

EXPROPRIATION OF LAND RIGHTS FOR IMPLEMENTATION OF INTERNATIONAL INFRASTRUCTURE PROJECTS

- The case of the Baltic Pipe gas transmission system between Norway and Poland

Søren Brandt PEDERSEN, Denmark

Key words: Participatory processes, expropriation, land tenure rights, environmental protection, security of supply, economic development, SDG's

SUMMARY

Land tenure is an important issue on the global agenda and land rights are often at stake in the implementation of major infrastructure projects. There is an oppositional relation between securing tenure rights on the one hand and on the other hand meeting a public need to acquire rights for establishing infrastructure projects to secure the general development of society. This creates a paradox because both issues contribute to achieving the Sustainable Development Goals (SDG's).

This paper describes the experiences implementing an international infrastructure project in Northern and Central-Eastern Europe using a participatory approach to expropriation of land rights while at the same time creating the basis for economic development and security of supply.

EXPROPRIATION OF LAND RIGHTS FOR IMPLEMENTATION OF INTERNATIONAL INFRASTRUCTURE PROJECTS

- The case of the Baltic Pipe gas transmission system between Norway and Poland

Søren Brandt PEDERSEN, Denmark

1 TENURE RIGHTS AND EXPROPRIATION IN DENMARK

The first registrations of real estate in Denmark took place as early as the 13th century and there is a long tradition of registering and securing tenure rights. The current system has continuously been maintained and upgraded over more than two hundred years. The system includes detailed mapping, boundary marking and registration of land and property rights.

Tenure rights are thus well protected in Denmark, and the safeguarding of tenure rights is enshrined in the constitution, from which it appears that "Property rights are inviolable. No person shall be ordered to surrender his property except where required in the public interest. It shall be done only as provided by statute and against full compensation." The inviolability of property rights is thus combined with the possibility of expropriation - but only if the purpose is in the public interest and against full compensation. Implementation of major infrastructure projects are considered such a "public interest".

The democratic rights in Danish society are expressed by the fact that the affected landowners are continuously involved in the expropriation process, where a number of legal provisions ensure that the affected property owners are heard in several phases, and that appropriate (full) compensation is ensured for the encroachment on land rights.

Denmark has thus a long-standing experience, both when it comes to safeguarding and when it comes to violation of tenure rights. These experiences are valuable, for taking a closer look at the management of the paradox that the law on the one hand is safeguarding tenure rights and on the other hand is willing to violate these rights in order to implement publicly relevant infrastructure projects. However, both attitudes are in fact prerequisites for achieving the Sustainable Development Goals (SDG's).

In order to safeguard existing land rights, a proper and participatory process is essential. Such a proper and participatory process should include:

- Assessment of whether the project is of a significant public interest and has a societal value that exceeds the respect of private tenure rights and thus justifies expropriation

- Ensuring that interventions in private properties are limited and hence not more extensive than absolutely necessary
- Ensuring that landowners are involved in an ongoing dialogue and receive full and fair compensation for what is expropriated
- Attempts to make voluntary agreements in some parts of the process instead of expropriation

When land rights on agricultural land are expropriated, it can cause certain problems as the land represents the actual livelihood asset for a farmer. It should thus be ensured that farmers are compensated in such a way that they can continue to sustain a living from their property or, alternatively, receive full financial compensation if their farming operations are prevented or restricted for a period. (Henningsen, Ravn-Christensen and Norre, 2018)

2 THE BALTIC PIPE

Baltic Pipe is a gas pipeline that will provide Denmark and Poland with a direct access to Norway's gas fields.

Implementation of the Baltic Pipe project will bring significant social and economic benefits for Poland, Denmark and other countries of the Baltic Sea and Central and Eastern Europe regions. The project is fully compliant with the European Union energy policy guidelines to ensure safe, affordable and sustainable energy supplies.

The investment will contribute to better integration of gas markets and higher competitiveness of natural gas. (Source: Baltic Pipe Project)



Figure 1: The Baltic Pipe - Strategic important gassupply for the Baltic and Central & Eastern Europe (Source: Energinet)

The project is organized as collaboration between Energinet and the Polish gas transmission system operator GAZ-SYSTEM S.A.

Baltic Pipe will include expansion of the Polish and Danish gas infrastructure and will begin gas transmission services by October 2022.

The new pipeline will expand the gas transmission capacity by up to 10 billion cubic meters of gas per year. In comparison, the total Danish gas consumption for 2016 was 2.5 billion cubic meters.

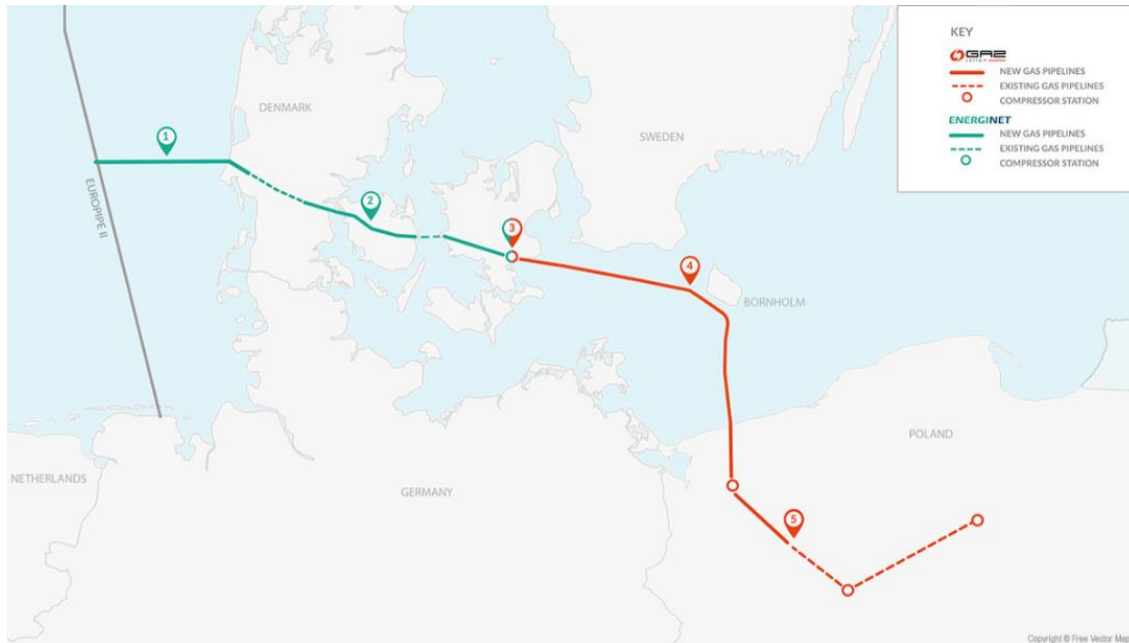


Figure 2: The planned pipeline crossing Denmark from the North Sea to Poland (Source: Energinet)

Baltic Pipe will include the following technical systems and installation:

- A 105-110 kilometres long, new offshore gas pipeline from Norway's pipeline Europipe II in the North Sea to a receiving terminal.
- Expansion of the Danish transmission system with a new gas pipeline, approximately 210 kilometres long.
- A compressor station in Zealand. The compressor station will increase the pressure of the gas in the pipeline in the Baltic Sea.
- A 275 kilometres long offshore gas pipeline in the Baltic Sea between Denmark and Poland. GAZ-SYSTEM is in charge of establishing a gas pipeline across the Baltic Sea between Denmark and Poland.
- Expansions of Poland's transmission system.

Energinet is in charge of establishing the first three components, while GAZ-SYSTEM is responsible for the pipeline in the Baltic Sea and expansions in Poland.

The total cost estimate for Baltic Pipe is EUR 1,6 – 2,2 billion. The costs are split equally between Energinet and GAZ-SYSTEM.

As mentioned, the Baltic Pipe Project can bring significant socioeconomic benefits to Poland, Denmark and the Baltic and Central & Eastern European regions. Hence, it is the case of an

infrastructure project that is underpinned by very strong society interests. This is the argument for the tenure rights giving way for the pipeline to be established across Denmark.



Figure 3: Part of the 210 km onshore pipeline across Denmark being established

The necessary planning for The Baltic Pipe is based on a so-called planning directive.

A "Class-location zone" of 200 meter on each side of the pipeline is defined, and special provisions apply for planning and permission for housing and other constructions.

Rights on approx. 550 properties are expropriated to establish the Baltic Pipe across Denmark.

Rights are secured to carry out the necessary construction work in a working belt of approx. 32 meter and the right for the established gas line to lie undisturbed in the ground is ensured by registration of easements on all the affected properties.

The easement contains restrictions for the landowners in a belt of 10 meter along the gas line, and establishes a safety zone of 20 meter from the pipeline, with restrictive provisions for construction and changes of terrain.

The easement also ensures that Energinet has ongoing access to inspection and maintenance of the pipeline, which is done against full compensation for the damage and inconvenience this entails.

3 ACQUISITION OF LAND RIGHTS THROUGH PARTICIPATORY PROCESSES

ENVIRONMENTAL ASSESSMENT

Before a project as Baltic Pipe is started, the Danish legislation prescribes that an assessment of environmental consequences has to be carried out (EIA- Environmental Impact Assessment). It is to be understood in a very broad context, so the comprehensive assessment analyses all imaginable consequences for plants, animals and people. The work of analysis is completed and gathered in a report with appertaining attachments.

As part of the report, consequences for the affected surroundings and properties are covered. This describes how the surroundings and properties are affected by the construction work, both directly and indirectly, e.g. in the form of noise, dust, vibrations, etc. This also covers consequences for residents in the surroundings along the pipeline route in general. An assessment of the project consequences for the health of residents and quality of life in both the construction phase and the subsequent operational phase is thus carried out.

Citizens and NGO's have continuously been involved during the preparation of the environmental reports for the project.

Prior to the environmental assessment process, the public could provide input to the future environmental assessments. At a later stage in the process, when a draft of an EIA-report had been prepared, as an integrated part of the environmental assessment of the project, the statutory hearings were carried out. During this phase, the authorities have held public meetings along the pipeline route, and assessment of public input has been included in the final preparation of the EIA-report.

The final EIA-report can be appealed and actually a complaint about this project, led to an overturn of the approved EIA-report. The Danish Environmental and Food Appeals Board repealed the permit for the gas pipeline Baltic Pipe on land. According to the appeals board, the permit from the Danish Environmental Protection Agency did not sufficiently describe the measures taken to protect dormice, Nordic birch mice and bats, protected by the European Habitats Directive Annex 4, during the construction of the 210-kilometer-long pipeline across Denmark.

On this basis, a new environmental assessment process was initiated with associated public procedures and hearings, and the planned work establishing the gas pipeline was postponed on the untouched parts of the route, and not initiated before the new environmental assessment was finally in place.

However, it is important to mention that the cancellation of the EIA permit approx. 2 years into the implementation phase, was considered controversial and had significant consequences for such a large international project as the Baltic Pipe.

Despite this, the above is evidence of a thorough process, where the involvement of citizens and NGO's etc. is an integral and important part of the environmental assessment process, and public hearings, inputs and any complaints are carefully assessed and dealt with.

THE EXPROPRIATION PROCESS

The expropriations are carried out by a special commission, the Expropriation Commission, which is independent of both the project authority and the landowners.

In the case of major national infrastructure projects, such as the Baltic Pipe project, the acquisition of rights takes place in accordance with legislation, dividing the expropriation process into two sessions. An initial inspection session, where the planned trace is reviewed and assessed, and a final expropriation session, where the final acquisition of rights is carried out for the individual landowners.

During the inspection session, the preliminary plans for the project are presented and the affected landowners and other stakeholders have the opportunity to attend the meeting and make comments and propose changes to the project.

The Expropriation Commission then carries out an examination of the project, taking into account, among other things, considerations for owners and stakeholders that may cause changes and adaptation of the current project.

At the final expropriation meeting, the Expropriation Commission meets with the individual landowners on their respective properties, and the final acquisitions of tenure rights are being reviewed with the landowners. The landowner has the option of involving a lawyer or another professional expert assisting him with the expropriation matters.

At this meeting, the compensation for the expropriated tenure rights is also determined. In determining compensation, both parties are involved: The Expropriation Commission listens to the views of both the landowners and the authority and attempts to make a settlement through a voluntary compensation agreement. Often, an amount will be provided for any expert assistance, if the landowner has made use of this.

If an agreement cannot be reached, the Expropriation Commission will determine the compensation that is considered to be in accordance with the value of the tenure right being expropriated. After this, it is possible to appeal to a higher and independent authority. This process is free of costs for the landowners. Subsequently, it is possible to appeal to the ordinary judicial system.

However, final commission decisions on compensation are generally reached by agreement between the parties and very few (if any?) give rise to subsequent legal proceedings and decisions, i.e. a very well-functioning, involving and efficient system that provides satisfactory compensation decisions for both the landowners and the public developer.

4 BALTIC PIPE AND THE SDG'S

As stated in the introduction, the establishment of infrastructure is significant for achieving the Global Goals. This applies also to the Baltic Pipe. Hereinafter, it is discussed, which Global Goals to a particular extent will be supported by the project:



Goal 7: Affordable and clean energy

Enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, energy efficiency and advanced and cleaner fossil-fuel technology, and promote investment in energy infrastructure and clean energy technology (Target 7.a).

The Baltic Pipe project may potentially promote more extensive use of natural gas for energy and heat production in Poland, Central and Eastern Europe and the Baltic Sea region, replacing other fossil fuels (e.g., coal). Thanks to it, the project may contribute to decreasing CO₂-emissions. Moreover, the investment may support the use of biogas as a renewable energy source, by enabling its transmission, should there be such a need on the market.



Goal 9: Industry, innovation and infrastructure

According to this development goal, regional and cross-border infrastructure is to be established to support the economic development and human welfare (Target 9.1.).

The Baltic Pipe project is an example of such infrastructure. The project establish cross-border connection between Northern and Central-Eastern Europe creating the basis for economic development and security of supply. Appearance of new gas market participants increase competitiveness and ensure continuity of gas supply.



Goal 11: Sustainable cities and communities.

This goal covers, amongst other things, reduction of the adverse per capita environmental impact of cities, by paying special attention to air quality (target 11.6).

As mentioned at Goal 7, the Baltic Pipe project may potentially promote more extensive use of natural gas for energy and heat production in Poland, Central and Eastern Europe and the Baltic Sea region, replacing other fossil fuels (e.g., coal). Therefore, the project may contribute to decreasing CO₂-emissions and consequently a better air quality.



Goal 14: Life below water.

According to this goal, sea pollution is to be prevented (target 14.1.) and sea environment is to be administrated in a sustainable manner (target 14.2.).

Expropriation of Land Rights for Implementation of International Infrastructure Projects (11572)
Søren Brandt Pedersen (Denmark)

As a part of the preparations for the Baltic Pipe project, extremely comprehensive environmental assessments have been carried out. E.g., route optimisation – bypassing submarine objects and places of special environmental value and constructing the pipeline landfalls without trenching on the beaches and dunes by using special drilling techniques.



Goal 15: Life on land.

According to this goal, a line of considerations to the eco-system on land is to be carried out (target 15.1). Among these, natural habitats must be safeguarded permanently (target 15.5).

As mentioned extensive environmental studies have been carried out during the preparation of the EIA-report. In order to compensate for the deterioration of nature caused by the project on land many measures are taken to ensure that the existing wildlife does not suffer harm and replacement nature is established close to the pipeline trace. The manner to address the environmental issues definitely can be an inspiration, when future similar projects are to be prepared in other places around the globe.



Goal 16: Peace, justice and strong institutions.

According to this goal, inclusive, participatory and representative decision-making processes must be ensured (target 16.7).

During the planning phase, the affected citizens have been involved in a number of sub-processes. For example, in relation to the environmental assessment, but, in particular, in relation to the expropriation of property rights for the project. Such a citizen involvement is completely normal, when infrastructure is to be established in Denmark, and a significant part of inhabitant involvement is rooted in legislation.



Goal 17: Partnerships for the goals

This goal encourages enhancing the Global Partnership for Sustainable Development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the Sustainable Development Goals in all countries, in particular developing countries (target 17.16).

The project is being developed in collaboration between the Danish gas and electricity transmission system operator Energinet and the Polish gas transmission system operator GAZ-SYSTEM. Both companies are committed to maintaining a high level of security of supply and to supporting the development of a diversified and integrated European energy market. Implementation of the Baltic Pipe Project will significantly contribute to achieving these key objectives of the European Union.

5 CONCLUDING REMARKS

Experiences from the applied participatory process show that expropriation of rights on even very large land areas for infrastructure projects can be done in a manner that takes all parties' interests into account.

In the planning phase, the affected citizens have been involved in a number of sub-processes. For example in relation to the environmental assessment and in particular in relation to expropriation of property rights for the project. These processes is to a large degree based on participatory and inclusive dialogue. The processes thus takes both the interest of securing land tenure rights and the need for implementation of this international infrastructure project into account.

In this way, the case of the Baltic Pipe project shows how these issues are not necessarily contradictory but both essential prerequisites for achieving the Global Agenda.

REFERENCES

Baltic Pipe Project

<https://www.baltic-pipe.eu/>

Energinet

<https://en.energinet.dk/Infrastructure-Projects/Projektliste/BalticPipe>

Henningsen, Ravn-Christensen, C. and Norre, K (2018): Expropriation of land rights for implementation of mega infrastructure projects - *The case of the Fehmarn Belt connection between Denmark and Germany*

CONTACTS



Soren Brandt Pedersen

Senior Advisor, Land Management, LE34
Hestehaven 21J, 5260 Odense S
Odense
DENMARK
Tel. +45 5131 4216
Email: sbp@le34.dk
Web site: le34.eu

Expropriation of Land Rights for Implementation of International Infrastructure Projects (11572)
Søren Brandt Pedersen (Denmark)

FIG Congress 2022
Volunteering for the future - Geospatial excellence for a better living
Warsaw, Poland, 11–15 September 2022