



# BULLETIN

No. 15 (91) • January 28, 2010 • © PISM

## COMMENTARY

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### Northern Gas Pipeline and the Szczecin and Świnoujście Navigation Fairway

Rafał Tarnogórski

*Germany's decision to lay the Northern Gas Pipeline has again aroused fears in Poland concerning access to Polish ports, but the option of modifying or supplementing the decision once Poland delivers plans for its construction has been retained. In light of the deadline for starting work on the laying of the pipeline, this should be done without delay, and at the same time it should be determined whether there is any foundation for these fears.*

On 22 January the firm Nord Stream announced that construction of the first pipes for the gas pipeline will start on 1 April 2010. Once permission has been given by Denmark, Finland (the supplementary decision still needs to be made), Sweden, Russia, and the Federal Republic of Germany, the investment will enter a new stage—laying of the underwater section.

In connection with Poland's fears about the point of intersection of the pipeline and the shipping routes leading to Szczecin and Świnoujście in German waters, and the potential restriction of traffic in those shipping routes, the decision of the German Federal Maritime and Hydrographic Agency has led to controversy. The German authority took the view that any potential disruption to shipping will only occur in special cases, while the burying of the pipeline, which in time will settle on the seabed by itself, presents some ecological risks. The gas pipeline will be included on maritime maps. There are alternative routes which are used by deep draught ships at the moment. The decision provides for the option of amendment or addition at a later stage (and thus there might still be an order for it to be buried) once additional data regarding extension of the Polish ports has been provided, above all the Świnoujście LNG terminal, adapted to accommodate Q-flex gas tankers of a draught of 12 m.

At the core of Poland's demands for the burying of the pipeline is the fear of restriction of the only sea transport route to the Polish ports, which would also present a threat to plans to build the Świnoujście terminal. Under the international law of the sea, the exercising by a state of its sovereign rights should not disrupt shipping or rights and freedoms of third countries. The route to Szczecin and Świnoujście has been used for international shipping for a long time. The artificial reduction of depth, leading to restriction of traffic, may justifiably raise concerns. Countries located on coastlines, in this case the Federal Republic of Germany, should have regard for all routes traditionally used for international shipping, so as not to restrict freedom of navigation. A deterioration of conditions for use of the existing route could be deemed a restriction of the right of innocent passage guaranteed under international law and treaties between Poland and Germany on maritime shipping and movement of ships through domestic sea waters in the region of the island of Uznam.

The laying of the pipeline cannot not give rise to restriction of the possibility of expansion of Polish ports. Under international law damage must be avoided whenever possible. Poland is fully entitled to make use of the sea in line with the natural environmental conditions. In this respect the depth of the Danish Straits is a natural barrier to the expansion of the Polish ports, limiting access to the Baltic Sea to vessels of a maximum draught of 15 m.

If passage is restricted, under international law Germany will be liable for any damage caused. When giving permission the German authority concluded that installation did not present any threats to the environment or shipping. If damage should be caused, Poland would be entitled to demand compensation and damages from the Federal Republic of Germany before the international tribunals.

In addition to considerable loss, obstruction of the expansion of ports and the LNG terminal could also be damaging for Polish-German relations, due to the citing in political discourse of harmful opinions regarding an anti-Polish German-Russian alliance, and have a detrimental effect on development of the Pomorze Zachodnie region, which would translate into deterioration of good neighbor relations. It would be in the interests of both countries to resolve these concerns as soon as possible.