations, as laid down in the statement, must be submitted to the permit authorities for consideration during the consent and permit procedures.

The ELY Centre of Uusimaa affirmed in its statement of 26 July 2017 on the EIA report that, in general, the project has been described in such detail that the recognition and assessment of impact has been possible. The EIA report also fully serves the purpose of providing extensive information, in order to facilitate further assessments in the framework of Natura 2000. According to the ELY centre, the most important environmental impact is directed towards mammals. The construction work on the pipeline system may additionally cause negative impact on birds and the undersea flora and fauna, the spread of sediment and some diffusion of harmful substances. In the operational phase, the pipeline will have a certain impact on commercial fishing activities and the future use of the exclusive economic zone. This way, especially the impact on fishing should be subjected to a more detailed analysis in the application documents.

The ELY Centre of Uusimaa's statement also presents the requirement that the specific impact on Natura 2000 sites must be examined in more detail in the Natura 2000 assessments. It is also required of the applicant to provide mitigation of the environmental impact, and construction should be suspended for specific periods in locations where species are found that are known to be sensitive, and where endangered species are found. The ELY Centre also noted that the southern alternative routing solutions, listed in the EIA report, would clearly cause less impact than the routing along northern parts. Furthermore, to operate a dynamically positioned pipe-laying vessel causes less impact than the traditional vessel that uses anchors for its positioning.

Finally, the ELY Centre demanded that the applicant must write up a response that answers the questions asked during the international hearings, and answers the need to provide further information.

Prior to construction, it will be necessary to dispose of wartime munitions located in the main corridor and the wider security corridor, for ensuring safety during the installation work and the operational phase. For making sure of installation safety, the ELY Centre demanded that the report should additionally contain plans for munitions clearance based on the actual quantity of munitions in the selected corridor of pipeline. Effects on the quality of water and consequently, the small flora and fauna, will mainly be caused by the activities of explosive ordinance disposal and embankment building out of rocks and stones. However, it is estimated that the effects will remain minor. As the work on the munitions clearance plan and building plan progresses, it may be necessary to revise this estimate later.

The impact of the project, in conclusion, is almost entirely caused during the construction phase. The impact is local and of limited duration. The ELY Centre of Uusimaa stated that the Nord Stream 2 project will not pose an obstacle to the reaching of the goals relating to the quality of water. This issue will be examined again during the permitting procedure because at that stage, both the required

additional reporting and documentation and the Natura 2000 assessments will be available for use.

Nord Stream 2 made a commitment to arrange for observation activities of the mammals and birds during activities of munitions clearance, before detonations, and after them. The ELY Centre's statement contains a conclusion that the suggested program outlining observation and monitoring is sufficient.

The environmental impact caused by munitions clearance will be addressed during the permitting procedure according to the provisions of the Water Act. The applicant has, after submittal of its application letter, decided to introduce bubble curtains as a further precaution giving a mitigating effect. The curtains are to be available for the majority of disposals of explosive ordinances (for 80 out of 87). It is not feasible to use a barge when carrying out the disposals. If the weight of the explosive ordinance stays below 22 kilograms, it is estimated that bubble curtains should not be used unless the location is the Eastern part of the Gulf of Finland. Each support embankment must be designed in such a way that the amount of rocks, stones and gravel is as small as possible. It is estimated that zero to two new wartime munitions may be located outside the researched security corridor. Some of the embankments to be constructed may extend themselves to this outside area but such extensions will remain small (maximum 10 metres).

The applicant has performed a general revision of the observation and monitoring program that was included in its application letter. The revisions are based on the statements received in response to the submitted application. The planned monitoring activity covers the construction and operational phases. The authorities in charge of control and the applicant have discussed the revisions.

#### **4.6 Comments from the ELY Centre of Uusimaa regarding the assessment within the Natura 2000 framework, and from the ELY Centre of South East Finland regarding the Natura 2000 framework**

##### **4.6.1 Natura 2000 assessments**

In reference to the provisions of section 65, the Environmental Protection Act (1096/1996) two assessments within the framework of Natura 2000 were conducted by the applicant, along with four Natura 2000 means tests on the subject of whether or not a full Natura 2000 assessment must be carried out. The sector of the sea located south of Sandkallan was covered by an assessment report submitted to the ELY Centre of Uusimaa on 3 July 2017. The islets and sea near Kallbådan was covered by an assessment report submitted to the ELY Centre of Uusimaa on 10 July 2017. New, revised Natura 2000 assessments due to the optimisation of the routing, and due to the use of bubble curtains to facilitate disposal of wartime munitions, were submitted on 6 September 2017.

On the basis of the assessment report on the Kallbådan islets and the sea, the most important environmental impact on this Natura site will be caused by the work aimed at disposal of wartime munitions. To mitigate the impact, the applicant will use bubble curtains for some of the explosive ordinances to be detonated. Regarding the assessment report of the sea south of Sandkallan, this Natura 2000 site will be exposed to increased sedimentation. This constitutes the most important environmental impact on this Natura site. The sedimentation will be the consequence of munitions disposal work and stone embankment work. Regarding the islets and sea at Kallbådan and the assessment report concerning this area, the conclusion is made that the project alone, or jointly with other projects and planned projects, does not endanger the nature, with reference to the values of the natural environment that served as the grounds when this site was annexed to the Natura 2000 network. As for the area south of Sandkallan and the Natura 2000 assessment concerning it,

the conclusion is that the project alone, or jointly with other projects and planned projects, does not endanger the nature, with reference to the values of the natural environment – the "reef" category – that served as the grounds when the Sandkallan, Porvoo-Natura 2000 site was annexed to the Natura 2000 network.

#### **4.6.2 Natura 2000 means test**

The applicant carried out four separate Natura 2000 means tests for the purpose of ascertaining whether a full Natura 2000 assessment should be performed. The means tests regarding the following areas were combined into one means test: islands outside Tammisaari/Ekenäs and Hanko/Hangö, the natural sea reserve of Pohjanpitäjänlahti/Pojoviken, the islands of Söderskär and Långören, and Pernajanlahti and the islands of Pernaja constituting a natural sea reserve. The combined Natura 2000 means test was submitted to the ELY Centre of Uusimaa on 12 July 2017. In addition, a means test was carried out for the Natura 2000 site called "the archipelago and waters of Eastern Gulf of Finland—Itäisen Suomenlahden saaristo ja vedet". This means test was submitted to the ELY Centre of South East Finland on 6 September 2017.

The conclusion of the means tests in the framework of Natura 2000 is that the Nord Stream 2 project does not, alone, or jointly with other projects and planned projects, endanger the nature, with reference to the values of the natural environment that served as the grounds when the sites were annexed to the Natura 2000 network, i.e. the sites of islands outside Tammisaari/Ekenäs and Hanko/Hangö, the natural sea reserve of Pohjanpitäjänlahti/Pojoviken, the islands of Söderskär and Långören, and Pernajanlahti and the islands of Pernaja constituting a natural sea reserve. This way, the means test results indicate that it is not necessary to conduct a Natura 2000 assessment within the meaning of section 65, Environmental Protection Act, for the three areas concerned. As for the Natura 2000 site called "the archipelago and waters of Eastern Gulf of Finland—Itäisen Suomenlahden saaristo ja vedet", the means test indicated that the project does not, alone, or jointly with other projects and planned projects, endanger the nature, with reference to the values of the natural environment that served as the grounds when the site was annexed to the Natura 2000 network. This way, the results indicate that it is not necessary to conduct a Natura 2000 assessment on that site, within the meaning of section 65, Environmental Protection Act.

#### **4.6.3 Statement issued by the ELY Centre of Uusimaa on the assessments and means test within the framework of Natura 2000**

The ELY Centre of Uusimaa issued its statement, making comment on the two Natura 2000 assessments in its jurisdiction area and on the three Natura 2000 means tests. Regarding the means tests, the ELY Centre agrees with the conclusions made. There is no need to perform a full Natura 2000 assessment. In the same way, the ELY Centre agrees with the conclusions of the two completed Natura 2000 assessments. The Centre also pointed out that the conclusions would remain the same even if the environmental impact were to be assessed together with those of the Balticconnector pipeline, the wind energy production included in the zoning plans, and the operations of soil extraction from the same water territory.

#### **4.6.4 Statement issued by the ELY Centre of South East Finland on the assessments and means test within the framework of Natura 2000**

The ELY Centre of South East Finland issued its statement, making comment on the Natura 2000 assessment for the site called "the archipelago and waters of Eastern Gulf of Finland—Itäisen Suomenlahden saaristo ja vedet" on 20 November 2017. The Centre agrees with the conclusions made. There is no need to perform a full Natura 2000 assessment. In addition, the Centre stated that the project's joint effects

taken together with the Balticconnector pipeline and the gravel extraction site outside of Loviisa do not give reason to change the conclusion. The most important negative impact on the environment will be caused during the building work of the pipeline, and they are directed toward the mammals and birds of the sea, the flora and fauna under the surface, and connected with the spread of sediment and diffusion of harmful substances. At the pipeline operation phase, some impact may be caused on commercial fishing and on the future use of the exclusive economic zone.

#### **4.7 Consideration of comments of other coastal states in accordance with the Espoo Convention**

Nord Stream 2 will cause impact in the other countries of the Baltic rim. Their public authorities, citizens and corporate entities are entitled to participate in the EIA process including the appraisal procedures carried out in Finland inasmuch as the impact is directed to the other countries. By virtue of section 15 of the EIA Act, the authorities and public of a state that is a Party to the Espoo Convention must be reserved the opportunity to participate in the assessment procedure if it is likely that the environmental impact will affect the territory of the state in question.

The UN European economic commission's Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) is applicable, and therefore the Finnish authorities, citizens and corporate entities have the right to express their opinions on the project's environmental impact on Finland. The Ministry of the Environment is the competent authority with regard to the Espoo Convention. The Ministry presents the statements of other countries on their respective pipeline sections, distributing them to the countries.

Finland, as a Party of Origin, delivered a notification in March 2013 on the commencement of an EIA procedure to the Affected Parties and provided them with the opportunity to participate in Finland's EIA procedure. The notification was forwarded to Sweden, Denmark, Estonia, Latvia, Lithuania, Poland and the Russian Federation. All states indicated their willingness to participate in Finland's EIA procedure. Germany, Denmark, Sweden and the Russian Federation sent Finland a notification referred to in the Convention on the start of the assessment work on 8 April 2013, which was enclosed with a document on Environmental Impact Assessment on the entire Baltic Sea.

Finland responded on 14 June 2013 and communicated that it will participate in the EIA procedures of the respective countries. Supplemental documentation dated 16 July 2013 to the response contained the Ministry of the Environment's summary that covered the statements issued in Finland concerning the aggregate impact of the entire project.

The Contact Authority for the project, the ELY Centre of Uusimaa demanded in its statement in response to the EIA report that the applicant, being responsible for the project, must prepare an answer to the questions raised during the international hearing on the subject of EIA documentation, also as a response to the requests to provide further information. Estonia, Latvia, Lithuania, Denmark, Germany and Sweden had asked questions and requested further information. On 19 September 2017, the Ministry submitted the comments prepared by the applicant to these countries, asking them to notify the Ministry by 10 October whether they wish to continue with the hearings within the meaning of the Espoo Convention. The Ministry also informed the countries that if no such wish is expressed, the Finnish authorities will treat the consultations under the Espoo Convention as having closed.

The Russian Federation and Denmark did not give remarks to Finland, which means that the Espoo process is terminated for these two countries as well. Poland asked for further details, and Lithuania expressed an interest for a meeting to be arranged

after the hearings are closed. Sweden and Estonia informed the Ministry of the Environment that they do not find it necessary to conduct negotiations. The Ministry of the Environment forwarded the requested details to Poland on 26 October 2017. In response, Poland let the Ministry know on 16 November 2017 that it has no further remarks to make. The Ministry arranged a meeting with the representatives of Lithuania on 21 November 2017. The minutes from it were forwarded to Lithuania on 19 December 2017, enclosed with the statement on the Natura 2000 assessment, issued by the ELY Centre of Uusimaa, which Lithuania had requested.

The process known as the Espoo Process in which Finland is the "party of origin", within the meaning of Article 1 of the Convention on Environmental Impact Assessment in a Transboundary Context (Treaty series 67/1997), has reached its termination when the letter dated 19 December 2017 was forwarded to the Lithuanian ministry of the environment. Lithuania was the last country concerned by the process. The process terminated earlier in the autumn of 2017 for the other countries concerned.

The Ministry of Environment has the obligation, under Article 5 of the UN Convention on Environmental Impact Assessment in a Transboundary Context, to forward the hearing documentation to the permitting authorities after the EIA hearings are closed. The Ministry sent the Espoo documentation to the permit authority on 9 January 2018. The Ministry affirms that all the hearings within the meaning of the Convention on Environmental Impact Assessment in a Transboundary Context (Treaty series 67/1997) and within the meaning of the specific Agreement signed with Estonia (Treaty series 51/2002) are finished. Article 6 of the said UN Convention requires that the contracting states must ensure that assessment results will be taken into consideration in decision-making. The results include the EIA results, the documentation on assessment, the feedback or comments received on them, and the results from the talks referred to in Article 5 of the Convention.

The feedback received from other countries contained a discussion of similar themes as those addressed during the national hearing in Finland. Examples of the themes include the importance of using a pipe-laying vessel with dynamic positioning, which is better than using a vessel with conventional anchors, and concerns of the impact to be felt by the commercial fishing sector, effects on the existing infrastructure and the future outlook of building more infrastructure in the Baltic Sea later. Another remark that was made was in reference to the EU legislation that requires that important projects in the energy infra sector must be controlled by EU legislation. The feedback voiced some concerns about whether or not the new pipeline will increase dependence on Russian natural gas. Another concern was the negative impact caused by the noise when explosive ordinances are disposed of, and how the mammals that live in the sea are affected. They especially consist of porpoises and seals; in addition, the Kurgalsky natural reserve can be exposed to negative impact. Still further questions were raised on how the pipeline can be decommissioned, and what kind of security measures must be undertaken during the construction phase, and what has been done in order to prepare for accidents.

The applicant has responded to the questions raised in the international hearing as called for by the ELY Centre of Uusimaa, which gave a statement to that effect.

**Sweden.** When giving its response to Sweden the applicant noted that regarding Finland, Natura 2000 assessments and means tests have been carried out after the EIA report was submitted. On the climate and the project's expected impact on it, the applicant called attention to the statement of the ELY Centre of Uusimaa that indicated that sufficient assessment regarding the climate was already made in the filed EIA report.

**Poland.** The applicant noted in its response that regarding Finland, Natura 2000 assessments and means tests have been carried out after the EIA report was submitted. The applicant also provided answers to Poland's remarks on the noise that the operation may cause under the sea. After writing the response, the applicant made a commitment to mostly utilize bubble curtains when disposing of munitions in Finland. This will reduce the noise effect even more.

**Lithuania.** On the subject of Europe's needs for natural gas, the applicant made reference to the data it has presented in enclosure no 10 to the application letter. The applicant tells the Lithuanian authorities that the pipelines are only intended to be transportation routes. Regarding the methods used during the EIA, the applicant points out that the selected methods are widely used when environmental impact is assessed. As for the effects to be felt by the fishing sector, the applicant maintains that the existence of the pipeline will not cause losses of fishing waters, and that the authorities in charge of the matter have been given information on the extent of Lithuanian fishermen's activities of fishing in the areas concerned by the project (also located outside Finland).

**Estonia.** The applicant gave an answer to Estonia and noted that the impact against the Baltic seal population will be mitigated by carrying out special measures. After writing the response, the applicant made a commitment to mostly utilize bubble curtains when disposing of munitions in Finland. This will reduce the noise effect even more.

**Germany.** In the response to Germany the applicant noted that the question of added nutrients was addressed in the EIA report and its enclosures. The applicant has also taken notice of the remarks on the Baltic seal population, and it therefore taking special measures in order to mitigate the negative effects on the Baltic seals living in the Eastern part of the Gulf of Finland. After writing the response, the applicant made a commitment to mostly utilize bubble curtains when disposing of munitions in Finland. This will reduce the noise effect even more.

**Latvia.** The applicant's response to Latvia contains the affirmation that a contingency plan will be prepared in conformity with HELCOM requirements. The applicant fully agrees with Latvia's views that in the anchoring corridor, it will be feasible to avoid the necessity to carry out disposal of wartime munitions when a dynamically positioned pipe-laying vessel is in operation. The only pipe-laying vessel to be utilised in Finland will be the dynamically positioned one.

#### **4.8 Further supplementary information provided by the applicant**

On 5 February 2018, the applicant delivered further documents, consisting of a new agreement on compensation paid to fishermen, a new cable crossing agreement, and an updated monitoring program of environmental effects.

The applicant has stated on 9 March 2018 that the planning of construction start is progressing and is in the original schedule. The applicant also noted that Bergmat Stalsund, the German authority of the mining sector, approved the plan concerning the territorial waters on 31 January 2018. The applicant notes that the contracts for disposal of munitions were given to MMT/Ramora and N-Sea/Bodacin.

The applicant has stated that it signed an agreement on cable crossing with Fingrid Oy. The applicant updated enclosure no 3 "Nord Stream 2 – Stakeholder Engagement Plan Finland". The applicant had a version prepared in Finnish.

The applicant has stated that it improved the design of stone embankments after submittal of the application letter. The updated design will not require more than 1.9 million cubic metres of rocks, stones and gravel; it is likely that the total amount

to be used will be some 1.2 million cubic metres. The applicant noted that when the design and planning work progressed it became clear that a part of the embankments will extend itself to the outside of the security corridor of pipelines, to the research area as defined in the application letter.

The applicant submitted supplemental documents and requested that a change be made to section 6.7.1 of its application letter (procedures in case of unexpected discoveries). This adjustment was motivated by the applicant's reasoning that when the design and planning of embankments progressed it became clear that a part of the embankments will extend itself to the outside of the security corridor of pipelines, to the research area as defined in the application letter. It is the understanding of the applicant that there would be any additional munitions to be found in the immediate vicinity of the stone embankments. The applicant declared that it is committed to using bubble curtains also when carrying out disposals of unexpectedly discovered wartime munitions, following the principles it has explained earlier when giving answers to the parties who had given statements and comments to the application.

The applicant updated the application letter concerning the quantity of barrels found in the corridor of pipe laying, defined in the application.

#### **4.9 Status as a concerned party**

The Ministry of Economic Affairs and Employment states that the statements, clarifications and claims received with respect to the matter in hand must be investigated insofar as they are presented by a concerned party. Status as such a party is determined by assessing the legal interests of each party that has presented claims or statements with respect to the impact of the project, particularly within the meaning of section 11 of the Administrative Procedure Act (434/2003). A party must be treated as a concerned party under the provisions of section 11 if he or she has rights, benefits or obligations that relate to the matter in hand.

Under section 11 of the Act on Public Disclosure of the Activities of Authorities (621/1999), documents may be publicly disclosable depending on whether they are likely to have an impact, or may have had an impact, on how the concerned party's case is processed. Under section 11, concerned parties also have the right to receive information of other documents than public materials if such a document is likely to have an impact, or may have had an impact, on how the concerned party's case is processed. This means that there must be a likelihood, which should at least to some degree be an objectively assessed fact. The public disclosure of a matter to concerned parties is only possible if the concerned party's case is under processing; it does not extend itself to other matters and cases that are pending with other public authorities or in a court of law. The public disclosure of a matter to concerned parties is always linked to a single case being processed. The concerned party is entitled only to receive information on the documents that have affected the processing.

However, considering that the whole project and its legal effects are characterised by the environmental impact of the project, status as a concerned party must also be analysed in the light of how the concept of such a party is defined in environmental legislation. In accordance with Chapter 16, section 7 a of the Water Act, the inhabitants of the affected area, on whose dwelling, working or other living conditions the implementation of the project may have an impact, and the associations representing them, have the right to express their opinion on the application. In accordance with section 37 of the Environmental Protection Act (86/2000), the permit authority shall provide those whose rights or interests may be concerned (party concerned) with the opportunity to lodge a complaint regarding the issue and persons other than the parties concerned shall be provided with the opportunity to state their opinion.

KS stated that he is the owner of approximately 100 square kilometres located in Finland's exclusive economic zone, south of the shallow water known as Helsingin matala. Nord Stream 2 is planned to run through the same area. The Finnish EEZ Act is based on the UN Convention on the Law of the Sea. Under the Convention, an exclusive economic zone set up by a state is an area located outside the state's territorial sea where special legal rules apply as defined by the Convention so that the rights and jurisdiction of the coastal state and the rights and freedoms of other states are controlled by specific provisions of the Convention. Both the water and the seabed are part of the economic zone.

As provided by the Finnish EEZ Act, a set of rights belong to Finland in its exclusive economic zone, and the State of Finland holds these rights exclusively. According to the Government proposal concerning the Act on Finland's exclusive economic zone (HE 53/2004 vp), the economic zone and its seabed is not owned by the State as public waters are, and that Finland's exclusive economic zone is not owned by anyone. Instead, it is part of international sea. For this reason, no party can exercise the power of ownership of international waters, i.e. the economic zone or part of it, and the Finnish Land Act is not applied on the economic zone. Provisions to this effect are found in sections 3–5 of the EEZ Act. In addition, the provision of chapter 1, section 1 of Land Act indicates that the right of ownership to real estate property can be received through a commercial transaction, exchange, gift, or other conveyance. The legal norms do not recognize a possibility to obtain real estate ownership by making a claim to it.

The Land Survey of Finland rejected KS's request for transfer of title on 26 July 2017. Based on the opinions of legal experts, and also based on the reasoning of the Land Survey's decision, no real estate can be obtained through a claim in today's circumstances. Claims of ownership are only applicable to moveable property. KS submitted an appeal to the District Court of Vantaa against the Land Survey's decision of rejection. This court rejected the appeal on 30 November 2017; its reasoning contained the observation that the Land Survey should not even have made a decision on the matter at all because it lacks legal grounds. However, the Court did not in any case find any reason for referring the request back to the Land Survey for re-processing.

KS has requested leave to appeal, and lodged an appeal against the Court's ruling to the Supreme Court. Under section 238 of the act on the outlining of real estate (kiinteistönmuodostamislaki 554/1995), a ruling or decision handed down by such a Court must be enforced in such a way as the legal rules require when a ruling is being enforced after it has gained legal force. For this reason, the Court's ruling is enforceable. Because of the facts and information presented above, the applicant believes that KS must not be regarded as a concerned party in the matter at hand, and consequently, any statement KS might give should not be considered when deciding on the applicant's request for consent. Based on the above, KS does not have the status of a concerned party in the matter.

## **5 Legislation in force**

### **5.1 The United Nations Convention on the Law of the Sea**

Finland has ratified the UN Convention on the Law of the Sea (Finnish Treaty Series 49-50/1996), which has been implemented by an act (Act No. 524/1996, Finnish Treaty Series 49/1996) and decree (Decree No. 525/1996, Finnish Treaty Series 50/1996), with effect from 21 July 1996. In addition, Switzerland, where the applicant is domiciled, has ratified the Convention and it entered into force for Switzerland on 31 May 2009 (C.N.344.2009.TREATIES-5 (Depositary Notification)).

**Exclusive Economic Zone.** According to Article 57 of the UN Convention on the Law of the Sea, the exclusive economic zone must not extend beyond 200 nautical miles from the baselines from where the breadth of the territorial waters is measured. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement (Article 74). Finland's exclusive economic zone is not part of Finnish territory but part of international waters where Finland's and other states' rights are defined by the Convention on the Law of the Sea.

**Rights of the Coastal State.** In its exclusive economic zone, Finland exercises jurisdiction which belongs to the coastal state under international law. According to Article 56 of the Convention, in the exclusive economic zone, the coastal State has i.a. sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone. In accordance with the Convention on the Law of the Sea, within its exclusive economic zone Finland also has, among others, jurisdiction with regard to the protection and preservation of the marine environment.

**Rights and duties of other states.** According to Article 58 of the Convention, in the exclusive economic zone, all States, whether coastal or landlocked, enjoy freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention. According to Article 58(3) of the Convention, States must have due regard to the rights and duties of the coastal State and have to comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention, and under other rules of international law, insofar as they are not incompatible with the Part of the Convention concerning the Exclusive Economic Zone.

According to Article 79(1), which is applied to the exclusive economic zone under Article 56(3), all States are entitled to lay submarine cables and pipelines on the continental shelf. For Finland, the continental shelf in the Gulf of Finland covers the same area as the exclusive economic zone. According to Article 79(2), subject to its right to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines, the coastal State may not impede the laying or maintenance of such cables or pipelines. According to Article 79(3), the delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State. Under Article 192 of the Convention, all states have the obligation to protect and preserve the marine environment.

**Liability.** According to Article 113, which is applied to the exclusive economic zone under Article 58(2), every State shall adopt the laws and regulations necessary to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence. This provision shall apply also to conduct calculated or likely to result in such breakage or injury. According to Article 114, every State shall adopt the laws and regulations necessary to provide that, if persons subject to its jurisdiction who are the owners of a submarine cable or pipeline beneath the high seas, in laying or repairing that cable or pipe-line, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

**Duties of states bordering an enclosed or semi-enclosed sea.** The Baltic Sea is a semi-enclosed sea as referred to in Articles 122 and 123 of the Convention, because it is surrounded by two or more States and consists entirely of the territorial seas and exclusive economic zones of two or more coastal States. The Convention obliges States bordering an enclosed or semi-enclosed sea to cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention. The obligation applies i.a. to the coordination of the implementation of their rights and duties with respect to the protection and preservation of the marine environment. As a Party to the Espoo Convention, Finland has participated in the international environmental impact assessment process both in the roles of the party of origin and affected party. Finland has reserved the affected parties the opportunity to present additional questions and transmitted the responses of the applicant to other coastal states, and has taken the comments received from other coastal states into account when making its decision.

## 5.2 The Act on Finland's Exclusive Economic Zone

The use of rights relating to the exclusive economic zone and belonging to the coastal state is provided for in the Act on Finland's Exclusive Economic Zone (1058/2004). Under section 6 of the Act, the Government may, on application, give its consent to the performance, in the exclusive economic zone, of other activities aimed at the economic exploitation of the zone. According to the Government proposal concerning the Act on Finland's exclusive economic zone (HE 53/2004 vp), permit matters relating to section 6 are decided upon in the Government's plenary session and upon the Ministry of Economic Affairs and Employment's proposal. Consent for exploitation may be given for a fixed term or until further notice. The consent decision determines any conditions considered necessary to security or to protecting any rights that belong to the State of Finland under the Act. The consent decision may be revised, or suspension of activities may be ordered, if the activities do not fulfil the conditions laid down in the decision. Suspension of the activities may be ordered on the same grounds. The consent decision may be cancelled if the activities fundamentally violate the conditions laid down in the decision.

Pursuant to the provisions of section 7 a of the said Act, the decision-making in connection with a project that coincides with the definition of the Decree on energy infrastructure, and is in the public interest (excluding the decisions on giving consent to research work) applicable law must additionally include the Decree on energy infrastructure and the Act governing the process of permit issuance for energetic projects that concern European public interest (Euroopan unionin yhteistä etua koskevien energiahankkeiden lupamenettelystä annettu laki). In collaboration across administrative sectors, the Energy Authority, in its capacity as the competent authority, has the jurisdiction for determining a number of process issues linked with other authorities' mandates, and the Energy Authority also defines the timeframe for specific permit procedures. However, when deciding whether the permit can be issued, the other authorities have independent powers to make decisions as appropriate.

Nord Stream 2 is not treated as a European energy project of public interest.

### 5.3 Regulations on damage to submarine cables and other possible damage

The Act on the Protection of Certain Submarine Cables and Pipelines (145/1965, as amended by Acts No. 597/1995 and 1071/2004) has been enacted in Finland. According to section 3 of this Act, if in the course of laying, constructing or repairing a submarine cable or pipeline, injury is caused to another cable or pipeline, the owner of the said cable or pipeline, even when he cannot be punished for causing injury, is liable to compensate the owner of the injured cable or pipeline for the necessary cost of repairing the injury. Outside of Finnish territorial waters, this Act only applies to vessels sailing under the Finnish flag, and to Finnish citizens and Finnish corporate entities.

**Compensation under the provisions of the Water Act.** Compensation is provided for in Chapter 11 of the Water Act (264/1961). Chapter 11, section 3 of the Water Act includes a list of damage that may be compensated for according to the Water Act. Compensation for damage arising from constructing and operating gas pipelines is decided upon by the competent authority, the Regional State Administrative Agency during the permit procedure under the Water Act. If the environmental permit authority decides to grant a permit, it will ex officio order compensation for both known and unforeseen damage. The Water Act also provides for the possibility to agree on compensation separately with the victim. Furthermore, if a permit is granted, the permit decision will impose an obligation to carry out construction work so that damage to the cables is avoided, and an obligation to repair any damage. The crossing of gas pipelines and cables may also be agreed upon with the owner of the cable.

According to the application, the applicant is going to conclude agreements on compensation with all the owners of submarine cables.

### 5.4 Maritime Safety

The relevant provisions on maritime safety, safeguarding traffic at sea than seafaring as such, are included in the Regulations set out in the Convention on the International Regulations for Preventing Collisions at Sea (Finnish Treaty Series 30/1977) as supplemented by later amendments. These regulations and the provisions of the Maritime Act (674/1994) provide rather extensive coverage of the maritime safety requirements applying to construction and other works carried out at sea, as required by the Nord Stream 2 gas pipeline project.

According to Chapter 6, section 9, of the Maritime Act, the shipmaster must ensure that the vessel is steered and handled in accordance with good seamanship. According to Chapter 6, section 10, the shipmaster is obliged to seek information on rules and regulations in force in those places the vessel visits during its journey. According to the International Regulations for preventing collisions at sea, vessels must pass one another at a safe distance. A vessel whose movement is restricted may define the safe distance due to reasons arising from its own activities. The Finnish Marine Authorities inform mariners about works known to them that might impede maritime traffic, among others in the publication Notices for Mariners. Information is also distributed to mariners by VTS centres. In this case, the authority distributes information to vessels about to enter the area e.g. on safe passing distances.

### 5.5 Legislation applied to immediate enforcement

The general provisions on the enforceability of administrative decisions are set out in Article 31(2) of the Administrative Judicial Procedure Act (586/1996). According to that provision, an administrative decision may be enforced before it has become final

if there is a provision to this effect in an Act or a Decree, if the decision is of a nature requiring immediate enforcement, or if its enforcement cannot be delayed for reason of public interest.

The circumstances described in the provision are an exception to the rule according to which a decision is not enforceable before it has become final. The two latter conditions set out in the provision may be difficult to identify as independent cases. The first-mentioned condition mainly applies to a decision that would lose its significance if not enforced immediately. With respect to the latter reason, the concept of public interest is crucial. "Public interest" as a concept is a general clause that gives the administrative authority some discretionary power. The ground for the immediate enforcement of the decision due to the nature of the decision also leaves room for the consideration of private interests. Thus, the assessment of public interest in relation to private interests is a question of relevance. According to some views presented in legal literature, it may refer to granting a permit for an activity that must be carried out within a certain time frame. It has also been stated in literature that the effective implementation of EU law may be a relevant aspect when assessing these cases.

## **6 The Government's Decision**

### **6.1 Consent to exploit Finland's exclusive economic zone and enforcement of the decision**

The Government grants consent for Nord Stream 2 AG's plan to construct an offshore natural gas pipeline system as described in the application documents submitted on 19 September 2018 (TEM/1810/08.08.01/2017), and in supplemental documents attached to the application. The applicant, the main implementer of the project, or a successor of the applicant's rights, must comply with the conditions laid down under Chapter 6.2 below.

The consent granted by the Government is valid for a period of 50 years from the date of the decision, and is renewable by application thereafter.

The decision is enforceable immediately regardless of any appeal, unless the appeal authority were to instruct otherwise.

### **6.2 Conditions**

1. The project must be implemented (during construction and during use) in conformity with the precautionary principle, paying particular attention to the Baltic Sea's sensitivity and vulnerability. The applicant must take all possible measures to prevent and minimise any damage. In this regard, the applicant must present sufficient evidence during the permit procedure under the Water Act concerning the construction of the pipeline;
2. If the competent authority, the Regional State Administrative Agency grants the project the construction permit within the meaning of the Water Act, the applicant must comply with the instructions and orders of that authority at least insofar as the applicant's operation extends itself to Finland's exclusive economic zone;
3. The project must be implemented (during construction and during use) in conformity with the principle of temporal priority, especially with regard to the projects already being operated in Finland's exclusive economic zone and the rights that belong to their owners;
4. The project must be implemented so as not to prevent any potential subsequent energy, telecommunication or other infrastructure projects, involving the construction of cables, pipelines or constructions intersecting with the gas pipelines;

5. The project must be implemented so as not to cause any more than minimum difficulty for any subsequent operation that will involve exploitation of Finland's exclusive economic zone in the future, or for any future scientific research project in the fields of maritime research;
6. The applicant must meet requirements for providing further clarification as laid down in the statement by the ELY Centre of Uusimaa and submit the information required for consideration in the permit procedure, pursuant to the provisions of the Water Act;
7. For the laying of pipes in Finland's exclusive economic zone, the applicant must use a dynamically positioned pipe-laying vessel;
8. The applicant must submit a plan outlining the upkeep, maintenance and repair of the pipeline system to the Finnish Border Guard, the Finnish Transport Agency and the ELY Centres that are the competent authorities in their respective regions;
9. The applicant must provide the further details and reports required by the Finnish Transport Agency in its statement, as appropriate, according to the methods set out by the statement given by the Agency.
10. As required for maintaining maritime safety and border security, the applicant must provide the Gulf of Finland Coast Guard subordinated to the Finnish Border Guard the specific information required by its management centre;
11. The applicant must follow the provisions of International Regulations for Preventing Collisions at Sea 1972, COLREG;
12. Prior to having a vessel or launch arrive in the economic zone, the applicant must, in advance, contact the VTS centre of the area;
13. The applicant must participate in the service activity as defined by the provisions of the Vessel Traffic Service Act (alusliikennepalvelulaki 623/2005);
14. The applicant must comply with the conditions of entry into the Finnish territory to the extent that operations are carried out in Finland's territorial waters;
15. The applicant must submit a contingency plan concerning disturbances in the pipeline transport system when it is in operation, to Finnish Border Guard and to the Finnish Transport Agency;
16. When construction is finished in the economic zone, the applicant must inform the Ministry of Economic Affairs and Employment of it, by letter, within 30 days;
17. The applicant must communicate the final details of location of the delineation for the Ministry of Defence, Finnish Border Guard and the Finnish Transport Agency before the pipeline is installed there, and the exact coordinates after it is installed, without delay, for the Ministry of Economic Affairs and Employment, Ministry of the Environment, Ministry of Defence, Finnish Border Guard and the Finnish Transport Agency. Finnish public authorities must be given the opportunity to verify this information before the start of installation work;
18. When the start date of pipeline operation is approaching, the applicant must inform the Ministry of Economic Affairs and Employment of it, by letter, and at least 30 days in advance;

19. Under the principles laid down by the Act on Criteria for Charges Payable to the State (150/1992), must compensate, to a reasonable extent, the costs for the preparation of this decision to the competent authority in charge of the permitting procedure;

20. The consent given by the Council of State covers no other activity in Finland's exclusive economic zone than what is described in the application letter;

21. In addition, the applicant must comply with the provisions of other relevant legislation and international conventions.

Minor changes in the routing for technical reasons are allowed.

## 6.3 Reasons

### 6.3.1 Consent

**Legal basis.** The consent given by the Council of State covers the pursuit in Finland's exclusive economic zone of the activities outlined in the application letter submitted by the applicant. The zone is not part of Finland's territory. It is in international waters by the definition of the UN Convention on the Law of the Sea.

The legal basis of the decision made by the Council of State consist, besides the principle of a constitutionally governed state, of the provisions of the Finnish EEZ Act and the UN Convention on the Law of the Sea. The UN Convention on the Law of the Sea is based on the principle of every state's right to lay pipelines and cables in an exclusive economic zone. In addition to state activities, the Finnish EEZ Act also regulates the activities of private persons. The starting point is that this right also belongs to states other than the coastal state. However, the coastal state has the right to subject the pipeline route to a national authorisation procedure, which in the Finnish legislation is based on section 6 of the EEZ Act.

Nevertheless, the Convention on the Law of the Sea or the EEZ Act define no specific criteria for granting or withholding consent. Both instruments mention environmental protection, conservation and care as well as the economic exploitation of the exclusive economic zone as rights of a coastal state. The impact of the project on these rights will be assessed when deciding whether the consent is given. This way, in the assessment, it is essential that the impact of the project on the environment, maritime safety, and its impact on other projects, possible damage to third parties, and matters relating to the security of energy supply, are weighed up. Other states' opinions on these matters are also relevant.

The Nord Stream 2 is additionally required to comply with the rules that emanate from EU law.

**The applicant.** The corporation established in Switzerland for the Nord Stream 2 project was registered there on 15 July 2015 with corporate domicile in Zug, Switzerland, with the business name New European Pipeline AG. On 2 October 2015 it changed to Nord Stream 2 AG. The Russian company OAO Gazprom is its only shareholder. Nord Stream 2 AG's headquarters is located in Zug. It has signed contracts for the financing of the project with five leading European energy companies, namely ENGIE, OMV, Shell, Uniper and Wintershall. These five companies committed themselves to provide long-term financing. This will cover 50% of total cost. At present, the estimated total runs at 9.5 billion euros (including the financing expenses). Each one of the above energy companies offers maximally €950 million of financing.

**The project.** Nord Stream 2 AG's project objective is to build a set of twin undersea pipelines for the transportation of natural gas through the Baltic Sea, from Russia to Germany. In the exclusive economic zone of Finland, the location of the new Nord Stream 2 route is mostly parallel to the existing Nord Stream pipeline and it runs on the northern side of it. Calculated length is 1,200 kilometres, of which 374 km in the economic zone. In this section, the distance between the pipelines will be 75 metres almost everywhere. The territorial waters of Finland are at a distance of 0.6 km at the place where the pipeline is at the nearest – there, the distance to the Finnish coastline will be 19 kilometres. The Nord Stream 2 pipeline system's transport capacity is 55 billion cubic meters of natural gas per year. Planned time frame for pipe laying is 2018–2019, and planned start of operation is at the beginning of 2020. Expected economic life of the pipeline system is at least 50 years.

In the same manner as Nord Stream AG's existing pipelines, the Nord Stream 2 pipelines are designed to link part of Russia's natural gas deposits to the European gas network. Natural gas will be delivered via Germany to Southwestern, Central, and Southeastern regions of Europe, relying on the European networks of natural gas transportation by pipelines. The participating energy companies estimate that the project is financially viable, and in the EU member countries that are involved, the project will have an important role in providing for supply in the future circumstances of gas demand. Basic assumptions of the calculation is the trend of diminishing gas production in the North Sea and the Netherlands, the upcoming growth in gas consumption that is part of the non-coal development of energy sourcing – and in German circumstances, part of the trend to avoid nuclear power – favouring the use of renewable resources.

The received application letter contains a sufficient detailing of the applicant's identity, the nature and objective of operations, the methods to be utilised, project schedule and duration, and the geographical area concerned.

**Other projects.** Existing, planned and other known projects located in the Finnish exclusive economic zone, the impact of the project and the comments presented by other states have also been taken into account. However, it is not possible to take account of all imaginable projects that may be implemented in the exclusive economic zone in the distant future, in the balancing of interests when deciding on whether to give consent.

The Council of State has previously, on 5 November 2009, given a conditional consent to the project of Nord Stream AG to build a subsea gas pipeline (the Nord Stream 1) in Finland's economic zone. The conditions included the following: that project had to be implemented in conformity with the precautionary principle, paying particular attention to the Baltic Sea's sensitivity and vulnerability. The party receiving permission must take all possible measures to prevent and minimise any damage. Furthermore, that project had to be implemented so as not to prevent any potential subsequent energy, telecommunication or other infrastructure projects, involving the construction of cables, pipelines or constructions intersecting with the gas pipelines. The decision was enforceable regardless of any appeal.

Compared with what was estimated before the start of Nord Stream 1, its actual environmental impact turned out to be less important than expected. Observations were carried out specifically for Finland in order to ascertain the actual impact by a follow-up that targeted 13 different locations in Estonia's and Finland's economic zones of the international waters. Quality of water was in focus. Six independent organisations carried out the observation work in Finland.

The Council of State has also previously, on 21 June 2017, given a conditional consent to the project of Baltic Connector Oy (the Balticconnector gas pipeline) in Finland's economic zone. The conditions included the following: the project had to be

implemented in conformity with the precautionary principle in order to prevent and minimise any damage, in conformity with the principle of temporal priority with regard to projects that are already in existence, and the project had to comply with the requirements laid down in the building permit obtained in accordance with the provisions of the Water Act. The decision was enforceable regardless of any appeal. The applicant has signed an agreement with Baltic Connector Oy on pipeline crossing. Because the two projects are quite similar, it is required that their main implementers will maintain close ties of working together in cooperation.

**The environment.** The environmental impacts of the project will be assessed in detail by the Regional State Administrative Agency of Southern Finland, during the construction permit procedure under the Water Act. The Government is of the view, however, that the fragility and vulnerability of the Baltic Sea must be taken into account in all activities and that the project developer must act in compliance with the precautionary principle, in order to prevent and minimise damage. This falls also in line with the applicant's interests because of care for the environment is increasingly important for today's businesses corporate image.

The material on the assessment of environmental impact has also been at the Government's disposal. For the purpose of the Government's decision-making process, it is relevant that the ELY Centre of Uusimaa, the competent EIA Authority in Finland, has noted in its statement that the environmentally sustainable implementation of the project is possible. In this Government's decision, the statements are taken into account from the ELY Centres of Uusimaa and South East Finland regarding Natura 2000 assessments and Natura 2000 means tests. The negative environmental impact caused by the project mostly consists of temporary problems that will only be present for a short time during the construction phase; when the pipeline system is in operation, environmental impact will be minimal. The application letter contains affirmations by the applicant that it will, to the extent possible, minimise all environmental impact when building the pipeline. According to the notification received from the Ministry of the Environment, the hearings relating to the Espoo Convention were held and concluded. Their results were taken into account when preparing the list of conditions included in the permit.

**Maritime safety.** The Government requires that any threats to maritime safety and the marine environment will be minimised when constructing the pipeline system. With a view to maintain safety at sea and in Finland's borders, the applicant is ordered to submit notices and reports to the Finnish Transport Agency and the Gulf of Finland Coast Guard subordinated to Finnish Border Guard. The party receiving the permit must inform Finnish authorities of the exact coordinates of the pipeline's location. In order to facilitate supervision and control, this must first be done before it is installed and repeated after installation is complete. The applicant must abide by the International Regulations for Preventing Collisions at Sea 1972, COLREG, establish contact with the relevant VTS centres, and participate in vessel traffic service in accordance with the provisions of Vessel Traffic Service Act.

**Impacts on other projects and possible damage to third parties.** There is no private ownership of land or water areas in the exclusive economic zone. However, telecommunication and energy infrastructure exists at the bottom of the Gulf of Finland. The interests of the owners of this infrastructure must be considered when granting new permits. There is a risk of damage to existing constructions during the laying, repair or maintenance of the pipes. It may also be assumed that the maintenance of cables will become more difficult if pipelines are constructed above them. When assessing the rights of various operators in the exclusive economic zone, the owners of existing infrastructure have priority based on time. Also according to the Convention on the Law of the Sea, the rights of others exploiting the same area must be respected when laying pipelines. The applicant has entered into

agreements that provide for intersections and crossings with the owners of existing infrastructure at the bottom of the Gulf of Finland.

Considering these issues, consent may be granted subject to the condition that the applicant does not oppose any future energy or telecommunication infrastructure projects involving the construction of cables or pipelines intersecting with the gas pipelines. The applicant will be under obligation to allow crossings using the most financially advantageous construction.

Various rights to exploit living natural resources are related to an exclusive economic zone. These rights could be endangered due to the impact of the project. The applicant has concluded agreements on compensation for losses with professional fishermen operating in the area and their associations as well as with the owners of cables. The Regional State Administrative Agency of Southern Finland will assess ex officio whether such parties exist on which the project might have some impact but of whom the applicant has not been aware, and will, ex officio, define compensations for any damage caused to these parties by the project. Similarly, the Regional State Administrative Agency will also impose the penalty charge relating to fishing. The ELY Centre of Finland Proper has communicated to the Regional State Administrative Agency that the applicant's calculation is acceptable regarding the base of imposition of the penalty charge.

**Energy Security and Energy Supply.** Nord Stream 2 is a project of great magnitude, dealing with international concerns of energy supply, and for this reason, many comments in various EU member countries have been made; there are opposing views, supportive, and neutral comments. Those who express opposing views mention the EU energy union's goal to avoid dependence from deliveries of natural gas from Russia, and the Nord Stream 2 project seems to do the opposite. In addition, Nord Stream 2 is allegedly set to erode the European Union's unified policy in relation to the Russian Federation, set to weaken Ukraine's relative position, and set to complicate the Baltic region's circumstances from the perspective of security policies. These are the general, shared arguments; they are complemented by the national arguments that may be presented separately for each country, because there are multiple national interests that may promote opposition towards the Nord Stream 2 project.

Those who are supportive of Nord Stream 2 have considered it necessary because Europe will need an increasing amount of natural gas, bearing in mind the objective of diversifying energy routes, and the fact that it might offer a way to reduce pollution from today's levels because it offers cost-effective energy in the form of natural gas.

The majority of EU member countries have primarily regarded the project as a commercial undertaking, and in the same way as with any other commercial undertakings in the energy sector it should not be prevented, as long as it satisfies the requirements of EU rules, international law, and national legislation.

The Council of State understands the concerns of energy and security that have been associated with the project in Europe and around the Baltic region. The anxiety concerning the impact of Nord Stream 2 pipeline construction on national security policies is similar to what was under debate previously, when the very similar Nord Stream 1 system was in its planning and construction phase. After the completion of Nord Stream 1, the circumstances of national security are less favourable than in the past. However, having the Nord Stream 2 system built next to the existing pipelines in a parallel line is not expected to have direct effects on Finland's position from a national security perspective. Neither does it affect the Finnish energy security, or the safety of energy supply. Equally, it is not expected that any security threat would surface during the construction phase.

The Council of State points out that Finland has no specific national interests that would make it necessary to oppose or, on the other hand, to support, the commercial undertaking of the Nord Stream 2 AG company. When preparing and making decisions on whether consent can be given to operations to be conducted in the exclusive economic zone, the Finnish government's powers of deliberation are restricted, as is the case for other countries as well, by the UN Convention on the Law of the Sea, which provides a set of rights to be enjoyed by all states. Operations must meet all environmental requirements and other norms in accordance with the legislation of the EU, international and national legislation. A careful EIA process, a decision in principle made by the Council of State, and a more detailed decision within the meaning of the Water Act are necessary because the area of operation is the Baltic Sea. For this reason, the most important focus in this matter must be the project's total impact on the environment.

In the Council of State's opinion, the best way to improve energy security is a market-oriented approach, which means making the internal EU energy market work more effectively. To make Europe less dependent on Russian natural gas, the best way is the diversifying of gas transportation routes for import, the diversifying of gas sources to be used, a further improvement of the EU's legislation on gas markets, expansion of pipeline transportation systems, and the LNG infrastructure. At the present time, these developments are in progress as they form part of the EU energy union's mandate and execution. Gas markets in the EU are increasingly competitive today, and this has become visible to consumers as gas tariffs have remained low.

As for a further improvement of the EU's legislation on gas markets, the European Commission put forth a proposition in November 2017 to extend the scope of the Gas Directive so as to also be applicable on gas pipelines from third countries if they enter into the territory of the EU. This would include the Nord Stream 2 project. Finland has taken a stand which in principle is affirmative but involves certain restrictions. The internal market laws of the EU should become applicable in the entire European Union. The ongoing process of amending the Directive has not affected the permitting procedures that have been pending in Finland with regard to Nord Stream 2. The Gas Directive with its proposed amendment is intended to control the way pipeline systems are used, not how they are constructed.

**Responses and statements that were received.** Statements and opinions provided by other parties were mostly affirmative from the perspective of project realization. The applicant has, to a sufficient extent, taken note of the suggestions for improvement included in many of the received responses or statements.

**Responses of other countries to Finland.** In accordance with the Espoo Convention, countries on whose territory or exclusive economic zone the project has impact were reserved the opportunity to make statements on the application. The countries were invited to give their statements in response to the EIA report and documentation, and after this was done, they were given an opportunity to submit further observations on Finland's responses. The Ministry of the Environment sent the applicant's commentary to the countries on 19 September 2017 and asked them to provide their additional feedback by 10 October 2017. The countries expressed their opinions in their statements and responses, and their points of view were considered when the decision on the consent was prepared.

**Sweden.** The statement from Sweden puts forward the suggestion that instead of continued investment in natural gas, European countries would do better if long-term investment in other than fossil fuels would be more popular. In addition, citizens' organizations in Sweden have voiced their concerns about how the Nord Stream 2 project will affect Natura 2000 sites. The Swedish public authority in charge of environmental issues (Naturvårdsverket) noted that it invited all interested parties to provide new, revised statements on the matter but none of them wrote a statement.

For this reason, Sweden does not see a need to continue negotiations about the matter with Finland with reference to Espoo Convention.

**Poland.** Poland observed that the documentation does not address the relevant Natura 2000 sites in detail although the pipeline is routed through them. Another observation is that further information is necessary on the subject of mammals living in the sea and their reactions to noise. Additionally, Poland stated that plans must be prepared for various incidents that present danger or are exceptional, and that the aggregate impact of the project on other ongoing projects should be assessed more thoroughly. Poland also noted that an assessment must be made of how the pipeline will be decommissioned, and this subject must be approached on the basis of the equipment and technology that is available today. The Polish contact authority in matters relating to the Espoo Convention responded that it wishes to examine the applicant's documentation on the subject of Natura 2000 sites, about alternative ways to dispose of wartime munitions, and about commercial fishing activity. A request was made to receive this documentation without delay. It was sent to the Polish public authorities on 26 October 2017, and Poland communicated to the Finnish Ministry of the Environment that Poland does not have further comment.

**Lithuania.** Concerns were expressed about the fact that when the pipeline is in existence, the role of Russian natural gas will be more important and the economy will become increasingly dependent on it. Besides, it is not in line with the objectives of current EU policy on energy to build such a pipeline system. Lithuania also asserted that the assessments should have a more quality-oriented approach, should take into account the artillery installations on land, and enumerate the losses that are likely to be caused to the fishing sector. Lithuania is also concerned about safety, the action to be taken in dangerous situations, and the interaction between the pipeline transport system and other infrastructure. The ministry of environment of Lithuania requested that Finland's Ministry of the Environment arrange mutual negotiations. On 21 November 2017, talks in accordance with the Espoo Convention were carried out with the Lithuanian counterpart. The minutes from these negotiations and the detailed information that Lithuania asked for were sent off on 19 December 2017. The Finnish Ministry of the Environment also stated that the hearings in accordance with the Espoo Convention were thus concluded.

**Estonia.** The concerns listed by Estonia included the necessity to dispose of munitions, and the harm that may be done to mammals living in the sea. There was also a remark by Estonia about the necessity to cut down on fossile fuels. In addition, concerns about negative effects on the fishing trade were mentioned, and the exposure of the Kurgalsky natural reserve to potential negative effects. The country's ministry of the environment stated that the applicant has failed to respond in sufficient detail to several questions that had been raised: instead, the applicant's responses were formatted theme-by-theme. It is one of the major concerns of the Estonian ministry of the environment to clarify whether the pipeline project will cause potential harm to the seals living in the Baltic Sea, especially in current circumstances when this species has an endangered population. The applicant has committed that bubble curtains will be installed in the relevant geographical areas, which will help contain the negative impact against seals. The ministry also noted that it does not see a need to continue negotiations about the matter with Finland. However, the statement from Estonia repeatedly emphasized the importance of carrying out all the measures that are planned in order to prevent and to mitigate all transboundary effects to be felt by Estonia.

**Germany.** Statements that arrived from Germany were given by several citizens' organisations of that country, and the commentary mostly concerned the matters that are seen as essential from the German perspective. However, there were many general observations as well – such as the probability that fossile fuels will be relied on increasingly when the pipeline transport system is in operation. The concerns that

relate to Finland were the different negative effects of the construction work such as the necessity to dispose of munitions, the harm that may be done to mammals living in the sea, the lack of alternatives in the EIA report, the increasing content of organic and non-organic pollutants in the Gulf of Finland.

**Latvia.** Latvia's statement discussed some facts and information that mainly concern other parties than Finland. The statement included an affirmation that a dynamically positionable vessel will indeed be important, because the Baltic Sea still has a great number of mines and munitions dating back to wartime. Another point made by Latvia was that any dangerous incidents such as oil leaks must be prepared for in advance, and this preparation should involve the setup of an early-warning system and of a rescue organisation in a framework of collaboration.

**Denmark.** The responses from Denmark mostly have to do with the particular questions in Denmark's sphere of interest. It is also noted that Denmark has informed Finland of the fact that a new legal norm was prepared and enacted, effective from 1 January 2018, which allows the permitting procedure regarding building projects in Danish territorial sea to be more politically oriented than previously. On 9 January 2018, the Danish ministry of the environment has, making reference to the newly adopted legal norm, requested Denmark's foreign-affairs ministry to issue an opinion of the Nord Stream 2 project's effects on their national security policy. The deliberations are still in process.

**Natura 2000 sites.** Impacts of all activities planned for the Finnish exclusive economic zone during the project, with respect to existing Natura 2000 areas, have been assessed during the EIA process. In addition, two separate assessments were carried out in the framework of Natura 2000. The ELY Centre of Uusimaa issued a statement that also covers the area south of Sandkallan where a Natura 2000 site is located, additionally including the Kallbådan Natura 2000 site. Both sites are comprised by the Natura 2000 network, set up under the provisions of the EU Directive. It was the conclusion of the ELY Centre that neither one of the sites will not be endangered for reasons of the Nord Stream 2 project alone, and not even taken together with other ongoing or planned projects within the meaning of section 66, Environmental Protection Act, or with reference to the values of the natural environment that served as the grounds when these sites were annexed to the Natura 2000 network, provided that the planned measures will be taken that are aimed at mitigating the overall impact.

### 6.3.2 Enforcement of the decision

Pursuant to the provision of section 31, Administrative Judicial Procedure Act, decisions that are not appealable cannot be enforceable before they have gained legal force i.e. become final. However, decisions may be enforced before they become final if there is a provision to this effect in an Act or a Decree, if the decision is of a nature requiring immediate enforcement, or if its enforcement cannot be delayed for reasons of public interest.

Considering the matter in hand, the question of whether the immediate enforcement requested by the applicant may be granted will be solved through an assessment where matters of public interest are compared with the endangering or loss of third-party rights. It is worth noting that the finality of a decision as a prerequisite for enforcement is the rule, and exceptions to this rule require special grounds. According to some views presented in legal literature, it may refer to granting a permit for an activity that must be carried out within a certain time frame. It has also been stated in literature that the effective implementation of EU law may be a relevant aspect when assessing these cases. The applicant primarily carries the risks that relate to the time schedule and economics of its project in Finland's exclusive economic zone.

In environmental terms, the project will cause an impact that does not extend itself beyond the construction stage. No permanent damage is caused. The use of the pipeline only causes some minor environmental effects. The EIA report concluded that the project's effects will be directed toward the seabed, quality of water, underwater species including flora and fauna. No effects are involved that would concern zones of protected natural reserves, and the detrimental impact when the pipeline is under construction will be minor in Finland's exclusive economic zone as regards the seabed, quality of water and air, flora and fauna, levels of noise, the seabed's environmental circumstances, the plancton, the fish and fish stocks, the mammals and birds in the area, maritime transport, zones of military exclusion, existing and planned infrastructure, cultural heritage, interests relating to tourism, and the fishing trade. The applicant will take measures to prevent and minimise any damage when the pipeline system is under construction. The advantages of the project are greater than the disadvantages.

When assessing the importance of the immediate enforcement of the decision, it may also prove pertinent that, if the permit procedures needed for laying the pipeline are concluded as soon as possible, the applicant may be able to reserve a dynamically positioned vessel for pipe-laying. This technology of positioning reduces the negative impact that the activity causes to the marine environment because a conventionally anchored vessel carrying out the same task would have a more important negative impact. Considering the matter in hand, the question of whether the immediate enforcement requested by the applicant may be granted will be solved through an assessment where matters of public interest are compared with the endangering or loss of rights of third parties.

No construction permit has yet been issued to the project under Water Act. As such, the consent of the Government does not grant the applicant the right to engage in the actual construction or pipe-laying measures within Finland's exclusive economic zone. The process of requesting a construction permit in compliance with the Water Act goes on concurrently. Therefore, the enforcement of the Government's consent does not involve any direct effects on the legal status of third parties, the marine environment, or maritime safety within the exclusive economic zone. Hence, the immediate enforcement of the decision will not in itself render appeals futile. There is no private ownership of land or water areas in the exclusive economic zone.

The terms of immediate enforcement were already implemented previously when the Council of State has given consent to some other projects that involved exploitation of economic resources.

Considering the importance of the project to the security of energy supply in Europe, as well as the environmental impacts of using a pipe-laying vessel that uses no anchors and the genuine effects of the enforcement of the Government's decision on third parties, the immediate enforcement of the decision can be considered justified for reasons of 33 public interest, as referred to in Section 31 of the Administrative Judicial procedure Act.

The decision is enforceable immediately.

## **7 Applied provisions of law**

Convention on Environmental Impact Assessment in a Transboundary Context  
(Finnish Treaty Series 67/1997)

The United Nations Convention on the Law of the Sea  
(Finnish Treaty Series 49-50/1996)

Convention on the International Regulations for Preventing Collisions at Sea  
(Finnish Treaty Series 30/1977)

Administrative Procedure Act (434/2003)  
Administrative Judicial Procedure Act (586/1996)  
Act governing the protection of specific submarine cables (145/1965)  
Act governing the process of permit issuance for energetic projects that concern European public interest (684/2014)  
Act on Finland's Exclusive Economic Zone (1058/2004)  
Act on Environmental Impact Assessment Procedure (468/1994)  
Water Act (264/1961)  
Marine Act (647/1994)  
Tort Liability Act (412/1974)  
Agreement between the Government of the Republic of Finland and the Government of the Republic of Estonia on Environmental Impact Assessment in a Transboundary Context (Finnish Treaty Series 435/2002)  
Government Decree on Finland's Exclusive Economic Zone (1073/2004)  
Government Decree on Environmental Impact Assessment Procedure (713/2006)  
Government rules of procedure (262/2003)

## **8 Instructions for appeal**

This decision may be appealed against by lodging an appeal before the Supreme Administrative Court in accordance with the enclosed instructions. The decision may be enforced regardless of any appeal unless the appeal authority prevents it.

Kimmo Tiilikainen  
Minister of the Environment, Energy and Housing

Kari Klemm  
Government Counsellor

## **APPEAL DIRECTIONS**

### **Appellate authority**

Written appeals against this decision can be lodged with the Supreme Administrative Court. An appeal can be made on the basis of the decision being unlawful. The petition of appeal must be addressed to the appellate authority, and submitted within the appeal period to the Registry Office of the Supreme Administrative Court.

### **Appeal period**

Appeals must be submitted within 30 days of receiving notification of the decision. The date of receiving notification is not included in the appeal period. If the last date of the period falls on a public holiday, Saturday, Independence Day, 1 May, Christmas Eve or Midsummer Eve, the appeal period shall continue into the following working day.

The date of notification is indicated in the certificate of the service of documents. If the notification has been issued as a service of documents via a normal letter to the recipient, the recipient is considered to have received the notification on the seventh day from the date of posting, unless it can be demonstrated otherwise.

If the notification has been issued as a substitute service of documents, the recipient is considered to have received the notification on the third day from the date of the certificate of the substitute service. An authority is considered to have been notified of the matter on the day of receiving the letter.

### **Content of appeal**

The petition of appeal must indicate the following:

- the decision against which the appeal has been lodged
- the specific sections of the decision which the appeal concerns and the requested changes
- the grounds for the appeal
- the name and domicile of the appellant
- the postal address and telephone number on whose basis further notifications can be made to the appellant

Should the appellant's right to be heard be vested in a legal or other representative, or the appeal have been drawn up by someone else, the petition of appeal must indicate said person's name and domicile. The petition of appeal must bear the signature of the appellant or the legal or other representative.

### **Annexes to appeal**

The following must be attached to the petition of appeal:

- the original decision or a copy thereof, against which an appeal is being lodged
- proof of the date of the service of documents or other notification of start date of appeal period
- documents in support of the appeal, unless already submitted to the authorities
- representative's power of attorney

## Delivery of petition of appeal

The petition of appeal may be delivered by the appellant or his authorised representative. At the appellant's own risk, it can also be posted or delivered by courier. The petition must be posted in good time for delivery by the end of office hours on the final day of the appeal period. The opening hours of the Registry Office of the Supreme Administrative Court are 8 a.m. – 4.15 p.m.

The Supreme Administrative Court will charge the appellant a **court fee** of EUR 500. The Act 1455/2015 specifies certain cases in which no fee is payable.

### Supreme Administrative Court

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