

Comments from Sweden on the Nord Stream AG application for Derogation according to art 49a Gas Directive

Dear Colleagues,

Thank you for the opportunity to participate in the consultations which according to the invitations refers to Article 49a of the Gas Directive.

Nord Stream AG applies for a derogation from the provisions in sections 8–10e and sections 20–28 of the Energiewirtschaftsgesetz (EnWG). The derogation shall apply for the pipe-line section of the Nord Stream gas interconnector operated by Nord Stream AG located within the German territory for the maximum 20 years and irrespective of the possibility of later extensions. Should the maximum period not be granted, the Nord Stream AG announces a second application to be submitted with a duration of the longest period possible.

SE does not question there exists a need for a transitional period before extending the application of the fundamental rules in the Gas Directive to the Nord Stream pipelines within German territory. As SE has not been able to examine the confidential parts of the argumentation in this respect, we will abstain from comments on the duration of a derogation.

According to our interpretation, section 28b of the EnWG, which implements Article 49a of the Gas Directive into German law, covers derogations from unbundling, non-discriminatory and regulated third party access, the provision of balancing services and the procurement of energy for the operation of the pipe-line, as well as access to up-stream pipelines and storage. The application for a derogation has been worded accordingly.

However, it is our understanding that derogations according to section 28b of the EnGW can be granted only in respect of transmission lines.

SE has an additional question, which may be due to misinterpretation of the EnWG. As SE understands Article 49a of the Gas Directive, it does not allow for a derogation from the provisions of Article 13.5 of the Directive, which states that transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures. Have those provisions of the Directive been transposed into German Law through section 22 of the EnWG?

We would finally like to inform the Bundesnetzagentur of the following. The Swedish response in this matter is subject to Inter Departmental Consultations which cannot be conducted in the German language. We will within a few weeks accommodate your request for a response in German, with a convenience translation