Administrative case No. I-757-422/2012
Judicial proceedings No. 3-62-3-00115-2011-5
Category of procedural decision: 2.3.1; 2.6; 2.7; 74.
(S)

KAUNAS REGIONAL ADMINISTRATIVE COURT

J U D G E M E N T

ON BEHALF OF THE REPUBLIC OF LITHUANIA

5 July 2012

Kaunas

the Panel of Judges of the Kaunas Regional Administrative Court consisting of Judges Janina Vitunskienė (Chairman and Rapporteur), Daina Kukalienė and Jolanta Medvedevienė,

Secretary Anželika Kuicaitė,

in the presence of the representatives of the Claimant, the association Rudaminos Bendruomenė, namely, Chair R. C., R. V. and Attorney-at-Law Ramunė Dulevičienė, the representative of the Defendant, the Alytus Regional Environmental Protection Department, Dalė Amšiejienė, the representative of the third parties concerned UAB SWECO Lietuva and UAB SWECO International A. V., the representatives of the third party concerned Litgrid AB, namely, R.Č., Attorney-at-Law Nijolė Vaičiūnaitė and Attorney-at-Law Vitoldas Kumpa, the representatives of the third party concerned LitPol Link Sp. Z. o. o., namely, Attorney-at-Law Nijolė Vaičiūnaitė and J. N., the representative of the third party concerned, the Lazdijai District Municipality Administration Kęstutis Jasiulevičius, and the representatives of the third party concerned, the Alytus Territorial Division of the Department of Cultural Heritage under the Ministry of Culture, Alius Baranauskas and Dalia Lungevičienė,

in the absence of the representatives of the following third parties concerned: the Marijampolė Municipality Administration, the Kalvarija Municipality Administration, the Alytus District Municipality Administration, the Alytus Public Health Centre, the Ministry of Energy of the Republic of Lithuania, the State Service for Protected Areas under the Ministry of Environment, the Alytus County Fire and Rescue Board and the Environmental Protection Agency,

having heard at a public hearing the administrative case under the complaint filed by the Claimant, the association Rudaminos Bendruomenė against the Defendant, the Alytus Regional Environmental Department under the Ministry of Environment of the Republic of Lithuania, the third parties concerned, namely, Litgrid AB, UAB Sweco Lietuva, AB Sweco International, LitPol Link Sp. z.o.o., the Alytus District Municipality Administration, the Lazdijai District Municipality Administration, the Marijampolė Municipality Administration, the Kalvarija Municipality Administration, the Alytus Public Health Centre, the State Service for Protected Areas under the Ministry of Environment of the Republic of Lithuania, the Alytus Territorial Division of the Cultural Heritage Department under the Ministry of Culture of the Republic of Lithuania, the Alytus County Fire and Rescue Board, the Environmental Protection Agency and the Ministry of Energy of the Republic of Lithuania regarding the cancellation of part of the decision,

has a s c e r t a i n e d:

the Claimant, the association Rudaminos Bendruomenė, applied to the Kaunas Regional Administrative Court with a request to annul the part of Decision No. ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department regarding the construction and operation of a 400 kV overhead power transmission line between the Žuvintas Biosphere Reserve and the Lithuanian–Polish border beside the lake Galadusys (part of Subalternative B1) *(hereinafter referred to as the "Contested Decision").*

In its application (case file p. 5–6), the Claimant indicated that it disagrees with the part of the Decision which allows designing the construction and operation of a 400 kV overhead power transmission line *(hereinafter – the "EEPOL" or the "Line")* in the B1 section of the subalternative specified in the Decision and on the website of the company LitPol Link (www.litpol.lt), which provides for the construction and operation of the EEPOL between the Žuvintas Biosphere Reserve and the Lithuanian–Polish border beside the lake Galadusys. The Claimant indicated that it is the public concerned, the stakeholder in the EIA process, whose participation in the EIA process is guaranteed by both national and international legislation. The route for the design of the planned EEPOL chosen under Subalternative B1 passes the territory of Rudamina, Karužai, Skaistučiai and Neravai villages where the members of the association Rudaminos Bendruomenė reside and/or have their properties. According to the Claimant, the Defendant unreasonably failed to consider the Line alternative proposed by it. In the given case, the most appropriate method of construction of a power transmission line is a direct-current underground cable by combining it with the existing infrastructures, without uglifying the landscape and other components of the environment. The application of the underground line building technology is more appropriate not only from a technological point of view but first of all in ecological, recreational, cultural heritage-related and all other respects, particularly, in the aspect of landscape protection. By failing to take into account the proposal of the public and permitting by the Decision to build the Line in the picturesque area of the Lazdijai district, the principle of rational infrastructure layout was totally ignored. In the Claimant's opinion, under its proposed alternative the route in the section Alytus-Šeštokai could be totally aligned with the existing 110 kV EEPOL and in the section from the Šeštokai eldership to the electrical substation located in the village of Oleandrai it would further run along the railway line, through the Šeštokai-Mockava industrial area, which is already provided in the Master Plan of the Lazdijai District Municipality, and through the infrastructure corridor to the Republic of Poland planned in the solutions set out in the Master Plan of the Kalvarija Municipality *(hereinafter also referred to as the "MP")* (2007). The proposed route would run through the areas intended for the construction of utility engineering networks and entities and development of engineering communications and the territory of the Lazdijai District Municipality would not be uglified by another construction works of a cumbersome height and width emitting pollutants into the surrounding environment. Besides, this alternative would allow shortening the Lithuanian-Polish power link Alytus-Elk by approx. 8 km, and this means that under the forecasted prices per km it would help Lithuania save at least EUR 3.2 million.

It was indicated that the Aarhus Convention was violated because it as the public concerned was not properly informed about this project in the earliest stage of its development. During the entire EIA process, the public was not properly informed about the Strategic Environmental Assessment, the approval of the EIA programme, the EIA report or the adopted EIA Decision. The Claimant stated that the announcement published in the 16th issue of the newspaper *Lazdijų Žvaigždė* of 16 April 2012 referred to a 400 kW overhead power line rather than to a 400 kV overhead power line; therefore, the public concerned was misled and due to this misleading its rights to be informed about the EIA process at the earliest possible stage were violated.

As the Claimant was not properly informed about the preparation of the project, the decision-making procedure was materially violated; therefore, the decision adopted by the Alytus REPD on 30 December 2010 has to be annulled. According to the Claimant, the Defendant did not make any efforts to coordinate the public information actions so that the public would be given a sufficient period of time to get familiarised with the drafted EIA material and to prepare for its proposals, objections and conclusions. All publicly announced documents were posted on the websites of the Sweco Lietuva, the drafter of the EIA documents, or LitPol Link Sp. z.o.o. The information and documents which were necessary to get familiarised with due to the complexity of the project were of a particularly large scope (over 100 pages) and special technical and engineering knowledge was required to analyse the information contained in these documents; therefore, the 10-day deadline set for getting familiarised with the documents was insufficient.

It was indicated that the EIA procedure was violated as well, i.e. the EIA report had to be coordinated by the land management divisions of the Alytus and Lazdijai District Municipalities as the planned line will run through state-owned and privately-owned land plots, thus, the land plots will be taken for public needs, or administrative servitudes will be established. The Claimant assumes that the conclusion of the National Land Service as the assignee of the rights of the County Governor's Administration was inevitable necessary for such project where privately-owned land will be taken for public needs, the

purpose of use of land plots will be changed, state-owned forests will be cut, buffer zones and administrative servitudes will be established and other land-related issues will be resolved. Besides, the EIA report was not coordinated with the Lazdijai Fire and Rescue Service. The conclusions of the Alytus County Fire and Rescue Board Service were adduced in the case even though the Alytus Fire and Rescue Service was indicated in the EIA programme. Although the Line will run through the district of Lazdijai but the EIA report was approved without the conclusion of the Lazdijai Public Health Centre and without the approval of the Lazdijai District Municipality of the construction of the EEPOL along the route through the territory of the Lazdijai district. The State Services of Protected Areas under the Ministry of Environment approved Subalternative B1 and indicated to comply with the terms set forth in its letter but these terms are not specified in the Decision. The Decision contains information about the positive decision of the Alytus Territorial Division of the Cultural Heritage Department under the Ministry of Culture; however, the Claimants received the letter from the Cultural Heritage Department that this entity of the environmental impact assessment reasonably refused to coordinate the EIA report. The Claimant indicated that, in compliance with the provisions of the Law on Environmental Impact Assessment of the Proposed Economic Activity (LEIAPEA), in case no conclusions have been received from the specified entities of the EIA report assessment during the EIA assessment procedure, the competent authority, i. e. the Defendant, the Alytus REPD, had no right to adopt the decision.

According to the Claimant, in the given case, when carrying out an environmental impact assessment of the proposed economic activity, the provisions of EU Directives 85/337/EEC, 2001/42/EC, 2003/35/EC and the Aarhus Convention. The EIA of the 400 kV EEPOL had to start from the strategic environmental assessment (hereinafter also referred to as the "SEA") procedure. Without having carried out the assessment of the high-voltage transmission plan and the strategic environmental assessment of the project, the environmental impact assessment of the Litpolink project could not have been commenced in the first place; therefore, the Contested Decision is null and void. In addition to the EIA and SEA procedures, the territorial environmental impact assessment had to be carried out. According to the Claimant, the Line will cross the area of the Žuvintas biosphere reserve, which is a Natūra 2000 site; however, the assessment of this area was not carried out.

The Claimant indicated that under European Commission Regulation No. 75/2012 of 30 January 2012 honey of the Lazdijai land (Lazdijų krašto medus) was included into the register of protected designations of origin; therefore, the construction of the Line will violate the provisions of this Regulation and cause big damage to the people of Rudamina.

According to the Claimant, the Defendant did not publish the Decision under the procedure laid down by the law; the Decision being complained about is a normative act and therefore, it had to be published in the Official Gazette *Valstybės Žinios*, and the Claimant received it belatedly.

In the Reply to the Complaint and at the hearing, the Defendant indicated that it disagrees with the Claimant's complaint and requests to reject it as ungrounded. In the Defendant's opinion, the Claimant is not authorised by the law to defend the public interest by filing a complaint against the EIA procedures and the Decision, and the Articles of Association of the Claimant do not allow it to act in the field of environmental protection; besides, the Complaint is in principle the measure chosen by the Claimant to defend the private interests of its members and the Complaint does not specify any violation of the public interest; therefore, it is obvious that the Claimant is not an appropriate entity under Article 5(1) of the Law on Administrative Proceedings (LAP) or under Article 5(3)(3) of the LAP and its complaint should be rejected on these grounds alone.

It will not be forbidden to engage in agricultural activity or to grow crops on the land plots above which there will the overhead power lines or in the EEPOL buffer zone itself; therefore, the members of the association who own the land plots with the main target purpose of use being agriculture will further be able to use the land plots for their target purpose, and they will be paid compensations for the parts of their land plots in respect of which servitudes are established, in the manner prescribed by the law. The EIA report and the Decision do not address the issues related to restrictions on the use of land because those are the matters constituting part of another process, i.e. territorial planning. The Decision addresses the single issue – whether the construction of the Line is feasible in the locations specified in the EIA report due to its environmental impact and having regard to impact reduction measures**.** According to the Defendant, the Decision cannot be partially annulled because the Decision approving the EIA report is integral and undivided. It is not possible to separate the part of the Decision the existence of which

allegedly leads to the violations specified by the Claimant; therefore, in fact, the Claimant requests to annul the Decision to the full extent. The annulment of the entire Decision would not help in any way to protect the allegedly violated rights and lawful interests of the Claimant but it would have tremendous negative consequences for Lithuania, violate the national interests, increase the operating costs of the transmission system operator and simultaneously the final electricity price for all consumers in Lithuania and result in violation of Lithuania's international commitments in the field of energy. In the Defendant's opinion, the Claimant's statements regarding the inappropriately chosen site/area for the construction of the Line and the chosen technology (an overhead high-voltage alternating current line rather than a direct-current underground cable in the EIA report are illegal and ungrounded as during the EIA all the circumstances were established and the impact of the planned Line on all the components of the environment was assessed comprehensively. The Claimant did not specify any new circumstances or the impact that was not assessed. The Line site alternative proposed by the Claimant covers the areas of the Marijampolė District Municipality and the Kalvarija Municipality where the construction of a 400 kV overhead high-voltage transmission line is not provided in the solutions of the Master Plan of the Territory of the Republic of Lithuania or in the Master Plans of the territories of the aforementioned municipalities. Meanwhile, the Subalternative belt B1, which was selected as the most appropriate in the EIA report, just like all the other alternatives considered, fully meets the Master Plans of the Territory of the Republic of Lithuania and of the territories of the Alytus District Municipality and the Lazdijai District Municipality. The location for the construction of the Line is also provided in the National Energy Strategy. Besides, when assessing the territorial alternative proposed by the Claimant which was assessed in the EIA report in terms of an environmental impact, it was determined that the impact of the proposed belt on the natural environment will be the same as that of the belt Subalternative B1. The Defendant stated that, under the territorial alternative proposed by the Claimant, the Line would cross the Lithuanian–Polish border not within the territory of the Lazdijai district but within the territory of the Kalvarija Municipality, and this would be in principle in conflict with the agreement achieved between Lithuania and Poland. It was unacceptable to change the point of crossing the Lithuanian–Polish border by selecting it to be within the Kalvarija Municipality in terms of protected areas as well because there is a protected Natura-2000 site at the border, within the territory of Kalvarija, i.e. Kalvarija biosphere polygon with an area of 2000 ha. When carrying out an EIA, the potential environmental impact of the Line was comprehensively assessed in different aspects, i. e. on ambient air, water bodies and other components of the environment such as soil, the underground, landscape, protected natural areas, flora, fauna, cultural heritage properties, public health, tourism, and other proposed economic activity. Having comprehensively analysed the environmental impact of the proposed economic activity, the adequate impact reduction measures were provided in the EIA report. After the alternatives for the construction of an overhead power transmission line and an underground cable have been compared in different aspects, the significant advantage of the overhead line was determined as it would have a smaller environmental impact because soil can be removed only in individual small areas rather than in the entire construction belt; it is not necessary to fully cut trees along the route, and there are lower restrictions on economic activity, whereas no excavations are allowed above the route of underground cables, it is much easier and cheaper to detect and eliminate failures, it is easier to carry out construction/mounting works, and the construction price is lower from 5 to 10 times. During the entire EIA process the public concerned was properly informed about the EIA procedures. Information about the prepared EIA programme, report and public access to it was published in local newspapers, on the billboards of the respective municipalities and elderships, and on the Internet; the documents were available for public access at the headquarters of Sweco, the drafter of the EIA documents, municipalities and elderships as well as on the internet. There were also information conferences organised, special information booklets were distributed, etc. Besides, R.C., the Chairperson of Rudaminos Bendruomenė and other members of this community were repeatedly informed about the EIA procedures by letters of the Ministry of Environment of the Republic of Lithuania. The Defendant indicated that the Claimant's arguments regarding the violation of the EIA procedures are ungrounded and the Defendant carried out the EIA procedures in strict compliance with the statutory requirements. In the Defendant's opinion, by filing its complaint with the court regarding the same issues which were analysed and answered in great detail in the letters by Sweco, the Ministry of Environment of the Republic of Lithuania, the Ministry of Energy of the Republic of Lithuania and the Alytus REPD and additionally assessed and described in both the EIA report and the Decision, i.e. by raising the same issues which had been already answered to the Claimant and its representatives by state authorities and the drafters of the EIA report, without introducing any new legal and reasonable

arguments and without providing any evidence of its violated rights and thus initiating an unreasonable dispute, the Claimant seeks to stop the implementation of the strategic project of extraordinary significance for the Republic of Lithuania by unfair means and obviously abuses its right; therefore, the interests of the Claimant as the person abusing its right should not be defended.

The third parties concerned, Litgrid AB, UAB Sweco Lietuva, AB Sweco International, LitPolLink Sp. z.o.o. and the Ministry of Energy of the Republic of Lithuania, request the court to reject the Claimant's complaint as ungrounded and in principle approved the arguments regarding the unreasonablessness of the complaint set out by the Defendant.

The representatives of Litgrid AB emphasised that there were no legal grounds to examine the territories of the districts of Marijampolė and Kalvarija or the territorial planning documents applicable in these territories because the power line is planned to be constructed in the districts of Alytus and Lazdijai under the higher-level Master Plans having precedence over them. Master plans are binding on everyone. Accordingly, Order No. 1-190 of 12 October 2009 of the Ministry of Energy provides for the planning of a power line within the County of Alytus as specified in the master plans. The Claimant did not even contest the approved special plan which, based on the Defendant's decision, determined the particular place for the power line and its trajectory. This means that the Claimant agrees with the particular location of the power line because the administrative act came into effect and was published a long time ago.

The representative of Sweco Lietuva emphasised that the EIA report was prepared by a licensed company having the licence to carry out an assessment of the impact factors that affect public health issued by the State Public Health Care Service.

LitPolLink Sp. Z. o. o. stressed the reliability of the overhead line, i. e. indicated that a cable line is not as reliable as an overhead line. If there is a failure in the cable, it is detected within a few months, whereas the overhead line provides this possibility within one day, the possibility to restore the supply of electricity via overhead lines is calculated in hours.

The third parties concerned, namely, the Alytus District Municipality Administration, the Lazdijai District Municipality Administration, the Marijampolė Municipality Administration and the Alytus Territorial Division of the Cultural Heritage Department under the Ministry of Culture of the Republic of Lithuania leave the decision regarding the reasonablessness of the Claimant's complaint for the court to make at its discretion.

In its Response to the Complaint (vol. 3, case file p. 153-155), the Alytus County Fire and Rescue Board set forth only its arguments regarding the Claimant's statement that the EIA procedure was violated, i. e. in the opinion of the third party concerned, the Defendant did not have to obtain the conclusion of the Lazdijai Fire and Rescue Service because on 1 April 2008 the Alytus Fire and Rescue Service was reorganised into the Alytus County Fire and Rescue Board (CFRB) and the Lazdijai Fire and Rescue Service became a structural division of the Alytus CFRB in the same year. Besides, the Alytus CFRB, having received the EIA report, assessed its environmental impact not only in the district of Alytus but in the district of Lazdijai as well; therefore, the Lazdijai Fire and Rescue Service as a structural division of the Alytus CFRB did not produce a separate conclusion.

In its Response to the Complaint (vol. 5, case file p. 32), the Environmental Protection Agency indicated that it has not performed within its competence any actions relating to the EIA procedures in respect of the options of construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border. As the adopted procedural decision in this case will have no impact on its rights and duties, this authority requested the court not to consider it as a third party concerned.

The third parties concerned, namely, the Kalvarija Municipality Administration, the Alytus Public Health Centre and the State Service of Protected Areas under the Ministry of Environment of the Republic of Lithuania, neither submitted any responses to the complaint nor participated in the court hearing, and therefore, the court is not aware of its opinion regarding the reasonablessness of the complaint.

The complaint is not satisfied.

In the given case, the dispute arose over the legality of Decision No. ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department approving the construction of the 400 kV

overhead power transmission line belt from the Žuvintas biosphere reserve to the Lithuanian–Polish border beside the lake of Galadusys (Subalternative B1 part) according to the submitted environmental impact assessment report.

In the Contested Decision, it was stated that the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border are permissible according to the most optimal belt Subalternative B1 provided in the EIA report.

The environmental impact assessment of the proposed economic activity and mutual relations between the participants in this process are regulated by the Law on Environmental Impact Assessment of the Proposed Economic Activity, the Procedure for the Examination of the Documentation on Environmental Impact Assessment of the Proposed Economic Activity by the Ministry of Environment and Its Subordinate Institutions approved by Order No. D1-311 of 23 June 2006 of the Minister of Environment of the Republic of Lithuania *(hereinafter referred to as the "Procedure")*, and the Regulations for the Environmental Impact Assessment Programme and Report approved by Order No. D1-636 of 23 December 2005 of the Minister of Environment *(hereinafter referred to as the "Regulations").*

The object of environmental impact assessment is the proposed economic activity which, by virtue of its nature, size or location, may have a significant effect on the environment (Article 3(1) of the LEIAPEA). Environmental impact assessment is conducted when the proposed economic activity is included in the List of the Proposed Economic Activities Subject to an Environmental Impact Assessment (Article 3(1)(1) and Article 7(1)(1) of the LEIAPEA). The proposed economic activity specified in the Contested Decision falls within the activities defined in paragraph 8.8 of the Annex No. 1 to the Law on Environmental Impact Assessment of the Proposed Economic Activity "List of the Proposed Economic Activities Subject to an Environmental Impact Assessment" (construction of overhead electrical power lines with a voltage of 110 kV or more and a length of 15 km or more); therefore, it was mandatory to conduct an environmental impact assessment of the proposed economic activity. Upon completion of this assessment, the Contested Decision approved the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border under the most optimal belt Subalternative B1 provided in the environmental impact assessment report.

The Claimant, the association Rudaminos Bendruomenė was established on 27 April 2005; its headquarters are situated in the town of Rudamina, Lazdijai District Municipality (vol. I, case file p. 18). In compliance with its Articles of Association, the objective of this association is to coordinate public interests, to gather the persons residing in or otherwise related to the town of Rudamina for resolution of community problems and to defend the interests of the Rudamina community in state institutions (vol. I, case file p. 19).

The right of the public concerned to participate in the process of environmental impact assessment of the proposed economic activity is entrenched in the legislation. Article 2(10) of the LEIAPEA defines the concept of the public concerned: "public concerned shall mean the public affected or likely to be affected by, or having an interest in, the proposed economic activity. For the purposes of this definition, non-governmental organisations participating in the solution of environmental protection problems and meeting the requirements of laws of the Republic of Lithuania shall also be deemed to be the public concerned".

The Claimant inter alia derives its right to defend the public interest from the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter referred to as the "Aarhus Convention"). As it can be seen from its case law, the Supreme Administrative Court of Lithuania upholds the position that in certain cases Article 9(2) of the Aarhus Convention may grant the right to a public organisation to apply to court regarding the defence of the public interest (see, e.g., Ruling of 24 October 2006 of the Supreme Administrative Court of Lithuania in Administrative Case No. A^{10}-1775/2006, Ruling of 9 December 2010 of the Supreme Administrative Court of Lithuania in Administrative Case No. A^{556}-393/2010, etc.). However, it should be emphasised that Article 9(2) of the Aarhus Convention can be directly applied only to decisions, action or omission falling within the scope of Article 6 of the Convention. Article 6 of the Convention should be applied when adopting decisions on whether to permit the proposed activities listed in Annex No. I to the Convention (Article 6(1)(a) of the Convention) and, in accordance with its national law, decisions on the proposed activities not listed in Annex No. I which may have a significant effect on the environment. For this purpose, the Parties determine whether these provisions are applicable to such proposed activities

(Article 6(1)(b) of the Convention). Paragraph 20 of Annex No. I to the Convention provides that "any activity not covered in paragraphs 1-19 above where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation". Thus, the activity which, in compliance with national law, is subject to an environmental impact assessment procedure, in which the public is granted the right to participate, may fall within the scope of Annex No. I to the Convention and respectively of Article 6(1)(a) and Article 9(2) of the Convention.

The planned power line is to be constructed near the town of Rudamina, as confirmed by the map of the planned Line (vol. I, case file p. 38), the Special Plan (p. 231), and the graphic data of the Environmental Impact Assessment Report (EIA Report, book L-2, l. 285). According to available data, the land plots of some community members are included into the territory of the proposed economic activity, as confirmed by the administrative cases in which the administrative acts regarding the establishment of servitudes are contested (e.g., Administrative Cases No. Ik-778-422/2012, Ik-777-414/2012, Ik-773-505/2012, etc.).

Taking into account these data and legal regulation, it should be concluded that the Claimant is interested in the proposed economic activity of the object of this dispute and therefore, it has the right to apply to court to defend the community's interests.

The complaint filed by the Claimant is based on the violations of the public's information and participation in the EIA procedure, disagreement with the technological solution for the power interconnection relating to the method of construction of the transmission line (construction of an overhead power line) and the location (territory) chosen for the construction of this line. Furthermore, the unlawfulness of the decision is associated with the violated environmental impact assessment procedures and the requirements for the announcement of the relevant decision.

On 12 October 2009, by Order No. 1-190 regarding the drafting of the Special Plan for the construction of the 400 kV overhead power transmission line "Alytus transformer substation – Lithuanian–Polish border" the Minister of Energy adopted the decision to commence the drafting of the Special Plan for the construction of the Lithuanian–Polish power interconnection and to permit AB Lietuvos Energija (its assignee – AB Litgrid) to perform the functions of the planning organiser. This institution is the developer of the proposed economic activity as well.

UAB Sweco Lietuva became the drafter of the documentation on the environmental impact assessment of the proposed economic activity on the basis of the agreement signed with AB Lietuvos Energija on 22 October 2009. In December 2009, the aforementioned company drafted the Programme for the Environmental Impact Assessment of the Construction and Operation of the 400 kV overhead power transmission line between the Alytus transformer station and the Lithuanian–Polish border (hereinafter also referred to as the "EIA Programme"), which was approved under Letter No. ARV2-5-439 of 17 March 2010 by the Alytus Regional Environmental Protection Department under the Ministry of Environment of the Republic of Lithuania, the institution responsible for the environmental impact assessment (EIA Programme, p. 171).

In June 2010, UAB Sweco Lietuva drafted the Report on the Environmental Impact Assessment for the object of the dispute (Book L-1, text of the Report, Book L-2, Annexes to the Report).

On the violation of the requirements for public announcement of the Decision

In its complaint, the Claimant indicated that the Defendant failed to announce the Decision under the procedure established by law because the Decision being complained about is a normative act and therefore, it had to be published in the Official Gazette *Valstybės Žinios*. These arguments were negated by the ruling passed by the Kaunas Regional Administrative Court on 14 September 2011 (vol. IV, case file p. 13-19). Under the Ruling of 2 March 2012, the Supreme Court of Lithuania recognised that the Decision was published on the Defendant's website and in the local and national press on 3 January 2011, under the procedure established by law, in principle in compliance with the procedures for public announcement but it only pointed out that the Decision was revised on the Defendant's website on 12 January 2011-01-12 (vol. IV, case file p. 79-83).

Based on this fact and other circumstances indicated in the ruling, the Supreme Administrative Court renewed by its ruling the time limit for the Claimant to challenge the aforesaid decision; therefore, it should be stated that the immaterial procedural violations did not prevent the Claimant from applying to

the court and the Claimant's arguments related to the inappropriate announcement of the Decision do not constitute the grounds for stating its unlawfulness.

On the violation of the rights of the public and the public concerned

In the Claimant's opinion, the public concerned was not properly informed about the SEA, the approval of the EIA Programme, the EIA Report and the adopted Decision. By rejecting these arguments made by the Claimant, the court states that the data adduced in the case confirm that since the very start of the EIA process the EIA drafter has taken various measures to ensure that the public would be notified of the planned EEPOL at the earliest stage of the EIA process and could get familiarise with all the documents being drafted, to actively participate in the EIA process and submit motivated proposals.

The Aaarhus Convention and the LEIAPEA provide for the right and obligation of the public to participate in the EIA process and obtain information about the potential environmental impact of the proposed economic activity in order to ensure that quality decisions on environmental matters are adopted and their implementation is improved (Preamble of the Aarhus Convention, Article 2(10), Article 5(1)(5), Article 6(5), Article 7(9), Article 8(12), Article 9(3), Article 10(1) and (4) and Article 13 of the LEIAPEA). The procedure for the provision of information to the public about the process of environmental impact assessment of the proposed economic activity and the procedures for its participation in the process of environmental impact assessment of the proposed economic activity are established in the provisions of the Specification of the Procedure for the Provision of Information to the Public and Its Participation in the Process of Environmental Impact Assessment of the Proposed Economic Activity approved by Order No. D1-370 of the Minister of Environment of 15 July 2005.

The purpose of the procedures for the provision of information to the public is to create appropriate conditions for the public to get familiarised with the information about the proposed economic activity and participate in determining the potential environmental impact of such activity and reducing it to the greatest extent possible.

Paragraph 8 of the Specification of the Procedure for the Provision of Information to the Public and Its Participation in the Process of Environmental Impact Assessment of the Proposed Economic Activity approved by Order No. D1-370 of the Minister of Environment of 15 July 2005 provides that the developer or the drafter of the EIA documentation and the competent authority must notify the public of the screening conclusion whether it is mandatory to assess the environmental impact of the proposed economic activity which is included in the list of activities subject to the EIA, in respect of which screening has to be made due to environmental impact assessment, or in case the participants in the process of environmental impact assessment of the proposed economic activity request and the competent authority decides that the screening for the purpose of environmental impact assessment should be carried out in respect of the proposed economic activity which is not included into the list of activities subject to an environmental impact assessment and the list indicated in this paragraph, the public must be notified of the drafted EIA programme for the proposed economic activity and in other cases set out in this Specification. Paragraph 18 of the Procedure provides that the developer or the drafter of EIA documentation must publish the information specified in paragraphs 9, 12 and 14 in the press of the city(-ies) or district(s) where the proposed economic activity is to be carried out and, where possible, on the radio and television, on the developer's website as well as on the billboard of the municipality (eldership), in the territory of which the proposed economic activity is to be carried out, together with the information tag of the municipality (eldership) of the fact and date of the receipt and to notify the representatives of the public concerned who submitted proposals in writing (by registered mail).

The information about the prepared EIA Programme was published in the following newspapers: *Respublika* on 23 January 2010, *Lazdijų Žvaigždė* on 22 January 2010, *Miesto Laikraštis* on 22 January 2010; on the billboards of the Alytus and Lazdijai District Municipalities, Alytus, Miroslavas, Kriokialaukis, Simnas and Lazdijai, the elderships of Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis on 22 January 2010, on the website of the project coordinator LitPol Link Sp. z o.o.: http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/ as well as on the website of the competent authority the Alytus Regional Environmental Protection Department. The drafted EIA programme was available for public access in the headquarters of the drafter of the EIA documentation UAB Sweco Lietuva, at the Alytus District Municipality, the Alytus, Simnas, Miroslavas and Kriokialaukis elderships; at the Lazdijai District Municipality, at the Lazdijai Town, Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis elderships; on the website of the project coordinator LitPol Link Sp. z o.o.: http://www.litpol-

link.com/lt/aplinkosauga/pav-dokumentai/lietuva/ (EIA Programme, Part IV – EIA Programme coordination documents).

Information about the completed environmental impact assessment of the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border, the drafted report and the planned public hearing was published in the Lazdijai district newspaper *Lazdijų žvaigždė* on 25 June 2010 No. 26 (704) (the report on the environmental impact assessment of the construction and operation of the 440 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border (*hereinafter also referred to as "Report Book L1 and/or L2)*p. 354), in the newspaper *Lietuvos žinios* on 26 June 2010, No. 143 (12672) (Report Book L1, p. 355), in the newspaper of the Alytus district *Alytaus naujienos* on 26 June 2010, No. 117 (11709) (Report Book L1, p. 356), in the newspaper of the Krosna town *Saugok šeimą* of June 2010, No. 1 (Report Book L1, p. 357), on the billboards of the Alytus and Lazdijai District Municipalities as well as on the billboards of the Alytus, Miroslavas, Kriokialaukis and Simnas elderships of the Alytus District Municipality and the billboards of the Lazdijai Town, Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis of the Lazdijai District Municipality (Report Book L1, p. 350-353). The drafted EIA Report was available for public access in the headquarters of UAB Sweco Lietuva, the drafter of the EIA documentation, as well as at the Alytus District Municipality (at the Alytus District Municipality and the Alytus, Simnas, Miroslavas and Kriokialaukis elderships) and at the Lazdijai District Municipality (at the Lazdijai District Municipality, in the elderships of the Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis) and on the website of the project coordinator LitPol Link Sp. Z.o.o. http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/. The drafter of the EIA documents had not received any reasoned proposals regarding the drafted EIA report until the public hearing on the EIA report. During the period from 29 June 2010 until 14 July 2010 the drafter of the EIA documentation provided replies to the proposals of the representatives of the public received before the public hearing (Report Book L1, p. 345-348).

The public presentation of the EIA Report was held: in the Miroslavas and Kriokialaukis elderships of the Alytus District Municipality on 13 July 2010 (Report Book L1, p. 389-399), in the Simnas eldership on 14 July 2010 (Report Book L1, p. 406-416); in the public library of the Alytus District Municipality and in the Alytus eldership on 16 July 2010 (Report Book L1, p. 428-438); in the Krosna eldership of the Lazdijai District Municipality on 14 July 2010 (Report Book L1, p. 400-405), in the Šeštokai eldership on 15 July 2010 (Report Book L1, p. 422-427), in the Būdvietis eldership on 15 July 2010 (Report Book L1, p. 417-421), in the Teizai eldership on 19 July 2010 (Report Book L1, p. 439-449), at the Lazdijai District Municipality on 19 July 2010, in the Lazdijai town eldership and in the Lazdijai eldership. The EIA drafter prepared a special information booklet (1,000 copies) which provides information about the proposed economic activity, its potential impacts, the course of the project and the opportunities for the public to get familiarised with the EIA documentation and to participate in the EIA process distributed among the public in the respective elderships and municipalities. On 27 July 2010, the results of the EIA of the proposed power line were presented to the Lazdijai District Municipality Administration in the presence of the organiser of the proposed activity, the project coordinator, the drafter of the EIA documents and media representatives.

The project organisers held two information conferences on the project: one in Jaczne, Poland, on 15 May 2009 and the other one in Alytus on 23 October 2009 in order to create conditions at the early planning stage for representatives of the local government, the public and non-governmental organisations to get familiarised with the project, to provide comments and to participate in discussions. The conference held in Lithuania was attended by the representatives of the Alytus REPD, the Alytus and Lazdijai District Municipalities and eldership, the Alytus County Governor's Administration, the Meteliai Regional Park, the Lithuanian Ornithological Society, the media and other organisations.

Information about the proposed activity was provided on the website of the daily *Lietuvos rytas* (www.lrytas.lt) and on the website of Delfi (www.delfi.lt) on 29 June 2010, on the website of Cika on 23 July 2007 (www.cika.lt), on the website of the Lazdijai district newspaper *Dzūkų žinios* on 7 July 2010 (www.dzukuzinios.lt) and on the website of the Lithuanian news agency Elta on 7 September 2010 (www.elta.lt).

On 25 October 2010, the Alytus REPD announced the receipt of the EIA report on its website at http://ard.am.lt/VI/index.php#a/515.

During the EIA process, the Alytus REPD received proposals from the public concerned. In compliance with Article 10(4) of the Law on Environmental Impact Assessment of the Proposed Economic Activity, by its Letter No. ARV2-51732 of 10 December 2010 the Alytus REPD invited the representatives of the public who submitted proposals, the entities of environmental impact assessment, the drafter of the environmental impact assessment documentation and the developer of the proposed economic activity to arrive in the Alytus REPD on 17 December 2010 to discuss the proposals of the public concerned (Minutes of the Meeting held on 17 December 2010, No. ARV4-18).

The Panel of Judges does not have any grounds to agree that the public was informed about the EIA in violation of the applicable legislation.

The court notes that the Aarhus Convention confers the right to the public concerned under the established procedure to obtain information on environmental matters, in the given case, on the assessment procedures of the proposed economic activity and its permissibility. The public has the right to participate in the decision-making process by submitting proposals, voicing its opinions and presenting claims; however, the public opinion is not binding on the competent authority, which is entrusted under the procedure laid down in the legislation with the power to decide on the permissibility/non-permissibility of the proposed economic activity in the chosen location.

The Claimant's arguments regarding the misleading information provided in the announcement published in *Lazdijų žvaigždės* on 16 April 2012, No. 16, should be rejected. The aforementioned announcement, which referred to the construction of a 400 kW overhead line rather than a 400 kV overhead line, mentioned the Report on the Strategic Environmental Assessment of the Special Plant (hereinafter also referred to as the "SEA") (vol. IV, case file p. 182). The court notes that the subject matter of this case is the Decision regarding the permissibility of the proposed economic activity according to the submitted Report on the Environmental Impact Assessment; therefore, the issue of legality of the Special Plan and the SEIA procedures is not addressed in this case.

The legislation regulating the participation of the public in the EIA process do not provide that graphic PEA data should be published in the press as well; therefore, the Claimant's arguments regarding the Line alternative maps (extracts thereof) which were not published in the press are groundless. In the opinion of the court, the analysis of the factual data of the environmental impact assessments allows concluding that the information on the EIA documentation was published properly, and the published information clearly provided for the right of the public to get acquainted with the drafted EIA Programme and the EIA Report in the headquarters of the drafter of the aforementioned documents, on the website of the project coordinator, or at the respective municipalities and elderships. The time limits established in the Specification of the Procedure for the Provision of Information to the Public and Its Participation in the Process of Environmental Impact Assessment of the Proposed Economic Activity approved by Order No. D1-370 of the Minister of Environment of 15 July 2005 were complied with; therefore, the Claimant's arguments relating to these circumstances should be rejected. In the given case, no violations of the public information and participation in the EIA procedures were detected.

On the unsuitable location/territory chosen for the construction of the power interconnection

According to the Claimant, when adopting the Contested Decision, due account had to be taken of the alternative proposed by them, which was compliant with modern technologies and the practice of Western Europe, under which the 400 kV power supply would be ensured via a high-voltage direct-current underground cable and the existing infrastructures (power lines, roads, railways) would be maximally used for its construction. According to the proposal of the public, the Line should be combined with the existing 110 kV EEPOL in the section Alytus-Šeštokai and from the electrical substation located in the village of Oleandrai, in the Šeštokai eldership, the Line would continue to run along the railway line through the Šeštokai-Mockava industrial territory, which is already provided in the Master Plan of the Lazdijai District Municipality, and the infrastructure corridors leading to the Republic of Poland, which have already been provided in the Master Plan of the Kalvarija Municipality. According to the Claimant, the alternative proposed by it would allow shortening the power interconnection approx. by 8 km, as a result of which Lithuania would save EUR 3.2 million and the natural diversity as well as the part of the Lazdijai district rich in exclusive landscape and cultural heritage would be protected.

The essence of the alternative proposed by the Claimant is to reconstruct the existing 110 kV Alytus-Šeštokai power line and to link it with the infrastructure development corridors provided in the Master Plan of Kalvarija (vol. I, case file p. 151-152).

As it can be seen from the map of the PEA belt alternatives, Subalternative B1 in the Alytus-Šeštokai section of the territory is combined with the route of the existing 110 kV power transmission line within the territory of the Alytus District Municipality (EIA Report, Book L-2, p. 285). In principle, the Claimants seek to achieve that the Line would be constructed in the territory of the Kalvarija and Marijampolė Municipalities, bypassing the territory of the Lazdijai District Municipality.

It was determined that the 400 kV power transmission line is provided in the Master Plan of the Republic of Lithuania approved by Resolution No. IX-1154 of 29 October 2002 of the Seimas of the Republic of Lithuania. The Master Plan should serve as the basis for development strategies of the branches of the economy (sectors), other strategic plans and programmes drafted by state institutions. The National Energy Strategy approved by Resolution No. X-1046 of 18 January 2007 of the Seimas of the Republic of Lithuania provides that the strategic objectives of the Lithuanian energy sector include energy safety, competitiveness, sustainable development of the energy sector and efficient use of energy; therefore, it is sought to interconnect the Lithuanian high-voltage power grid with the networks in the Scandinavian countries and Poland no later than by 2012. It is indicated that, if the electric power systems of the Baltic countries have been interconnected with the electric power systems in Western European and Scandinavian countries before the commencement of the operation of a new nuclear power plant, it will be possible to use the reserve capacities of Western European and Scandinavian countries. In case the required interconnections are not constructed in a timely manner, the matters relating to the reservation of high-capacity blocks should be aligned with the Unified Electric Power System of Russia. Paragraph 30(3) of the National Energy Strategy indicates that, in order to achieve an efficient electricity market, all possible economic and political measures should be aimed at promoting and constructing powerful interconnections with the power systems of Poland and Sweden (investments amounting to LTL 1.5 and 1.4 billion respectively) as soon as possible. These interconnections would allow the integration of the Baltic countries into the Western European electricity market. Paragraph 31 of the National Energy Strategy indicates that, in order to attain the objectives of the development of the electric power sector, namely, ensuring the strategic reliability of electricity supply and integration into the EU market, the following measures are necessary: to construct strategic interconnections with Poland and Sweden by 2012 (p. 3), to implement technical measures by 2015 necessary for the synchronised operation of the Lithuanian power system with the UCTE system (p. 4). Under the Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security adopted on 10 October 2002, the construction of power transmission interconnections with Poland and Sweden is attributed to the projects of particular strategic importance to national security, which is associated with the implementation of the principal task of the power system of the Republic of Lithuania, namely, to provide Lithuanian consumers with electricity for an unlimited period of time and in an independent, safe and reliable manner, the implementation of which is subject to special security measures ensuring the national security interests (Article 6(1), 6(2)(2) and (2)(3), 6(3) of the Law.). When evaluating the legal regulation of this project and its importance for the interests of the public, it should be concluded that this project is intended to satisfy the public interest of the whole of Lithuania.

Although the Claimant states that the construction of the aforementioned Line was legally regulated for the first time only after Resolution No. 1442 of 23 February 2011 of the Government had been adopted, and the method of (overhead) power transmission was introduced later, but these statements are negated by the factual data. The necessity of the construction of the 400 kV power interconnection, the method of construction of the Line route and its preliminary location were entrenched in the solutions of the Master Plan of the Republic of Lithuania approved by Resolution No. IX-1154 of 29 October 2002 of the Seimas of the Republic of Lithuania. It is indicated in the Chapter “Energy Infrastructure” of the Master Plan that for the purpose of integrating into international power markets, it is planned to construct a powerful interconnection with Poland for the integration into the Western European electric power system and thus ensure the reliability of the operation of the Lithuanian power system by consistently reducing the dependence on the Unified Power System of Russia (UPS) (Paragraph 18(2)), which is highlighted in the energy field as the main method to integrate into the common power system of Western Europe and a priority for the implementation of actions (p. 37) (vol. I, case file p. 61, 62). The 400 kV high-voltage overhead power line is provided in the graphic part of the Master Plan, i.e. the Technical Infrastructure

Plan, where it is marked in yellow, running through the territories of the Alytus and Lazdijai Municipalities, and there is an inscription “400 kV high-voltage overhead power line” made at the point of its legend (vol. V, case file pages 47, 50-67, 68).

The 400 kV high-voltage overhead power line is included into the approved Master Plans of the Alytus District Municipality and the Lazdijai District Municipality (Decision No. K-79 of 24 March 2009 of the Council of the Alytus District Municipality, Decision No. 5TS-648 of 5 December 2008 of the Council of the Lazdijai District Municipality) (vol. IV, case file p. 196-197) (EIA Report. Book L-l, p. 40. Book L-2. Graphic Annex No. 2).

Thus, the data adduced in the administrative case confirm that the method of construction of the proposed economic activity (PEA) (the 400 kV high-voltage overhead power line) was entrenched in the normative act adopted in 2002, i.e. the Master Plan, and under Order No. 1-190 of 12 October 2009 of the Lithuanian Minister of Energy, it was decided to commence the drafting of the Special Plan for the construction of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border in the County of Alytus. The Lithuanian Minister of Energy approved the special plan for the aforementioned entity under its Order No. 1-211 of 30 August 2011; therefore, the Claimant’s arguments that in the given case the PEA method and location were determined by the legal entities having private interests (the PEA organiser, the PEA drafter) rather than by the applicable legislation are groundless.

The Master Plan is a normative act. The Master Plan should serve as the basis for development strategies of the branches of the economy (sectors), other strategic plans and programmes drafted by state institutions. Article 2(1) of the Law on Territorial Planning defines that the master (general) plan is a document of integrated planning establishing the spatial concept of the planned territory development and the principles of use and protection of the territory, which are detailed in solutions of lower-level territorial planning documents. Article 7 of the Law on Territorial Planning, which provides for the objects and tasks of the general territorial planning, outlines the following objects of the planning: state territory, county territory, and municipal territory. In the same Article, one of the key tasks of the general territorial planning is reserving the territories in which the objects required for meeting the needs of communication corridors, engineering and communications infrastructure and other needs of the public are developed (Article 7(7)). In compliance with the Law of the Republic of Lithuania on Territorial Planning (Article 11(7), Article 18(2)), solutions of lower-level territorial planning documents should not contradict higher-level documents, in the given case, the Master Plans for the territory of the Republic of Lithuania and of the county and district levels. The wording of Article 16(1)(3) of the Law on Territorial Planning, which was valid at the time of submission of the alternative of the public, indicated that special plans are drafted when it is necessary to specify solutions of general territorial planning documents. The aforementioned legal regulation allows concluding that under the solutions of the Master Plan of the Republic reserved the territory for public needs, the construction of the necessary object, i.e. the 400 kV power line, and the specification of the solutions established in the Master Plan is possible within the limits of the administrative territorial units defining the level of documents marked in the Master Plan. Thus, in the given case, the construction of the object of the dispute according to the territorial planning documents is possible within the limits of the territories of the Alytus and Lazdijai District Municipalities, and the Claimant’s proposals to construct the power line in the territories of other municipalities are in conflict with the imperative provisions of the Law on Territorial Planning (Article 2(1), Article 11(7), Article 18(2)).

Based on the data adduced in the administrative case (extracts from the Master Plans, map extracts, EIA documents) (vol. I, case file p. 38, vol. IV, case file p. 102, vol. V, case file p. 68), it can be seen that the route proposed by the Claimants is within the limits of the territories of the Marijampolė and Kalvarija Municipalities. Neither the Master Plan of the Marijampolė Municipality approved by the decision of 27 October 2008 of the Council of the Marijampolė Municipality nor the Master Plan approved by Decision No. T-46-39 of 18 June 2009 of the Council of the Kalvarija Municipality provide for the construction of the 400 kV overhead high-voltage power line (vol. IV, case file p. 100-102, 103-119, vol. V, case file p. 6). The Master Plan of the Marijampolė Municipality provides for the 330 kV power line (in the territory of the Gudeliai and Igliauka elderships). Within the territories of the aforementioned municipalities, under the approved Master Plans, the infrastructure corridor for the planned Trans-European Rail Baltica railway is planned at the location of the route proposed by Claimant (vol. IV, case file p. 101-102). Without having changed the solutions set out in the Master Plans, these infrastructures may not be used

for the implementation of the project because they are not adapted for the supply of energy. In the opinion of the Panel of Judges, the implementation of the power line alternative proposed by the Claimant would be in conflict with the aforementioned provisions of the Law on Territorial Planning because the location and method of the Power Line provided in the Master Plan of the Republic and in the Master Plans of the Alytus and Lazdijai Municipalities should be designed within the territories of the Marijampolė and Kalvarija Municipalities, where such project is not provided for in the Master Plans of these municipalities or the Master Plan of the Republic; therefore, without changing the solutions set out in the Master Plans, the implementation of the power line alternative proposed by the Claimant would be in principle unfeasible. The change of the solutions set forth in the Master Plan according to the procedures laid down in the Law on Territorial Planning (Articles 10–12) would take a long time; therefore, the Panel of Judges in principle agrees with the Defendant's arguments that this would be in conflict with the tasks and objects of the national energy sector, the public interest and international commitments. It is noteworthy that it can be seen from the data adduced in the case that LitPol Link Sp. z.o.o., the company responsible for the construction of the power line, applied to the Marijampolė and Kalvarija Municipality Administrations regarding the possibilities of constructing EEPOL within their territories, and they provided the answer that, in order to plan EEPOL within the territories of the Marijampolė District and Kalvarija Municipalities, all the related territorial planning procedures under the applicable legislation must be carried out (Section II of the EIA Report Book L-1).

The data adduced in the administrative case confirm that when screening the Line belt alternatives in the EIA report, due account was taken of the agreement made between the Republic of Lithuania and the Republic of Poland during the interstate consultations formalised under Minutes No. D4-50 of 30 April 2010, in which it was agreed that the Line crossing point by the Lithuanian–Polish border will be in the district of Lazdijai, northwest from the Lake of Galadusys, and this location was determined having regard to the Master Plan of the RoL, the Master Plan of the Lazdijai District Municipality and the Master Plan of the Seinai County (EIA Report. Book L-2. Text Annex No. 3, Text Annex No. 8). According to the alternative proposed by the Claimant, the Line would cross the Lithuanian–Polish border within the territory of the Kalvarija Municipality, and this would be in conflict with the achieved interstate agreement.

Furthermore, the Kalvarija biosphere polygon (around 2,000 ha), which is classified as a protected area of the European ecological network Natura 2000, was established by Order No. D1-407 of 14 July 2009 of the Minister of Environment of the Republic of Lithuania (p. 1.3 of the Order) at the location proposed by the Claimant for the construction of the line, at the Lithuanian–Polish border within the Kalvarija Municipality. Based on the data of the EIA Report, under Subalternative B1 the Line does not cross any protected areas of the European ecological network Natura 2000 (Report, Book L-2, p. 285). According to the evaluation scheme of the criteria restricting this activity (the construction of the 400 kV overhead line), where the aforementioned territories are marked in red, it is obvious that it is very complicated to choose the most optimal option because the disputed territory covers quire a large area where it is forbidden to plan an overhead power line) (vol. V, case file p. 72).

During the court hearing, A. V.,the representative of the EIA drafter UAB SWECO International, reasonably explained why the power transmission alternative proposed by the Claimant, i.e. a high-voltage direct-current underground cable, is unfeasible both technically and strategically, as it will not ensure the strategic objective of the Lithuanian energy sector set for the project of the interconnection with the Polish electric power system LitPol Link – the interconnection with the power system of the continental Europe for synchronous operation. It can be seen from the data adduced in the case that the Ministry of Energy of the Republic of Lithuania, having received during the environmental assessment process the proposals by the representatives of the public R.V. and P. K. regarding the underground cable and having analysed them, provided reasoned answers regarding its unfeasibility in technological and strategic terms in its letter No. (11.2-13)-3-3275 of 23 November 2010 (vol. I, case file p. 132). The Claimant did not submit to the court any objective data to negate these circumstances. The examples of Western Europe provided by the Claimant regarding the implementation of energy sector projects may not be deemed as sufficient arguments that constitute the basis for annulment of the Contested Decision as there are no data that the mentioned projects are analogous in terms of scope, strategic significance and conditions of implementation. It can be seen from the EIA Report that the proposals by the public regarding the EEPOL alternatives were properly analysed and reasonably rejected (Report Book L1, p. 368-375).

The court notes that the Claimant did not negate the arguments provided by the Defendant, the organiser of the proposed economic activity and the drafter of the EIA documentation regarding the suitability of the location and method of the proposed economic activity and did not submit any objective data confirming that the alternative proposed by it (the direct-current underground cable power line at the location specified by it), thus ensuring compliance with the environmental, public health and cultural heritage protection requirements, and that the choice of this alternative would lead to the lowest possible effect on the environment and public health. The EIA Report (Report Book L-2, p. 228-229) contains an alternative comparison between the overhead line and the underground cable, from which it can be seen that in the given case the method of construction of an overhead line is more suitable because of the smaller area needed for the route, lower potential restrictions on the use of land, efficiency of elimination of failure causes, reliability of operation, performance of construction works and other factors; however, the Law imperatively provides that the court does not offer assessment of the disputed administrative act and acts (or omission) from the point of view of political or economic expediency (Article 3(2) of the Law on Administrative Proceedings); therefore, the court should not offer its opinion on the arguments set out in the complaint in relation with the aforementioned circumstances, the future costs of the object of the dispute and other arguments of an economic and political nature.

It can be seen from the data adduced in the administrative case that in the given case when selecting the location of the Line under Subalternative B1 during the proposed economic activity process, there was a deviation from the trajectory specified in the Master Plan; however, the direction of Subalternative B1 conforms to the one provided in the Master Plan and does not exceed the limits of the solutions provided in the Master Plans of the Lazdijai and Alytus Municipalities, having regard to the objectives and nature of the general and specialised planning provided in the Law on Territorial Planning, it should be considered that the requirements of the legislation were not violated when selecting the location of the 400 kV overhead power transmission line in terms of legislation on territorial planning. In compliance with the requirements of the legislation regulating the directions of the National Strategy, the solutions of the Master Plan of the RoL and Order No. 1-190 of 12 October 2009 of the Minister of Energy of the Republic of Lithuania, the Minister of Energy of the Republic of Lithuania approved by Order No. 1-211 of 30 August 2011 the special plan for the construction of the aforementioned object, which finally entrenched the location and method of construction of the 400 kV high-voltage power line. The aforementioned decision was not challenged and it is effective; therefore, in the opinion of the Panel of Judges, as the Claimant does not challenge the administrative act regarding the approval of the special plan and the special planning procedures, the arguments set forth by the Claimant in its complaint regarding the Line alternative proposed by it do not have any legal significance for the reasonablessness and legality of the Contested Decision. When forming the practice of application of the law in the cases of this category, the Supreme Administrative Court of Lithuania has indicated that the court, when hearing complaints regarding the acts or actions that are unable to cause or that do not cause any legal consequences, could not defend the person's rights because even if such complaint is satisfied, the scope of the person's rights and duties would not change and the process itself would be practically meaningless *(Rulings of the Supreme Administrative Court of Lithuania: Ruling of 9 September 2011 in Administrative Case No. AS*^{146}*-465/2011, Ruling of 10 October 2011 in Administrative Case No. A*^{858}*-2232/2011).* Based on the provided arguments, the Panel of Judges does not assess the circumstances specified in the complaint that are related to the procedures carried out during the special planning because these matters were addressed in the solutions of the special plan that are unchallengeable. The same grounds should be used to reject as ungrounded the Claimant's arguments regarding the illegality of the approval of the national Energy Strategy Programme and the right of the Minister of Energy to issue Order No. 1-190 of 12 October 2009, under which it was decided to commence the drafting of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish Border in the Alytus County and to permit the public limited liability company Lietuvos Energija *(note: its rights have been taken over by Litgrid AB)* to perform the functions of the organiser of planning in the process of drafting the special plan for the construction of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish Border.

Furthermore, in the opinion of the court, the arguments set out in the complaint regarding the incorrectly chosen location for the power interconnection because the alternative proposed by the Claimant was not chosen go beyond the limits of the Contested Decision as the Decision addresses the permissibility of the economic activity in another location than the one proposed by the Claimant, and this conforms to the competence of the competent authority, in the given case –that of the Environmental Protection

Department, and the objectives raised by the law (LEIAPEA), i.e. to determine whether to ascertain whether the proposed economic activity may be permitted in the selected location upon evaluating the nature and environmental effect thereof (Article 4 of the LEIAPEA); therefore, Decision No. ARV2-5-1810 of the Alytus Regional Environmental Protection Department reasonably indicates that the EEPOL belt planning proposed by the public concerned and the Lazdijai District Municipality in the territories of the Marijampolė and Kalvarija Municipalities go beyond the borders of the territory controlled by the Alytus REPD and it may not be held liable for the environmental impact assessment in the territories of the Marijampolė and Kalvarija Municipalities. During the environmental impact assessment process, based on the EIA Report data, the Alytus Environmental Protection Department determined within its competence and assessed the likely effect of the proposed economic activity on public health, fauna and flora, soil, surface and the underground, air, water, climate, the landscape and biodiversity, material assets and immovable cultural properties as well as interaction between these components of the environment, thus concluding that the construction and operation of the 400 kV power line is permissible under the most optimal belt Subalternative B1 provided in the EIA Report; therefore, there are no grounds to recognise as grounded the Claimant's argument that in the given case the Decision had to be adopted by the Environmental Protection Agency; thus, there were no grounds for the annulment of the disputed document under Article 89(1)(2) of the Law on Administrative Proceedings.

On the violated environmental impact assessment procedures

Some violations of the environmental impact assessment process are related to the participation of EIA entities in the EIA process.

The participants in the environmental assessment process of the proposed economic activity are listed in the law. Article 5(1)(2) of the LEIAPAE list the state institutions in charge of health care, fire protection, protection of cultural properties as well as county and municipal institutions among the aforementioned entities.

Paragraph 2 of the same article provides that entities of environmental impact assessment may also be other state institutions not referred to in subparagraph 2 of paragraph 1 of this Article where they are invited to participate by the competent authority or where they have their own interest in participation in the process of environmental impact assessment and the competent authority approves thereof in light of the nature, size or location of the proposed economic activity. In such cases the competent authority notifies all the entities of environmental impact assessment, the organiser of the proposed economic activity and the drafter of environmental impact documentation in writing of any other state institutions involved in the environmental impact assessment process. Thus, when assessing this norm, it is obvious that all the entities listed in Article 5(1)(2) of the LEIAPAE must obligatorily participate in the EIA process and present their opinions on the proposed economic activity, whereas the participation of other entities not referred to in this paragraph is determined by the selection of the competent authority or their own interest in the process.

As it can be seen from the data adduced in the administrative case, in compliance with the provisions of Article 5(1)(2) of the LEIAPAE, the following institutions were reasonably involved in the EIA procedure as EIA entities: the Lazdijai District Municipality Administration, the Cultural Heritage Department, the State Service of Protected Areas, the Alytus District Municipality Administration, the Alytus County Fire and Rescue Board, the Alytus Public Health Centre, the Geological Survey of Lithuania under the Ministry of Environment, which presented within their competence conclusions regarding the Programme, the Report and the possibilities of the proposed economic activity within the limits of the activity provided in Article 6(4) of the LEIAPAE. The EIA Programme was approved by all the entities mentioned above (Report, Book L-2, l.83-91). The EIA Report was agreed on with all the entities which in principle approved the planned economic activity under Subalternative B1 (Report, Book L-1, l. 454-466), except for the Lazdijai District Municipality Administration, which partially approved the Report (Report, Book L-1, l. 453). As it can be seen from its Letter No. 1-3573 of 3 December 2010, the Lazdijai District Municipality Administration approved the part of the Report which assesses the 400 kV overhead power transmission line aligned with the route of the existing 110 kV power transmission line from the Oleandrai substation to Alytus, whereas in respect of the remaining part of the 400 kV power line between the Alytus transformer substation and the Lithuanian–Polish border it indicated that it is of the opinion set forth in Letter No. 1-2578 of 2 September 2010 of the Lazdijai District Municipality Administration addressed to the EIA drafter UAB Sweco Lietuva (vol. IV, case file

p. 95). It can be concluded from the contents of Letter No. 1-2581 of 2 September 2010 that the Lazdijai District Municipality did not approve the construction of the Line under Subalternative B1 in the section from the Alytus transformer substation to the Lithuanian–Polish border, and their position in principle coincides with the Claimant's position (vol. IV, case file p. 170).

As it can be seen from the administrative case, the Alytus Regional Environmental Protection Department under the Ministry of Environment of the Republic of Lithuania, having heard the Report, the comments and proposals submitted by the public concerned, applied to the EIA drafter regarding the supplement and amendment to the Report (vol. I, case file p. 165). In response to the demand of the competent authority, the EIA Report was supplemented with textual and graphic materials, the Study on Identification of the Diversity and Types of Spatial Structure of Landscape of the Republic of Lithuania, the map of geomorphologic conditions in the PEA area, the physical – morphografic map of the PEA in the territory of the Lazdijai District Municipality, the psychosomatic impact assessment, and reasoned clarifications of other issues raised by the public (vol. I, case file p. 167-171).

The functions of the participants in the environmental impact assessment process are clearly regulated by law. Article 6 of the LEIAPEA provides that the competent authority co-ordinates the process of environmental impact assessment (p. 1), conducts screening, considers and approves programmes, considers evaluation of proposals of the public concerned, reasoned proposals of the public concerned, reports, conclusions of entities of environmental impact assessment regarding the programmes, reports and feasibility of the proposed economic activity and adopts a decision thereon (p. 2), where necessary, involves consultants (p. 3). Article 10(1) of the LEIAPEA provides that, having considered a report, conclusions of entities of environmental impact assessment on the report and feasibility of the proposed economic activity, substantiated evaluation of proposals of the public concerned, also the reasoned proposals of the public concerned received in writing, the competent authority within 25 working days of the receipt of the report: (a) makes reasoned requests to amend or supplement the report, or (b) adopts a decision. Where conclusions of entities of environmental impact assessment regarding the feasibility of the proposed economic activity are in conflict with each other and/or the competent authority has received reasoned proposals of the public concerned, the competent authority, prior to adopting a decision, invites the organiser (developer) of the proposed economic activity, the drafter of documents of the environmental impact assessment and entities of environmental impact assessment to participate in consideration of their conclusions and/or reasoned proposals. The representatives of the public concerned who have presented reasoned proposals are also invited (Article 10(4) of the LEIAPAE).

Thus, the legal regulation entrenches the obligation of the competent authority to adopt a decision to permit or not to permit the proposed economic activity in the selected location after having analysed the environmental impact assessment documents and having assessed the nature of the proposed economic activity in respect of the environment, i. e. the adoption of a decision is its prerogative. The legal acts regulating the environmental impact assessment process do not provide that in case the EIA entity disapproves of the Report, the adoption of a decision is impossible. The court hereby notes that the proposals by the Lazdijai District Municipality regarding the selection of the power route in another location (within the territories of the Marijampolė and Kalvarija Municipalities) were reasonably rejected by the EIA drafter and the competent authority, and the aforementioned institution does not dispute this in court. Article 8(9) of the LEIA stipulates that where, prior to approval of a programme, the council of a municipality within the territory whereof an economic activity is intended to be carried out adopts a reasoned negative decision regarding the feasibility of the proposed economic activity, the procedures of environmental impact assessment may not be resumed during the entire period of validity of the decision adopted by the municipal council, with the exception of the cases when the proposed economic activity is of national significance and implementation thereof is provided for in the state strategic plans approved by the Government of the Republic of Lithuania. In the given case, the proposed economic activity is of national significance and implementation thereof is provided for in the state strategic plans approved by the Government of the Republic of Lithuania. The EIA data confirm that the Lazdijai District Municipality approved the EIA Programme (Report, Book L-2, p. 83), the existence of the Line within the territory of the Lazdijai District Municipality was established in the solutions of the Master Plan approved by the municipal council; thus, the partial objection of the aforementioned Municipality did not constitute the grounds for the competent authority to adopt a negative decision on the PEA under Subalternative B1. The court hereby notes that the proposals and comments of the Lazdijai District Municipality Administration were partially taken into account and the legislation regulating the legal

relationship of the dispute does not provide for the requirement for the competent authority not to permit the proposed economic activity in case at least one EIA entity disapproves of (or partially approves) such activity. Based on the arguments set forth above, the case data confirm that in the given case the proposals of the Lazdijai District Municipality Administration regarding the construction of the Line in the territories of the Kalvarija and Marijampolė Municipalities would be in conflict with the solutions of the Master Plans, and the aforementioned municipalities objected to this (Report Book L1, l. 488, 489); therefore, the aforementioned proposals were reasonably rejected once considered.

When hearing the case, the court did not find any violations of the procedures regulated by the LEIAPAE regarding the participation of EIA entities and other participants in the environmental impact assessment process (including the public concerned) in the EIA process. Before adopting the Decision regarding the proposed economic activity, the Alytus REPD analysed all the received proposals of the public concerned regarding the construction of the proposed Line and provided a reasoned reply to each representative of the public (vol. 1, case file p. 155-157). Implementing the provisions of Article 10(4) of the LEIAPEA, the Defendant invited all the EIA participants, including the Lazdijai District Municipality Administration and the representatives of the public to consider the conclusions and proposals submitted by the EIA entities (vol. 1, case file p. 158-164). Having regard to the comments of the EIA participants, the Alytus REPD requested on a number of occasions to amend and supplement the EIA Report (vol. 1, case file p. 165-166) and it adopted the Decision only after the aforementioned requirements had been met (vol. 1, case file p. 167-171). Thus, the Decision was adopted after the conclusions and proposals of all the EIA entities had been discussed and assessed in a detailed and comprehensive manner, in compliance with all the procedures laid down in the LEIAPEA.

The entities mentioned by the Claimant, namely, the Lazdijai Fire and Rescue Service and the Lazdijai Division of the Alytus Public Health Centre (referred to as the Lazdijai Public Health Centre by the Claimant) are not individual independent institutions but the structural territorial divisions of the Alytus County Fire and Rescue Board and the Alytus Public Health Centre respectively (see the management scheme of the Regulations of the Alytus Public Health Centre approved by the Director of the State Public Health Care Service under the Ministry of Health, Order No. V-64 of 22 July 2010, p. 1, available on the website http://alytausvsc.sam.lt/struktura-ir-kontaktai/), therefore, the court agrees with the position indicated by the Defendant that their non-involvement into the EIA process was not obligatory.

According to the wording of the LEIAPEA effective at the time of the drafting and presentation of the EIA Programme to the EIA entities (adopted by Law No. X-1654 of 30 June 2008, effective since 17 July 2008) the EIA entities included the state institutions in charge of health care, fire protection, protection of cultural properties as well as county and municipal institutions (Article 5(1)(2)).

In compliance with this provision of the Law, the Alytus County Governor's Administration was involved in the EIA process and approved the EIA programme (Report Book L-2, l.82). Under the wording of Article 5(1)(2) of the LEIAPAE (effective since 1 July 2010) applicable at the time of the coordination of the EIA Report, county institutions were not included among the aforementioned entities; therefore, the failure of the competent authority to submit the EIA Report to the National Land Service under the Ministry of Agriculture, the assignee of the rights of the County Governor's Administration, did not violate the requirements of the applicable legislation.

The data adduced in the administrative case confirm that the National Land Service under the Ministry of Agriculture has approved the special plan of the aforementioned object and has coordinated it without any comments (vol. III, case file p. 174-175). By its administrative acts, the aforementioned institution established servitudes for the land plots located within the territory of the dispute as a result of the construction of the Line, which the members of the association Rudaminos Bendruomenė are entitled to challenge in court. Based on the data of the court information system Liteko, some members of the community exercise this right (e.g. administrative cases No. Ik-778-422/2012, Ik-777-414/2012, Ik-773-505/2012, etc.); thus, it should be concluded that the violations of the rights of the Claimant and its members relating to the functions of the aforementioned institution will be examined in other cases; therefore, even if it has been established that the participation of the National Land Service in the EIA process was necessary, the failure to coordinate the EIA Report with this institution did not have a direct effect on the Claimant's rights.

The Claimant's arguments regarding the Forest Department under the Ministry of Environment and the Lithuanian State Department of Tourism under the Ministry of Economy are ungrounded because the

Law (Article 5(1)(2) of the LEIA) does not assign these entities to the category of those entities whose participation in the EIA process is obligatory; therefore, their non-involvement cannot be deemed as the grounds for the annulment of the Contested Decision.

By its Letter of 20 August 2010, the Cultural Heritage Department under the Ministry of Culture informed the representatives of the public (vol. I, case file p. 64-65) that the Alytus territorial division of the Department reasonably refused to coordinate the submitted Environmental Impact Assessment (EIA) Report but the data provided in the EIA Report confirm that, by its Letter No. 2A-278 of 21 October 2010 addressed to the authority responsible for the environmental impact assessment (Report Book L-1, p. 454), the Alytus territorial division of the Cultural Heritage Department under the Ministry of Culture approved the proposed economic activity specified in the Report; therefore, the Claimant's arguments regarding the disapproval of this institution are ungrounded.

The Claimant indicated that the public health impact assessment of the proposed economic activity was conducted inappropriately.

Under the Law on Environmental Impact Assessment of the Proposed Economic Activity, the institutions in charge of health care are indicated as the EIAPAE entities (Article 5(1)(2) of the Law); however, the aforementioned Law did not establish the procedure and conditions for the public health impact assessment of the proposed economic activity. Article 38 of the Law on Public Health *(hereinafter referred to as the "LPH")* regulating the public health impact assessment of the proposed economic activity provides that, when carrying out a public health impact assessment of a proposed economic activity, the likely effects of public health determinants on public health are determined (p. 1). A public health impact assessment of a proposed economic activity is carried out in accordance with the procedure laid down by the Law on Environmental Impact Assessment of the Proposed Economic Activity and other legal acts (p. 2), methodological instructions on public health impact assessment of proposed economic activities are approved by the Minister of Health (p. 3). When systematically evaluating the provisions of Article 5(1)(2) of the LEIAPEA and Article 38(2)(9) of the LPH, it should be decided whether the public health impact assessment of the proposed economic activity is conducted by carrying out an expert examination of public health safety. Article 2(9) of the LPH defines the expert examination of public health safety as the determination, description and assessment of likely and/or present effects of public health determinants on public health, as well as the formulation of findings and proposals on the prevention or limitation of negative impact pursuant to the Public Health Safety Regulations (Hygienic Norms) (Article 16 of the LPH).

The data adduced in the administrative case confirm that the Alytus Public Centre approved the Programme for the Environmental Impact Assessment of the Construction and Operation of the 400 kV overhead power transmission line between the Alytus transformer station and the Lithuanian–Polish border by its Letter No. Rl-205 of 11 February 2010 (vol. II, case file p. 57). The Environmental Impact Assessment Report was approved on the basis of Hygiene Examination Minutes No. Rl-973 of 27 August 2010 (vol. II, case file p. 52-56).

In compliance with p. 5.1 of the Hygiene Norm HN 104:2000 "Protecting the public against electromagnetic fields emitted by overhead power lines" approved by Order No. 4 of 4 January 2001 of the Minister of Health, when designing the overhead lines with a voltage of 330 kV or more, the locations that are further from urbanised areas or dwellings should be selected. Where designing 400 kV overhead power lines, the distance of at least 250 m from the lines and dwellings should be provided. In exclusive cases, where the local conditions do not allow meeting this requirement, 330 and 400 kV overhead power lines may be constructed closer to urbanised (built-in) areas but no closer than 20 and 30 m respectively, thus ensuring that the electric field strengths of the overhead lines under wires do not exceed 5 kV/m. The possibility of bringing the overhead lines closer to urbanised (built-in) areas must be coordinated with public health care institutions. Under p. 5.2, a sanitary protection zone (SPZ) must be established in order to protect the residents against the harmful effects of the electric field of overhead lines.

As it can be seen from the data adduced in the administrative case, for the purpose of assessing the EIA Report, an expert examination of the normative documents and products was conducted at the Alytus Public Health Centre under the Ministry of Health of the Republic of Lithuania on 27 August 2010. It is stated in Expert Examination Minutes No. R1-973 (vol. II, case file p. 52-56) that the Environmental Impact Assessment Report assessed the potential negative effects of the physical factors caused by the power line and the substation on the residents. It was determined that the public health impact would be

minor provided that the localisation of objects has been properly resolved and safe distances are maintained. When analysing the impact on ambient air, the background pollution of the territories, where the construction of EEPOL under the chosen Subalternative B1 is scheduled, was equated to the average annual pollution of ambient air in the relatively clean Lithuanian rural areas submitted by the Environmental Protection Agency. It was provided that during the operation of the line, in case of electrical discharges, small quantities of ozone and nitrogen oxide will be released into ambient air; however, the increase in these materials is observed only at the distance of several dozen centimetres from the electric wires; therefore, this will have no effect on public health. The noise level of the overhead lines should be evaluated on the basis of the noise tests carried out in Poland. The CadnaA programme was used to forecast the noise emitted from the Alytus transformer substation. Thus, the existing and projected noise levels emitted from the existing transformer substation, the planned 400kV substation and the zone of the proposed direct-current converter were estimated. Based on the estimations, it was determined that the projected noise levels do not violate the threshold levels established in Hygiene Norm HN 33:2007 "Acoustic noise. Noise value limits in the residential and public buildings and their surroundings". Based on the calculations of the electromagnetic field levels, it was determined that the magnetic field flow reaches the maximum level of 25 mikroT under the load of 1000MW at the distance of 10 m from the centre of reference, and under the capacity of 1200MW, the level of 30 mikroT is recorded at the same distance (the threshold level recommended by the European Council is 100 mikroT (1999/519/EC)**.** It can be seen from the calculations of the electric field strength that the electric field reaches the maximum level of over 8kV/m at the distance of 10m from the centre of reference but, at the distance of 30m from the centre of reference, the electric field level is lower than 1kV/m. Under Hygiene Norm HN 104:2000 "Protecting the public against electromagnetic fields emitted by overhead power lines" (Official Gazette, 2001, No.4-109), this level of electric field strength does not limit human exposure in terms of time. There is no negative impact of the noise spread from the transformer station on the residents as the nearest homestead is at the distance of 250 m and the nearest settlement is located at the distance of 750 m from the Alytus TS. Having assessed the EIA Report, the aforementioned institution submitted a conclusion stating the fact that the Report on the environmental impact assessment of the construction and operation of the 440 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian–Polish border is being coordinated does not constitute an objection to the implementation of the proposed economic activity and indicated that it is mandatory to legalize the established SPZ pursuant to the requirements of the Special Conditions for Land and Forest Use approved by Resolution No. 343 of 12 May 1992 of the Government of the Republic of Lithuania, p. 2.3 (Official Gazette, 1992, No. 22-652; 1996, No.2-43; 1999, No. 104-2995). There are no data in the administrative case indicating that, when planning the proposed economic activity, the requirement set in p. 5.1 of Hygiene Norm HN 104:2000 regarding the distance of 250 m between the power line and residential buildings (reduction of the safety zone); therefore, it was not necessary to agree with Public Health Centre on this separately.

The Claimant's representative indicated that, when carrying out the public health impact assessment, p. 1.3 of Resolution No. 1610 of 10 October 2002 of the Government of the Republic of Lithuania regarding the implementation of the Law of the Republic of Lithuania on Public Health was violated. Under this legal act, the Government, implementing the provisions of the Law on Public Health, decided to authorise the Ministry of Health to draft and, having coordinated with the institutions concerned, approve by 31 December 2002: the procedure for drafting, funding, implementation and control of public health programmes (p. 1.1), prices of public health measures and public health care services) (p. 1.2), including the procedure for setting limits and mode of sanitary protection zones for the economic-commercial activities in respect of which sanitary protection zones are established (p. 1.3). The Rules on Setting Sanitary Protection Zone Limits and Mode approved by Order No. V-586 of 19 August 2004 of the Minister of Health of the Republic of Lithuania provide that the Rules on Setting Sanitary Protection Zone (*hereinafter referred to as "SPZ")* Limits and Mode regulate the procedure for drafting, coordination and approval of sanitary protection zone limits that are safe for the residential environment and human health and the requirements of the mode applicable to these zones. These Rules are binding on organisers of territorial planning and drafters of planning documents, institutions drafting special conditions and state supervisory institutions as well as other legal and natural persons engaged in economic-commercial activities according to the types of activities for which sanitary protection zones must be established under the procedure laid down by the Minister of Health of the Republic of Lithuania (p. 1, p. 2). It is noteworthy that the subject matter of the dispute in this case is the legality and

reasonablessness of the decision on the environmental impact assessment. The institution in charge of public health, namely, the Alytus Public Health Centre, approved the EIA Report by setting the requirements for the establishment of sanitary protection zone limits in the conclusion.

Based on the conclusion of the competent authority, the Contested Decision, in which due account was taken of the proposals submitted by the public, provided for the measures to reduce the public health impact in the technical design stage: 1) to establish an integrated 30 m wide protection and sanitary protection zone for the EEPOL; 2) to establish a sanitary protection zone at the distance of 16-160 m from the transformers and filters for the Alytus TS upon reconstruction and expansion and the new back-to-back converter and the 400 kV substation according to the acoustic noise dispersion scheme provided that no technical measures to lower the noise level in excess of the normative one are implemented (such as containing noise sources in closed premises, installation of noise-abating walls) or noise-reducing systems that ensure limiting of the night-time noise level to 55 dBA at the boundaries of the designed land plot are implemented; 3) to ensure appropriate compensations to residents for losses incurred in connection with the PEA and the imposed restrictions on the use of land plots (vol. I, case file p. 124, II half).

Thus, having evaluated the data adduced in the case and legal regulation, it should be concluded that the public health impact assessment of the proposed economic activity was carried out in compliance with the requirements and procedure laid down in the legislation.

It is noteworthy that the establishment of sanitary protection zones is a constituent part of the territorial planning procedure implemented in the technical design stage (p. 2.2 of the Special Conditions for Land and Forest Use approved by Resolution No. 343 of 12 May 1992 of the Government of the Republic of Lithuania, p. 1 and p. 2 of the Rules on Setting Sanitary Protection Zone Limits and Mode approved by Order No. V-586 of 19 August 2004 of the Minister of Health of the Republic of Lithuania). In the given case, the Special Plan for the construction of the 400 kV power transmission plan has been already approved and has not been contested by the Claimant; therefore, the Claimant's arguments regarding the establishment of sanitary protection zones are considered to be beyond the scope of the dispute in the context of the existing factual circumstances and legal regulation.

According to the Claimant, before carrying out the environmental impact assessment of the object of the dispute, the strategic environmental assessment, which consists of the discussion and approval of the document on establishing the scope of the strategic environmental assessment and the report on the strategic environmental assessment drafted on the basis of the previous document, had to be conducted and only then the environmental impact assessment and an individual territorial impact assessment should have been carried out.

The national legal regulation of the strategic environmental assessment is entrenched in the Law on Territorial Planning, the Procedure for Strategic Environmental Assessment of Plans and Programmes approved by Resolution No. 967 of 18 August 2004 of the Government *(hereinafter also referred to as the "SEA Procedure approved by the Government")* and the Procedure for Screening of Plans and Programmes for Strategic Environmental Assessment approved by Order No. D1-456 of 27 August 2004 of the Minister of Environment *(hereinafter also referred to as the "SEA Procedure approved by the Minister of Environment").*

Article 2(33) of the Law on Territorial Planning effective at the time of the environmental impact assessment defined the concept of strategic planning as follows: "strategic planning shall mean the process during which the strategy of activities management shall be prepared providing for the forecast of activities, their aims, priority directions, actions and methods how to most efficiently use the available and receivable financial, material and labour resources for achieving the set out objectives, implementation of strategy provisions, monitoring of activities and accounting for the results". Article 17 of the Law regulating the stages of the special territorial planning process provides that the process of special territorial planning comprises the preparatory stage, the stage of preparation of the territorial planning document, the stage of assessing the effects of the solutions and the final stage. Article 17(4) of the same Law, which establishes the procedures carried out in the stage of assessing the effects of the solutions of the territorial planning document, provides that the assessment of the effects of the territorial planning document solutions is performed according to the procedure established by the Government. The strategic impact assessment of the territorial planning document solutions is carried out in the cases and according to the procedure established by laws and other legal acts. In cases where, under the Law on the Assessment of Effects of the Planned Economic Activities on the Environment, the assessment of

effects on the environment of the planned economic activities has to be carried out and such assessment has not been carried out, the assessment is carried out when preparing the special plan.

Article 27 of the Law on Environmental Protection provides that the plans and programmes whose implementation may significantly affect the environment are drafted and implemented in compliance with this Law and other laws as well as legal acts regulating strategic assessment of effects on the environment, territorial planning and environmental monitoring. The procedure of strategic assessment of effects of the plans and programmes on the environment is established by the Government of the Republic of Lithuania. It is established in the SEA Procedure approved by the Government, which was adopted in order to implement Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, that this Procedure should be applicable to the drafting and approval of the plans and programmes, which are drafted after the entry into force of this Resolution (p. 2.1), the territorial planning documents, which were started to be drafted before the entry into force of this Resolution but whose stage of specification of solutions of territorial planning documents, under the Law of the Republic of Lithuania on Territorial Planning *(Official Gazette, 1995, No. 107-2391; 2004, No. 21-617)*, has not been commenced yet, other plans and programmes which were started to be drafted before the entry into force of this Resolution but which are scheduled for adoption and/or approval after 21 July 2006 (p. 2.3). It is indicated in the SEA Procedure approved by the Minister of Environment that the Procedure is intended for organisers of the drafting of plans and programmes or their consultants when carrying out screening for the strategic environmental assessment as well as the entities of strategic environmental assessment and the public (p. 1). Under this Procedure, the objects subject to screening should include the plans and programmes which serve as the measures intended for industry, energy, transport, telecommunications, tourism, agriculture, forest sector, fisheries sector and water sector development (expansion), waste management, determination of the land use (purpose) or territorial planning and determine the basics for the development of economic activity projects included into Annexes 1 or 2 to the Law of the Republic of Lithuania on Environmental Impact Assessment of the Proposed Economic Activity (p. 2.1).

In the given case, as the object of the dispute (the 400 kV power line being designed) falls within the activities specified in p. 8.8 of the List of the Proposed Economic Activities Subject to an Environmental Impact Assessment provided in Annex 1 to the Law on Environmental Impact Assessment of the Proposed Economic Activity, the strategic environmental assessment had to be carried out under the procedure laid down in the legal acts specified above.

The documents submitted to the court (the Special Plan for the Construction of the 400 kV Overhead Power Transmission Line. Strategic Environmental Assessment. Report) confirm that the aforementioned procedure was carried out. The Claimant does not challenge the neither the strategic environmental assessment of the object of the dispute nor the special planning procedures only the Claimant believes that the strategic environmental assessment had to be carried out before the EIA procedures. The Panel of Judges disagrees with these arguments. EIA and SEA are two separate processes, the performance and procedures of which are regulated by different legal acts specified above; however, they do not contain the requirement that the SEA procedure must be conducted before the EIA procedure. The Claimant relies on Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, Directives 85/337/EEB and 92/43/EEB; however, they also do not directly entrench the provisions regarding the precedence of the SEA procedures over the EIA procedures.

Council Directive 85/337/EEB on the assessment of the effects of certain plans and programmes on the environment, the so-called EIA (environmental impact assessment) Directive, requires that competent national authorities should assess projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location with regard to their effects before giving their consent. Projects may be proposed by each and every public or private person.

In its judgements, the Court of Justice has stated that, when transposing a directive into the domestic law, it is not necessary to transpose their provisions formally and literally into clear and special legal norms, a general legal context may be sufficient provided that it ensures the full application of the Directive in a sufficiently clear and accurate manner. The provisions of the Directive must be implemented by acts of indisputable legal effect and maintaining such concreteness, accurateness and clearness as required for the non-violation of the principle of legal security, under which, if the Directive is aimed at granting rights to

private persons, these persons must have the possibility of becoming aware of all their rights (see Judgement *Commission vs. Spain*, C-332/04, par. 38; Judgement *Commission v Ireland*, C-427/07, par. 54–55). The Court of Judgement has stated that national courts may take into account the provisions of the EIA Directive in order to verify whether the national legislator did not overstep the limits of discretion established in the Directive (Judgement *Linster*, C-287/98, par. 38). Thus, based on the case law of the European Court of Justice, Member States independently choose the form and methods of the implementation of directives; directives are not applied directly. The Panel of Judges agrees with the Claimant's opinion that the SEA procedures are regulated by EU Directive 2001/42/EEC, whereas the EIA procedures are regulated by the aforementioned Directive 85/337/EEC. Both procedures are carried out in Member States differently. Directive 85/337/EEB is binding on all Member States but the method of its implementation is the prerogative of Member States. All Member States had transposed Directive 2001/42/EEC (on the SEA procedures) into their national law before 2009. In Lithuania, EU Directive 2001/42/EC was implemented by adopting the Specification approved by Resolution No. 967 of 18 August 2004 of the Government. Besides, implementing the aforementioned Directive, the Law of the Republic of Lithuania on Environmental Protection was amended.

Article 11 of EU Directive 2001/42/EEB indicates that Member States, when setting such limits or criteria or examining projects in order to determine which of them should be assessed according to their significant impact on the environment, should take into account the respective selection criteria established in this Directive. According to the principle of subsidiarity, Member States are best aware of when such criteria should be applied. Thus, it is obvious from the provision set forth in Article 11 of the Directive that a Member State must take into consideration the key criteria established by the Directive but the decision on their application in particular cases is to be made at the discretion of Member States.

The relation of the aforementioned Directive with other EU legal acts, including the EIA Directive (p. 4, 4.1) is stated in the official document, namely, the Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and efficiency of the Strategic Environmental Assessment Directive (Directive 2001/42/EC), both in its original text[1] and its translation into the Lithuanian language. It is indicated that both Directives supplement each other. The SEA Directive is intended for the early stage and it provides for the best choices of the early planning stage, whereas the EIA Directive is intended for the subsequent stage of project implementation. Theoretically, these two processes should not overlap; however, it has been determined that overlapping is possible where these two directives are applied in certain fields.

Based on the provisions of the aforementioned Directives, their official interpretation and the case law of the European Court of Justice, it should be concluded that the method of transposing and implementing the aforementioned Directives is left to the discretion of Member States. Under the directives, it is recommended that the SEA should be carried first and the EIA afterwards; however, this is not a mandatory imperative requirement; both procedures can be carried out simultaneously by a single document. In compliance with the currently applicable provisions of the aforementioned Directives entrenched in the national law, the practice is diverse, and there is also no specific procedure determined for the implementation of the Directives; therefore, the Applicant's arguments regarding the precedence of the SEA procedures over the EIA procedures, in this particular case, the illegality of the implementation of the SEA Directive and of the Contested Decision respectively should be rejected as ungrounded.

Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora is implemented in the Lithuanian law by adopting the Law on Environmental Impact Assessment of the Proposed Economic Activity (Annex 3 to the Law). Based on the data adduced in the case, it was determined that the Defendant complied with the environmental impact assessment procedure regulated in the LEIA; therefore, the Claimant's arguments regarding the separate territorial impact assessment related to the assessment of the territory of Žuvintas reserve are groundless. Under the environmental impact assessment documents and the special plan for the object of the dispute, it was established that the Line does not cross the territory of Žuvintas reserve which is assigned to the protected areas of Natura 2000. The planned power line runs at the distance of approx. 200 m to the Žuvintas reserve. It is recognised in the Report that the planned EEPOL belt Subalternative B1 directly borders the Žuvintas biosphere reserve in a small section; however, compared with other alternatives considered, it would have the least negative effects on the environment. The representative of the drafter of the EIA documents indicated that during

the EIA procedure consultations were held with the employees of the reserve and naturalists in order to mitigate the negative impact on the environment. The Report provides for the measures aimed at mitigating the impact upon landscape, namely, the design – technical (which would allow to reduce the impact to the maximum extent already in the designing stage), restoration – recultivation, and compensation (which would compensate for the impact produced during construction) (EIA Report, Book L-1, l. 203-210). The aforementioned environmental object is not located within the residential territory of the Rudamina community, the Claimant did not specify any particular violations of its rights related to this natural object; therefore, it should be resolved that the arguments specified by the Claimant cannot serve as the basis for the annulment of the Decision either.

The court agrees that it is important to preserve cultural and landscape properties, natural diversity, but when assessing the strategic importance of the disputed project for national interests, the aforementioned arguments are assessed in the respect of balance between the public interest and the interests of the Claimant as the public concerned and it should be concluded that, based on them, there are no grounds to annul the Decision being complained of.

Based on the arguments set forth above, the conclusion should be made that the environmental impact assessment was carried out legally, and no material violations of the public information and participation in the EIA procedures and of the EIA procedures were determined, the Applicant's arguments regarding the alternative proposed by it should be rejected. As no grounds for the annulment of the act (Article 89 of the LAP) being complained of have been established, and the complaint should be rejected as ungrounded.

In accordance with Articles 85-87 and Article 88(1)(1) of the Law on Administrative Proceedings, the Panel of Judges

hereby r e s o l v e s:

to reject the complaint filed by the Claimant, the association Rudaminos Bendruomenė as ungrounded.

The Judgement may be appealed against to the Supreme Administrative Court of Lithuania through the Kaunas Regional Administrative Court or directly to the court of appellate instance within 14 days from the date of its announcement.

Judges Janina Vitunskienė

Daina Kukalienė

Jolanta Medvedevienė

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[1] European Commission, DG ENV Study concerning the report on the application and effectiveness of the SEA Directive (2001/42/EC) Final report April 2009 (l. 98-108).