

## Communication to the Aarhus Convention Compliance Committee

ACCC/C/2013/98 (Lithuania)

June 5<sup>th</sup>, 2015, Vilnius

### **COMMENTS REGARDING THE LITHUANIAN LEGISLATION FOR INFORMATION AND PUBLIC PARTICIPATION IN THE CONTEXT OF THE AARHUS CONVENTION**

Dear Madam/Sirs,

At the Compliance Committee meeting held in Geneva on the 24<sup>th</sup> of March 2015 the Association Rudamina Community (hereafter- the Communicant) received a question regarding the compliance of the laws and regulations of the Republic of Lithuania with respect to the Article 6, paragraph 7 of the Aarhus Convention. Below the Communicant provides the response to the Committee's question and explains how the period of time provided for the public for adhering to/commenting the documents (materials) and the nature of the proposals by the public have been defined by the Lithuanian Law.

The Communicant in its original Communication dated December 30, 2013 (page 11) stated:

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

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 Party Concerned has responded that the above-mentioned statement by the Communicant is not correct because provisions in the Lithuanian Law regarding 10 working days period has been changed.

#### **The Communicant disagrees with the position of the Party Concerned.**

The right of the public and the public concerned to be informed and participate in environmental impact assessment procedures is provided in a very general manner by the Proposed Economic Activity Environmental Impact Assessment Law (further - the PEAEIA Law) No. I-1495, passed by the Seimas (the Parliament) of the Republic of Lithuania on August 15, 1996. This law provides that the public shall be informed about and can participate in environmental impact assessment procedures following the rules provided by the Ministry of the Environment. The PEAEIA Law provides in section 5 of the Article 3 that the environmental impact assessment procedure consists of selection-program-report-activity permission decision, i.e:

- 1) deciding on selection of way on the assessment of the environmental impact and informing of the public about the decision on selection of the assessment;
- 2) a program on the environmental impact report and informing of the public about the program;

- 3) a report of the environmental impact assessment and informing of the public about the report on EIA;
- 4) decision making on permissibility of the proposed commercial activity and informing of the public about the decision.

More detailed legal issues on time and contents of information to the public and the public concerned, time framework for the public participation and submission of the proposals and comments from the public and the public concerned is regulated by the ministerial legal enactment - the Decree Nr.D1-307 issued by the Minister of the Environment of the Republic of Lithuania on July 15, 2005, which came into validity since August 3, 2005. The title of that Decree is The Description of Procedures on Information of the Public and Public Participation in the Process of the Environmental impact Assessment of the Proposed Economic Activity (further - "the Decree").

This PEAEIA Law since its adoption till the present has been amended nine times:

1. By the Law on Amendments to PEAEIA Law passed on June 26, 1997 No. [VIII-329](#), published in the Official Gazette in 1997, [Nr.65-1553](#), valid since July 9, 1997;
2. By the Law on Amendments to PEAEIA Law passed on October 7, 1997, No. [VIII-436](#), published in the Official Gazette in 1997, [Nr.96-2428](#), valid since October 24, 1997;
3. By the Law on Amendments to PEAEIA Law passed on April 27, 2010, No. [VIII-1636](#), published in the Official Gazette in 2000, [Nr.39-1092](#), valid since June 1, 2000;.
4. By the Law on Amendments to PEAEIA Law passed on June 21, 2005, No. [X-258](#), 2005-06-21, published in the Official Gazette in 2005, [No. 84-3105](#), valid since July 12, 2005;
5. By the Law on Amendments to PEAEIA Law passed on June 30, 2008, No. [X 1654](#), published in the Official Gazette in 2008, No. [81-3167](#), valid since July 17, 2008;
6. By the Law on Amendments to PEAEIA Law passed on April 27, 2010, No. [XI-784](#), published in the Official Gazette in 2010, [No. 54-2647](#), valid since July 1, 2010;
7. By the Law on Amendments to PEAEIA Law passed on June 9, 2011, No. [XI-1433](#), published in the Official Gazette in 2011, [No. 77-3720](#), valid since June 28, 2011 and some provisions since September 29, 2011;
8. By the Law on Amendments to PEAEIA Law passed on May 30, 2013, No. [XII – 353](#), published in the Official Gazette in 2013, [No. 64-3177](#), valid since June 18, 2013;
9. By the Law on Amendments to PEAEIA Law passed on June 27, 2013, No. XII – 418, published in the Official Gazette in 2013, [No .64-3835](#), valid since January 1, 2014.

The Decree since it was issued has been amended 6 times:

1. On December 8, 2008 applicable since December 14, 2008;
2. On December 30, 2009 applicable since January 8, 2010;
3. On July 22, 2010, applicable since July 28, 2010;
4. On May 9, 2011 applicable since May 15, 2011;
5. On August 29, 2011, applicable since September 2, 2011, and

6. On August 30, 2012, applicable since September 1, 2012.

Taking into account that the EIA procedure of the OHL project according to the position of the Party Concerned was started in January of 2010 and finished on December 30 of the same year (2010), there were two PEAEIA Law versions applicable during that time:

(1) the fifth version passed on June 30, 2008, No. [X 1654](#), valid since 2008-07-17 till July 1, 2010;

(2) the sixth version passed on April 27, 2010, No. [XI-784](#), published in the Official Gazette in 2010, No. 54-2647, valid since July 1, 2010 till June 28, 2011/September 1, 2011.

During the year 2010 there were four versions of the Decree applicable to the issues of the public information and participation in the EIA procedures, namely:

(1) the version of December 8, 2008 applicable since December 14, 2008 till January 8, 2010;

(2) the version of December 30, 2009 applicable since January 8, 2010 till July 28, 2010;

(3) the version of July 22, 2010, applicable since July 28, 2010 till May 11, 2011.

The PEAEIA Law provides for a defined period of time of the public involvement (information and participation) only in the first stage of the EIA procedure (section 9 of the Art. 7). The PEAEIA Law does not provide for any other time frame of the public information and participation in other three stages of the EIA procedure (drafting and deciding on the EIA program, discussing and commenting on the EIA Report and making of decision regarding permissibility of the proposed activity).

The PEAEIA Law till June 18, 2013 provided for 10 working days period prescribed for the public at the first stage: the public has the right to submit their motivated comments to the responsible authority (to the regional environmental agency) on decision on selection of the way on the environmental impact assessment (Section 9 of the Article 7).

The PEAEIA Law in section 5 of the Article 6 provided that the public has the right to submit motivated comments and proposals regarding the environmental impact assessment issues.

Only since June 18, 2013 till now this 10 working days period is replaced by 20 working days and a word “motivated” is deleted (Section 9 of the Article 7).

The PEAEIA Law in all other stages of the EIA procedure provides to follow the rules of the Decree (Section 3 of the Article 13).

This first phase was not necessary at the OHL project because this project anyway falls into Annex 1, when the program on EIA is mandatory. Therefore, the Communicant is

of opinion that the 10 or 20 working days time frame for public participation at the first stage of the OHL project is no longer an issue.

Therefore, the insufficient time frame of 10 working days in the Lithuanian Law for the information and public participation still remains an issue.

The Decree in all three versions applicable and in the present applicable version still has the rule that the public and the public concerned shall have the right to adhere to the EIA Program within 10 working days (section 14.6 of the Decree); submit its proposals to the consultants of an EIA report and/or the competent authority within 10 working days after a public meeting on discussion of the EIA report (section 31 and 36.2 of the Decree). The Decree also provides that the consultants of the EIA report shall provide access to the materials of the EIA report at latest 10 days prior to a day of the meeting to discuss the EIA Report (section 21, 21.2 of the Decree).

**The Communicant also upholds its statement that during the procedures of EIA of the OHL project the PEAEIA Law had provisions that required the proposals of the public shall be motivated. Such requirement was applicable till September 29<sup>th</sup> of 2011, i.e, during all the EIA procedures of the OHL project (the PEAEIA Law in its fifth, sixth and seventh versions (Law on Amendments to PEAEIA Law passed on June 30, 2008, No. [X 1654](#), published in the Official Gazette in 2008, No. [81-3167](#), valid since July 17, 2008 till July 1, 2010; Law on Amendments to PEAEIA Law passed on April 27, 2010, No. [XI-784](#), published in the Official Gazette in 2010, No. [54-2647](#), valid since July 1, 2010 till June 28, 2011 and Law on Amendments to PEAEIA Law passed on June 9, 2011, No. [XI-1433](#), published in the Official Gazette in 2011, No. [77-3720](#), valid since June 28, 2011 till September 29, 2011).**

Further on, the Communicant would like to outline briefly the contents of those rules of the PEAEIA Law that contained requirements of the motivated public proposals. Namely, all the above-mentioned versions applicable during the EIA procedures provided the following:

Article 6 section 1 para 1 provides that the responsible authority shall consider motivated proposals submitted in writing by the public;

Article 6 section 5 provides that the public shall submit its motivated proposals and comments following the rules and procedure issued by the Ministry of the Environment;

Article 7 section 9 provides that the public shall in 10 working days submit its motivated proposals to review the selection program;

Article 7 section 11 provides that the responsible authority shall invite the public to discuss the selection program if the public submitted motivated proposals/comments;

Article 8 section 12 provided that in case the reports of institutions participating in the EIA procedure are controversial and the public also submitted its motivated proposals, such reports shall be discussed in a meeting with participation of such institutions and the public;

Article 9 section 3 provides that the consultant of the EIA Report shall amend the EIA report accordingly taking into account the motivated proposals of the public;

Article 10 section 1 provides that if the public have submitted motivated proposals the responsible authority shall make decision on permissibility of the proposed activity or ask to amend the EIA report;

Article 10 section 4 provides that in case of controversial views and motivated proposals the

responsible authority shall invite the public to discussion.

The Decree had provisions requesting motivated proposals of the public till July 28, 2010 in the following sections of the Decree: 6, 10, 11, 12, 16, 18.3, 21, 25, 26.5, 31, 32, 33, 34, 36 and also in the Annexes of the Decree No 1, No. 3 and No.4.

The communicant therefore is of opinion that the Party Concerned failed to implement properly in national law the recommendations of the Decision adopted by the Meeting of State Members in Riga in June of 2008, case No. ACCC/C/2006/16 (Lithuania), although after the Riga Meeting the Government issued a Decree No. 979 dated August 29, 2009 on The Plan For Implementing of the Decisions of the Third State Members Meeting of the Aarhus Convention. That Decree provided for a time schedule to implement a list of legal enactments. The latest legal enactment to ensure effective information and public participation was scheduled as latest on the second quarter of year 2010 (this Decree was submitted to the Committee Secretariat in the beginning of 2010 by the Party Concerned to demonstrate that the Republic of Lithuania follows the recommendations of Decision of the Meeting of State Members in case No. ACCC/C/2006/16 (Lithuania)).

And finally, the Communicant in its Complaint of December 30, 2013 indicated 10 working days in the Lithuanian Laws because such a time frame was in the Lithuanian Law (i.e., the PEAEIA Law Art. 7 and the Decree) during the process of the OHL project EIA procedure (in year of 2010) and still remains in the Decree of the Minister of Environment of the Republic of Lithuania No. D1-307, dated July 15, 2005 as applicable in its latest version dated August 30, 2012, applicable since September 1, 2012.

Sincerely,

Dr. Ramūnas Valiokas, representative of Association Rudamina Community,

Ramunė Ramanauskienė, advocate