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Secretary to AARHUS Convention

Aarhus Convention Secretariat
Environment Division
United Nations Economic Commission for Europe
Palais des Nations, Av. de la Paix 10
1211 Geneva 10
SWITZERLAND

VILNIUS, on December 30th, 2013

COMMUNICATION
TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE

I. Information on correspondent submitting the communication:

The public (nongovernmental) organization – Association Rudamina Community. Original Lithuanian name- Asociacija Rudaminos bendruomenė, registered under the laws of the Republic of Lithuania under the register number 300109643, address Rudamina, LT-67401 Lazdijai, Lithuania, Tel +370 682 03149, email: rudaminosbendruomene@gmail.com

Association Rudamina Community (hereafter- Rudamina Community) is a non-political public organization of the residents of the Rudamina village, as well as the neighbouring villages Karužai, Skaistučiai, Neravai that are located in Lazdijai municipality, Alytus County, South-western part of Lithuania, close to the boarder to the Republic of Poland. Rudamina Community was established in 2005 with the aims to strengthen the social life and cooperation, to foster the traditions and cultural heritage and to represent the interests of the inhabitants of the aforementioned villages.

Rudamina village is at the very heart of a landscape of outstanding beauty, classified as the highest value according to the study of the Lithuanian landscape variety and types by the Ministry of Environment of Lithuania.¹ The Alytus County spatial (territorial) plan assigns the area to a well-preserved post-glacial geomorphological formation of international importance and it foresees several measures including a landscape reserve to protect it. Rudamina is surrounded by a cluster of Natura 2000 protected areas and by natural biotopes with many species protected under Bern Convention and other international agreements. Rudamina village is also known for another cluster of historical, archeological and architectural heritage sites. It is a part of a Polish-Lithuanian beekeeping region that under European Commission implementing regulation (EU) No 75/2012 of 30 January 2012 is entered in the register of protected designations of origin and protected geographical indications.²

1 Study on the Lithuanian landscape spatial structure diversity and identification of its types, performed in **2005-2006 in compliance with the European Landscape Convention**. Retrieved from <http://www.am.lt/VI/index.php#a/6033>.

2 EU Decision No 75/2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:027:0003:0004:EN:PDF>

2. Representatives and address or registered office of representatives, telephone/fa/email address:

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to represent them in respect of the communication with the AARHUS Convention compliance committee

II. Party concerned:

Republic of Lithuania

The Republic of Lithuania ratified the AARHUS Convention on January 28th, 2002, the Convention entered into force for Lithuania on April 28th, 2002

Alytus Regional Environmental Department of the Ministry of Environment, Kauno Str. 69, LT-62107, Alytus, Lithuania (An authority responsible for proper conducting and controlling /supervising of procedures on EIA)

III. Facts of the communication

Lithuanian authorities have issued decisions permitting planning, construction and operation of a 400 kV, 1000 MW overhead double circuit electrical power line (hereafter- OHL) interconnection between the towns of Alytus (Lithuania) and Elk (Poland) in an environmentally sensitive area in the Lithuanian-Polish borderland. The start of construction in Lithuania is planned for spring 2014 and operation start in 2015. The area chosen by the authorities is designated in the documents of spatial (territorial) planning as so-called ecological framework and it interlinks 4 adjacent Natura 2000 territories that are situated approximately 15 km from each other. Also, according to the valid documents of the spatial (territorial) planning, new landscape reserves were foreseen in the area as well as other measures to protect it, while promoting sustainable agriculture and tourism.

In opinion of the Association Rudamina Community (hereafter- the correspondents), a decision to start construction of the OHL was made in October of 2009 apart from the public, no consultations nor discussion with the public and especially with the community concerned were undertaken (residents of Rudamina town and adjacent villages).

The programme for environmental impact assessment (thereafter EIA) was initiated and launched in April 2010, simultaneously with the strategic environmental assessment (thereafter - SEA). The organizers failed to engage the public participation at the earliest stages of the planning as: not a single person from the public participated at the public meetings organized by the promoters and the hired Consultant (a consortium of two private companies, UAB Sweco Lietuva and Sweco International AB) in Lazdijai municipality on March 30, 2010 and May 18, 2010,

respectively.³ The first discussions with public participation took place only in July, 2010, after announcement in June, 2010 in newspapers about the prepared EIA report. At that time point, the correspondent was faced with the fact that an OHL route was already defined by the Consultant. The community concerned and the public was given only 10 working days to adhere to big amounts of the materials of the report, to verify its quality and reliability, and to prepare motivated comments, observations or proposals.

In November 2010 the EIA Report was submitted to the competent authority for approval and deciding on permission of construction of the overhead power line (hereafter- OHL). The competent authority – Alytus Regional Environmental Department under the Ministry of Environment of the Republic of Lithuania (hereafter the Alytus RED) approved the EIA and permitted intended activity of OHL on 30th of December, 2010, by Decision No. **ARV2-5-1810**. Information about that Decision (a concise text of the Decision) was placed on the website of the Alytus RED (<http://www.ard.am.lt>) on 12th of January, 2011. **First, very brief acknowledgements appeared on the Internet on 31 st of December, 2010.**

The correspondents using the help of independent experts objected the OHL from the very beginning when they became aware that the EIA report was prepared. Independent opinions and facts collected by Rudamina Community indicated that the EIA report was not only of insufficient quality, but it contained information that was incorrect and even misleading. Despite of that, the authorities did not show any will to independently verify the information in the EIA report prepared by the Consultant, a private company hired by the promoter of the project, the Stock Company Lietuvos Energija (later- AB LITGRID, the State owned enterprise). For example, recently, it turned out indeed that the existence of a notable number of species protected under Bern Convention and other international treaties in the area concerned was toned down or even not reported.⁴

Thus, the correspondents were suddenly faced with the fact that the OHL will be constructed in an extremely close neighbourhood: the OHL belt crossing the area or residence of the members of the Rudamina community, changing their life qualities for at least 70 forthcoming years. This is contrary to the valid spatial planning documents of the national, regional and municipality levels, respectively, that foresee landscape protection and restoration in the area concerned.

The Lithuanian authorities decided to construct the OHL not only in the immediate vicinity of Rudamina village, where the correspondents live, but heavy infrastructure with 50-70 m pylons every 350 metres, as well as construction and service access roads will cross already agriculturally developed (15 and more years) private landplots of farmers and lands with residential houses creating a wide belt of special OHL protection zone thus encumbering those landplots with huge land mandatory easements (servitudes) restricting the use of that land and strictly limiting farming activity and types of agricultural activity.

As already mentioned, Lithuanian authorities decided on the technology of the infrastructure construction and further development of the power line interconnection between Poland and Lithuania without public participation. In fact, it was decided by Decree No. 1-190 issued of the Minister of Energy of Lithuania on 12th of October, 2009. The public concerned was not acknowledged about the Decree. The Decree itself did not mention a particular location of OHL

3 Minutes including the participant lists (pages 4 and 5) of the public meeting at Lazdijai municipality (in Lithuanian):
http://www.litpol-link.com/uploads/File/documents/SPAV%20ataskaita/Susirinkimo_protokolas_Lazdijai.pdf

4 Complaint to the Bern Convention No.2013/5.

route (only Alytus, Lithuania and Elk, Poland was mentioned)⁵. Before that Decree, the EBRD report from 2003⁶ advised Lithuania because of environmental aspects considering a DC power line as an alternative to the AC technology. The EBRD report underlined that DC power line construction would be technically simpler and less visually intrusive. The advantages of the AC power line would be not obvious before Lithuania and the other Baltic Countries will join the Western power transmission system UCTE, a highly complex and complicated infrastructural and political challenge for the future. Even if it would be ever implemented, according to the aforementioned report, the DC power line would be economically justifiable as it would warranty reserve power supplies for Poland and Lithuania.

Instead of equal and objective consideration of different available technological alternatives, the EIA report prepared by the Consultant for the national grid operator AB Lietuvos energija contained a very brief and superficial discussion and gave a clear preference to the AC overhead power line technology. To justify the obviously desired choice, they provided irrelevant and misleading comparisons. For example, the EIA report⁷ stated that the costs of the AC underground cable technology are higher as compared to the proposed by the chosen AC OHL technology from 15-25 times (no references given to specific projects) up to 50 times (a reference to an underground cable construction in Berlin). However, the correspondents were able to collect information about realistic economic and technological aspects of partial undergrounding in three extra-high voltage AC power line projects recently implemented in Denmark. Based on the letter received from the Danish national grid operator Energinet, the costs of an AC underground cable would be 3-5 times higher than for an AC OHL⁸. Moreover, the data provided by the cable manufacturer association Europacable⁹, indicates that partial undergrounding may be cost neutral as the total project costs are taken into account. This supports the soundness of the proposals by the correspondents to the project promoter to consider DC full underground cable technology or AC partial undergrounding technology, especially in the most environmentally sensitive OHL sections such as the environs of Žuvintas Lake UNESCO-protected bird reserve and other identified bird migration routes, landscapes of outstanding beauty.

The aforementioned Decree of 2009 vested functions of planning organized to the AB „Lietuvos Energija“ mainly owned by the State of Lithuania. AB „Lietuvos Energija“ did not inform public in general and concerned community in particular about abovementioned Decree, nor about decision to develop simultaneously SEA and EIA programmes and reports, nor about OHL technology vis a vis AC or DC undergrounding technologies, nor about the benefits of establishing an alternative, about 10 km shorter route for the OHL for its maximal grouping with the existing OHLs, railways and planned industrial areas.

The correspondents are convinced that the authors of the EIA report and Lithuanian

5 The Minister of Energy Decided: „<...> 1. To start preparation of special plan on construction of 400 kV power transmission overhead line "Alytus power substation - border of the Republic of Poland" in Alytus county. 2. To allow "Lietuvos energija" AB perform functions of planning organizer in preparing of special plan on construction of 400 kV power transmission overhead line "Alytus power substation - border of the Republic of Poland“

6 Lithuania - Poland High Voltage Transmission Inter- Connector Project, overview report to European Bank for Reconstruction & Development by IPA Energy Consulting, SwedPower, SEK Advisory Services, January 2003.

7 EIA report_Volume L2, page 227: TEXT ANNEX 9. SHORT INVESTIGATION AND COMPARISON OF 400 KV UNDERGROUND CABLES AND OVERHEAD LINE, Stockholm, April 8, 2010.

8 „Experience with undergrounding projects in Denmark“, letter to the correspondent by Energinet, 14 December 2012.

9 „Recent study by Federal Ministry of Environment Germany shows that thanks to 1 year faster project realization, partial undergrounding can be cost neutral to full overhead line“, Europacable presentation, Brussels, 23 April 2012, retrieved from

<http://www.borealisgroup.com/pdf/wire-and-cable/partial-undergrounding-ehv-cables.pdf>

authorities later tried to justify the pre-decided choice of the technology and location of the project in a superficial and controversial way: at some point they gave explanations that consideration of other technological and geographical alternatives are not possible because of the tight deadlines defined by the current financial framework of the European Union. Or that an exact point of crossing of the Lithuanian-Polish boarder by the OHL was agreed by the Polish authorities or by Lithuanian-Polish negotiations and therefore, any objection from Lithuanian side will contravene Polish interests, that the line is necessary for the planed new nuclear reactor at the Visaginas power plant (this plan meanwhile is rejected by Lithuanian authorities), etc. Regarding possible grouping of the OHL with the existing infrastructure corridors, the competent authorities, planning organizer and hired Consultant later speculated (explained without any justified facts) that any grouping of the new OHL with the existing infrastructure corridors would cause security problems and will be complicated to operate, maintain, and manage the power line, especially in emergency situations. However, the correspondents are of opinion that such explanations are totally wrong because grouping of different infrastructures, including OHL is a common practice, especially in Europe.

The preparations for a power line interconnecting Lithuania and Poland and the rest of the EU goes back to year 2006, when the EU decided on integrating the Baltic States with the European Continental Power Network.¹⁰ The Lithuanian Seimas (Parliament) approved the National Energy Strategy and the Government decided on National Energy Strategy Implementation Plan for 2008-2012. Those laws did not specify neither a method of construction of 400 kV line, nor the specific location. The mentioned documents stated that a 400 kV line connecting Lithuanian to Poland shall be constructed in Alytus county by year 2012. The power line technology and particular route was not mentioned. On the other hand, the Territorial Master Plan of Lithuania was approved by the Seimas in 2002 and it foresaw planning of an OHL in a different belt. The original OHL route would not reach the village of Rudamina and it would be shorter by about 10 km than the route chosen by the Consultant. Thus, the correspondents asked the authorities to reject the EIA report as contradicting to the Territorial Master Plan of Lithuania. If the OHL route has to be changed, all the necessary SEA and EIA procedures should be undertaken and new spatial planning performed, including considerations of grouping the OHL with the existing infrastructural corridors (which would again allow identifying the third, alternative route, also 10 km shorter than the one chosen by the Consultant).

For implementation of the Lithuanian-Polish power interconnector project the Lithuanian and Polish authorities established a company registered in the Republic of Poland as LitPol Link Sp. z. o. o., ul. Wojciecha Gorskiego 9, 00-033 Warsaw. It is worth mentioning that the present Minister of Energy of the Republic of Lithuania, Mr. Jaroslav Neverovič, till recently was the president of the company. The correspondents are suspecting a conflict of interests as the current position of the Mr. Neverovič allows defending and protecting contraversary and potentially illegal actions and decisions with the involvement LitPol Link and its mother company AB Lietuvos energija (now registered as AB LITGRID). Moreover, the correspondent has information about other potential conflict of interests of the officials involved in the LitPol Link (OHL) project.¹¹

10 European priority project – Decision No.1364/2006/EC of the European Parliament and of the Council of the 6 September 2006, Part of the future Baltic Energy Market -Baltic Ring; Baltic Energy Market Interconnection Plan ("BEMIP Electricity")

11 For example, Mr. Kęstutis Škiudas, the close political collaborator and advisor of the former Prime Minister of the Republic of Lithuania Mr. Andrius Kubilius, has been engaged in energy matters including the LitPol Link project. He has a close relative Mr. Petras Povilas Škiudas, who as late as in 2008 was the board member and a shareholder of the project promoter AB Lietuvos energija. Notably, the company LitPol Link Sp. z. o. o. was also founded in

The national grid operator AB Lietuvos energija hired the Consultant (a consortium of two companies of Swedish capital) to prepare the EIA report. To the best of our knowledge, till recently the approval of the corresponding EIA report in Poland has not been finished. Despite the EIA procedures in Poland and Lithuania were independently conducted by different organizations, under different regulations and in different time frames, the point of the OHL crossing Lithuanian-Polish border was decided in April of 2010¹² and it is in an immediate vicinity (approx. 200 m) to the Natura 2000 protected site PLH200007. Therefore, the Correspondents are of opinion that competent authorities of Lithuania and Poland violated the UNECE Espoo Convention on EIA in a transboundary context and the SEA protocol to the Espoo Convention, Art 2(3) and (5). It is clear that OHL 400 kV project belongs to the category of projects, which are implemented in at least two Member States or having at least two Parties of Origin and are likely to cause significant effects on the environment or significant adverse transboundary impact. Despite of that, both Lithuania and Poland decided to terminate the procedures for the EIA in a transboundary context (as stated in Paragraph 9 of the Decision issued by the Alytus RED in December 30, 2010). At the same time the European Coordinator of the project Prof. Wladyslaw Mielczarski in his 2009-2010 activity report prepared for the European Commission, dated September 30, 2010 stated that "the Transboundary Environmental Impact Assessment for the project was conducted and successfully completed".¹³ Thus, the Correspondents are of opinion that Lithuania and Poland breached the Espoo Convention and provided misleading information regarding the compliance to this agreement to the public and to one of the potential donors of the project, the European Commission.

Information on the drafted EIA report was announced in the local weekly newspaper "Lazdijų Žvaigždė" ("Lazdiju Zvaigzde") on June 25, 2011, stating that within 10 working days from the day of the announcement the public can adhere to the EIA report materials and present motivated comments, observations and/or proposals. In this respect it has to be noted that only 10 working days were given to study an over 500 pages document with highly specialized and technical information. The announcement also called the public to participate in discussion on EIA report in few meetings in different elderships of the Lazdijai municipality from the 1st of July till 19th of July. Representatives of the correspondents Dr. Ramūnas Valiokas and Rūta Cimakauskienė participated in one of such meetings (July 19, 2010, Lazdijai municipality) where the EIA report was presented by the Consultant. After this meeting, the correspondents presented in written their motivated objections and proposals. For example, they criticized that the EIA report did not include the information on bird species in the OHL section from Rudamina village to the neighbouring Natura 2000 protected site PLH200007. Nor it referred to the aforementioned study of the Lithuanian landscape variety and types by the Ministry of Environment of Lithuania. The EIA report lacked any computer visualizations of the OHL infrastructure in the realistic landscapes and thus the public had difficulties to figure out the scale of the planned changes in their non-urbanized, natural environment. The latter request was never taken into account by the Consultant and the promoters of the project despite it was later even included as mandatory in Paragraph 10 of the Decision issued by the Alytus RED in December 30, 2010.

After these meetings, obviously organized as a formality, the LitPol Link company

2008. Also, Mr. Petras Povilas Škiudas had been functioning as the director of the national power grid at AB Lietuvos energija, while after stepping down from these positions he has been leading an association of manufacturers and suppliers of power instrumentation.

12 http://ec.europa.eu/energy/infrastructure/doc/assessment/20130724_litpol_link.pdf

13

http://ec.europa.eu/energy/infrastructure/tent_e/doc/power_link/2011_power_link_annual_report_2009_2010_en.pdf

published on its website different versions of the EIA report, while neither the Consultant nor the project promoters did not inform the correspondents, which version of the EIA report and what annexes were finally submitted to the competent authority, Alytus RED. Thus, the correspondents were not able to follow properly how their motivated objections and proposals were dealt with. From the materials related to the SEA and EIA procedures published on the LitPol Link company website, it was obvious that the Consultant and the Promoters tried to create a false impression of early and active public participation and they declared all the criticism was taken into consideration. It was obvious that the conclusions about the suitability of the chosen OHL route and technology remained unchanged despite formal acknowledgement of some of the above-mentioned severe methodological drawbacks.

The final version of the EIA report was not presented to the public. It was submitted to Alytus RED for approval and making of decision to consent to the intended construction and operation of OHL. In January of 2011, when information about the Decision of Alytus RED became available on the Alytus RED website, it became clear that none of the comments, observations and proposals were taken into account. The Decision outlined public participation in very brief and superficial way, listing dates of announcement and meetings, but not the essence of all concerns that the correspondents had and presented at that time. The fact that the public was not involved at the early phases of the project planning as required by the Convention was ignored by Alytus RED. Notably, the Decision also stated that Alytus RED was not competent to consider an alternative OHL route (which would be 10 km shorter and could be grouped with the existing infrastructure corridors) identified by Rudamina Community, Lazdijai district municipality and independent experts of territorial planning. According to Alytus RED, the alternative route could not be considered because a part of it exceeds the territories controlled by Alytus RED. However, according to the national legislation, in case of a decision that exceeds the territory controlled by a particular RED, the Environmental Protection Agency (EPA) is empowered to overtake decision making.

The correspondents are convinced that the Consultant did not include in the EIA report information on what will be the specific effects of the OHL infrastructure on the human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage in particular areas under consideration. Instead the EIA report contained general considerations, theoretical approximations and was not based on specific examples referring to analogous projects in similar terrain. The public could not obtain a realistic view on how the main factors of environmental impacts such as electromagnetic field of low intensity and frequency, radio electric interference, noise – acoustic sough, forest cut-down, impact on the landscape, impact on fauna and flora, OHL construction and service activities, as well as agriculture limitations under power lines, restrictions on construction, freedom of movement, business and public activities, safety and transeuropean infrastructure security measures will affect their daily live and economic survival possibilities.

Taking into account that the first announcements about preparation of the programme of EIA and SEA were circulated in April, 2010 on few websites, it is difficult to imagine that the community concerned could be aware of it, especially taking into account that no such economic activity had been planned in the area concerned in the valid documents of spatial planning. Further on, it has to be noted that the announcement of the “public hearing” was placed in local weekly newspaper and the information provided in that announcement was extremely superficial, visually hardly different from any regular announcements. There were no maps or schemes included that would draw attention in particular, there residents of the areas concerned. Therefore it was obvious that it was hard to expect that the local residents, in particular those who would be

immediately affected by the intended OHL, and the public in general could attend the announced EIA and SEA- related meetings. The published EIA report contained over 500 pages with annexes and a lot of technical and other specific terms, which are not understandable to an ordinary person without a special knowledge of such a project. In some announcements information about the technical parameters of the OHL was wrong - 400 kW instead of 400 kV and it was never corrected, a detail revealing the attitude of the Consultant and the promoters toward engagement of the public. The correspondents would like to underline that the announcements had no visualization of the intended infrastructure nor schematic representations of the route, which is common in other countries, including Sweden (note that the Consultant Sweco International AB is registered in Sweden). One can argue that the Lithuanian law does not require such a format of announcements; however, in such a situation superficial information having no indications of the intended route localization, without maps, schemes, computer visualizations etc. cannot be regarded as a proper notification. In particular because the planned 400 kV OHL is the first infrastructural project of that scale not only in correspondent's region but in Lithuania in general.

Evidences:

Excerpt from the Strategic Development Plan of Lithuanian Economy, General Territorial Plan of Lithuania *Annex 1*

Copies of announcement *Annex 2*

The Environmental Impact Assessment (EIA), size of projects, maps of the area, etc) are in <http://www.litpol-link.com/en/environment/-/eia-documents/lithuania.html> *Annex 3*

Decision of the Alytus RED on approving the EIA Report and the OHL project *Annex 4*

The information available in the year 2010 especially that presented the EIA Report, was superficial and did not allow realizing the actual effects and the related risks of the intended OHL project. This can be supported by information that was later obtained by the correspondent from competent sources:

Evidences :

“Experience with undergrounding projects in Denmark“, letter to the correspondent by the Danish national grid operator Energinet, 14 December 2012 *Annex 5*

Ms Laimute Janulienė, the expert of territorial planning, opinion letter regarding rules and good practice of territorial planning and availability of location for the OHL in an already existing infrastructure corridor *Annex 6*

Professor Paulius Kavaliauskas opinion letter explaining negative impact of landscape *Annex 7*

For the correspondent it is also not acceptable that the public participation as provided by the Aarhus Convention was only started or undertaken after EIA programme was approved and that there was no public discussion on best available technologies **at the very beginning, i.e., when all alternatives were open and before the Minister of Energy decided itself on a method.** An official like a minister cannot take to its own discretion such decision which has to be made only after consultations with public. In this respect it is important to notice that the Lithuanian authorities refused any discussion or any procedure to review or even discuss the technical details of the power line as well as of its placing in already existing infrastructure route.

Any discussion of other method, like underground vis a vis overhead or AC vis a vis DC was literally cut off or closed.

The AARHUS Convention and directive 2003/35/EC require that the public is early and efficiently informed and included in the procedure. Early and effective public participation (information and involvement) is crucial. Effective and early participation has to be enforced at the conceptual stage when all options are open. A procedure of public participation that only starts after it is decided on a method/option and location is in no way early and efficient. It is especially not efficient, because it is very unlikely that the OHL will be built with highly expensive costs, but afterwards not operated. This can become evident quite soon as Lithuania still did not decide regarding Visaginas Power Plant construction and the public in referendum of 2012 voted against Visaginas Power Plant.

By projecting the OHL the authorities established facts, which are irreversible and automatically lead also to the preparation for the construction of the OHL without the public having a chance to participate in the procedure as required by Aarhus Convention. The Lithuanian authorities till now have not changed their position and keep assuring that the procedure on deciding on the OHL project does not violate any Conventions nor the EU legislation.

In the meantime the technical project was tendered; a contract with a construction company signed and the construction work will begin as soon as the climate conditions allow so, therefore in spring 2014.

In this respect the correspondents would like to stress that the European Union is co-financing the intended OHL construction, as can be judged by recently including the project in the list of the so-called projects of common interest.¹⁴ There have been several announcements that the project has already received a substantial funding from the European Union funds.¹⁵

The current situation is therefore that the Lithuanian authorities refuse to provide a procedure, which guarantees EARLY AND EFFECTIVE public participation and access to justice for the public before the power line is projected/designed and when all options are open for discussion.

The land plots that the OHL will cross were encumbered by the easements (servitudes) in very unjust manner. The authorities served on owners misleading letters stating that there is no other solution than easements on part of land plots and those, who would agree voluntarily to accept the proposal of conventional easements on land will be better reimbursed than those who will object it, and that in case of objection the easements will be imposed by the administrative order. Many landlords signed conventional easement agreements and received monetary compensation (approximately EUR 1000-2000 per one hectare). Others got administrative orders imposing land easements and also received almost the same monetary compensations. In some cases more than 50 percent of the land plot is encumbered by land easements for needs of OHL. Land owners who objected the easements requested the authorities to overtake their land for public needs as provided by relevant Lithuanian laws, however, however they have not received motivated answers to their applications. In this respect the owners of land affected by administrative easements are asking to defend their interests at the national courts and they are preparing to apply to the European Court of Human Rights due to obvious violation of the Human

14 European Union Projects of Common Interest, Commission delegated regulation C(2013) 6766
http://ec.europa.eu/energy/infrastructure/pci/pci_en.htm

15 „LitPol Link z.o.o., a joint venture company setup to implement the project, received EUR214 million in European Union (EU) funds to finance the project.“ Retrieved from <http://www.globaltransmission.info/archive.php?id=2213>

Rights Convention.

IV Nature of alleged non-compliance

The Republic of Lithuania deposited its instrument of ratification of the Convention on 28 January 2002. The Convention entered into force for Lithuania on 28 April 2002.

The OHL line in question belongs to activities covered by Annex I of the Aarhus Convention. The full range of public participation procedures under article 6 of the Convention applies to decisions whether to permit such activities. Furthermore, the Decree of the Minister of Energy issued in October 2009 is related to the environment, therefore, article 7 of the Convention applies.

The Republic of Lithuania as a party to the Aarhus Convention failed to provide proper and efficient public participation in respect of the intended power line. In case ACCC/C/2006/16 (*Association Kazokiskes Community v. Lithuania*) Lithuania already was recommended to adopt national legislation to amend national laws and guarantee effective public participation. However, despite reports and information that the Republic of Lithuania submitted to the ACCC as its report on implementing the recommendations of the Meeting of State Members in June, 2008, in practice public participation guarantees are still abandoned by Lithuanian authorities.

Art. 6, chapter 4, of the Aarhus Convention provides *that each party shall provide for early public participation, when all options are open and effective public participation can take place.*

In this respect the alleged non-compliance concerns a specific case, the intended construction and operation of the power line in Lazdijai municipality and the violation of the residents of Rudamina village and the adjacent villages to participate in the procedure regarding the determination of a proper route and the technology used to protect environment and the interest of the correspondents in particular and the public and state in general.

Further on, the decision by Alytus RED to approve the EIA Report and to allow the OHL planning, construction and operation activities, as well as decision of the Minister of Energy to construct the Lithuanian-Polish power interconnection as an overhead power line is in the meaning of Art. 6 of the AARHUS Convention, as it permits on behalf of the competent authorities (the responsible authority in Lithuania for environmental protection) the construction of OHL according to the technical project approved.

V. Provisions of the Convention relevant for the communication

Violation of Art. 6 of AARHUS Convention

As mentioned under point IV. the communication concerns Art. 6 and 7 of the Aarhus Convention.

The establishment of the intended OHL is an activity listed in section 8.8 of Annex I of the Convention.

The information made available in January 2009 and the very limited public participation in July 2010, were not sufficient steps for proper implementation of the public participation. The technical details of the power line were not known at all at that time, as well as the proposed exact route, therefore effective public participation was not possible. The details as required by Art. 6

were missing (e.g., description of the significant effect of the proposed activity on environment including an estimate of the earthworks, expected emissions, a realistic and specific description of the measures envisaged to prevent and/or reduce the effects, restrictions on movement, security measures, etc.).

As already mentioned in part III above, the public in general and community concerned in particular was not acknowledged about such Decree. The Decree itself did not mention a particular location of OHL route. Therefore, even assuming that the people of Rudamina area could be aware of that Decree, they would not conclude that the OHL mentioned in that Decree may invade their private territories simply because (1) nothing about particular location was said in that Decree; (2) in the region mentioned in that Decree there already exists a general infrastructure corridor and a special zone for industrial activities; and (3) the valid territorial (spatial) planning documents foresee an OHL route that would not directly affect the environs of Rudamina village.

Especially there was missing clear and objective description of the main alternatives studied by the correspondent, for example, why an OHL infrastructure of this tremendous dimension is necessary and not a system of OHLs with less capacity, or underground cables, or combinations of different technologies, etc.

Art. 6 chapter 4 requires that each party of the Convention shall provide for early public participation, when all options are open and an effective public participation can take place.

After the method of construction of the 400 kV power line is decided, no options are open anymore, because for the economic reasons the OHL will be operated after it is constructed, especially taken into account that the project is included in the PCI list of the European Union and the estimated overall investment is around EUR 370 million.¹⁶

As we understand Article 6, chapter 1a of the AARHUS Convention, this article applies to all decisions on whether to permit an activity falling within the scope of the Convention or not, and irrespective if regarding the same activity/installation a procedure with public participation was carried out already earlier or not. The answer is clearly "yes". Article 6 applies to any decision to permit an activity falling within in the scope of the Convention. In practice, Art. 6 the Convention means that a decision/permission with public participation shall be properly initiated (at the early stage when all alternatives are possible for public discussion) and completed irrespective if another procedure with public participation will be undertaken or not. This is clearly demonstrated by the wording of Art. 6 of the Convention: "with respect to decisions" (the plural). Taking into account that the European Union is a member to the AARHUS Convention, the EIA Directive 85/337/EEC is also violated.

It makes simply no sense to provide for public participation after it is decided on the option.

The main purpose of the Aarhus Convention is to give the public, especially those people who are affected by an activity, the public concerned, the possibility to safeguard their interests in respect of projects with tremendous environmental effect. This shall be assured through an early and effective public participation, when all options are open, in the decision making and the right to appeal decisions to impartial courts.

¹⁶ Estimate by AB LITGRID, retrieved from <http://www.litgrid.eu/index.php/grid-development-/strategic-projects-/strategic-projects-/779>

Informing the public (notification) under article 6, paragraph 2 and 3

1. The Lithuanian legislation does not provide for a clear requirement, that the public shall be informed in a timely, adequate and effective manner. The requirement to set a period of 10 working days for adhering to the documents (materials) still remains in the Lithuanian Law, despite the Decision of State Members of June, 2008 (case No. ACCC/C/2006/16). The requirement for the public to be informed in an “effective manner” means that public authorities should seek and guarantee to provide a means of informing the public which ensures that all those who potentially could be concerned would have a reasonable chance to learn about proposed activities and their possibilities to participate. The chosen way of informing the public about possibilities of acknowledging about the decision and inviting to participate in the EIA procedure only via publishing information in local press issued only on a weekly basis (4500 copies) is not effective. Much more effective would be publishing it in a popular daily newspaper (with circulation at least 10 000 copies) in a clearly understandable visual format, and informing the public concerned and local communities directly at their residential place and/or local TV and radio channels. Placing information on website or issuing information flyers are also in no way effective when such flyers are not distributed to the people concerned by post and/or via the leaders/representatives of the communities concerned. Information on a website cannot serve as effective manner because the local people, especially those elderly ones, still have limited access to internet. Note, that the content of such websites is regularly changing, it can be easily manipulated (as the correspondent learned in this particular case); there are no efficient means to control their visibility and popularity.

Early public participation when all options are open – article 6, paragraph 4

2. Within each and every such procedure where public participation is required it should be provided early in the procedure when all options are open and effective public participation can take place.

Information to be made available under article 6, paragraph 7

3. Whereas the Convention requires in article 6, paragraph 7, that “public participation procedures shall allow the public to submit any comments, information, analyses or opinions”, Lithuanian authorities and legislation still limits the right of the public concerned to submit their comments, because it requires to submit “motivated proposals”, i.e. containing reasoned argumentation. In this respect, Lithuanian law fails to guarantee the full scope of the rights envisaged by the Convention and it still applies widely in practice of EIA procedures despite the Decision of June 2008 (Case No. ACCC/C/2006/16).

Information about the decision – article 6, paragraph 9

4. The Convention does not require the decision itself to be published. This is the reason why the correspondents are of opinion that the number of publications does not substitute the obligation to inform the public about the decision “promptly” and “in accordance with the appropriate procedures”. However, the objective of the Aarhus Convention is not a formalistic one. In this respect, Rudamina Community would like to mention the examples from Sweden and other European countries when all relevant informations, including excerpts of maps with location of planned OHL is published in daily newspapers. Therefore, the Rudamina Community is convinced that information about the decision in question was formalistic and was placed in weekly newspaper during the major Holiday Season (December 31, 2010), when people affected by the decision have no possibilities to consult with experts and other consultants/advisers.

Violation of Art. 9 of AARHUS Convention

According to Art. 9 chapter 2 of the AARHUS Convention each party to the Convention shall ensure that the members of the public concerned having a sufficient interest, have access to a review procedure before a court on substance and procedure regarding decisions subject to Art. 6 of the Aarhus Convention.

As mentioned above, the decision on permitting the OHL, is a decision in the sense of Art. 6 chapter 1 of the AARHUS Convention, this decision permits the activity listed in Annex I, section 8.8. Therefore according to Art. 9 of the Convention the correspondents, who are living in the same location that is now reserved for the OHL route and or in its immediate vicinity represent the public concerned and because of the direct effect of the landfill the correspondents also have a sufficient interest. All members of the Association of Rudamina Community will become neighbours of the OHL, many members of this community live, work and obtain most of their food on the land plots that will be occupied by the OHL and its construction, service/security zone. Suddenly they have to change their living plans, possibly even to leave their homes and the place they belong at, sell their developed agricultural land and all their estate for highly reduced price. Or to accept the drastic change of their living environment that till recently has been one of the most valuable and least industrialized landscapes of Lithuania and for the rest of their lives to take into account the impacts of the OHL on their health and safety.

As mentioned above the AARHUS Convention provides clearly in Art. 6 chapter 4 that each party shall provide for early public participation, when all options are open and effective public participation can take place. It is plausible to conclude that an effective public participation after a decision on the OHL is made will never be effective. If therefore the European Union was transposing the AARHUS Convention into EU legislation in a way that public participation is only necessary to participate in discussion formally afterwards, in such a case the EU legislation is not in compliance with the AARHUS Convention.

VI. Use of domestic remedies or other international procedures

The Rudamina Community appealed against the EIA procedure and a part of the Decision of December 31, 2010 **No. ARV2-5-1810** to the national courts by following the administrative case procedures. The appellant objected a part of the decision related to placing the OHL route named as the subalternative B1 (i.e. the route stretching between the UNESCO protected reserve of Zuvintas Lake and the Lithuanian-Poland border near Galadusys Lake Natura 2000 area). The appeals were rejected by the national courts. The first appeal was submitted in February 2011 and dismissed by the Kaunas District Court on **2012-07-05 (Administrative case No. I-757-422/2012)**. The correspondents appealed that decision, but on the same grounds the appeal was dismissed by the Supreme Administrative Court of the Republic of Lithuania as the final instance in May 2013. In short summary, the courts decided that the choice of the OHL route was legal according to the Lithuanian law, that the public objections against the chosen OHL route and the method of construction (BAT), etc. were baseless, that public participation rights were not violated as the community concerned was properly notified about the EIA report, invited to discuss the EIA report and the discussion of different alternative methods, alternative routes of the 400 kV OHL, and issues of the impact on the environment was sufficient.

Also, the correspondents in their complaint from February 8, 2011 asked the court to apply preliminary measures and to freeze a validity of the Decision in order to stop any further decision

making, like an approval of special technical plan on development of the project. However, the court rejected that request. In correspondents view non-applying of interim measures itself is violation of Art. 9, part 4 of the Aarhus Convention which provides for effective access to justice.

The correspondents have informed the international organizations about the possible breach of the international agreements and the corresponding Directives of the European Council.

European Union. The Correspondent informed by email (November 5, 2012) the Representative of the European Commission in Lithuania about the potential breach of several Directives of the EC by resending the complaint filed to the Supreme Administrative Court of the Republic of Lithuania. This document contained all the facts necessary to verify the compliance of the OHL project to the Aarhus Convention and the Directives. The received answer by the Representative stated that the material will not be examined as it was submitted not according to the form accepted by the European Commission. Additionally, since October 2013 there has been ongoing correspondence by the correspondent and several officers of the European Commission DG Environment and DG Energy, respectively, concerning the information about the environmental aspects of the OHL project provided to the European Commission by the Republic of Lithuania and the involved project promoters. The responsible officers of the EC have been provided by the correspondent with the facts of not involving the public at the early stages of the project, misleading statements in the report by the European Coordinator of the project, and also other facts.

Council of Europe and Bern Convention. The correspondent filed a complaint to the Secretariat of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) on June 17, 2013 (2013/5, Annex 8). The complaint followed by a report (T-PVS/Files (2013) 44, Annex 9) describes the existence of a notable number of species protected under Bern Convention in the area concerned by the OHL project and informs about possible violation of the The Articles 2, 4, 6, and 7 of Bern Convention. The complaint also provides evidences that the Lithuanian institutions and authorities did not take into account the risks related to the poor quality of the performed EIA procedure and that they did not allow carrying out independent verification of the information about the protected species provided in the EIA report. The complaint was discussed at the Convention Bureau meeting in Strasbourg, 17 September 2013. It is decided to consider this complaint as a complaint in stand-by at the first meeting of the Bureau in 2013, and the Secretariat is asked to contact in due time both the national authorities and the correspondent for the requested further clarifications.

VII. Confidentiality

The correspondents **do not** request confidentiality regarding the content of this communication or regarding the identity of the correspondents and their representatives.

VIII. Supporting documents

Annexes 1 to 9 as listed in Parts III to VI above, copied to the attached in a CD.

IX. Summary

Association Rudamina Community, the correspondents, being the public concerned as provided by the Aarhus Convention, objects the decisions of the Republic of Lithuania, the State concerned, that violated the Convention by allowing planning and construction of a 400 kV overhead power line across a cluster of environmental, landscape and cultural heritage sites close to the Lithuanian-Polish border. Therefore the correspondent seeks by this complaint to evaluate the violations and apply instruments provided in the Aarhus Convention.

XI. Signature

..... Ruta Cimakauskiene, the head of Rudaminos Association

....., advocate Ramune Ramanauskiene