Denmark’s Permitting Process & Nord Stream 2
Legal considerations
7th Vienna Forum on European Energy Law
International Law
UNCLOS

Basic principles
• Full sovereignty of the coastal state within the territorial waters
• The freedom of the sea is the main principle outside the territorial waters
• As a general rule, States are entitled to lay pipelines in the exclusive economic zone (Article 58(1)) and on the continental shelf (Article 79(1)) of other States

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Route – Nord Stream (1)

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After the NSP2 Application

- April 2017: Application for a route parallel with NS(1) (inside Danish territorial waters)
- January 2018: Amendment of the Danish Act on the Continental Shelf
- End January 2018: The Danish Energy Agency ask the ministry of foreign affairs for a recommendation
- August 2018: Application for a route north of Bornholm and outside Danish territorial waters
- March 2019: The Danish Energy Agency ask for a new route
- June 2019: The application for the first route is withdrawn

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Amendment of the Danish Act on the Continental Shelf

• Entered into force: 01.01.2018
  – Amendment proposal: 04.10.2017
  – Passed as Amendment Act: 05.12.2017

• Apply only to application inside territorial waters
  – veto-like provision for the Danish foreign minister
  – No justification needed
  – No consultation of parties needed
  – Since the foreign minister makes not a decision but only a recommendation

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The three transit countries

- Finland (NSP2):
  - Application: Sept. 2017
  - Permit: Apr. 2018
  - Note: EIA procedure completed prior to permit application

- Sweden (NSP2):
  - Application: Apr. 2017
  - Permit: Jun. 2018

- Denmark (NSP1):
  - Application: 03.03.2009
  - Permit: 20.10.2009
  - Approval (EBA): 31.05.2010
  - Constructed in: 2010/2011

- Denmark (NSP2):
  - Application: 03.04.2017
  - Permit: ?????????
  - Complaint (EBA): 17.04.2019

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The Three Routes

1. South of Bornholm (inside TW): Withdrawn
   – No answer from the ministry of foreign affairs

2. North of Bornholm (outside TW): Pending
   – EIA and Espoo process finished
   – Permit denied until the third route have been processed

3. South of Bornholm (outside TW): Pending
   – EIA and Espoo process to be finished in 2019
The Rule of Law?

• The Danish Government have acted against normal practise for good administrative behaviour
• The Danish Governments behaviour are hardly in accordance with the intensions of UNCLOS
• NSP2 has been postponed but no legal basis to deny a permit exists
• The Danish Government may have acted in a way giving NSP2 AG reason to claim damage

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Thank you for your attention

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