
Dear [Name] and [Name],

We refer to our letter of 8 July 2019 in which we wrote to seek further clarification of the position that the European Union ("EU") adopted in the amicable settlement meeting held pursuant to Article 26 ECT at the premises of the European Commission in Brussels on 25 June 2019, and to your letter in response of 26 July 2019.

We note that you maintain your position that it is not the EU's responsibility to explain the intended scope of the phrase "completed before 23 May 2019" in the Amending Directive, as well as your consequent refusal to address our request to provide clarification on this point. It is deeply disappointing that the EU continues to refuse to explain its own understanding of how the legislation it recently drafted and passed into law is intended and expected to operate. Quite plainly, the EU is in a position to do so and should, as the author of the measure, and as a matter of fairness and transparency to investors like NSP2AG, be able to commit to an unambiguous statement as to how the concept of "completed before 23 May 2019" will apply. We note in this respect that a number of public EU documents indicate that Nord Stream 2 would not be eligible for a derogation (see, for instance, the statement by Commissioner Cañete in the European Parliament on 3 April 2019 that Nord Stream 2 would be treated as a "new pipeline"). As we noted in our letter of 8 July 2019, the EU's deliberately ambiguous communication on this point with NSP2AG is a further violation of its obligations under the ECT.

We also note in this context the apparent confusion between whether your letter speaks on behalf of the European Commission or the European Union. You deny that the "Commission" has a role in determining the applicability of the derogation.
However, it is the EU to which we address our correspondence, and from which we expect a response, by reference to the EU's international law obligations. Furthermore, you have explained that the European Commission is responsible for handling this matter on behalf of the EU (and your letter of 26 July 2019 confirms this). Your attempt to use the EU's own institutional differences to avoid responsibility for interpretation of the derogation is disingenuous and artificial. It ignores that it is the EU itself which designed the constraints around the derogation criteria and which must comply with its investment obligations under the ECT towards NSP2AG.

You continue to challenge the substantial nature of NSP2AG's business activities in Switzerland. Despite your professed concerns, however, you do not even mention the invitation in our letter of 8 July 2019 for the EU delegation to visit NSP2AG's premises in Zug. Nor does it appear that you have made even the most basic enquiries into the nature of NSP2AG's business. There is ample evidence in the public domain regarding the status of NSP2AG's business activities in Switzerland, and we are of course fully prepared to support this status through further evidence in formal proceedings as may be necessary. We reiterate our invitation to the EU delegation to visit the Zug premises so that this groundless challenge can be put to rest.

In the event that the EU has any further comments to make on the matters raised in our letter of 8 July 2019, we would be pleased to receive them. Otherwise, in view of your response it appears that there is no point in litigating these matters further in correspondence, and that we must conclude that the EU takes the view that Nord Stream 2 is not eligible for a derogation. NSP2AG will consider all options available and necessary to protect its interests, including its right to initiate arbitration proceedings against the EU pursuant to Article 26 of the ECT without further notification to you. NSP2AG notes that the three month period referred to at Article 26(2) of the ECT has now expired.

As confirmed in our email of 31 July 2019 (from [redacted] to [redacted] and [redacted]), and repeated herein for completeness of the published record, there is no commercially sensitive information in our letter of 8 July 2019 or your response of 26 July 2019 which would require confidential treatment or redaction before publication. For the avoidance of doubt, we also confirm that this present letter does not contain any commercially sensitive information which would require confidential treatment. Other than the redaction of personal data, we do not consider that further redactions are required.

Yours faithfully,