



**5 November 2009 678/601/2009**

Unofficial translation provided by the Ministry of  
Employment and the Economy

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

### **1 Initiation of the Matter**

On 9 March 2009, the Ministry of Employment and the Economy received Nord Stream AG's application (Ministry of Economy and the Employment's register No. 678/601/2009) for the Government's consent to construct a natural gas pipeline system within Finland's exclusive economic zone as a part of a natural gas pipeline system running from Russia to the Gulf of Finland, traversing the Baltic Sea and ending in Germany.

The application documents include 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, the geographical zone in which the operation will be carried out; and the estimated start date and duration of the operation.

The Ministry of Employment and the Economy 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.

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 8 June 2009.

On 2 October 2009, in accordance with the Water Act, the Western Finland Environmental Permit Authority granted the project developer a permit for the clearance of wartime munitions within Finland's exclusive economic zone and a permit allowing it to immediately initiate the clearance works.

### **2 Application**

Nord Stream AG has applied for:

1. the consent of the Government for the construction and laying of two natural gas pipelines in the Finnish exclusive economic zone, approximately 375 kilometres in length and with a diameter of ap-

- proximately 1.15 metres, according to section 6 of the Act on the Finnish Exclusive Economic Zone (1058/2004); and
2. immediate enforcement into force of the consent of the Government regardless of a possible appeal process in accordance with section 31 of the Administrative Judicial Procedure Act (586/1996).

The consent of the Council of the State applies to the routing presented in Appendix 2. This covers the laying of the pipeline, its use, the required monitoring programme as well as the maintenance, repair, monitoring and control activities described in more detail in the application and the supplementary documents.

The pipeline would be installed with a tolerance of about 7.5 metres but minor deviations to the planned routing may be required during the construction phase, for technical and environmental reasons. 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 munitions have been disposed of, that is, in a corridor at a distance of +/-25 metres from the above-mentioned routing.

**Grounds for the application.** 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. The applicant states that it has striven to find the best alternative, in environmental terms, for the implementation of the project. An EIA report has been appended to the application, according to which the alignment presented in the application is the best alternative from the environmental point of view. The optimisation of the alignment is based on surveys conducted in the Baltic Sea. According to the applicant, the routing and construction of the pipelines have been designed with a view to the reduction of the environmental impacts of the project. 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 impacts arising from the project.

According to the applicant, the routing of the pipelines would have no or only minor impacts on the current or future exploitation of mineral deposits located in the seabed. The pipelines would not traverse any current soil extraction areas. Furthermore, according to the applicant future cables and pipelines could be constructed above the Nord Stream pipelines. The technique customarily used for recovering carbohydrates would also enable drilling underneath the pipelines. Hence, the pipelines should not hinder or present an unreasonable impediment to the construction and operations of oil or gas rigs or other submarine constructions, should such operations be performed within the Finnish exclusive economic zone in the future. 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.

Additionally, the applicant refers to the project's status as a TEN-E project of general European interest. According to the applicant, the project may be considered a key project for supplying gas to Europe. In addition, the project's EIA report 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 remove wartime munitions 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 impacts of the laying of pipelines on fishing activities will be mitigated by the applicant through 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 occurs. In the first instance, the applicant will seek to agree on possible compensation with the fishermen concerned, but matters relating to compensation will also be considered *ex officio* during the water permit procedure, in accordance with the Water Act.

The impacts of the Nord Stream project 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 will reach 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. 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.

Based on the application of present-day techniques, constructing wind parks would not be cost-effective in areas where the water depth exceeds 20 metres. The water depth along the planned route of the pipeline is 45 metres at a minimum. Even if wind parks were constructed in the future within the vicinity of the pipelines, the total negative impact of the pipes would remain insignificant, since they cause little restriction to wind park areas.

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

**Grounds for immediate enforcement.** The applicant invokes section 21 of the Constitution and the principle of good administrative practices, according to which administrative procedures should be handled without undue delay. According to the applicant, a periodic permit procedure in which the authorities require two separate permits, the second permit requiring that the first one be final, would unreasonably delay the permit

procedure. The applicant is of the view that such unfairness would be effectively mitigated if the Government decided that the consent granted in compliance with the Act on Finland's Exclusive Economic Zone be immediately enforced to the extent deemed necessary to avoid the interruption of the water permit procedure. Immediate enforcement of the consent granted in accordance with the Act on Finland's Exclusive Economic Zone would have no de facto impact on the environment or the rights of third parties since construction work cannot be commenced before the water permit has been granted. The immediate enforcement of this consent would support the uninterrupted progress of the procedure carried out in accordance with the Water Act. The delay in the consideration of the petition due to a periodic permit procedure would cause significant material and legal impairment to the establishment of an important European energy infrastructure. Hence, the delay in the decision's enforcement would be against the public interest.

The applicant would reiterate that the Nord Stream project has been designated as a primary project by the European Union. In that regard, the European Parliament and the Council have taken a decision which is binding on the Member States. Finland is thus obliged to avoid any delays and to rapidly conclude the required permit procedures. As for a periodic permit procedure, this requirement could be fulfilled only through the decision's immediate enforcement. According to the applicant, the public interest as described under national legislation also encompasses the general interest referred to in the decision of the European Parliament and of the Council. The applicant states that the principle of effectiveness obliges Member States and their national authorities to apply and interpret Community law and the respective national legislation in such a manner that the aims of Community law are properly and effectively achieved. In addition, the applicant refers to the view presented in legal literature, according to which the principle of effectiveness referred to above is a relevant factor when assessing whether the criteria laid down in section 31 of the Administrative Judicial Procedure Act are fulfilled. Furthermore, the applicant invokes the provisions of Directive 123/2006/EC, according to which authorisation procedures and formalities should not be dissuasive and should not unduly complicate or delay the provision of the service. Authorisation procedures and formalities must provide applicants with a guarantee that their application will be processed as quickly as possible.

In addition, the applicant refers to the Supreme Administrative Court's case law where the concept of public interest is defined. In certain earlier decisions, the Supreme Administrative Court has considered the public interest as requiring that a lake be regulated during a paddling contest, that the water level be raised in order to enable the construction of a boat harbour and that the water level be raised in order to promote the recreational use of a lake.

The applicant has declared that, of the three pipe-laying vessels available on the world market, it has a limited possibility to reserve the one that can be dynamically positioned (not using anchors). The use of a dynamically positioned vessel has significant advantages in comparison to the use of one that uses anchors.

Accordingly, the applicant maintains that it is quite obvious that the Nord Stream Project should be considered a project in the public interest within the meaning of section 31 of the Administrative Judicial Procedure Act.

### **3 Preparation of the Matter**

#### **3.1 Request for comments from public authorities**

The Ministry of Employment and the Economy has requested that the Ministry of the Environment, Ministry for Foreign Affairs, Ministry of Defence, Ministry of the Interior, Ministry of Transport and Communications, Finnish Environment Institute (SYKE), Uusimaa Regional Environment Centre, Defence Command Finland, the Border Guard Department of the Ministry of the Interior, Finnish Maritime Administration and Geological Survey of Finland provide comments on the application, submitted on 1 April 2009, by 31 August 2009.

This request for comments was supplemented on 7 July 2009 with the statement on the project provided by the Finnish competent authority on 2 July 2009 and with supplementary documents provided by the applicant. The supplementary documents have also been communicated to the Ministry of Agriculture and Forestry for information. Furthermore, the authorities asked to provide comments were notified in the same letter that the applicant's response to the EIA statement will be publicly available from 3 August 2009 to 31 August 2009.

#### **3.2 Public notification of the parties**

The Ministry of Employment and the Economy published a notice in Helsingin Sanomat, Hufvudstadsbladet, Turun Sanomat, Åbo underrättelser, Kymen Sanomat and Ålandstidningen on 23 April 2009, and in the Official Gazette on 24 April 2009, stating that the application documents were to be kept available in the Ministry's register office until 31 August 2009 and that the parties must submit their claims and clarifications on the matter by 31 August 2009 at the latest, in default of which the claims and clarifications would not be taken into account in decision-making.

The public notice has been supplemented with a notice on the publication of the EIA statement and supplementary documents provided by the applicant. The latter notice was published in Helsingin Sanomat, Hufvudstadsbladet, Turun Sanomat, Åbo underrättelser, Kymen Sanomat and Ålandstidningen on 16 July 2009 and in the Official Gazette on 17 July 2009. According to this public notice supplementing the first notice, the EIA statement and the supplementary documents of the application were kept available in the Ministry of Employment and the Economy's registration office until 31 August 2009 and the parties must submit their claims and clarifications on the matter by 31 August 2009 at the latest, in default of which the claims and clarifications will not be taken into account in decision-making. According to the latter public notice, the applicant's response to the EIA statement was kept available from 3 August 2009 until 31 August 2009.

Service by public notice was chosen because the parties and their precise number were unknown to the Government. It is considered that the matter has been brought to the attention of all parties upon the publication of a public notice in the Official Gazette.

### **3.3 Statements of Authorities on the Application**

#### **3.3.1 Ministries**

*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 will also be assessed on the basis of Finland's international legal commitments and obligations. The Ministry also finds it important that the Western Finland Environmental Permit Authority should deal with the prerequisites for the implementation of the project on the basis of water and environmental protection legislation. The Ministry deems that, considering the ecological vulnerability and the alarmingly deteriorated state of the Baltic Sea, the factors affecting the project and its implementation, which form the basis of decision-making, should be known to the Council of State to the greatest possible extent when considering giving its consent. In its statement dated 2 July 2009, the Finnish competent authority, the Uusimaa Regional Environment Centre, considers the performed environmental impact assessment sufficient in its fundamental aspects and that it fulfils the requirements laid down in the Finnish EIA Act. However, the competent authority has noted matters requiring further investigation by the applicant, further to the authorisation and permit procedures. The applicant submitted a further clarification to the Government on 31 July 2009. Furthermore, the applicant stated that it would specify certain matters on which further clarification was required in the application submitted to the Western Finland Environmental Permit Authority in accordance with the Water Act, certain matters on which further clarification was required. The Ministry of the Environment deems these clarifications highly significant considering the assessment of the project's total impacts.

In its statement, the Ministry of the Environment takes the view that the alternative route south of Gogland (Suursaari) would, due to the flatter profile of the seabed, be the preferred option in comparison to the alternative route north of Gogland, considering both environmental aspects and those relating to maritime safety. The Ministry states that the applicant should provide grounds for the selection of the pipeline's route. Furthermore, the Ministry considers it important that the need to curtail risks posed to maritime safety and those posed to the protection of the maritime environment during construction are taken into account by the Government when it discusses the application, and that the Government should require the applicant to supplement its application in this regard.

In the Ministry's opinion, the applicant should also provide comprehensive clarification of how the damage caused during the construction phase or in connection with the gas pipeline system will be compensated for, and of how maintenance and repair work in the Finnish exclusive economic zone will be carried out during the operational phase. In addition, the applicant should provide clarification of the economic mechanisms through which operations required during a disturbance or after the operational phase will be financed. The Ministry would consider

a fund founded by the applicant, safeguarding operations required after the operational phase of the gas pipeline or during the operational phase e.g. in case of a disturbance, a good option. When discussing the consent granted by the Government, the impacts of the gas pipeline system on the implementation of Community legislation and strategies and on the realisation of Finland's targets for water protection and the protection of the Baltic Sea, as well as on the realisation of common targets for the protection of the Baltic Sea set by HELCOM, should also be taken into consideration.

The Ministry of the Environment is informing the Government of the plans to supplement the proposal for Finland's Natura 2000 network by adding marine areas to it. The Ministry's proposal includes the marine area south of Sandkallan (FI0100106). It is estimated that this proposal will be discussed by the Government in late 2009.

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, as defined in the Administrative Judicial Procedure Act (586/1996), is not unambiguous. However, the Ministry considers that it has no specific reasons for opposing the applicant's request for the immediate enforcement of the decision, regardless of any appeal process in accordance with Section 31 of the Administrative Judicial Procedure Act, if immediate enforcement refers to the institution of an environmental permit procedure in accordance with the Water Act regardless of any appeal against the Government's decision. The Ministry is of the view that the institution of an environmental permit procedure by the environmental permit authority would not cause irreversible changes in the state of the environment. However, due to the nature of the project, the Ministry objects to the inclusion of any activities concerning construction within the scope of immediate enforcement.

In its statement, *the Ministry for Foreign Affairs of Finland* indicated that the planned gas pipeline would significantly increase the capacity of the gas transmission infrastructure on the European energy market, which will be needed as Europe's own gas reserves begin to dwindle. The pipeline also accords with the objective of diversifying energy routes. Regarding Finland's safety, the Gulf of Finland is an important maritime area. Its environmental state is weak, it is heavily trafficked and traffic volumes are predicted to increase further. Maritime surveillance is taken care of in cooperation with the authorities of neighbouring states and, i.a. according to the strategy for the Baltic Sea region, this cooperation will become even closer in the future. Surveillance requires exchange of information and early warning mechanisms between authorities and with commercial operators. If the pipelines are constructed, monitoring of the safe use of the pipelines through international cooperation and simultaneous monitoring of the environmental impacts caused by them would be in the interests of all parties. The Ministry considers it positive that the impacts of the project on both current and future exploitation of the exclusive economic zone were specified in the application. It would be important for the gas pipeline project not to impede other, future infrastructure projects in the area. The Ministry's understanding is that the applicant should be required to undertake the maintenance, repair, monitoring and other such activities necessary after pipe-laying upon the consent of the Finnish authorities and to notify the authorities of such

activities 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 considers that the Government could give its consent for the construction of gas 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 provisions of the Administrative Judicial Procedure Act provide the basis for the assessment of whether the Government's consent can be enforced immediately. The guideline decision (Decision No. 1364/2006/EC of the European Parliament and of the Council) includes nothing that would require derogation from the assessment based on the Administrative Judicial Procedure Act. Considering that, in addition to the consent of the Government, the project referred to in the application requires a permit in accordance with the Water Act, that the Government's consent does not include a permit to commence actual construction work and that the immediate enforcement of the decision would not de facto eliminate or restrict the right of appeal with respect to the decision, from the Ministry's point of view there are no special grounds for objecting to immediate enforcement in such way that commencing the actual construction work would not be enabled.

In the joint statement of the defence administration, *the Ministry of Defence* has commented that it sees no impediments to the construction of Nord Stream AG's two submarine gas pipelines as presented in the application. The planned gas pipelines will traverse two firing ranges of the Finnish Defence Forces, but will not hinder exercises conducted in these areas. The Ministry of Defence draws attention to the fact that the consent granted by the Government does not constitute a substitute for the permit procedure referred to in the Territorial Surveillance Act (755/2000) and required when entering Finnish territory.

In its statement, *the Ministry of the Interior* comments that the gas pipeline project is a significant international project that may also have impacts on the continent. In such situations, the police would act according to the legislation in force and in cooperation with other actors and authorities. The Ministry has emphasised that certain offences committed in the exclusive economic zone are treated as if they were committed in Finland. Finnish authorities have general jurisdiction in the exclusive economic zone only regarding those offences and such activities as are defined as subject to consent by virtue of the Act on Finland's Exclusive Economic Zone as well as regarding those constructions that are referred to in section 7 of the EEZ Act.

*The Ministry of Transport and Communications* draws attention to the fact that the construction of the gas pipeline system would occur in a heavily trafficked area in the Gulf of Finland. The establishment of the Gulf of Finland ship reporting system (GOFREP) was agreed in an IMO maritime safety committee's meeting in 2003 and the reporting system was introduced on 1 July 2004. The gas pipelines are planned for construction within three traffic separation schemes located in the GOFREP

area. A safety zone will be established around the pipe-laying vessels, to safeguard undisturbed vessel traffic.

*The Ministry of Agriculture and Forestry* states that the applicant's application takes inadequate, one-sided account of fishing, fish stocks and the possibility of damage to them. Not all of the possibilities for using the project area for fishing purposes are presented, and neither is the possible harm caused to fish stocks and fishing during the operational life cycle of the pipeline. The statement of the Finnish Game and Fisheries Research Institute depicts the impacts of the gas pipeline project on the fishing industry, and in this respect significantly differs from the account presented by the applicant. The Finnish Game and Fisheries Research Institute states that negative impacts will mainly be caused by the prevention of and restrictions on fishing in the vicinity of the pipeline system. The trawling areas of the Gulf of Finland are naturally narrow and, consequently, even minor restrictions on fishing may have considerable effects. In the Gulf of Finland, the catch potential of Baltic herring is greater than current catches. As environmental circumstances and factors contributing to the profitability of catches change, the prospects of increased herring catches are positive. In the long run, the likelihood of a large cod cohort and its spread to northern parts of the Baltic Sea and into the Gulf of Finland is great. However, the presence of the pipes could cause significant harm to the development of cod fishing close to the seabed in these areas. In sum, it is likely that the fish resources in the vicinity of the gas pipelines will be exploited extensively in the future. Fish stocks that are not currently fished may also be exploited in the future. Hence, it should be ensured that there are as few obstacles as possible to this. 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, provided that the consent mention the assessment of negative impacts 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.

### **3.3.2 Other authorities**

*The Finnish Environment Institute (SYKE)* stated that the description of the technical implementation of the project was comprehensive and the supplementary documents submitted were considerable. Transboundary impacts of operations planned for implementation on Russian territory cannot be assessed comprehensively in the light of the material presented. SYKE comments that routing the pipeline south of Gogland (Suursaari) would curtail the possible impacts on protection areas. The impacts of the construction and operation of the pipeline have been assessed extensively and diversely. In essence, this assessment is comprehensive and the discussion on the background and research material, and the analyses based on this material, are sufficient for the assessment of the main impacts of the options under consideration. The estimates on the dissolution of solid substances from basic sediments into water and the impacts of this seem realistic, provided that there are no fundamental changes in the extent of operations planned. The authority emphasises the importance of the timing of construction and maintenance and repair works, so that they do not cause any unneces-

sary damages to the flora and fauna in the area, and of monitoring the impacts of construction during the construction phase and for a sufficiently long period afterwards. Since the pipelines may have an impact on the benthic organisms of the monitoring stations located in the vicinity of the pipeline, the possible transfer of monitoring stations to new locations should be examined. SYKE proposes that the applicant prepare a plan required for this.

*The Uusimaa Regional Environment Centre* did not give a statement, in order to remain impartial due to its position as the competent authority.

*The Border Guard Headquarters* states that, from the Border Guard's point of view, the impacts of the project have in principle been dealt with comprehensively and that mechanisms promoting safety have been sought in the permit application. If the construction project is implemented, the active exchange of information, both between the applicant and regulatory authorities and between regulatory and designated authorities, will play an important role both in the monitoring of operations and the maintenance of safety. The application notes the importance of cooperation between the applicant and the Finnish Maritime Administration in order to safeguard the safety of maritime traffic, but other authorities also have cooperation needs.

*The Finnish Maritime Administration* states that the risk assessment included in the application deals with the bottom contact risk of vessels only as regards pipe-laying vessels. However, the depth of water in the Gulf of Finland is rather restricted and the shallows extend to the high sea areas surrounding the outermost islands. Consequently, the area cannot be considered as high seas that can be freely navigated, where vessels can freely steer clear of pipe-laying vessels. When vessels enter shallow waters, an immediate risk of bottom contact arises and thus the risk of a major environmental accident. Hence, the FMA considers it important that the risk assessment of other vessel traffic be supplemented by an assessment of the bottom contact risk. Hydrographic surveying should be enhanced when needed, so that it can be guaranteed that the pipelines are not positioned in a manner that would endanger maritime safety. Traffic forecasts should be made more specific in subsequent work in cooperation with the competent authorities. During the pipe-laying, the traffic separation scheme of the Gulf of Finland must be temporarily altered. The IMO must be informed at least four months prior to the enforcement of the alterations. This should be taken into account in subsequent work. The FMA is of the view that the applicant's proposal for immediate enforcement can only refer to the institution of the permit procedure in accordance with the Water Act. In the FMA's opinion, consent for this could be granted after the applicant has fulfilled the requirements concerning hydrographic surveillance, traffic forecasts, the schedule and planning of construction works, communications and risk assessment.

*The Geological Survey of Finland* stated that, when realised, the gas pipeline project would have a significant reductive impact on environmental loading in Europe. A dynamically positioned pipe-laying vessel would modify the seabed considerably less than a vessel using anchors. Lasting harm to future infrastructure projects on the seabed should be considered during the permit procedure; the presence of the pipeline

would hinder the realisation of new infrastructure projects. In addition, extractive activities would permanently be prevented or become more difficult in the pipeline and safety area. Geological, geotechnical and geochemical material gathered during the project should be freely available and stored in national databases. The GSF is of the opinion that the application is extensive and describes the project well. It has also been well executed in general. The GSF sees no impediments to the implementation of the project.

### **3.4. Claims and statements presented by others**

*Elisa Oyj* drew the Government's attention to the importance of the undisturbed functioning of the submarine telecommunication infrastructure. Elisa Oyj owns two submarine telecommunication cables running from Finland to Estonia. The two gas pipelines specified in Nord Stream AG's application would cross both cables owned by Elisa. Elisa and Nord Stream have been negotiating on an agreement concerning the crossing of cables and pipelines, but no agreement has been concluded so far. The parties have not yet been able to agree on all conditions. Elisa requests that account be taken of the fact that the gas pipelines might endanger the functioning of the telecommunications and telecommunication infrastructure. The cables are of great importance to the functioning of the telecommunications infrastructure both in Finland and in Estonia. All Baltic data connections of Elisa's Finnish business clients and operator clients run via Elisa's cables. All international traffic and all internet traffic of Elisa Eesti AS run via the above-mentioned cables. In addition, connecting the calls of certain subscribers of Elisa Eesti requires a connection to systems located in Finland. Elisa claims that if the Government grants its consent for the construction of the pipelines, such consent should be conditional: the construction work should be interrupted if Elisa is able to use only one functioning telecommunications cable connection between Finland and Estonia. The applicant could continue construction work only when there is no longer a danger that both cables will be simultaneously out of use. Elisa states that the applicant should compensate Elisa for all costs arising from any preparations made and any damage incurred, and that the applicant should, free of charge, assist in and contribute to the repair of Elisa's telecommunication cables and the laying of new cables, so that no extra costs are created for Elisa due to the existence of the pipelines. In Elisa's opinion, the applicant's request for immediate enforcement should be rejected in order to avoid the unreasonable restriction of the use of legal remedies

*The Finnish Association for Nature Conservation – the Uusimaa Group for Nature Conservation* has stated that it considers the shortcomings in the assessment of environmental impacts, and the narrow point of view of the Water Act, problematic. In the FANC's opinion, the issue of consent cannot be discussed before further clarification is submitted supplementary to the EIA report. The FANC states that, during the permit procedure in accordance with the EEZ Act, consideration should be given inter alia to the phase after the decommissioning of the pipeline, the land-based alternative and questions relating to quarrying and its impacts and the environmental impacts of pipe storage and traffic caused by it. The FANC believes that immediate enforcement should not be granted as this would put pressure on the decision-making procedure of the Western Finland Environmental Permit Authority, during

which possible appeals could be handled in accordance with the Water Act. The FANC also pointed out that the immediate enforcement of the decision would weaken the position of the parties and that the applicant cannot commence construction work before a water permit has been granted.

*Baltirail ry* requested that the Government consider the plans to construct a railroad tunnel in the Gulf of Finland's bedrock in the future, so that the construction of pipelines would not hinder, either technically or otherwise, the viability or use of the tunnel. B is not of the opinion that the pipelines would pose threats or harm to the tunnel or vice versa during this phase.

*OT* drew the Ministry of Employment and the Economy's attention to certain issues arising from the application and documents appended thereto. According to *OT*, the applicant has presented incorrect generalisations concerning the depth of the pipeline routing, the area covered by the pipelines, the United Nations Convention on the Law of the Sea and compliance with the EIA agreement and Act

*IK* requested that the statement he submitted to the Uusimaa Regional Environment Centre be considered when making the decision on granting the consent. According to this statement, no permit should be granted for the planned gas pipeline project since, with respect to the environmental protection of the Gulf of Finland, the best alternative would be to construct a new gas pipeline system overland.

*ES*, represented by attorney-at-law *KS*, stated that the project involves no public interest but only that of the applicant. *ES* views the application as misleading insofar as the company's interest is presented as the public interest. Furthermore, the applicant's claim that the risks of a possible enforcement would concern only the applicant itself is incorrect. *ES* views the associated risks as also involving him as a party to a mining claim. *ES* states that he has a time-based privilege over other applications involving the same area and that the applicant's application should be rejected insofar as it affects the application concerning the mining claim instituted by *ES*. *ES* is of the opinion that granting the consent would amount to Finland surrendering her sovereignty over an area of 1,100 square kilometres. He disputes the Government's authority to make the decision on the application, believing that such authority belongs to Parliament. According to *ES*, granting such consent would amount to granting consent to Russian military forces and private troops to maintain a continuous presence on Finnish territory. Consequently, the powers of the Finnish defence forces would be restricted. According to *ES*, this would in practice mean the total abandonment of naval defence.

*MS* has stated that consent should not be granted for the project referred to in the application because this would not generate any benefits for Finland but could cause a great deal of damage. According to *MS*, such damage would include the surveillance of the Gulf of Finland by foreign military vessels. *MS* states that this could also be decisive when forming Finland's next government. In his statement, *MS* urged the Government to take action in order to open negotiations on the requisition areas ceded to Russia.

### 3.5 EIA Contact Authority's comment

On 14 November 200, Nord Stream AG initiated an Environmental Impact Assessment (EIA) procedure by submitting an EIA programme for the project to the Uusimaa Regional Environment Centre. 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).

The Uusimaa Regional Environment Centre states that, in general, the project has been described in such detail that the recognition and assessment of impacts has been possible. Exclusions concerning the assessed project entity have been relevant. However, plans for munitions clearance and the use of anchors should be determined in more detail in subsequent work. In addition, a more extensive description must be provided of the alternative options concerning pipeline decommissioning. The Uusimaa Regional Environment Centre considers the assessment sufficient in its fundamental aspects and that it fulfils the requirements laid down in the EIA Act. The comments of the contact authority on the assessment programme were considered sound in principle. However, further investigations, as laid down in the statement, must be submitted to the permit authorities for consideration during the consent and permit procedures.

A summary of the further investigation required by the Uusimaa Regional Environment Centre is presented below:

1. More specific risk assessment and measures to curtail risks relating to navigation in a manner that is acceptable to the competent maritime authorities. In particular, risk assessment relating to vessel traffic in the Gulf of Finland and to oil and chemical damage arising from vessel traffic must be specified.
2. A more specific investigation of the project's impacts on fishing during its total life span, including transboundary impacts. In addition, an assessment must be provided of the necessity and extent of, as well as prerequisites for, establishing possible restricted areas for fishing. Risk assessment concerning bottom trawling must be specified.
3. An investigation into the alternatives for the decommissioning of the pipelines as well as on the environmental impacts and feasibility of various alternatives.

4. A more comprehensive investigation of the environmental feasibility of the project, particularly from the point of view of possible new Natura 2000 areas and the proposals for the protection of the Baltic Sea adopted by the Government.

5. A Natura assessment, if the Government decides to propose that the sea area south of Sandkallan be integrated into the Natura 2000 network.

6. A more specific investigation into sediment spreading and the subsequent release of nutrients and harmful substances, including the transboundary impacts of the substances. In addition, a more comprehensive estimate must be provided of the harmful substances and nutrients entering surface water and marine food webs.

7. A more specific investigation of the prerequisites for establishing various protection and containment areas relating to the project.

8. A more specific investigation of the anchoring corridor. In particular, detected military objects and cultural heritage objects must be described in the investigation, as well as detailed handling measures.

9. More specific investigations on the heating effect of the pipeline.

10. More specific investigations of other infrastructure in the sea area and on how it will be taken into consideration.

11. A more specific investigation on the impact of the project on the scientific sampling stations used for monitoring the state of the Baltic Sea.

12. An investigation on the intake of pressure testing water in Finland's exclusive economic zone and its discharge into Russian waters, as well as on chemicals possibly used during the procedure.

13. Regarding the mitigation of negative impacts, an investigation into handling objects containing possible chemical risks (underwater barrels), on the protection of cultural heritage objects during the construction phase, on the impacts of the dynamically positioned pipe-laying vessel, on the handling of anchors, on the timing of construction activities with a view to restricting the environmental impacts and on measures preventing harm to seals.

14. A more specific monitoring programme that has to be prepared in cooperation with the authorities and expert institutions.

15. Further assessments of transboundary impacts, as required by third countries.

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

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 impacts of the project will affect the territory of the state in question.

In accordance with the Convention, on 14 November 2006 Finland, as a Party of Origin, delivered a notification on the commencement of an EIA procedure to the Affected Parties and provided them with the opportunity to participate in Finland's EIA procedure. This notification was transmitted to Sweden, Denmark, Estonia, Latvia, Lithuania, Poland and Russia. All states indicated their willingness to participate in Finland's EIA procedure.

In a letter dated 9 March 2009, Finland informed all coastal states of the transboundary environmental impacts of activities to take place on its territory. Estonia, Latvia, Lithuania, Denmark, Germany and Sweden submitted their comments on the material. Estonia requested a consultation meeting. Due to this request, negotiations were held in Finland on 25 June 2009. After the Uusimaa Regional Environment Centre had required, in its statement of 2 July 2009, that the applicant also provide a response on comments made by other countries, on 15 September 2009 the applicant submitted supplementary documents to the Finnish Ministry of the Environment, to be submitted to other countries. This additional information was transmitted to Estonia, Latvia, Lithuania, Poland and Sweden, who had requested additional information. The deadline for comments on this additional material was 7 October 2009. Estonia gave its preliminary response and notification that an official comment would be submitted on 20 October 2009. Later, Estonia stated that comments would be submitted after bilateral negotiations held on 26 October 2009. Estonia submitted its official response on 2 November 2009 and Finland responded to Estonia on 3 November 2009, stating that the opinions presented in the comments would be taken into account in decision-making and thus concluding the consultation process according to the Espoo Convention.

Sweden, Lithuania and Poland submitted their responses within the given timeframe. During this phase, no additional information is required of Finland in these responses. However, the responses emphasise the importance of monitoring and ex post evaluation.

Feedback received from other countries deals with the same themes as the statements and comments submitted during Finland's national hearing process. Salient themes include shortcomings of the assessment on route alternatives (especially concerning the land-based alternative), incomplete investigations (for instance, the study on the anchoring corridor), shortcomings and uncertainties concerning the assessments of the impacts on water quality (particularly investigating sediments and nutrients, the harmful substances in them and dispersion modelling), the accumulation of detrimental substances in the food chain and in human food, investigations relating to chemical weapons, maritime traffic safety and accident risk, the impacts of seismic and tectonic activity on the pipeline, impacts on fishing, impacts on the future construction of other infrastructure in the Baltic Sea, decommissioning of the pipeline and the monitoring of environmental impacts.

### 3.7 The applicant's response to the comments

#### 3.7.1 National statements

The Ministry of Employment and the Economy reserved the applicant the possibility to make comments on the statements, claims and clarifications presented, by 4 October 2009. The applicant submitted its response to the Ministry of Employment and the Economy within the given timeframe. Additionally, the applicant provided supplements to the response on 2 November 2009.

The applicant has presented the following as a response to the viewpoints presented in the statement.

**Operational safety.** The opinions presented by the authorities of the coastal states will be considered in a safety plan which will be prepared in cooperation with the Finnish Border Guard and other competent authorities. Monitoring programmes will be prepared in cooperation with regional environmental centres, employment and economic development centres, the Finnish Environment Institute (SYKE), Geological Survey of Finland, the Finnish Meteorological institute and the Finnish Border Guard. Risk assessment will be made more specific through new studies to be concluded during the year 2009, to be delivered to maritime authorities when ready.

**Environmental impacts** have been considered during the planning phase of the project, and the impacts of the project on other uses of the area have been assessed. The competent authority considered the performed impact assessment sufficient in its fundamental aspects, and this has been supplemented according to the competent authority's requirements. The project has no impacts on the HELCOM monitoring stations. The closest long-term monitoring station is located 3.1 kilometres from the pipeline and 3.5 kilometres from any munitions to be cleared.

**Maritime safety.** The clarification required on the prerequisites for establishing various protection and restriction areas relating to the project was presented in the summer of 2009 as part of the investigations of the legislative framework relating to maritime traffic and the practices of maritime traffic. The restrictions are based on good seamanship and the principle of allowing the construction and repair works to continue without interruption. Thus, other traffic in the area may have to be re-routed. Practices to be followed have been agreed upon with the Finnish Maritime Administration. The pipe-laying vessel moves at such a slow speed that, with respect to navigation it may be considered immobile. There are no limitations concerning the steering of support vessels but they can be navigated normally. The operation of vessels used during maintenance work may be considered parallel to that of normal traffic involving vessels with limited ability to manoeuvre in the area.

**Additional liabilities.** The applicant acknowledges all liabilities based on national or international legislation.

**Curtailling the negative impacts of the project.** A dynamically positioned pipe-laying vessel would be used on the border between Finland's and Russia's exclusive economic areas (approximately from

kilometre point 123) until kilometre point 300 located west of Hankoniemi. However, the applicant reserved the right to use a vessel using anchors from kilometre point 270 westwards.

**Transboundary impacts.** Transboundary impacts have been assessed in the so-called Espoo process and the clarifications required by other countries have been compiled into a joint statement. Transboundary impacts on Finland have been considered in each state's own permit procedure on which Finland has had the opportunity to comment. For instance, the assessment of the Gogland route alternatives does not form part of the Finnish permit procedure but Finland has the possibility to affect the Russian permit procedure through its comments.

**Enforcement of the decision.** Obligations under EU law must be considered in national decision-making. The project's importance to the public interest was also stated in the decision taken by the Western Finland Environmental permit Authority on 2 October 2009, dealing with munitions clearance within Finland's exclusive economic zone.

**Munitions clearance.** The munitions clearance plan and schedule will be submitted to the Finnish Maritime Administration for monitoring purposes. The environmental and other impacts of clearance activities were assessed by the Western Finland Environmental Permit Authority under a separate permit procedure. The permit authority granted a munitions clearance permit allowing the immediate enforcement of the decision and, on 2 October 2009, approved the monitoring programme related to the clearance works.

**Cultural heritage.** The Finnish National Board of Antiquities has evaluated the historical value of one wreck and one partial wreck located near the planned route of the pipeline as being marginal. Procedures agreed upon with the Finnish National Board of Antiquities will be applied to other shipwrecks of historical value located in the vicinity of the pipelines. Sites of cultural heritage deemed to be of historical value will be avoided during the construction phase and separate restriction areas will be established around them. A report on the anchoring passage will be concluded during the autumn of 2009 and this will be delivered to the Western Finland Environmental Authority for consideration under the water permit procedure, in accordance with the Water Act.

**Impacts on third parties.** The applicant has taken out insurance against material damage or personal injury to third parties leading to legal liability for damages. The impacts of this would be directed mainly at fishermen and owners of submarine cables. Agreements on compensation have been or will be made during the autumn of 2009 with those professional fishermen on whom the project may have an impact. Questions relating to liability for damages have also been considered in these agreements. The provisions of the Water Act and the Environmental protection Act also apply to possible unforeseen damage. The applicant and its subcontractors have purchased extensive indemnity insurances against possible contractual or extra-contractual damage to third parties. The impacts on future infrastructure projects have been discussed in greater detail in an appendix to the application. The impacts on the public interest concerning fishing and needs for compensation are assessed

ex officio by the Western Finland Environmental Permit Authority, as provided under the Water Act.

At the moment, there are no valid permits for the exploitation of Finland's exclusive economic zone.

**Fund for compensation.** Legislation does not require the establishment of a fund for compensation for unforeseen environmental damage.

**Vessels used during operations.** No vessels sailing under foreign flags will be used in the project.

### 3.7.2 International statements

The applicant has also submitted its opinions on the comments presented during the consultation process in accordance with the Espoo Convention.

**Sweden.** No restrictions on anchoring have been defined for the Finnish exclusive economic zone, since these were not considered necessary in the risk assessment carried out. If the maritime authorities deem a restriction necessary, the applicant will not object to the restriction. Due to the vulnerability of the marine environment, the Baltic Sea has been classified as a PSSA (Particularly Sensitive Sea Area) by the IMO. Thus, the assessment and curtailing of the risks posed by the project have been emphasised during the planning phase. In addition to risk assessments on construction and operations, the applicant will carry out additional assessments relating to the risk of bottom contacts of third parties, the risk of collision in maritime traffic and of local deviations to the traffic separation schemes to be agreed upon with the Finnish, Estonian and Russian maritime authorities.

**Estonia.** To prevent corrosion, seawater will be pre-treated for the cleansing and pressure testing of the pipeline. Chemicals used for pre-treatment are not classified as harmful to the environment. Sodium bisulphite is included in the OSPAR PLONOR (Pose Little Or NO Risk) list whereas sodium hydroxide, a pH-increasing agent, has been classified as an E-class ("environmentally friendly") substance by the Oilfield Chemical Notification Scheme system. All chemicals used in the pre-commissioning phase are substances found naturally in marine environments and which, in natural quantities, are not harmful to the marine environment. No water discharge will take place at kilometre point 300. The test water will be discharged at the Portovaya station in Russia. Treated water resulting from the use of the monitoring device will be lifted to the vessel aiding the device, and will be treated ashore at a suitable discharge location. When assessing the possible increase of pH values, mixing with seawater and the natural buffering capacity of seawater will be considered. The possible impacts of decreased oxygen contents will be assessed similarly. Dissolution modelling has shown that the dissolution of pressure test water is adequate near the discharge point.

Pycnoclines capable of causing internal waves are known to exist in the Baltic Sea. Considering the importance of internal waves to environmental and coastal technology, these features would have been de-

tected during the monitoring and would have been reported. Based on the novel flow measurement programmes carried out on the Baltic Sea, it can be concluded that internal waves may exist but that they are rare and of a small magnitude. Breaking and unbreaking waves have an insignificant effect on the planning of the pipeline as well as on its hydrodynamic and morphological impacts and, consequently, on the dispersion of sediments and harmful substances.

The aim of sediment modelling was to specify the vertical spread of harmful substances and the occurrence of dioxins in particular, in order to define the assessment of the project's environmental impacts. Sampling was concentrated on sedimentation areas located in the pipeline construction areas. The occurrence of dioxin and mercury bearing sediments stemming from the river Kymijoki have already been considered in the EIA report. The dioxins in the river Kymijoki mainly consist of heptachlorfurans which dissolve from solid substances very slowly and which accumulate in rather small quantities in fish. Despite very high dioxin concentrations of moving sediment, eating Kymijoki fish has not been proven to pose any essential risks to health.

The analyses of the sediment sample profiles showed that, excluding the areas near the Kymijoki delta, the highest concentrations of harmful substances were found in the surface layer of the sediment. The assessment of health risks was performed according to the precautionary principle and the exposure calculated represents the worst realistically possible scenario. Dioxin concentrations in breast milk depend on the mother's lifetime exposure history, and exposure cannot be calculated based on a short-term exposure situation as presented in Estonia's comments.

The source of scientific data on seismic activity referred to in Estonia's statement will be checked. Considering that the deviations refer to two incidents in material on a total of twenty incidents and that the differences in the order of magnitude are small, the assessment of the probable seismic risk remains valid.

According to statistical data on maritime traffic accidents, there have been 27 accidents during the past 18 years in the entire Gulf of Finland. The number of accidents that have taken place in the vicinity of the planned route of the pipeline is much lower than this. Not all accidents occurring on the surface would lead to a collision with the submarine pipeline. This calculation is based on a geometric model taking consideration of the time the vessel spends above the pipeline or in its vicinity as well as the dimensions of the object, anchor and vessel. The estimate presented in Estonia's statement is based on an assumption according to which every accident taking place on the surface along the pipeline's route will lead to a collision with the submarine pipeline. This estimate is unnecessarily conservative because the pipe is long but narrow and the navigational area is much larger than the area occupied by the pipeline. The estimated number of fatalities presented in the statement is based on the average number of persons exposed to sudden eruptions on freight and passenger vessels. A gas leak would create a cloud in the seawater and erupting clouds in the atmosphere. When ignition is delayed, the result is a sudden eruption and consequent exposure to heat. Eruption clouds would remain in the vicinity of the damage

to the pipeline and would not, consequently, harm persons ashore. The combustion of the pipe is not a realistic scenario in the case of a submarine pipeline. Combustion in open air is not a realistic scenario due to the occurrence of sudden eruptions. A gas leak underneath the ice coat is considered highly unlikely. A leak is possible only due to the risk of collision by a vessel traversing the pipeline during winter. In such a case, the drift-ice would be broken and the gas may remain in certain places underneath the drift-ice close to the surface. The gas would then spread horizontally from the edges of the ice and, if it ignited, sudden combustion would follow.

Estonia has no fishing rights above the pipeline in ICES sub-square 32 (the Gulf of Finland), excluding the westernmost part of the sub-square.

Estonia has fishing rights in ICES sub-square 29 (the Archipelago Sea), including above the pipeline. Bottom trawling with pelagic trawls is not permitted in the Gulf of Finland along the pipeline's planned route. Estonian trawlers operate in the vicinity of the coast. In theory, trawling close to the bottom is possible in the eastern part of the Archipelago Sea. The pipeline will be marked on sea charts and fishermen will be informed about the free span areas.

Soviet-era fishing rights and statistical data gathered over 60 years on archaic vessels are not relevant in this context. The recovery of cod has not resulted in a significant increase in cod catches along the planned pipeline route in the Gulf of Finland and the Archipelago Sea. The statistical data presented by Estonia concerns bottom trawling near the coastal line and does not include any information on the former Soviet fishing zone or on the Finnish exclusive economic zone. The pipeline will not have any impacts on the business of Estonian fishermen or on Estonia's food safety. However, if the project has impacts on Estonian fishermen, these impacts could be minimised through agreements. In addition, the Western Finland Environmental Permit Authority will evaluate ex officio whether the project has any impacts on Estonian fishermen and define compensation for any losses of benefits caused by the project. The inaccuracies of the assessment of fishing are related to information left undelivered by Estonia.

**Latvia and Lithuania.** The applicant has committed itself to reporting the results of monitoring in the Finnish exclusive economic zone, publicly and at regular intervals. Nord Stream AG's website will be used for this purpose. Monitoring results will be submitted to the Finnish authorities in two different reports: separate monitoring reports will be prepared 2-3 months after the conclusion of each construction or monitoring activity. Unexpected situations and observations will be reported to the competent authorities without delay and following the procedures defined in the monitoring programme. In addition, all monitoring data gathered in the Finnish exclusive economic zone during the year will be compiled in an annual report that will be delivered to the authorities at the end of each year during the entire monitoring period. These reports will be delivered to the competent authorities in Finnish. The applicant has offered to publish the reports in English too.

### 3.8 Status as an interested party

The Ministry of Employment and the Economy states that the statements, clarifications and claims received with respect to the matter in hand must be investigated insofar as they are presented by an interested party. Status as an interested party is determined by assessing the legal interests of each party that has presented claims or statements with respect to the impacts of the project, particularly within the meaning of section 11 of the Administrative Procedure Act (434/2003). However, considering that the whole project and its legal effects are characterised by the environmental impacts of the project, status as an interested party must also be analysed in the light of how the concept of an interested party are 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.

OT, IK and MS have not demonstrated that the present permit matter at would be in their interests within the meaning of section 11 of the Administrative Procedure Act discussed above. Even considering the concept from a wider point of view, in the light of the provisions of the Water Act and the Environmental Protection Act, OT, IK and MS have been unable to present anything in their statements that would prove their status as an interested party in the present matter, for which reason their claims have not been examined further.

Due to the nature of their activities, the project may have an effect on the activities of the Finnish Association for Nature Conservation and Baltirail ry. (registered association). Baltirail ry has not, however, opposed the application. In a letter dated 31 August 2009, Baltirail ry stated that it does not consider the gas pipelines to pose a threat, or that they would cause any harm to, the tunnel or the tunnel to the gas pipelines, since the tunnel would be located below bedrock with a thickness of approximately 50 metres.

In its consideration of the issue, the Ministry of Employment and the Economy has considered the opinions of the Finnish Association for Nature Conservation. It is also worth noting that various authorities have also expressed opinions on the same themes, as has the Finnish Association for Nature Conservation, but these opinions have deviated from the conclusions drawn by the FANC to a certain extent.

ES's application to exploit Finland's exclusive economic zone in order to reserve a claim, as referred to in the Mining Act (503/1965), for an area that partly overlaps the planned pipeline route, was rejected on 24 September 2009 by a decision of the Government's plenary session. This decision is not yet final. Even if ES were granted a claim right for this area due to an appeal, the right in question would not exclude the pos-

sibility of parties other than operators engaged in ore prospecting or mining activities to operate in the area under the Mining Act.

Elisa Oyj's legal interest in the issue of the permit is undisputed.

## 4 Legislation

### 4.1 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 shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea 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 land-locked, 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 shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of the Convention and other rules of international law in so far 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 pipeline, 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.

#### **4.2 The Act on Finland's Exclusive Economic Zone**

The use of rights related 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). According to section 6 of the Act, the Government may, upon 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 Employment and the

Economy's proposal. Consent for exploitation may be given for a fixed term or until further notice. The consent decision shall determine any conditions considered necessary to security or to protecting any rights which belong to the state 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.

#### **4.3 Regulations on damage to submarine cables and other possible damage**

An 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 the 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 afore-mentioned 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 Finnish territorial waters this Act only applies to vessels sailing under the Finnish flag, and to Finnish citizens and Finnish corporations.

**Compensation under the Water Act.** Compensations 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 Western Finland Environmental Permit Authority 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 of the owners of submarine cables.

#### **4.4 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 Baltic Sea 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.

#### **4.5 Legislation applied to immediate enforcement and the Decision No. 1364/2006/EC of the European Parliament and of the Council**

The general provisions on the enforceability of administrative decision 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 reserving the administrative authority 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.

Decision No 1364/2006/EC of the European Parliament and of the Council laying down guidelines for trans-European energy networks identifies projects of common interest belonging to trans-European electricity and gas networks as well as projects receiving the highest priority, also of European interest. According to Article 6(5), Member States shall take any measures they consider necessary to facilitate and speed up the completion of projects of common interest and to minimise delays, while complying with Community law and international conventions on the environment, especially as regards projects declared to be of European interest. In particular, the necessary procedures shall be completed rapidly. The aim of the Decision is to supplement and develop the European energy infrastructure in order to render the internal energy market more efficient.

#### **4.6 Directive 2006/123/EC**

On 12 December 2006 the European Parliament and the Council of the European Union adopted Directive 2006/123/EC on services in the internal market. The directive seeks to support freedom of establishment for providers and the free movement of services in Member States. Article 5 of the Directive applies to the simplification of procedures. Rules relating to administrative procedures should aim at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new service undertakings thereof. The applicant has referred to the obligations set on Member States in the Directive as one of the reasons for the immediate enforcement of the decision.

### **5 The Government's Decision**

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

The Government grants consent for Nord Stream AG's plan to construct an offshore natural gas pipeline system as described in the application documents submitted on 9 March 2009 and in supplementary documents attached to the application. The applicant or a successor subrogated to the rights of the applicant must comply with the conditions laid down under Chapter 5.2.

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.

#### **5.2 Conditions**

1. The project should be implemented 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. 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.
3. The permit holder must provide the Gulf of Finland Coast Guard Headquarters with the following information required for maintaining maritime safety and border security:
  - a. general plan for carrying out the project: the schedule together with a map, a detailed plan for the laying of pipelines, the vessels and aircraft used, their basic information, including information on the shipping company, the flag state, contact details, safety plans and safety equipment, rescue plan for diving activities, communications equipment, and vessel/aircraft permits for state vessels/ aircraft

- b. monthly plan: further specifications of the information provided in the general plan.
- c. weekly plan: changes (if any) to the monthly plan, a detailed work plan for the week, permits for activities subject to separate permits, number of crew on the vessels/aircraft, changes in crew, material replenishments and exceptional movement, such as spare part replenishments. The weekly plan must be submitted by 12:00 noon on the Friday of the previous week.
- d. daily plan: the weekly plan, further specified for the day in question, commencing and ending the permit-based operations, including information on the testing use of underwater equipment. The daily plan must be submitted on the previous day by 4:00 pm. Crew changes must be notified no later than 48 hours before the change, and if the change takes place on a small boat, for example, a notification must be submitted when the boat departs. The notification must include the following information: personal information, and information contained in the travel document (passport number, nationality), on the agent/shipping company, and on the routing.

The control centre of the Gulf of Finland Coast Guard will distribute the notifications it has received, taking account of the rules concerning the disclosure of the information, to other national authorities and the Estonian border control authorities.

When giving notice of the time, the location and the safety zone of the measures, as well as of accidents, malfunctions, deviations from the plan, and any events posing a threat to the marine environment, the international regulations for navigational emergency and safety communications, as well as the instructions provided by the Finnish Border Guard, and the Finnish Maritime Administration, must be followed.

- 4. The need to temporarily alter the Traffic Separation Schemes must be notified to the Finnish Maritime Administration at least four months prior to commencing the works in the area covered by the Traffic Separation Schemes.
- 5. Any costs arising from construction works and routing and traffic control procedures as well as procedures aiming at improved vessel traffic safety required by the construction works, must be compensated to the Finnish Maritime Administration in accordance with the Act on Criteria for Charges Payable to the State (150/1992);
- 6. The applicant must also meet requirements for providing further clarification as laid down in the statement by the Uusimaa Regional Environment Centre and submit the information required for consideration in the permit procedure, pursuant to the provisions of the Water Act.
- 7. 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;

8. The applicant must use a dynamically positioned pipe-laying vessel west of the border between Finland's and Russia's exclusive economic zones, up to kilometre point 270 at a minimum;
9. The applicant must submit a maintenance plan of the pipeline system to the permit authority referred to in the Water Act;
10. The applicant must submit a contingency plan concerning disturbances, during both the construction phase and the operational phase, to the permit authority referred to in the Water Act;
11. In addition, the applicant must comply with the provisions of other relevant legislation.

Minor changes in the routing for technical reasons are allowed.

### **5.3 Reasons**

#### **5.3.1 Consent**

Nord Stream AG was established in 2005 as North European Gas Pipeline Company (NEGP), a joint venture owned by OAO Gazprom, BASF AG and E.ON AG. The Dutch company A.V. Nederlandse Gasunie has later joined the project. The shareholders and their shares are Gazprom 51 %, BASF 20 %, E.ON 20 % and Gasunie 9 %. Nord Stream AG has headquarters in Zug, Switzerland. The aim of Nord Stream AG is to construct and operate a natural gas pipeline system traversing the Baltic Sea. The project consists of two parallel pipelines. These pipelines, approximately 1,220 km long, are intended to run from Portovaya Bay in the Vyborg-St. Petersburg region, Russia, to Lubmin in Bay of Greifswald in Germany. Approximately 375 km of the route will lie within Finland's exclusive economic zone (hereinafter referred to as the exclusive economic zone). The pipelines are meant to link part of Russia's natural gas deposits to the European gas network. Natural gas will be delivered via Germany to e.g. Denmark, the Netherlands, Belgium, Great Britain, France, Poland and the Czech Republic.

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 its 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. Moreover, the Convention on the Law of the Sea or the EEZ Act defines 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 belonging to the coastal state. The impacts of the project on these rights will be assessed when deciding whether the consent is given.

Thus, in the assessment, it is essential that the impacts of the project on the environment, maritime safety, and its impacts 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.

Existing, planned and other known projects located in the Finnish exclusive economic zone, the impacts 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.

**Environment.** The environmental impacts of the project will be assessed in detail by the Western Finland Environmental Permit Authority, 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.

The material on the assessment of environmental impacts has also been at the Government's disposal. For the purpose of the Government's decision-making process, it is relevant that the Uusimaa Regional Environment Centre, the competent EIA Authority in Finland, has noted in its statement that the environmentally sustainable implementation of the project is possible, provided that certain further clarification is submitted and the required measures are carried out. This further clarification, referred to in Chapter 3.5 of this decision, excluding sections 1, 7 and 10, will be taken into account by the Western Finland Environmental Permit Authority when deciding on whether to grant the permit. Sections 1, 7 and 10 are taken into account in this Government's decision. The applicant has submitted further clarification under sections 1, 7 and 10 to the Government as required in the statement. This further clarification may be considered as extensive and sufficient.

**Maritime safety.** The authorities responsible for maritime safety have already drawn up an action plan in cooperation with the applicant. The action plan aims at minimising the risks to maritime safety arising from the project. The Government requires that any threats to maritime safety and the marine environment will be minimised when constructing the pipeline system.

**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.

An electricity cable project between Finland and Estonia, strongly supported by the European Union, will be implemented simultaneously with the gas pipeline project.

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 is obliged to allow crossings using the most financially advantageous construction. Due to the simultaneity of the projects, the developers must cooperate closely when planning and realising the crossings of gas pipelines and cables.

Various rights to exploit living natural resources are related to an exclusive economic zone. These rights could be endangered due to the impacts 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 Western Finland Environmental Permit Authority will assess ex officio whether such parties exist on which the project might have impacts 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.

**Security of Energy Supply.** The project has no direct impact on the security of energy supply in Finland. However, the project is in accordance with the common European objective of increasing the use of more sustainable forms of energy, regarding both the energy source and the method of transfer and with the objective of diversifying energy routes. Thus, the implementation of the project would also be relevant to Finland.

**Statements of other countries to Finland.** In accordance with the Espoo Convention, states on whose territory or exclusive economic zone the project has impacts have been reserved the opportunity to make statements on the application. In the Transboundary answers document (appendix 22 to the application) Finland gives responses to other countries' questions and statements based on the EIA report. In addition, Finland has given separate responses to Latvia, Poland and Sweden (15 September 2009), to Lithuania (15 September 2009) and to Estonia (15 September 2009). Those states have been reserved the opportunity to submit further observations on Finland's responses. They have submitted their responses, which have been taken into consideration in decision-making.

**Responses of other countries to Finland.** The responses of Denmark, Sweden and the Russian Federation to questions presented by Finland have been submitted to Finland and the Finnish Ministry of the Environment has organised a public hearing concerning these responses. Sweden replied to the request for clarification made by Finland in a letter dated 23 September 2009. The clarification was kept available from 29 September 2009 to 12 October 2009 and Finland submitted a response to Sweden on 13 October 2009. The clarification from Denmark, submitted in a letter dated on 7 August 2009, was kept available from 14 August 2009 to 1 September 2009 and Finland submitted a response to Denmark on 7 September 2009. Russia's answer, dated on 28 Septem-

ber 2009 was made available on 2 October and the deadline for comments and statements was set on 12 October 2009. Finland responded to Russia on 16 October 2009. These hearings may have an impact on the national permit procedures of the said countries but not directly on decision-making in Finland.

**Natura 2000 sites.** Impacts of all activities planned for the Finnish exclusive economic zone during the project, both with respect to existing and planned Natura 2000 areas, have been assessed during the EIA process. It is estimated that the impacts during construction will remain local and of small scale. Due to the distance between the pipeline route and Natura 2000 areas including valuable habitat types and organisms (3 – 30 kilometres), no significant impact or changes are expected to affect the conservational values of any existing or planned Natura 2000 areas. It has been estimated that birds and mammals will be exposed, in particular, to the spread of sediment and to noise insofar as they move within the construction areas. No significant impacts are expected because the probability that birds or mammals would actually dwell in the construction area is small, as is the estimated amount of sediment spread, while its estimated duration is short. It is estimated that threshold values will be exceeded for a few days. As the project is not expected to decrease the natural value of existing or planned protection areas, a separate assessment of the project in accordance with the provisions of section 65 of the Nature Conservation Act is not considered necessary.

### 5.3.2 Enforcement of the decision

**TEN-E project status.** The applicant has referred to the public interest, referred to in Article 31 of the Administrative Judicial Procedure Act, as one of the grounds on which the immediate enforcement of the decision should take place. The applicant claims that the public interest, which is the condition for immediate enforcement, will be served through the TEN-E status of the project on the one hand: in accordance with Decision No. 1364/2006/EC of the European Parliament and of the Council, the gas pipeline project is defined as a project receiving the highest priority. According to the decision in question, projects of European interest should be implemented promptly and Member States shall take any measures they consider necessary to facilitate and speed up the completion of projects of common interest and to minimise delays. According to the principle of impartiality and equivalence, for a right based on Community law, a Member State must provide the same legal remedies and the same requirements concerning the handling of the matter as are provided in respect of rights based on national legislation. The principle of effectiveness obliges Member States and their national authorities to apply and interpret Community law and the respective national legislation in such a manner that the aims of Community law would be properly and effectively realised. Based on the case law of the Court of Justice, the principle of loyalty and cooperation implies that authorities must facilitate the effective implementation of the aims of Decision No. 1364/2006/EC if national legislation does not preclude this.

In accordance with section 7 of the Administrative Judicial Procedure Act (586/1996), an appeal against a decision of the Government or a Ministry shall be lodged in the Supreme Administrative Court. Such an

appeal may only be founded on the illegality of the decision. The appeals system is an integral part of the Finnish procedural law, as is, within the scope of the Administrative Judicial Procedure Act, the principle that a decision is not enforceable before it has become final. The enforcement of a decision regardless of any appeal is an exception to the main rule, and can only be applied when the condition of public interest has been proven to exist.

The TEN-E status of the project alone cannot be considered a factor fulfilling the criteria for public interest as referred to in section 31 of the Administrative Judicial Procedure Act. However, the project has a favourable effect on the security of supply of energy in the European Union. The maximal security of supply of energy within the EU can also be considered to serve Finland's interest.

**Directive 2006/123/EC.** The obligations imposed on Member States in the Directive are indicative in respect of the present application. The deadline for the national implementation of the directive expires on 28 December 2009. Compliance of national permit systems with the Directive can be assessed only after the expiration of the deadline for implementation.

**Legal interests directly endangered by immediate enforcement.** 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. Due to this consent, the applicant may proceed with the process for a construction permit in compliance with the Water Act. 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.

**Technical solution for pipe-laying.** 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. Such a vessel is considered to cause significantly less environmental impact on the marine environment than traditional pipe-laying vessels that use anchors.

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 in which matters of public interest are compared with the endangering or loss of rights of third parties. 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.

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

public interest, as referred to in Section 31 of the Administrative Judicial procedure Act.

## **6 Applied provisions of law**

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

Act on Finland's Exclusive Economic Zone (1058/2004)

Government Decree on Finland's Exclusive Economic Zone (1073/2004)

Water Act (264/1961)

Government Rules of Procedure (262/2003)

Administrative Procedure Act (434/2003)

Administrative Judicial Procedure Act (586/1996)

Tort Liability Act (412/1974)

Marine Act (647/1994)

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

Act on Environmental Impact Assessment Procedure (468/1994)

Government Decree on Environmental Impact Assessment Procedure (713/2006)

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

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)

## **7 Appeal**

This decision may be appealed against by lodging an appeal before the Supreme Administrative Court in accordance with the appeal instructions appended to this decision. The decision may be enforced regardless of any appeal.

Mauri Pekkarinen  
Minister of Economic Affairs

Teija Miller  
Government Secretary