



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate F - WTO, Legal Affairs and Trade in Goods
F2: Dispute Settlement and Legal Aspects of Trade Policy

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Ref. Ares(2019)5061282 - 02/08/2019

Brussels, 26 July 2019

TRADE.F.2/[REDACTED] 2019)5245425

[REDACTED]
[REDACTED]
Nord Stream 2 AG,
Baarerstr. 52,
CH-6300 Zug
Switzerland

Subject: Reply to Nord Stream 2 AG's ("NS2AG") letter dated 8 July 2019

Dear [REDACTED]

I refer to your letter of 8 July 2019 following up on the meeting of 25 June 2019, in which you reiterate your request that the EU confirms in writing whether the Nord Stream 2 pipeline is eligible for a derogation pursuant to Article 49a of Directive 692/2019, or alternatively whether a derogation granted by Germany would be consistent with EU law. You claim that if such a derogation was not available or if the EU did not otherwise grant NS2AG treatment equivalent to pipelines eligible for a derogation, this would amount to discriminatory treatment contrary to the EU's obligations under the ECT. In your letter, you also claim that NS2AG has substantial business operations in Switzerland, and that the EU refuses to explain its own legislation thus leaving NS2AG in an uncertain position, contrary to the EU's obligations under the ECT.

First, I would like to thank you for the explanations you provided in your letter of 8 July 2019 and at the meeting of 25 June 2019 on the question whether NS2AG has substantial business operations in Switzerland. It is noted that while NS2AG has made a number of assertions in this respect it has not provided the EU with substantive evidence supporting these assertions. We expect NS2AG to be in a position to provide evidence to substantiate the claims it has made with regard to its business operations in Switzerland.

Second, in reply to your requests for further clarifications, I can only reiterate what was stated at the meeting of 25 June 2019: in accordance with Article 49a of Directive 692/2019 the decision on whether to grant a derogation to the Nord Stream 2 pipeline will be up to the competent Member State authority based on the national legislation implementing Directive 692/2019. The competent Member State authority – which in the case of Nord Stream 2 pipeline would be the German regulatory authority – will need to take a decision in response to an application by NS2AG.

The EU rejects allegations that it has refused to explain its own legislation in a manner that leads to a breach of its obligations under the ECT. Under the Directive, the

Commission has not been attributed the role of deciding on derogations in relation to transmission lines to and from third countries. At the meeting of 25 June, the Commission explained in an objective and factual manner the applicable legislative framework. It is thus not for the Commission to anticipate how the German authorities will decide in the event that NS2AG applies for a derogation, nor it is for the Commission to decide for NS2AG whether it should apply or not for a derogation.

In accordance with its transparency standards, the Commission intends to publish your letter of 8 July 2019 as well as this reply on DG TRADE website and therefore invites you to identify by 31 July 2019 any commercially sensitive information that in your view would require confidential treatment supported by substantiated reasons. Personal data will be redacted in the published documents.

Yours sincerely,

e-signed

