



**LIETUVOS RESPUBLIKOS ENERGETIKOS MINISTERIJA
MINISTRY OF ENERGY OF THE REPUBLIC OF LITHUANIA**

Gedimino av. 38, LT-01104 Vilnius, Lithuania, tel. [REDACTED]

fax. [REDACTED], e-mail [REDACTED]

[REDACTED]
Chair of Ruling Chamber 7
Federal Network Agency

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Cc: European Commission
Permanent representation of Lithuania to the European Union
Embassy of the Republic of Lithuania to the Federal Republic of Germany

CONSULTATION OF MEMBER STATES UNDER ARTICLE 49a OF DIRECTIVE (EU) 2019/692 DEROGATION FOR NORD STREAM 2 AG, NORD STREAM 2 (BK7-20-004)

Madam [REDACTED],

In response to your letter of the 10th February 2020, the Ministry of Energy of the Republic of Lithuania submits its comments for the consultation on *Nord Stream 2 AG* application for derogations for the *Nord Stream 2*, under the Article 49a of Directive (EU) 2019/692 of the European Parliament and of the Council of 17 April 2019 amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (hereinafter – Gas Directive)¹:

- (1) The purpose for amending Gas Directive was to clarify that within EU's jurisdiction the fundamental principles of EU energy legislation, such as third-party access, tariff regulation, ownership unbundling and transparency, applies to EU natural gas interconnectors with third countries. Agreement on the necessary amendments of the Gas Directive in the European Parliament and in the Council was a step towards Energy Union and better functioning of the Union's internal gas market.
- (2) *Nord Stream and Nord Stream 2* (hereinafter – *Nord Stream* gas import route) is an infrastructure with a significant impact to competition in the EU's internal gas market, its effective functioning and security of supply of natural gas in the Union. For this reason, a legal framework under which this gas import route operates is a common European interest.
- (3) *Gazprom* has a dominant position in certain European gas market, there are many cases when this undertaking has abused its dominant position, therefore, *Nord Stream* gas import route requires regulatory oversight, third-party access, tariff regulation, ownership unbundling and transparency.

¹ Due to technical problems the Ministry of Energy of Lithuania was unable to provide its response on a data exchange platform at <https://gbg3.bundesnetzagentur.de> (document upload function was not working properly), therefore its comments to the Federal Network Agency is provided herewith this letter.

- (4) Gas Directive provides instruments for Member States to ensure a unified (single) regulatory regime for the interconnectors with third countries and to ensure compatibility with Union law. One of the options is to conclude technical agreements on issues concerning the operation of transmission lines between a Member State and a third country. The Ministry of Energy of Lithuania asks responsible authorities in Germany to ensure that such regulatory regime would be negotiated with *Nord Stream 2 AG* and Russian Federation in order to ensure that in EU's jurisdiction fundamental principles of EU energy legislation is respected and the interests of a citizens and natural gas consumers in Europe are well protected.
- (5) *Nord Stream 2 AG* arguments that *Nord Stream 2 project* was already completed before 23 May 2019 have no grounds and it's not in line with EU law. It is obvious that *Nord Stream 2 project* cannot be considered as completed before 23 May 2019 – construction of the gas transmission line has not been finished yet, project promoters publicly states that *Nord Stream 2* is expected to be completed in the first quarter of 2021. Project completion date (project commissioning) leaves no room for interpretations and *Nord Stream 2 AG* arguments that *Nord Stream 2 project* is only a small part of the pipeline in the territory of Germany is misleading and such interpretation is incompatible with Article 49a of Gas Directive which refers to *transmission line between a Member State and a third country* in its entire length, not just a certain smaller parts of such transmission line.
- (6) Considering that *Nord Stream 2 project* is not yet completed, it should be noted that *Nord Stream 2 AG* is not entitled to submit application for derogations for the *Nord Stream 2* under the Article 49a of Gas Directive for the reason of not being an operator (there are no operator or legal person yet who exploits this transmission line).
- (7) Derogations for *Nord Stream 2 project* under the Article 49a of Directive (EU) 2019/692 would be detrimental to competition and effective functioning of the EU's internal natural gas market. Permission to avoid application of the fundamental principles of EU energy legislation to the *Nord Stream* gas import route would have a negative impact to the security of natural gas supply in the Union, it would also undermine EU solidarity and energy policy principles. It is for the best interest of a citizens and natural gas consumers in Europe to ensure that *Nord Stream* gas import route in its entirety operates under common rules for the internal market in natural gas.

The Ministry of Energy of Lithuania looks forward to continuing close cooperation between our countries on energy related affairs and we appreciate all the efforts which was made by the Federal Network Agency to have a wide-ranging in-depths consultation with the Member States on Directive (EU) 2019/692 implementation.

Yours sincerely,

Vice-Minister of Energy

