

**Communication to the Aarhus Convention Compliance Committee
ACCC/C/2013/98 (Lithuania)**

June 5th, 2015

OBJECTIONS AND COMMENTS OF RUDAMINA COMMUNITY DURING THE
PUBLIC PARTICIPATION PROCEDURE

Dear Sir/Madam,

We are thankful for the letter from the Compliance Committee dated May 18th, 2015 with the indicated questions to the Parties. In this letter, the Association Rudamina Community (hereafter- the Communicant) was asked to provide the most important objections and comments submitted during the EIA procedure, not taken into account in the decision-making process, as well as the official answers to these objections and comments provided during the public participation procedure by (i) the developer; and (ii) the competent public authority.

First of all, we would like to emphasize that the Communicant had no possibility to participate in the EIA procedure itself. The EIA report was prepared, most likely, during the end of 2009 and/or winter-spring 2010, without informing and engaging the public, especially the communities directly affected by the 400 kV overhead power line project (hereafter- OHL). As pointed out in the Communication, members of Rudamina Community became aware of the EIA procedure conducted by the private companies only when the EIA report was about to be published in the end of June 2010. Thus, the Communicant had no possibility to participate at the earliest stages of decision making and project planning, when all alternatives were still open. The Communicant only could participate in the formal public participation procedures before the EIA approval by the competent authority. The most important comments, objections and requests by the Communicant as well as the received responses are summarized below.

1. Comments by the Communicant on the EIA report, July 26th, 2010.

Following the valid EIA procedure, Rudamina Community first wrote a letter to UAB Sweco Lietuva, one of the private consultants (hereafter- the Consultants), which prepared the EIA report and which conducted the EIA public participation procedure for AB Lietuvos Energija (later changed to AB LITGRID) and LitPol Link Sp.z.o.o. (hereafter- the Developers). This letter was also copied to the Ministries of Environment and Energy, respectively, to the Department of Cultural Heritage Protection, and also to the Municipalities of Lazdijai District (Lithuania) and Punszk (Poland).

Summary of the major objections, comments and requests:

- The possible alternative OHL routes should have been identified not only in the territory of Lazdijai District Municipality, but also in the neighboring Kalvarija Municipality. The Consultant should have included in the performed evaluations also the recently adopted (in 2007) Master Plan of the Territory of Kalvarija Municipality, which foresees several broad infrastructural corridors designated for “technical infrastructures”¹. The Consultant should have taken advantage of these corridors for grouping the planned OHL with the existing and/or planned railways, OHLs and other similar infrastructures thus lowering the environmental and social impact on Lazdijai region. Instead of doing so, the Consultant chose two equally unfavorable routes across the natural, landscape and cultural heritage values of Lazdijai District Municipality.
- The EIA report did not analyze the negative impacts on the classified landscapes of outstanding beauty and the numerous historical and cultural values around the village of Rudamina as a whole. These cumulative impacts, in turn, would cause negative socio-economic conditions for the local people who rely on small scale

¹ A proposal that was later supported by the conclusions received by the Communicant from independent experts in landscape management and spatial planning.

agriculture, tourism and other environment-friendly occupations and trans-border cooperation.

- The Consultant obviously had ignored these consequences, as well as it omitted in the EIA report the analysis of the impacts on the protected species in the entire section of the OHL stretching from Rudamina to the Polish-Lithuanian border.
- **The Community expressed the protest against Consultant's attitude to informing the public: the Consultant and the Developer had already executed several stages of the OHL planning without engaging the public as requested by the European Union legislation. The local people became aware of the OHL project only after the EIA report had been published, i.e. without having the opportunity to participate at the earliest stages when all the alternatives were open.**
- The Community proposed the responsible authorities (the Ministries of Energy and Environment, respectively) to take an immediate action and to perform an evaluation of the OHL special planning procedure, making sure that the ultimate decision would cause as little damage as possible on the environment and on the interests of the rural communities at the border region that already had been experiencing difficult economic conditions.

Summary of the response by the Consultant, dated August 5th, 2010:

- The Consultant stated the chosen OHL route described in the EIA report was according to the valid Master Plans. The Consultant admitted that these Master Plans indeed foresee restoration and enrichment of the natural landscape components in the disputed area around Rudamina. Still, the Consultant was of opinion that the valid Master Plans do not forbid economic activities such as construction of residential houses or technical infrastructures in the same area. Also, the Consultant was of opinion that it took into account the designated cultural heritage protection zone (now crossed by the OHL near Rudamina), in a sense that it is not prohibited to plan an OHL in such a zone.
- The Consultant stated that it analyzed the impact on the biodiversity in the entire section of the OHL from Rudamina to the Polish-Lithuanian border; the OHL would not have the impact on the population status of birds and animals. The Consultant referred to the EIA report, book L-2, Annex No.3 (which in reality contained only superficial information about the birds and animals²).
- **The Consultant (misleadingly) stated that the public participated in the presentation of the concept of the special planning procedure in Lazdijai District, but it admitted no public participated in the presentation of the SEA report.** The Consultant also emphasized it had distributed special booklets to the public³.
- The Consultant explained it could not ignore the valid Master Plans⁴, and referred to the right of the Rudamina Community to address the Ministry of Environment and the respective municipalities regarding changes in the Master Plans⁵.

² Later it turned out that the cited document had no or misleadingly little information about the rich biodiversity in the disputed OHL section, including around 20 species protected by the Bern Convention. Based on those findings, the Rudamina Community filed a complaint under the Bern Convention.

³ **The Communicant learned that in reality these booklets were never distributed in the village of Rudamina nor in the surrounding villages; especially in those directly affected by the OHL construction.**

⁴ Note that the Master Plan of Kalvarija Municipality that foresees the infrastructural corridors was also valid, but it was still ignored by the Consultant.

⁵ The Communicant did so and at the public meeting held at The Parliament of the Republic of Lithuania on the 27th of September 2010, the director of the Administration of Kalvarija Municipality Mr. Valdas Aleknavičius presented a proposal to amend the Master plan of that municipality, in case there were any formal restrictions for the alternative OHL route suggested by the Communicant and the Lazdijai District Municipality. However, this proposal was ignored by the responsible authorities.

Summary of the response by the Ministry of Environment⁶, received by the Communicant on September 2nd, 2010:

- The Minister of Environment by the Decree No. D1-407 of 14.07.2009 established a biosphere monitoring area (a part of the Natura 2000 network) that is located in Kalvarija Municipality. Therefore, in opinion of the Ministry of Environment (hereafter MEnv), it might be not applicable to change the OHL crossing point⁷ of the Lithuanian-Polish state border in the context of the protected areas.⁸
- All the identified EIA issues should be addressed to the Consultant⁹. The comments sent by the Communicant to the MEnv would be forwarded to the Alytus RED for examination as it is the competent authority.
- According to the MEnv, the OHL routes identified in the EIA report complied with the valid Master Plans; therefore the MEnv did not see the reason to start an amendment procedure for the valid Master Plans, despite these changes were requested by the public.
- The information campaign conducted by the Developer during the previous stages of the project was sufficient. Although the MEnv took note of the fact that no representatives from the public participated in the presentation of the SEA report held in Lazdijai on the 18th of May 2010, the public had all the opportunities be informed about the OHL project.

Beside these two responses from the Consultant and from the Ministry of Environment, the Communicant received neither a response from the competent authority nor from the other institutions.

2. Letter by the Communicant to the Alytus Regional Environmental Department, November 6th, 2010.

The members of Rudamina Community held a meeting on the 6th of November 2010 and having discussed the worrying developments they decided to address the Alytus RED. The letter was also copied to the Developer, to the Ministries of the Environment (MEnv) and Energy (hereafter MEnergy), respectively, to the Office of The President of The Republic of Lithuania, to the State Agency for Protected Areas and the Department of Cultural Heritage Protection.

⁶ The Alytus Regional Environmental Department (Alytus RED) as the competent authority is under this ministry. The Alytus RED was also copied as the recipient of this letter by the ministry.

⁷ The Communicant is of opinion that the predefined and fixed "crossing point" was indicative of providing no realistic alternatives. **Thus, the public was automatically eliminated from the process of identifying and discussing realistic alternative OHL routes and was simply faced with the choice made by the Consultants and/or the Developers.**

⁸ Note that at that stage the Communicant requested, first of all, **to include in the EIA procedure** the identified new alternative OHL route, extending into Kalvarija Municipality (see also Annex 10). Only after having conducted such a procedure one could judge about its feasibility and the least impact of the OHL. Secondly, the proposed alternative route in Kalvarija Municipality would be aligned along the designated infrastructural corridors, and not occupy the protected areas as claimed by the MEnv. Also, the EU legislation does not forbid economic activities in Natura 2000 areas- such possibilities in specific cases fully depend on the actual impact that has to be evaluated. Importantly, the Communicant is of opinion that the EIA for the Natura 2000 area (No. LTKALB001) in Kalvarija Municipality had to be carried out in either case, following the European Council's Habitats and Birds Directives: even in the case of the OHL route chosen in Lazdijai District, the impact of the OHL on the protected birds and other species in the above-mentioned Natura 2000 area remained realistic, as the OHL stretches along it only a few kilometers away, crossing a migratory corridor of international importance, designated in the valid Master Plans. **Thus, the MEnv subjectively rejected the proposed alternative clearly in favor of the Developer and its Consultant.**

⁹ UAB Sweco Lietuva and Sweco International AB, **the private companies.**

Summary of the major objections, comments and requests:

- The inhabitants of Rudamina and the neighboring villages expressed their protest against the actions by the Consultant and the involved authorities. These actions might be against the valid legislation of the European Union and they caused significant risks of damaging the public interest and the rights of the inhabitants.
- The OHL route preferred by the Consultant overlapped with that identified in the valid Master Plans only within 15 % of its total length. The Communicant did not agree that the OHL was planned according to the valid Master Plans, contrary to the statements of the Consultant.
- The Master Plan of the Territory of Kalvarija Municipality valid as of 2007 had also to serve as the base for identifying the alternative routes, especially as it enabled the shortest possible route for the entire OHL between Alytus (Lithuania) and Elk (Poland) and provided for avoiding the severe damages to the valuable natural areas in Lazdijai District.
- In the EIA report the Consultant ignored the available data about the classified landscapes of outstanding beauty known as Sūduva-Dainava hill area, and ignored the fact that there was foreseen a new reserve for landscape protection. As the recreational potential of the area decreased, this would have direct negative consequences to the local people.
- The Consultant had no enough qualified experts to deal with all the aspects of the environmental impact and it did not analyze several important public studies and planning documents.
- The Communicant protested against ignoring its request previously sent to the MEnv and MEnergy, respectively, to launch an evaluation of the ongoing special planning procedure for the OHL. The Communicant maintained that such an evaluation should be started immediately.
- The Communicant repeatedly pointed out that the project Consultant failed to inform the public in a timely and efficient way, at the earliest stages of the special planning and SEA procedures.
- **Despite the Communicant had clearly expressed its interest in participation in the EIA procedure, the Consultant and Alytus RED did not inform Rudamina Community about a new version the EIA report submitted to the competent authority on October 25th, 2010 and about the term of 10 working days for lodging eventual complaints.¹⁰** This attitude was a clear ignorance of the rights of the citizens and the public interest.
- The Communicant maintained its position that a significant section of the OHL should be placed in the industrial zone in the north-west of Lazdijai District and also along the infrastructural corridors in Kalvarija Municipality, both designated in the valid Master Plans.

The Communicant received no detailed answer to these comments from the competent authority to the above letter, only a formal and short acknowledgement of taking into account (dated December 1st, 2010). Instead, the MEnergy, the major owner of the Developer, sent a response, summarized below.

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Summary of the response by the Ministry of Energy from December 23rd, 2010:

- The chosen OHL route was in agreement with the valid Master Plans.
- In response to the meeting held at the Parliament of the Republic of Lithuania on the 27th of September 2010, the Consultant analyzed the feasibility of the proposal of the Communicant and Lazdijai District Municipality to adjust the route of the OHL

¹⁰ The Communicant found this information on the internet in the end of October 2010. The advertisement on the webpage of the Alytus RED was published in a way that it was difficult to find for an unskilled person.

so that it was partially placed in the territory of Kalvarija Municipality¹¹. The Municipality of Kalvarija informed the Developer it would need to amend the Master Plan of that territory. Therefore, the MEnergy was of opinion such a procedure would have caused a serious risk for Lithuania to accomplish the goal of connecting to the electricity grid of the continental Europe in a synchronous regime¹².

- The Developer and the Consultant had been carrying out all the procedures on a high professional level, and strictly according to the national and European legislation. Moreover, the Consultant undertook additional measures to inform the public, including the performed SEA procedure for the special plan. According to the MEnergy, the latter procedure was not necessary for an economic activity of one type.¹³
- Further on, the MEnergy listed in detail the formal meetings and advertisements, openly praising the job performed by the Consultant. It repeated the (unrealistic) statements of the latter about the “efficient information campaign” by distributing the booklets about the project.

3. Public hearing at the Alytus RED held on December 17th 2010.

Communicant received a letter from the competent authority (Alytus RED) dated December 10th 2010 with an invitation to participate in a public discussion of the OHL project at Alytus RED held on December 17th 2010. Among the other participants of this meeting there were representatives of the consultant UAB Sweco Lietuva and the developer LitPol Link Sp.Z.o.o. The parties maintained their positions concerning the EIA procedure and the special planning process of the OHL. The Communicant emphasized it still had not received any updated versions of the EIA report. The only available copy of the EIA report was the one at the office of Lazdijai Neighborhood, dated July 19th 2010. The Communicant also pointed out the poor quality of the advertisements published by the Consultant and the Developer, including the lack of graphical information and visualization of the planned OHL in the actual areas and provided convincing examples from other countries, e.g. Sweden. The Communicant also raised the issue of the chosen doubtful technological solution¹⁴.

After the above meeting the Communicant received no answers to the presented oral comments and criticism of the EIA report. During the Christmas holiday season (the last days of December 2010) the representatives of the Communicant found a text on the webpage of the Alytus RED that had no official registry numbers or signatures (an electronic copy is saved) but was obviously a decision on approving the EIA report and permitting the OHL in the route preferred by the Consultant and the Developer. This information shortly disappeared from the Alytus RED webpage and was replaced with an advertisement about the undertaken decision that had no detailed explanations and argumentations. A version of

¹¹ **The Communicant was never informed officially about the analysis performed by the Consultant and it was never published.** As the Communicant learned later, this so-called analysis was based on misleading facts and subjective judgements, see also the additional remarks by the Communicant on this topic submitted to the ACCC on February 25, 2015 and Annex 11.

¹² **Note that at that time there was no (and there is no at the present) an elaborated plan for connecting Lithuania to the electricity grid of the continental Europe in a synchronous regime, as this is a political issue involving the Baltic States, Poland, the European Union, and other countries. For this purpose at least one more OHL is needed, and Poland is currently cautious about constructing it for environmental reasons.** For details see the additional remarks by the Communicant submitted to the ACCC on February 25, 2015.

¹³ Contrary to this statement, the SEA procedure was mandatory according to the SEA Directive 2001/42/EC not only to this OHL project but to the whole National Strategy for Energy (which included the electrical transmission line between Poland and Lithuania) adopted by the Parliament of the Republic of Lithuania in 2007 and to the Decree No. 1-190 from October 12, 2009 issued by the Minister of Energy of Lithuania. **No SEA was performed to these essential plans and programs.**

¹⁴ These doubts became even stronger after having received the information from the Danish TSO about the state-of-the-art technological solutions employed in similar infrastructures in that country; see Annex 5 in the original communication.

the advertisement was also published at the regional newspaper Lazdijų žvaigždė, on the 7th of January 2011. However, the Alytus RED never sent to the Communicant neither the decision (Annex 4 in the original communication) nor the minutes of the public meeting from December 17th, until the Communicant requested this material in written on January 23rd 2011. The Alytus RED sent the requested documents on February 1st 2011.

Yours sincerely,

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Ramunė Ramanauskienė, advocate