

Warsaw, 28 August 2020.

DPT.2822.8.2020 / 2

Mr  
Marek Gróbarczyk  
Minister for Maritime Affairs and Inland  
Navigation

*Dear Minister,*

In response to the letter from the Minister dated 8 July 2020, ref. DGM.WZRMPP.3.4600.1.4.2020.LZ.2 concerning the consultation of the draft spatial development plan for Polish maritime areas, I kindly provide the position of the Ministry of Foreign Affairs with regard to the **legal status of the northern approach fairway to the ports of Szczecin and Świnoujście and anchorage no. 3**. At the same time, I kindly inform that the position in question, according to which the above area is part of the territory of Poland, has been known to the German side for many years.

The delimitation of maritime areas in the Pomeranian Bay is provided for in the *Agreement between the People's Republic of Poland and the German Democratic Republic on the delimitation of maritime areas in the Pomeranian Bay*, signed in Berlin on 22 May 1989. In accordance with the provisions of the abovementioned Agreement, the area of the approach fairway to the ports of Szczecin and Świnoujście as well as the anchorage No 3 is situated in the Polish territorial sea or in the open sea, and thus in no case in waters under German jurisdiction. The application of the above Agreement is confirmed by Article 1 of the *Treaty between the Republic of Poland and the Federal Republic of Germany on the confirmation of their existing border*, done at Warsaw on 14 November 1990.

Despite the above-mentioned agreements remaining in force, in 1994 the German side unilaterally, in the *Proclamation of 25 November 1994 on the Creation of an Exclusive Economic Zone of the Federal Republic of Germany in the North Sea and the Baltic Sea*, extended its *Exclusive Economic Zone (EEZ)* to the sea area in question (despite the fact that the German side undertook therein not to exercise unilaterally towards Poland its rights resulting from the possession of such a zone, the content of the Proclamation is intrinsically unacceptable). In response to an act which is incompatible with the agreements binding the parties, Poland extended its territorial sea to the northern approach fairway to the ports and anchorage No 3 (*Regulation of the Council of Ministers of 22 February 1995 on the fixing of the boundary of the roadstead for the seaports of Świnoujście and Szczecin*), establishing a roadstead in that area. It should be stressed that the establishment of the roadstead (as a territorial sea) by Poland was in compliance with the relevant (Articles 12, 15 and 16) provisions of the *United Nations Convention on the Law of the Sea of 10 December 1982*, to which both States are parties. Consequently, **the area of the northern approach fairway to the ports of Szczecin and Świnoujście and anchorage No 3 constitute, according to international law, the Polish territorial sea**. Under national law, the status of the area in question was finally confirmed in the *Regulation of the Council of Ministers of 13 January 2017 on the detailed course of the baseline, the external border of the territorial sea and the external border of the contiguous zone of the Republic of Poland*.

Consequently, from Poland's perspective, **all unilateral actions of the German side, both legal and factual, in the area in question must be considered as contrary to the legal international**

**obligations of this country.** Such actions are subject to protests (diplomatic notes and other actions). Despite this, the German side sometimes undertakes activities in the area in question (e.g. holding military exercises, stopping ships dredging the approach, attempts to establish its spatial plan in the area in question, establishment of Natura 2000 areas).

In conclusion, in accordance with the position which has been presented for years in bilateral relations, **from the Polish perspective, the German side should observe in particular the provisions of the agreements of 1989 and 1990.** According to them, the area in question does not fall under German jurisdiction, but falls exclusively under Polish jurisdiction, as confirmed by its inclusion (in response to German actions contrary to the agreements binding the parties) in the territorial sea of Poland (through the establishment of a roadstead).

Yours sincerely,

Piotr Wawrzyk

Secretary of State

/signed by qualified electronic signature/