

Tallinn

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Refusal to give consent for conducting marine research

The decision is given under the Economic Zone Act (EZA) and under the UN Convention on the Law of the Sea of 10 December 1982 (Convention on the Law of the Sea) and in accordance with international law, custom and practice as well as in accordance with the State Borders Act and the Administrative Procedure Act (APA).

1. Circumstances and procedure

Nord Stream AG, a legal person registered in Switzerland, submitted on 31 May 2007 to the Ministry of Foreign Affairs an application for the research permit of the economic zone. According to the data presented in the application for the research permit, Nord Stream AG wishes to conduct geophysical and geotechnical research, visual surveys as well as to take sediment samples in the economic zone of the Republic of Estonia. Issuing from the co-ordinates of the centre line set forth in the application for the research permit as well as from the fact that the research area reaches up to 1 km from the centre line, the intended research area is partly located in the territorial sea of the Republic of Estonia (in length ca 4 km and in width maximally 225 m in the area with the co-ordinates 59°42,213'N and 24°28,793'E).

Section 1 of the APA provides that the Act is directed at ensuring the protection of the rights of a person by creation of a uniform administrative procedure, which allows participation of persons and judicial control. The application for the research permit of Nord Stream AG is processed under the EZA and in accordance with the APA, providing for the terms of administrative procedure in public administration, *inter alia* upon issuing an administrative act.

Section 8, sub-section (1) of the APA provides that administrative authority means any agency, body or official, which is authorised to perform public administration duties by an Act, a regulation issued on the basis of an Act or a contract under public law. Section 2, sub-section (1) of the APA provides that an administrative procedure means activities conducted by an administrative authority upon issue of regulations or administrative acts, taking measures or entry into contracts under public law. According to Section 51, sub-section (1) of the APA, an administrative act is an order, resolution, precept, directive or other legal act, which is issued by an administrative authority upon performance of administrative functions in order to regulate individual cases in public law relationships and which is directed at the creation, alteration or extinguishment of the rights and obligations of persons.

Under Section 8, sub-section (1) of the EZA, foreign organizations aiming to conduct research in the economic zone shall submit to the Ministry of Foreign Affairs an appropriate application. Thus, an authority has been designated by law to process the relevant applications.

2. Substantiation

Having analysed data set forth in the application for the research permit, having enquired the opinion of competent government agencies and research institutions, proceeding from the legal acts of the Republic of Estonia, from international law, custom and practice and considering the sovereignty of the Republic of Estonia in the territorial sea and the interests of the Republic of Estonia in its economic zone and on the continental shelf underneath it, the following has been taken into consideration in making the decision.

Pursuant to the application for the research permit, it has been intended in the framework of geotechnical surveys to perform drilling work on the continental shelf. In the list of the research activities, there has been mentioned cone penetration (penetration depth up to 5 m) and taking samples by using vibro and gravity cores. Although the applicant in its letter of 4 September 2007 set forth its position that the using of a vibro and gravity cores is not drilling, the Ministry of Foreign Affairs, based on the opinions of the Ministry of the Environment and research institutions, holds the view that the using of those devices is drilling for the purposes of Section 8, sub-section (2), clause 2) of the EZA. From the point of view of geological surveys, also the vibro and gravity cores are drilling mechanisms. The term „drilling” covers different ways of drilling: in the case of solid rocks, the use of revolving drills, in the case of soft soils, the use of vibro and gravity cores. Since the research permit foresees drilling on the continental shelf, the Republic of Estonia has the right under Section 8, sub-section (2), clause 2) of the EZA and in accordance with Article 81 and Article 246, paragraph 5, sub-paragraph b of the Convention on the Law of the Sea to refuse giving consent for the research.

Pursuant to the application for the research permit extensive research works planned cover a large part of the economic zone of the Republic of Estonia and of the continental shelf in the Gulf of Finland. While using the methods mentioned in the application, the research works will give information on the volume of the natural resources of the Republic of Estonia and on the possibilities of the use thereof. Although Nord Stream AG has in its application for the research permit of 31 May 2007 explained that the research works will not cover the collection of information on the volume of natural resources and on the possibilities of the use thereof, the Ministry of Foreign Affairs, based on the opinions of the competent research institutions, holds the view that in the course of the intended research works still data will be obtained on the natural resources in the Gulf of Finland. Mineral resources, on which information will be obtained in the course of the research works, will in future serve as important mineral resources for the Republic of Estonia, even if the Republic of Estonia does not intend in the near future to use them. As the research works will provide information on the volume of the natural resources of the Republic of Estonia and on the possibilities of the use thereof, the Republic of Estonia

under Section 8, sub-section (2), clause 1) of the EZA has the right to refuse giving consent for the research.

Pursuant to the application for the research permit submitted on 31 May 2007, the research area partly covers the territorial sea of the Republic of Estonia between points 6 and 7 of the centre line. The applicant has in its letter of 4 September 2007 argued that „pursuant to the geographic specification enclosed with the application, the outer border of the gas transmission system corridor will enter the territorial waters of the Republic of Estonia”. In addition, Nord Stream AG in its application for the research permit foresees to enlarge the research area to an unspecified extent. Nord Stream AG argues that „the 2 km research area may be enlarged in the area of unfavourable seabed morphology in order to establish the possible locations of the gas pipe, where the impact on the environment would be minimal.” Thus, Nord Stream AG despite of its argument set forth in its letter of 4 September 2007 that it „is not planning to conduct exploration works in the territorial waters of the Republic of Estonia”, has not modified the dimension of the research area set forth in the application. According to Section 13, sub-section 1², clause 10 the passage of a foreign vessel is deemed to endanger peace, public order or the national security of Estonia if the passage of the vessel through the territorial sea is related to research or measurement activities. Pursuant to Articles 2 and 245 of the Convention on the Law of the Sea, a coastal state has sovereignty in its territorial sea and a full right to decide on the admissibility of research works and of other activities in the territorial sea. Since the application for the research permit involves research in the territorial sea, the Republic of Estonia has the right proceeding from the above-mentioned articles to refuse the application.

3. Decision

Proceeding from what has been said above and based on Section 8, sub-section (2), clauses 1) and 2) of the EZA and on Article 245 and Article 246, paragraph 5, subparagraph b of the Convention on the Law of the Sea and in accordance with the APA, to refuse to give consent to Nord Stream AG for conducting marine research.

4. Contestation

The decision may be contested under Section 9, sub-section (1) of the Code of Administrative Court Procedure within 30 days after the date on which the administrative act was made public.

Minister of Foreign Affairs