

Stockholm, 5 June 2017

GREENPEACE

To: Naturvårdsverket, registrator@naturvardsverket.se

Diarienummer NV-03441-13

Regarding: Nord Stream 2

MEMORANDUM
PERTAINING TO THE PUBLIC CONSULTATION PROCESS
FOR THE NORDSTREAM EXTENSION PROJECT

Greenpeace Nordic would like to state that the proposed NordStream Extension project (the so-called “NordStream 2” project, hereinafter referred to as the “**investment**” or the “**proposed investment**”) would have serious adverse implications for the environment of the countries in the Baltic Sea basin.

We believe that these serious implications have not been taken into account sufficiently in the EIA report and the Espoo report, which are now the subject of public consultations. Neither report provides a sufficient assessment of the project as a whole. Rather, these documents attempt to split it into pieces in terms of environmental permitting while leaving the most important impacts including the proposed investment’s impact on European energy markets insufficiently with insufficient attention.

More specifically, we are of the opinion that:

1. Both the EIA report and the Espoo report give an inaccurate assessment of the impact of the proposed investment on Natura 2000 sites located in both the countries of origin and the affected countries. The proposed investment is clearly likely to have a significant impact on the environment. It is therefore clear that since the investment runs through or very near to Natura 2000 sites, it must be assessed also as to its potential impact on these sites and that such an assessment must meet the standards provided for in European Union law, specifically in art. 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter referred to as the “Habitats Directive”).

It is the established case law of the Court of Justice of the European Union that art. 6 (3) of the Habitats Directive nor any other provision thereof specifies the exact procedure

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which must be followed in order to ensure an appropriate assessment of the impact of an investment on Natura 2000 sites. The Court has, however, held that such an assessment must be organized in such a manner that the competent national authorities can be certain that a plan or project will not have adverse effects on the integrity of the site concerned, given that, where doubt remains as to the absence of such effects, the competent authority will have to refuse authorization (thus: CJEU in case no. C-304/05 Commission of the European Communities vs. the Italian Republic, paragraph 58, and see, to that effect, Waddenzee, paragraphs 56 and 57, and Castro Verde, paragraph 20).

In the case of the instant investment, there are numerous Natura 2000 sites, spread across a total of 8 countries. The Espoo Report indicates that the Natura 2000 sites located in Poland selected for assessment:

- a. SAC PLH990002, Ostoja na Zatoce pomorskiej
- b. SPA PLB990003, Zatoka Pomorska

are both located 22 kilometres from the planned investment.

At the same time, however, the Espoo Report (pg. 375 and 376) lists these two Natura 2000 sites among those located no more than 6 km from the proposed route of the investment. Irrespective of this discrepancy, however, we believe that there are as yet insufficient grounds to state that the proposed investment will have no impact on the Natura 2000 sites, particularly those in Poland, as is stated in the Espoo Report.

Furthermore, given that there are concerns as to the effect of the investment on the Natura 2000 sites, specifically those that have marine mammals as the designation basis, it is not enough for the Espoo Report simply to have one paragraph (on page 377) stating that there is a limited potential for an impact on the overall functioning of the Natura 2000 system. This assessment is, in our view, at least premature, particularly given that, as is stated on page 376 of the Espoo Report “In writing this Espoo Report (and the Finnish EIA), detailed information about the location and features of munitions on the seabed was not available. The Natura 2000 Appropriate Assessment for the Kallbådan Islets and Waters Natura site will be carried out in accordance with the requirements of the Habitats Directive after receiving the detailed information on observed munitions (location, characteristics) to be cleared.”

We consider it impossible in these circumstances to issue a decision allowing for the construction of the investment, given that there are doubts concerning its impact on Natura 2000 sites and the information regarding at least one such site is incomplete. It should be noted that only once an administrative authority is certain that an investment shall have no adverse impact on a Natura 2000 site may it grant permission for such an investment – this is confirmed by CJEU case law, exemplified by case no. C-258/11 Peter Sweetman and Others v An Bord Pleanála, where the CJEU stated that “It is to be noted that, since the authority must refuse to authorize the plan or project being considered where uncertainty remains as to the absence of adverse effects on the integrity of the site, the authorization criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects being considered. A less stringent authorization criterion than that in question could not ensure as effectively the fulfilment of the objective of

site protection intended under that provision (Waddenvereniging and Vogelbeschermingsvereniging, paragraphs 57 and 58).”

It is our opinion, moreover, that this incomplete documentation concerning Natura 2000 sites makes the public consultation process regarding both the EIA Report and the Espoo Report inadequate and flawed.

It is clear that public participation, both on the basis of (i) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1–21, hereinafter referred to as the “EIA Directive”) and the (ii) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark on 25 June 1998 (hereinafter referred to as the “Aarhus Convention”) must be ensured at an early stage, however no earlier than after all relevant documentation necessary for the issuance of a decision is available and provided to the public. This is not the case here, as documentation concerning at least one Natura 2000 site is still unavailable.

2. Furthermore, we believe that the EIA Report is inadequate as its analysis concerning the investment’s impact on the climate and air, contained in chapter 11, is limited to:

- a. “Only direct impacts in Finland from the activities included in the project scope (...)” (p. 278);
- b. In terms of the climate impact – solely as concerns CO₂ (carbon dioxide) emissions;
- c. In terms of air quality impacts – solely as concerns nitrogen oxides (NO_x), sulphur dioxide (SO₂) and particulates (PM).

This assessment is in violation of art. 3 of the EIA Directive, which requires an environmental impact assessment to identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12 of said directive, the direct and indirect effects of a project on the following factors:

- a. human beings, fauna and flora;
- b. soil, water, air, climate and the landscape;
- c. material assets and the cultural heritage;
- d. the interaction between the factors referred to in points a, b and c above.

It is clear that an EIA Report, which lacks an analysis of the indirect effects of the proposed investment on the climate and the air, is not in accordance with the EIA Directive. Moreover, too little justification has been given as to why the analysis of the investment’s impact on the climate and the air is limited only to CO₂, NO_x, SO₂ and PM, to the exclusion of other pollutants, which are, incidentally, included in Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1–44).

3. Additionally, we consider the environmental impact assessment in this matter to be flawed due to the serious doubts concerning the adequacy of the Russian assessment of the environmental considerations and consequences of the planned investment. As a result, it must be considered that the Espoo consultation procedure – which is based on

national environmental impact assessments – cannot be considered adequate. Specifically, this refers to the chosen route of the investment through the Kurgalsky Nature Reserve, in relation to which – according to the Espoo Report – “The project will require temporary construction activities within the Kurgalsky Nature Reserve and result in some long term changes to habitats. However, due to the small areas affected and the fact that the most valuable habitats will not be impacted and the overall integrity and functioning of the reserve will not be affected, the impact ranking on the protected area is evaluated as minor.” We cannot accept that long-term changes to habitats deemed not the “most valuable” but only “valuable” or “less valuable” mean that the impact on the protected area is minor. This is an unacceptable assessment grounded on a criterion that is not to be found in international law and which would not be deemed adequate under EU law, if EU law were applicable in this regard (note: EU law calls for the protection of all habitats for which protection areas are created, not just those branded “most valuable”).

We have serious reservations as to the accuracy and validity of this assessment also because:

- a. it is based on the conclusions of the Russian EIA procedure, during which serious objections were raised concerning whether the chosen route is the least damaging to the environment – we believe that environmental aspects were largely ignored when selecting the route of the investment through the Kurgalsky Nature Reserve;
- b. it is in violation of Russia’s obligations under:
 - i. the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat;
 - ii. the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area.

We appreciate that Russia is not bound by the Espoo Convention and that, nonetheless, it has elected to act as a party of origin under said convention, to the extent allowed by its laws. This does not mean, however, that Russia can act in violation of its international treaty obligations and that the other states involved in the investment, all of which are EU member states, can disregard the serious flaws of the Russian EIA procedure, accepting its results in its EIA and as the basis for the Espoo Report.

4. Moreover, we consider that approval of the investment, should it be given, shall constitute a violation of the Marine Strategy Framework Directive, which requires member states to:

- a. take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest. Good environmental status means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas, which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.:
 - i. the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic,

geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;

ii. hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects;

b. develop and implement marine strategies in order to:

i. protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected;

ii. prevent and reduce inputs in the marine environment, with a view to phasing out pollution, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.

The Baltic Sea is a marine region covered by the scope of said directive, therefore it is the responsibility of all EU member states which are parties of origin for the proposed investment to ensure that no actions are undertaken that will make more difficult the attainment or maintenance before 2020 of the good environmental status of the waters of the Baltic Sea.

It is clear to us that the proposed investment will make this task more difficult and is in clear conflict with the obligations arising under the Marine Strategy Framework Directive, including for the reasons specified in this consultation memorandum.

5. Furthermore, we are of the opinion that, irrespective of the baseline analysis included in chapters 7 – 9 of the EIA Report and analysis of alternative routes, the grounds for undertaking the proposed investment are not sufficient, due to the fact that Europe has for some time been experiencing an oversupply of natural gas. It is therefore not the case, as is stated in the EIA Report, that “access to natural gas is becoming increasingly critical for the EU as global demand rises and its own gas resources deplete. With Nord Stream 2, the EU can secure additional gas resources in the long term in order to ensure global industrial competitiveness and meet domestic demand.” The proposed investment is not justified in economic terms, and, therefore, any economic factors in favour of its construction are outweighed by the environmental detriment brought about by the investment, particularly those issues outlined in pts. 1 – 4 above.

6. In conclusion, Greenpeace Nordic would like to state their firm opposition to the investment and any decision, which brings its construction closer to completion. The investment would be detrimental to the environment, specifically the unique ecosystems of the Baltic Sea and adjacent lands and tie the European energy system

more strongly to fossil fuels. The Swedish authorities should not grant the investment an EIA permit and should not allow for its construction on Swedish territory.

On behalf of Greenpeace Nordic,

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Programme Manager, Greenpeace Sweden

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Programme Manager, Greenpeace Finland

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