

Nord Stream 2: Denmark's playing for time

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On 30th November the Danish parliament amended the law on the continental shelf in the section which concerns consent given by the Danish Ministry of Energy, Utilities and Climate to lay pipelines and cables in Danish territorial sea (extending up to 12 nautical miles). Beginning from 2018 any investment will have to be in line with Danish interests in foreign, security and defence policies. Opinion on these matters will be issued by the foreign minister.

All parties represented in the Danish parliament voted in favour of the amendment. The changes were, however, criticized by companies involved in the NS2 gas pipeline project: Nord Stream 2 AG, OMV, Uniper, Shell, Wintershall and Engie. The arguments used by those opposing the application of new legislation to NS2 pertain above all to the law being retroactive. NS2 AG has stressed that the motion for a permit to lay the underwater pipeline was submitted in April this year and should be processed in line with the legal order in effect at that time.

Denmark has decided to amend the law since the previous Danish interpretation of the Law of the Sea (in effect when the construction of Nord Stream was approved in 2009) stipulated that there was no possibility to block an investment due to reasons other than environmental issues. The Convention on the Law of the Sea confirms that coastal states have the right to 'establish conditions for cables or pipelines entering its territory or territorial sea' (art.79).

Commentary

- The amendment to the law on the continental shelf is an element of the government's strategy to play for time with regard to the NS2 gas pipeline which is planned to run across Danish territorial sea to the south of Bornholm. The legislative process and a possible application of the new procedure with regard to the motion submitted by Nord Stream 2 AG are lengthening the decision-making process (the motion was submitted on 3rd April this year). The centre-right government of Lars Løkke Rasmussen is hoping that the decision about NS2 will be made by the European Commission and that Denmark will not be forced to block the construction of the gas pipeline alone. Copenhagen wishes to avoid a situation wherein it would need to unequivocally take sides – either that of the proponents of the project (along with its most important economic partner – Germany) or of its opponents (including its key ally in security policy – the US).

- In recent months the subject of NS2 has become more visible in Danish public debate and its dynamics present disadvantages for the project. The energy ministry has been avoiding linking the amendment to the law on the continental shelf with the gas pipeline project and the declaration that the new procedure would be used with regard to the NS2. Nevertheless, should the attempts to solve the issue at the EU level fail, Denmark is not likely to approve the laying of the pipeline in its territorial sea. The Danish government will probably take the objection to NS2 openly expressed by the left-wing opposition, MPs from the coalition parties and the US lobby into account. This would force NS2 AG to delineate the pipeline route in the Danish exclusive economic zone to the north of Bornholm since in this case the Convention on the Law of the Sea does not give a coastal state the possibility to block gas pipeline projects.