Ms. Catherine Day
Secretary General
European Commission
B-1049 Brussels
Belgium

COMPLAINT
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES
CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW

Re: permits for construction of the Nord Stream gas pipeline in the Baltic Sea

1. Complainants

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2. Field and place of activity

Estonian Green Movement (*MTÜ Eesti Roheline Liikumine* in Estonian) and Estonian Fund for Nature (*SA Eestimaa Looduse Fond* in Estonian) are non-governmental, non-profit organisations. Both are engaged in environmental protection and their activities are pursued in Estonia.

3. Member State or public body alleged by the complainant not to have complied with Community law

Denmark
Finland
Germany
Sweden

4. Community law which the complainant considers to have been infringed by the Member States concerned

The EU has adopted ambitious goals for environmental protection. To this end, several pieces of community legislation, such as the directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), the directive on the conservation of wild birds (79/409/EEC) , the directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC), and exercise of Precautionary Principle (EC Treaty, Article 174).

In order to comply with this legislation and to achieve the Community goals for the protection of the environment, human health and biodiversity, the decisions regarding possible impacts of plans and projects have to be based on actual analysis of the risks. We are hereby addressing this complaint to the European Commission, since according to our assessment the member states in question have not implemented the above listed directives and EC Treaty properly.

Experts from two parties of origin (Sweden and Finland), and four affected parties (Estonia,

Poland, Latvia, Lithuania), have indicated that the environmental impact assessments of the Nord Stream pipeline have underestimated the risks and have presented environmental statements that are not sufficiently supported by the available data. It has been demonstrated in several reports that the most critical parts of the EIA report are inaccurate, incomplete or scientifically illiterate. Therefore substantial damage to the fragile environment of the Baltic Sea and human health in the Baltic Sea countries cannot be excluded.

In any case, the framework of the environmental impact assessments of the Nord Stream gas pipeline, the risks have not been properly estimated and relevant scientific data have not been taken into account, therefore not following precautionary principle. In a most regrettable way the authorities in the Member States responsible for issuing the relevant environmental permits have neglected the fact that important environmental impacts have been underestimated and have not given sufficient attention to the objections put forward by experts both from their own countries and from the affected parties. We believe that the Member States in question have failed to properly implement the Community law (directives 85/337/EEC, 79/409/EEC and 92/43/EEC).

4.1 Infringement of the directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)

Underestimated accident risks related to the pipeline
There is growing evidence that many of the related risks (for example, the risks of shipping accidents on the pipeline route in the Gulf of Finland) are underestimated by a factor of at least 100 [or even 1000]. According to an expert opinion based on the input data from the Nord Stream report, the probability of the accidents that can lead to numerous human casualties can be as high as 30% during the pipeline exploitation. Also, the Nord Stream's analysis of environmental impacts and risks of conventional and chemical munitions is restricted to only a few munitions claimed to have been found during the survey.

Risks related to sediment disturbance as a result of laying the pipeline
With the seabed intervention in a large-scale pipeline project, toxins (persistent organic pollutants and heavy metals) and nutrients (phosphorus) will be remobilized from the seabed and distributed over wide areas.

The Finnish Food Safety Authority EVIRA has warned of the impact of the pipeline to human health. The impacts of the pipeline on human health and well-being are not assessed adequately. Sediments containing very toxic chemicals are remobilized during construction. Thereby dioxins, PCBs and other persistent organic pollutants, as well as organically bound mercury and other chemicals containing heavy metals can enter food chains and end up in human food in significantly amplified concentrations. The environmental impact assessments (EIAs) of the pipeline project have not provided clear answers to the questions regarding the remobilisation of toxic pollutants, stating instead without any proof that there are no risks.

According to previous studies, the greatest (concentration) of the toxic substances in the Gulf of Finland are in the area of impact of the Finnish Kymijoki River and in the eastern part of the Gulf, i.e. the Russian waters. The information presented in the EIA report and in the additional reports on the geochemistry of the area influenced by the Kymijoki is insufficient. With the choice of the sampling sites and the statistical manipulation of the data, by using average concentration of one anomalous sample from the polluted area and about 20 background samples, an impression of low dioxin concentrations is created. Further, these low average values have been used in risk analyses. This is misleading, because for the Kymijoki River point source, from where in the years 1940-1984 high concentrations of dioxins, cadmium and mercury have been found, the gradual change of concentrations from the mouth of the Kymijoki towards the open sea has been described in well-known studies included in the reference list of the EIA and in further environmental reports. This case illustrates the misleading reasoning used in the EIA report and the additional reports.

Data for the eastern part of the Gulf of Finland, where extensive (dredging of sediments has been planned during the pipeline construction, the data are missing. Unfortunately, Russia has not presented its most relevant environmental data for most of the toxic substances on the HELCOM list. Also, the overall geochemical data presentation of the EIAs and the corresponding atlases has suffered from the fact that only the upper 0-6 cm surface layer has been systematically studied. There is however sufficient reason to suspect that higher concentrations of dangerous chlorinated organic compounds may lie in deeper layers containing older sediments, since maximum concentrations of PCBs and DDT were observed more than 30 years ago.

An equally important deficiency of the EIA report is that „the conclusions drawn in the consultation report [about the impacts on the ecosystem that are driven by hydrodynamic processes] are based on indicative information which, unfortunately, does not rest on a solid factual ground" as formulated by the Swedish Meteorological and Hydrological Institute (SMHI). The modelling of hydrodynamic processes - that are the major agents of the redistribution of the water masses and thus of the potentially dangerous substances in the water column - has been performed without validation against measurement data and partially with the use of inappropriate models. The analysis of certain aspects (e.g. the influence of the presence of the pipeline in the Gulf of Finland on the local physical processes) is "completely incorrect" according to the SMHI. Some major agents of hydrodynamic activity in stratified marine areas, such as nonlinear internal waves, are completely overlooked. Thus, a large part of the estimates of the transport of substances based on the analysis and modelling of hydrodynamic processes are entirely irrelevant.

Therefore, the statements of the Nord Stream developers about "no or minimum risks" of the remobilisation of the toxicants are not supported by the evidence - these risks are presented as seemingly low, despite the fact that sediments at a depth of 10-50 cm, where high concentrations of toxicants have been accumulated, and which inevitably will be disturbed in the neighbourhood of the pipeline, have not been studied.

The risks related to the release of phosphorus from the sediments have also not been properly assessed. The Baltic Sea has been severely overloaded with plant nutrients and the pollution reduction efforts have not yet given any clear results. Therefore, significant acceleration of eutrophication and spreading of anoxing conditions as the result of additional release of phosphorus from sediments can be expected. These risks have not been clearly ruled out in the framework of the EIA.

Careful examination of the EIAs by scientists and environmentalists has identified a large amount of insufficiently supported and misleading environmental statements presented by the developer, with the aim of creating an impression of an environmentally safe project. The EU Member States in the role of the countries of origin are expected to undertake the critical examination of the project plans. During the consultations on trans-boundary environmental impact, none of the countries of origin or other affected parties had access to an authorized version of the Russian EIA. Furthermore, the official request by the Estonian Competent Authority to obtain this information for examination by scientific experts was declined by Russia.

As a result, the authorized information of the potential transboundary impacts in the eastern part of the Gulf of Finland was missing during the processes of transboundary environmental impact assessment. According to the latest public domain documents from November, 2009, the dragging dredging of 175000 m^3 of seabed sediments and the dumping of 1,14 million m^3 of gravel is planned in Russian waters and EEZ. The transboundary impact of these works on Finland has occasionally been discussed in the new documents compiled after the international discussions and appended to the Finnish water permit application, without notifying Estonian (or other) authorities.

As a result, the parties of origin, by agreeing to conclude the transboundary consultations in July, 2009, at a stage when their responsibilities on the transboundary impacts to all affected parties remained unclear, created a situation where other affected parties and their NGOs have been discriminated with respect to the availability and access to the information on environmental impacts having immediate effect to the local environment and people´s well-being and health. In other words, the conditions of the Aarhus Convention were not fulfilled because the most relevant aspects of transboundary impacts were not discussed during the public hearings in March, 2009, but were postponed and never introduced to the authorities of the affected parties and to the public in these countries.

Regardless the above-mentioned major shortcomings of the quality of EIA the permits for construction of the pipeline were granted by the governmental agencies of Denmark, Finland, Germany and Sweden, indicating poor implementation of the directive 85/337/EEC.

4.2 Infringement of the directive on the conservation of wild birds (79/409/EEC) and directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC)

In the framework of EIAs the possible impacts on habitats and species in the Natura 2000 areas -

including transboundary effects - have not been sufficiently examined. The effects on the internationally important species, including those listed in Annex IV of the Habitats directive have not been sufficiently assessed. The possible impacts on the ringed seal population in the Gulf of Finland are of special concern. No sound impact assessment, based on best available scientific knowledge of the ringed seal population has been conducted. The possible cumulative effects, including effects of accumulation of the persistent organic pollutants possibly released from the bottom sediments on the seal populations have been ignored. Impacts on resting, moulting, staging and wintering sites of waterfowl have not been properly assessed. Lack of significant effects on Baltic Sea biodiversity has therefore not been proved.

We find that by not properly addressing the above-mentioned problems and yet granting the permits for construction for the Nord Stream gas pipeline the governments of Denmark, Finland, Germany and Sweden are probably not properly applying the directives 79/409/EEC and 92/43/EEC.

5. Conclusions

The current complaint shows that from the environmental perspective the documentation presented by Nord Stream, including the Espoo EIA, national EIAs and additional documentation are far from acceptable in the context of the EU EIA directive and guidance for its application (EIA review check-list and others). On the contrary, the EIA documents and the EIA process have partially been used in an explicitly opposite manner compared to their genuine spirit. Many experts have expressed an impression that some documents have intentionally diminished the actual level of environmental risks in a hope that these activities and documents are not subjected to any serious scientific scrutiny.

The analysis of a scientific expert group shows that many chapters of the EIAs and the supporting documents exhibit serious misuses of data in interpretations. In certain cases, even basic knowledge and methodology of physics, statistics, mathematics, chemistry, biology (specifically, ecotoxicology) is ignored, and the suggestions of low impact or low risks do not rest on solid factual ground. The environment of the Baltic Sea and the life quality and health of the people of the Baltic Sea countries is at stake.

The intervention of the European Commission is required when there are solid grounds to believe that there have been failures in meeting the relevant legal obligations with respect to EC Law, including EU environmental law (Commissioner Stavros Dimas, speech/08/43 of 29.01.2008).

On the grounds of the evidence on the potential failures to follow EC Law, we call for the intervention of the European Commission to ensure that the Member States in question guarantee full implementation of the Community law (directives 85/337/EEC, 79/409/EEC and 92/43/EEC).

6. Approaches already made to national authorities, whether central, regional or local

Estonian Fund for Nature has applied to the Administrative Court of Vaasa, Finland, regarding permit decision No 83/2009/2, Dno LSY-2009-Y-143 on munition clearance within the Finnish EEZ as part of the natural gas pipeline project from Russia to Germany, issued the Western Finland Permitting Authority. In the context of the transboundary impact assessment, EFN has analysed the conclusions based on the Estonian statement and their treatment in the permit decision is not adequate because the arguments on the risks have been misinterpreted. This has lead to approval of the erroneous conclusions of the applicant that diminish serious risks to environment and human health (especially, infant health) more than 100 times.

7. Confidentiality

We authorise the Commission to disclose our identity in its contacts with the authorities of the Member State against which the complaint is made.

8. Place, date and signature of complainant

Tartu, Estonia, January 6th, 2010.

Ms. Jana Adari
Chairman of the Board
Committee
Estonian Green Movement

Mr. Jüri-Ott Salm
Chairman of the Executive
Estonian Fund for Nature

REFERENCES