Administrative case No A[602]-186/2013

Judicial procedure No 3-62-3-00115-2011-5

Procedural decision category 2.3.1; 2.6; 2.7

(S)

SUPREME ADMINISTRATIVE COURT OF LITHUANIA

RULING

ON BEHALF OF THE REPUBLIC OF LITHUANIA

29 May 2013

Vilnius

The panel of the Supreme Administrative Court of Lithuania, consisting of judges Ramūnas Gadliauskas, Veslava Ruskan (rapporteur) and Arūnas Sutkevičius (chair of the panel), with Gitana Aleliūnaitė acting as secretary,

with the attendance of the claimant's representatives: attorney at law R. R., R. C., R. V.,

representative of third parties concerned UAB Sweco Lietuva, UAB Sweco International A. V., representative of LitPol Link Sp. z. o. o. attorney at law V. K., attorney at law N. V., authorised person A. V., representative of Litgrid AB R. Č., representatives of the Ministry of Energy of the Republic of Lithuania G. K., D. G.,

has decided an administrative case at a hearing on the appeal of the claimant, association named Rudaminos bendruomenė, against the judgement of 5 July 2012 of Kaunas Regional

Administrative Court in an administrative case concerning a complaint of the claimant, association Rudaminos bendruomenė, against defendant Alytus Regional Environmental Protection Department of the Ministry of Environment of the Republic of Lithuania, third parties concerned Litgrid AB, UAB Sweco Lietuva, AB Sweco International, LitPol Link Sp. z. o. o., Alytus district municipal authority, Lazdijai district municipal authority, Marijampolė municipal authority, Kalvarija municipal authority, Alytus Public Health Centre, the State Service for Protected Areas reporting to the Ministry of Environment of the Republic of Lithuania, Alytus local office of the Cultural Heritage Department reporting to the Ministry of Culture of the Republic of Lithuania, Alytus County Fire and Rescue Board, the Environmental Protection Agency, and the Ministry of Energy of the Republic of Lithuania seeking the annulment of part of the decision.

The panel of judges

found as follows:

I .

The claimant, association Rudaminos bendruomenė (hereinafter also referred to as claimant), applied to the Kaunas Regional Administrative Court asking to annul a part of Decision No ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department (hereinafter also referred to as defendant; Department) concerning the construction and operation of the 400 kV overhead power transmission line between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys (part of sub-alternative B1) (hereinafter also referred to as Line) (hereinafter referred to as Contested Decision).

It stated in the request that it disagrees with the part of the Decision which allows to design the construction and operation of a 400 kV overhead power transmission line (hereinafter also referred to as EEPOL, Line) in the section of sub-alternative B1 indicated in the Decision and on the website of LitPol (www.litpol.lt) where the construction and operation of EEPOL is planned between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys. It observed that it is the public concerned and a participant in the Environmental Impact Assessment (EIA) process whose involvement in the EIA process is guaranteed by national and international legislation. It pointed out that the section which is necessary for designing the planned EEPOL and which is selected according to sub-alternative B1 crosses the area of Rudamina, Karužai village and Skaistučiai and Neravai villages where members of the association Rudaminos bendruomenė live and/or own property. It claimed that the defendant did not take into account its proposed Line alternative without valid ground because a direct-current underground cable combined with existing infrastructure which does not distort the landscape and other environmental elements is the most suitable technique of building a power transmission line in that specific case. It was of the opinion that laying of an underground line technology is more suitable from not only technological but also primarily from the environmental, recreational, social, cultural heritage and all other points of view, especially as far as landscape protection is concerned. It observed that according to its proposed alternative, in the section between Alytus and Šeštokai, the route could be completely integrated with the existing 110 kV EEPOL while in the section starting from the power substation in Oleandrai village of Šeštokai local neighbourhood it could continue along the railway, across the industrial area between Šeštokai and Mockava, which has already been included in the general plan

of Lazdijai district municipality, and along the infrastructure corridor leading to the Polish Republic, which is included in the solutions of the general plan (hereinafter referred to as GP) of Kalvarija municipality (2007). The proposed route would run across areas intended for building engineering networks and facilities and for developing engineering communication systems without distorting the area of Lazdijai district municipality. Furthermore, this alternative would allow shortening the Lithuania-Poland power interconnection between Alytus and Elkas by approximately 8km, which would mean an EUR 3.2 million saving for Lithuania according to projected rates per 1km.

It pointed out that the Aarhus Convention was violated because as the public concerned it was not duly informed about this project in its earliest development phase, which also present ground to annul the Contested Decision. It observed that the advertisement in the 16th issue of Lazdijų žvaigždė dated 16 April 2012 indicated a 400 kW overhead line instead of a 400 kV overhead line, which means that it was mislead, this resulting in the violation of its right to receive the earliest possible notice of the EIA process. It claimed that the defendant did not make efforts to co-ordinate public information actions so that the public has sufficient time to become familiar with EIA material and prepare proposals, objections and conclusions because in that specific case the information and documents were of particular complexity and of large volume and 10 days was an insufficient period to become familiar with them.

It observed that the EIA procedure was also violated, i.e. the EIA report had to be co-ordinated by the land management divisions of Alytus and Lazdijai district municipalities because the planned line will run across public and private parcels of land, the parcels of land will be taken for social purposes or administrative easements will be established. It was of the opinion that in the said project, a conclusion from the National Land Service as the successor of the rights of the county governor's authority was absolutely necessary. Furthermore, the EIA report was not co-ordinated with Lazdijai Fire and Rescue Service. It added that although the Line will run across Lazdijai district, the EIA report was approved without a conclusion from Lazdijai Public Health Centre and without a consent from Lazdijai district municipality to the building of EEPOL route across the area of Lazdijai district. It also observed that the State Service for Protected Areas reporting to the Ministry of Environment supported sub-alternative B1 and ordered to comply with the conditions defined in its letter, but the Decision excludes those conditions. It also pointed out that the Decision includes information about a positive decision of the Alytus local office of the Cultural Heritage Department reporting to the Ministry of Culture, but the claimants received a letter from the Cultural Heritage Department that the entity of environmental impact assessment refused to co-ordinate the EIA report on valid grounds. It observed that based on the provisions of the Law on Environmental Impact Assessment of the Proposed Economic Activity (EIAPEA), if the planned conclusions of the assessment entities of the EIA report are not received in the EIA procedure, the competent authority, i.e. the defendant, had no right to pass a decision. It claimed that in that specific case, in the process of assessing the environmental impact of the proposed economic activity, the provisions of EU directives 85/337/EEC, 2001/42/EC and 2003/35/EC and of the Arhus Convention were violated. It specified that the EIA of the 400 kV EEPOL was supposed to start with a strategic environmental impact assessment (hereinafter referred to as SEIA) procedure while without a strategic environmental impact assessment of the high-voltage transmission plan and the project, the environmental impact assessment of the Litpolink project could not have been started at all. It argued that in addition to EIA and SEIA procedures, an environmental impact assessment of areas should have been carried out. It added that the line will cross the area of Žuvintas Biosphere Reserve, which is a Natura 2000 site, but the assessment of this territory was not performed. Furthermore, Regulation No 75/2012 of the European Commission of 30 January 2012 included the honey of Lazdijai land into the register of protected designations of

origin, therefore the building of the Line will come into conflict with the provisions of this regulation and will present great damage to the people of Rudamina. It finally pointed out that the defendant did not publish the Decision as prescribed by law because the contested decision is a regulatory act and had to be published in Valstybės žinios official gazette.

In its response the defendant disagreed with the complaint and is asking to dismiss it as unfounded.

It observed in its response that the law does not render the authority to the claimant to protect public interest by contesting EIA procedures and the Decision, its statutes do not allow it to operate in the field of environmental protection, and, furthermore, the complaint is, in principle, a means chosen by the claimant to protect the personal private interests of its members and the complaint does not indicate any violation of public interest, so it is apparently not a suitable entity under Article 5 of the Law on Administrative Proceedings (hereinafter referred to as LAP), which constitutes an independent ground to dismiss the complaint. It observed that on the parcels of land over which the electricity overhead lines will run and in the EEPOL protection zone itself, it is not prohibited either to engage in agriculture or plant crops, therefore the members of the association whose owned parcel of land is mainly intended for agriculture will be able to continue using the parcels of land according to their specific use, while in respect of the parts of the parcel where easements have been established individuals will be paid compensations as prescribed by law. Furthermore, the EIA report and the Decision do not address issues of restrictions on land use because these are issues pertaining to a different process – territorial planning. It also claimed that the Decision is undivided and that therefore the claimant with its complaint seeks annulment of the entire Decision, but that not only would it not help to protect the supposedly violated rights of the claimant but it would also violate the national interests of Lithuania. It is of the opinion that the claimant's statements concerning an improperly selected site/area for building the Line and the selected technology in the EIA report are unlawful and ungrounded because EIA identified all the circumstances and assessed every possible aspect of how the planned Line can affect all elements of the environment. It observed that the alternative site of the Line proposed by the claimant falls within the territories of Marijampolė district and Kalvarija municipality, where, according to the solutions of the general plans of the territory of the Republic of Lithuania and of the said municipalities, construction of a high-voltage 400 kV electricity transmission overhead line is not planned. Whereas the section sub-alternative B1 which is selected in the EIA report as the most acceptable one, as all other alternatives that were considered, fully complies with the general plans of the territory of the Republic of Lithuania, Alytus district municipality and Lazdijai district municipality and with the National Energy Strategy. Furthermore, an evaluation of the territorial alternative proposed by the claimant, which was assessed in the EIA report from the point of view of environmental impact, showed that the impact of the proposed section on the natural environment will be the same as that of the section sub-alternative B1. It observed that according to the claimant's proposed territorial alternative the Line would cross the Lithuanian-Polish border on the territory of not Lazdijai district but Kalvarija municipality, which would essentially come into conflict with the agreement reached between the states of Lithuania and Poland, furthermore, changing of the site of crossing the Lithuanian-Polish border by relocating it to Kalvarija municipality was also unacceptable in respect of protected areas because the Kalvarija frontier area is home to a protected Natura 2000 site - a 2,000 ha Kalvarija Biosphere Ground. It claimed that the potential environmental impact of the Line was assessed in detail during EIA whereas a comparison between the alternatives of building an electricity transmission overhead line and an underground cable from the different aspects found a significant advantage of the overhead line on account of a lower environmental impact because soil can be potentially removed only on small individual areas and not continuously on the entire construction section, complete deforestation is not required in the

route section, there are lower restrictions on economic activity whereas no soil excavations are permitted over the route of underground cables, it is much easier and cheaper to detect and repair faults, it is easier to perform construction/assembly work and the construction price is lower from 5 to 10 times. It pointed out that throughout the EIA process the public concerned was kept duly informed about EIA procedures because developments concerning the prepared EIA programme, report and publicity were covered in the local press, information boards of municipalities and local authorities, on the Internet, and documents were available from the headquarters of the originator of EIA documentation, Sweco, municipalities, local neighbourhoods, on the Internet, in addition to information conferences, special information booklets, etc. It expressed an opinion that by filing a complaint which, in principle, raises the same issues which have already been answered by public authorities and originators of the EIA report and without giving any new lawful and grounded arguments, the claimant is initiating an unfounded dispute aiming to hinder the implementation of a strategic project of special interest.

Third parties concerned Litgrid AB, UAB Sweco Lietuva, AB Sweco International, LitPol Link Sp. z.o.o., and the Ministry of Energy of the Republic of Lithuania, asked the court to dismiss the claimant's complaint as ungrounded and supported, in principle, the defendant's arguments as regards the ungrounded nature of the complaint.

Third parties concerned Alytus district municipal authority, Lazdijai district municipal authority, Marijampolė municipal authority and the Alytus local office of the Cultural Heritage Department reporting to the Ministry of Culture of the Republic of Lithuania left the issue of justification of the claimant's complaint to be decided by the court at its discretion.

In its response, the Environmental Protection Agency, in turn, pointed out that it did not perform any actions related to the EIA procedures of the Line according to its competence, therefore it asked the court not to consider this authority as a third party concerned.

II.

With its judgement of 5 July 2012, Kaunas Regional Administrative Court dismissed the claimant's complaint as unfounded.

The Court pointed out that it was decided by the Contested Decision that the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border is permissible according to the optimal section sub-alternative B1 which is provided in the EIA report. The Court relied on Article 3(1)(1) and Article 7(1)(1) of the Law on Environmental Impact Assessment of the Proposed Economic Activity (hereinafter referred to as EIAPEA) and observed that the planned economic activity indicated in the Contested Decision falls within the activities provided in clause 8.8 of the list of the proposed economic activities subject to an environmental impact assessment in Annex 1 to the Law on EIAPEA (Construction of overhead electrical power lines (with a voltage of 220 kV or more and a length of 15 km and more)), and therefore pointed out that in that specific case an environmental impact assessment of the planned economic activity was required and once it was performed, the Contested Decision permitted the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border

according to the optimal section sub-alternative B1 which is provided in the EIA report. The Court also relied on the definition of the public concerned which is established in Article 2(10) of the Law on EIAPEA and on the content of Article 9(2) of 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) which was revealed in administrative cases No A^{10}-1775/2006 and No A^{556}-393/2010 of the Supreme Administrative Court of Lithuania (hereinafter referred to as SACL) and pointed out that it is intended to build the planned power line next to the town of Rudamina, this is confirmed by the map of the planned line, the Special Plan, the graphical data of the EIA report, and in addition, according to the information available, the parcels of land of some members of the community fall within the territory of planned economic activity, which is confirmed by administrative cases which contest the administrative acts regarding establishment of easements (e.g., administrative cases No Ik-778-422/2012, Ik-777-414/2012, Ik-773-505/2012, etc.). Taking this into account, the Court considered that the claimant is concerned with the planned economic activity of the subject-matter of the dispute and therefore has access to court, protecting community interests. As part of the factual circumstances of the case, the Court also pointed out that on 12 October 2009, the Ministry of Energy with his Order No 1-190 on the development of a special plan for building a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic" made the decision to begin developing a special plan for the construction of a Lithuanian-Polish power interconnection and to permit AB Lietuvos energija (AB Litgrid is its successor) to perform the functions of a planning organiser. It observed that this institution is also the contracting authority for the planned economic activity. It added that UAB Sweco Lietuva became the originator of documentation of the environmental impact assessment of planned economic activity based on the agreement with AB Lietuvos energija which was signed on 22 October 2009. In December 2009, the above-mentioned company developed a programme of the environmental impact assessment of the construction and operation of a 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border (hereinafter also referred to as EIA Programme), which was approved by the competent authority in charge of environmental impact assessment - the Alytus Regional Environmental Protection Department of the Ministry of Environment of the Republic of Lithuania with letter No ARV2-5-439 of 17 March 2010 (EIA Programme, I.171).

Regarding violation of the requirements for communication of the Decision to the public the Court pointed out that with its ruling of 2 March 2012 SACL acknowledged that the Decision was communicated as prescribed by law and essentially in line with the communication to the public procedures (Vol. IV, p. 79 – 83), and furthermore, the SACL ruling renewed the term for the claimant to contest the said decision, therefore the Court pointed out that non-essential procedural violations did not prevent applying to court and the claimant's arguments associated with the improper communication of the Decision constitute no ground for it to be found unlawful.

Regarding violation of the rights of the public and the public concerned the Court pointed out that the information contained in the case confirms that the originator of EIA, from the very start of the EIA process, took various measures to make the public aware of the planned construction of EEPOL at the most intensive stage of the EIA process and to ensure public access to all documentation which was being prepared, proactive involvement of the public in the EIA process and the opportunity to present reasoned proposals. It observed that based on the provisions of the Aarhus Convention and the Law on EIAPEA, the purpose of the communication to the public procedures is to provide the public with proper access to information about planned economic activity and to be involved in identifying the potential environmental impact of such activity and minimising such impact. The Court relied on clauses 8 and 18 of the Procedure for communication of information to the public and involvement in the process of environmental impact assessment of

planned economic activity (hereinafter referred to as Procedure) and observed that information about the developed EIA programme was published in the press: Respublika on 23 January 2010, Lazdijų žvaigždė on 22 January 2010, Miesto laikraštis on 22 January 2010, the information boards of Alytus and Lazdijai district municipalities and Alytus, Miroslavas, Kriokialaukis, Simnas, Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis local neighbourhoods, on the website of project co-ordinator LitPol Link Sp. z o.o.: http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/, and on the website of the competent authority Alytus Regional Environmental Protection Department on 22 January 2010. The developed EIA programme was available at the headquarters of the originator of EIA documentation, UAB Sweco Lietuva, Alytus district municipality, Alytus, Simnas, Miroslavas and Kriokialaukis local neighbourhoods; Lazdijai district municipality, Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis local neighbourhoods; on the website of the project co-ordinator LitPol Link Sp. z o.o. http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/ (EIA programme, Part IV – co-ordination documentation of the EIA programme). In addition, information about the performed environmental impact assessment of the Line, the produced report and the planned public hearing was published on 25 June 2010 in the Lazdijai district paper, Lazdijų žvaigždė, issue 26 (704) (Report on the environmental impact assessment of the construction and operation of a 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border (hereinafter also referred to as Report volume L1 and/or L2) p. 354), on 26 June 2010 in the paper Lietuvos žinios issue 143 (12672) (Report volume L1, p. 355), on 26 June 2010 in the Alytus regional paper Alytaus naujienos issue. 117 (11709) (Report volume L1, p. 356), in June 2010, in the paper of Krosna town, Saugok šeimą, issue 1 (Report volume L1, p. 357), on the information boards of Alytus and Lazdijai district municipalities as well as on the information boards of Alytus, Miroslavas, Kriokialaukis and Simnas local neighbourhoods of Alytus district municipality and of Lazdijai, Krosna, Šeštokai, Teizai and Būdvietis local neighbourhoods of Lazdijai district municipality (Report volume L1, p. 350-353). The produced EIA report was also available at the headquarters of the originator of EIA documentation, UAB Sweco Lietuva, Alytus district municipality (Alytus district municipality, Alytus, Simnas, Miroslavas and Kriokialaukis local neighbourhoods) and Lazdijai district municipality (Lazdijai district municipality, Lazdijai town, Lazdijai, Krosna, Šeštokai, Teizai, and Būdvietis local neighbourhoods) and on the website of the project co-ordinator, LitPol Link Sp. Z.o.o.: http://www.litpol-link.com/lt/aplinkosauga/pav-dokumentai/lietuva/. It observed that prior to the public hearing of the EIA report, the originator of the documentation received no reasoned proposals regarding the produced EIA report and between 29 June 2010 and 14 July 2010, the originator of EIA was providing replies to the proposals from representatives of the public received prior to the public hearing (Report volume L1, p. 345-348). It added that the public presentation of the EIA report took place: on 13 July 2010 at Alytus district municipality, Miroslavas local neighbourhood, Kriokialaukis local neighbourhood (Report volume L1, p. 389-399), on 14 July 2010, at Simnas local neighbourhood (Report volume L1, p. 406-416); on 16 July 2010, at the public library of Alytus district municipality and Alytus local neighbourhood (Report volume L1, p. 428-438); on 14 July 2010, at Lazdijai district municipality Krosna local neighbourhood (Report volume L1, p. 400-405), on 15 July 2010, at Šeštokai local neighbourhood (Report volume L1, p. 422-427), on 15 July 2010 , at Būdvietis local neighbourhood (Report volume L1, p. 417-421), on 19 July 2010, at Teizai local neighbourhood (Report volume L1, p. 439-449), on 19 July 2010, at Lazdijai district municipality, Lazdijai town municipality and Lazdijai local neighbourhood. The originator of EIA produced a special information booklet (1,000 copies), which informs about the planned economic activity and its potential impacts, the progress of the project, availability of EIA documentation to the public and public involvement in the EIA process. The booklet was distributed to the public at local neighbourhoods and municipalities. The results of EIA of the planned power line were also introduced, on 27 July 2010, to the Lazdijai district municipal

authority with the participation of the organiser of the planned activity, the project co-ordinator, the originator of the EIA documentation and the media. In addition, the project organisers held two information conferences on the project: On 15 May 2009 in Jaczne, Poland, and on 23 October 2009 in Alytus, to make representatives of the local government, the public and non-governmental organisations aware of the project at the early planning stage and to provide the with the opportunity to give feedback and participate in discussions. It also observed that the planned activity was publicised on 29 June 2010 on the website of the Lietuvos rytas daily (www.lrytas.lt) and on the Delfi website (www.delfi.lt), on 23 July 2007 on the Cika website (www.cika.lt), on 7 July 2010 on the website of the Lazdijai regional paper Dzūkų žinios (www.dzukuzinios.lt), and on 7 September 2010 on the website of Elta news agency (www.elta.lt). In addition, on 25 October 2010, Alytus Regional Environmental Protection Department (REPD) announced about the received EIA report on its website http://ard.am.lt/VI/index.php#a/515. It observed that during the EIA process, Alytus REPD received proposals of the public concerned and with letter No ARV2-51732 of 10 December 2010, in accordance with Article 10(4) of the Law on EIAPEA, invited representatives of the public that provided proposals, environmental impact assessment entities, the originator of the environmental impact assessment documentation and the contracting authority of the planned economic activity to come to Alytus RAD on 17 December 2010 to discuss the proposals of the public concerned (minutes from the discussion of 17 December 2010, No ARV4-18). In summary, the Court pointed out that it has no ground to agree that the public was being informed about EIA in violation of legislative provisions. It also observed that the Aarhus Convention entitles the public to be involved in decision-making under the established procedure, but the public opinion is not mandatory. It also pointed out that the claimant's arguments regarding the misleading information in the advertisement published in Lazdijų žvaigždė, issue No 16 on 16 April 2012 should be dismissed because the subject-matter of this case is the decision regarding the admissibility of planned economic activity according to the provided EIA report and therefore the issue of the legality of the Special Plan and of SEIA procedures is not being addressed in this case. Furthermore, the legislation that governs public involvement in the EIA process does not provide that graphical information pertaining to PEA be published in the press, therefore the claimant's arguments about the fact that maps of the Line's alternatives (their extracts) were not published in the press are also unfounded. It pointed out that the above-listed information leads to a conclusion that EIA documentation was given proper publicity and no violations pertaining to communicating information to the public and public involvement in EIA procedures were found.

Regarding the improperly selected site/territory for the construction of a power interconnection it pointed out that the idea behind the alternative proposed by the claimant is to reconstruct the already existing Alytus-Šeštokai 110 kV power line and to connect it with the infrastructure development corridors provided in the Kalvarija general plan (Vol. I, p. 151-152). It observed that, as seen from the map of alternatives of PEA sections, sub-alternative B1 in the part of the territory between Alytus and Šeštokai is being combined with the existing route of the 110 kV transmission line on the territory of Alytus district municipality (EIA Report, Volume L-2, p. 285) whereas the claimant, in principle, seeks that the Line be built on the territory of Kalvarija and Marijampolė municipalities bypassing the territory of Lazdijai district municipality. It pointed out that it was found that a 400 kV transmission line is provided in the general 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 noted that the general plan should serve as basis for industry (sector) development strategies and other strategic plans and programmes drafted by public bodies. Furthermore, clause 31 of 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 following is necessary to implement the development goals of the Electricity sector, i.e. ensuring the strategic reliability of electricity supply and integration into the EU market: by 2012, build strategic interconnections with Poland and

Sweden (par. 3), by 2015, implement the technical measures required for the synchronised operation of the Lithuanian electricity system with the UCTE system (par. 4). 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 building of power transmission interconnections to Poland and Sweden is categorised as a project of special strategic importance to national security <...> hence, this project is aimed at satisfying pan-Lithuanian public interest. It observed that although the claimant stated that the construction of the aforementioned Line became legally governed for the first time only after the Government adopted Resolution No 1442 of 23 February 2011 and the electricity transmission technique (overhead lines) was planned even later, these statements are denied by factual information because the need for constructing a 400 kV power interconnection, the technique of building the line route and its preliminary site are established by the solutions of the general plan of the territory of the Republic of Lithuania approved by Resolution No IX-1154 of 29 October 2002 of the Seimas of the Republic of Lithuania. It pointed out that the chapter "Energy infrastructure" of the General Plan indicates that in order to integrate into international energy markets, plans are to build a powerful interconnection with Poland for integration into the electrical system of Western European states thus to ensure a reliable operation of the Lithuanian electrical system by consistently reducing dependency on the Russian electrical system (ES) (par. 18, point 2), the priority of implementing techniques and actions for integration into the common Western European energy system is named as an essential one in the field of energy (par. 37) (Vol. V, p. 61, 62), whereas a 400 kV high-voltage overhead electrical line is provided in the graphic part of the General Plan – Technical Infrastructure Plan, marked in yellow and running across the territories of Alytus and Lazdijai municipalities, and there is an inscription next to its symbol: "400 kV high-voltage overhead electrical line" (Vol. V, p. 47, 50-67, 68). Furthermore, a 400 kV high-voltage overhead electrical line is also provided in the approved general plans of the territories of Alytus district municipality and Lazdijai district municipality (Decision No K-79 of 24 March 2009 of Alytus district municipal council, Decision No 5TS-648 of 5 December 2008 of Lazdijai district municipal council) (Vol. IV, p. 196 – 197) (EIA Report. Volume L-l, p. 40 Volume L-2. Graphical annex 2). The Court therefore considered that the evidence in the file confirms that the technique of Proposed Economic Activity (PEA) (building a 400 kV high-voltage electrical line (overhead)) was established by a regulatory act adopted in 2002 - a general plan, whereas with Order No 1-190 of 12 October 2009 the Lithuanian minister of energy decided to begin developing a special plan for building a 400 kV overhead power transmission line between Alytus transformer substation and the Lithuanian-Polish border in the Alytus county. It pointed out that on 30 August 2011, the Lithuanian Minister of Energy passed Order No 1-211 to approve a special plan for the construction of the aforementioned facility, therefore the claimant's arguments that the technique and site of PEA in this specific case were established by legal entities with special private interests (PEA organiser, PEA originator) rather than by legislation are unfounded.

The Court also relied on Article 2(1), Article 7, Article 11(7), Article 16(1)(3) and Article 18(2) on the Law on Territorial Planning and observed that the aforementioned legal regulation leads to a conclusion that according to the solutions of the Republic's general plan, a territory was reserved to build a 400 KV power line - a facility required for satisfying public needs - and the detailing of the solutions established in the general plan is possible within the boundaries of the administrative territorial units which are marked on the general plan and define the documentation level. Hence the building of the disputed facility in the specific case according to territorial planning documentation is possible within the boundaries of the territories of Alytus and Lazdijai district municipalities and the claimant's proposals to build the power line on the territories of other municipalities contradict the imperative provisions of the Law on Territorial Planning (Article 2(1), Article 11(7), Article 18(2). It observed that according to the evidence contained in the

administrative case (extracts from general plans, map excerpts, EIA documentation) shows that the route proposed by the claimant falls within the boundaries of the territories of Marijampolė and Kalvarija municipalities. It pointed out that neither the general plan of the territory of Marijampolė municipality approved by the decision of 27 October 2008 of Marijampolė municipal council nor the general plan approved by decision No T-46-39 of 18 June 2009 of Kalvarija municipal council provide for the construction of a 400 kV high-voltage overhead electrical line (Vol. IV, p. 100-102, 103-119, Vol. V, p. 6), whereas the general plan of Marijampolė municipality (on the territories of Gudeliai and Igliauka local neighbourhoods) provides for a 330 kV electrical line. It added that on the territories of the aforementioned municipalities, at the site where the claimant proposes to build a route, the approved general plans provide an infrastructure corridor for a planned trans-European railway, Rail Baltica (Vol. IV, p. 101-102), and this infrastructure cannot be used for implementing the project without changing the solutions because they are not adjusted for the supply of energy. It considered that the implementation of the alternative proposed by the claimant would contradict the aforementioned imperative provisions of the Law on Territorial Planning because the site and technique of the electrical line provided in the general plan of the Republic of Lithuania and in the general plans of the territories of Alytus and Lazdijai municipalities would have to be planned on the territories of Marijampolė and Kalvarija municipalities, where such a project is not foreseen, and furthermore, the implementation of such an alternative would take a long time, which would contradict the goals and objectives of the national energy system, public interest and international commitments. It added that LitPol Link Sp. z.o.o. , which is in charge of the construction of the power interconnection, applied to Marijampolė and Kalvarija municipal authorities regarding the feasibility of building EEPOL on their territories and received a reply and when planning EEPOL on the territories of Marijampolė district municipality and Kalvarija municipality one needs to perform all related territorial planning procedures according to effective legislation (EIA Report volume L-1, part II). In addition, according to the alternative proposed by the claimant, the Line would cross the Lithuanian-Polish border on the territory of Kalvarija municipality, which would, in principle, contradict the reached cross-border agreement. It added that the aforementioned alternative would also come into conflict with Kalvarija Biosphere Ground (about 2,000 ha) established at the border with Poland in Kalvarija municipality by Order No D1-407 of 14 July 2009 of the Minister of Environment of the Republic of Lithuania, which is a protected site of Natura 2000, the European network of nature protection areas (clause 1.3 of the Order).

The Court also observed that the representative of EIA originator UAB SWECO International, A. V., gave a grounded explanation during the court hearing that that the electricity transmission alternative proposed by the claimant - a direct-current high-voltage underground cable – is not feasible both for technical and for strategic reasons. Whereas the claimant presented no objective evidence to deny this conclusion and its indicated examples from Western Europe regarding implementation of energy projects are insufficient in this specific case. Furthermore, the EIA Report (Report volume L-2, p. 228-229) provides a comparison between constructing an overhead line and an underground cable, which shows that the overhead line construction technique is more suitable on account of a smaller area required for the route, lower potential restrictions on land use, rapid elimination of causes of faults, operational reliability, performance of construction work and other identified factors, but the Court did not elaborate on these circumstances (LAP Article 3(2)). It added that in the specific case, when choosing a site for the Line in the process of planned economic activity according to sub-alternative B1, there was a derogation from the Line trajectory indicated in the General Plan, but the direction of sub-alternative B1 corresponds to the one in the General Plan and does not go beyond the boundaries of the solutions provided in the general plans of Lazdijai and Alytus municipalities, therefore it should be considered that the legislative provisions were not violated when selecting a site for the Line. It also pointed out that in compliance with the legislation governing the axes of the national strategy, the solutions of the

general plan of the Republic of Lithuania, Order No 1-190 of 12 October 2009 of the Minister of Energy of the Republic of Lithuania, a special plan for the construction of the aforementioned facility, which finally established the site and technique of the construction of the Line, by Order No 1-211 of 30 August 2011 of the Minister of Energy of the Republic of Lithuania. It observed that the aforementioned decision has not been rebutted, therefore, as long as the claimant does not contest it, the arguments of its complaint regarding the Line's alternative no longer have legal significance as far as the justification and legality of the contested decision are concerned. Therefore the panel of judges did not look at the circumstances indicated in the complaint related to the procedures that were performed during special planning. On the same ground, the Court also dismissed the claimant's arguments regarding the unlawful nature of the approval of the national Energy Strategy programme and regarding the right of the Minister of Energy to adopt Order No 1-190 of 12 October 2009, by which it as decided to begin drafting a special plan to construct a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic" and to allow Lietuvos energija public limited-liability company (Litgrid AB is its successor) to carry out the functions of the planning organiser in drafting a special plan to construct a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic". In addition, the Court considered that the contested decision rightly points out that the planning of the EEPOL section proposed by the public concerned and Lazdijai district municipality on the territories of Marijampolė and Kalvarija municipalities goes beyond the boundaries of the territory controlled by the Alytus REPD and that it cannot be responsible for the impact assessment on the territories of Marijampolė and Kalvarija municipalities and pointed out that there is no ground to declare grounded the claimant's argument that in the specific case a Decision was supposed to be made by the Environmental Protection Agency.

Regarding the violated environmental impact assessment procedures the Court relied on Article 5(1)(2) and Article 5(2) of the Law on EIAPEA and observed that in the specific case, based on the aforementioned provisions, the following entities were rightly included into the EIA procedure as EIA entities: Lazdijai district municipal authority, the Cultural Heritage Department, the State Service for Protected Areas, Alytus district municipal authority, Alytus County Fire and Rescue Board, Alytus public health centre, Lithuanian Geological Survey reporting to the Ministry of Environment and according to its competence provided conclusions regarding the programme, the report and the feasibility of planned economic activity within the limits of the activities defined in Article 6(4) of the Law on EIAPEA. It pointed out that all the above-listed entities favoured the EIA programme (Report, Volume L-2, p.83-91) and the EIA Report was agreed with all the entities which, in principle, favoured the planned economic activity according to sub-alternative B1 (Report, Volume L-1, p. 454-466), except for Lazdijai district municipal authority, which partly favoured the Report (Report, Volume L-1, p. 453). It observed that it follows from the content of letter No 1-2581 of 2 September 2010 of Lazdijai district municipal authority that the Lazdijai district municipality did not favour the building of the Line according to sub-alternative B1 in the section between Alytus transformer substation and the Lithuanian-Polish border and their stated position, in principle, matches that of the claimant (Vol. IV, p. 170). It also pointed out that the defendant, after examining the report and the comments and proposals of the public concerned, applied to the originator of EIA asking to supplement and amend the Report (Vol. I, p. 165) in response to the requirement of the competent authority, the EIA Report was supplemented with textual and graphical material, "A study on the identification of the diversity and types of the spatial structure of the landscape of the Republic of Lithuania", a map of geomorphological conditions of the EIA area, a physical and morphological map of EIA on the territory of Lazdijai district municipality, a psychosomatic impact assessment and reasoned explanations on other issues raised by the public (Vol. I, p. 167 – 171). The Court relied on paragraphs 1 - 3 of Article 6 and paragraphs 1 and 4 of Article 10 of the Law on EIAPEA and pointed out that the aforementioned

provisions establish the obligation of a competent authority, following an examination of the environmental impact documentation and an assessment of the environmental impact of planned economic activity, to adopt a decision allowing or disallowing the planned economic activity at a selected site, i.e. adoption of a decision is its prerogative. It observed that the legislation government the EIA process does not preclude adopting a decision where a EIA entity disapproves of the Report. It pointed out that the proposals of Lazdijai district municipality regarding selecting a different site for the electricity route (on the territories of Marijampolė and Kalvarija municipalities) were reasonably rejected by the EIA originator and the competent authority and the aforementioned authority has not applied to court to dispute this. It also relied on Article 8(9) of the Law on Environmental Impact Assessment and pointed out that the contested economic activity is of public nature and its implementation is provided in the national strategic plans approved by the Government of the Republic of Lithuania and the EIA findings confirm that Lazdijai district municipality favoured the EIA programme (Report, Volume L-2, p. 83), and the existence of the Line on the territory of Lazdijai district municipality was established by the solutions of the general plan approved by the municipal council, and therefore pointed out that the partial objection of the aforementioned municipality to the competent authority did not present ground to adopt a negative decision regarding EIA according to sub-alternative B1. It therefore considered that the aforementioned proposals, once examined, were reasonably dismissed. It emphasised that it did not find any violations to the procedures established by the Law on EIAPEA regarding the involvement of EIA entities and other participants of the environmental impact assessment process (including the public concerned) in the EIA process, and therefore pointed out that the Decision was adopted following an exhaustive and consistent consideration and assessment of the conclusions and proposals of all EIA entities in line with all the procedures provided in the Law on EIAPEA. Whereas the entities indicated by the claimant - Lazdijai fire and rescue service and the Lazdijai office of Alytus public health centre (referred to by the claimant as Lazdijai public health centre) are not separate and independent institutions but rather territorial organisational units of the institutions - Alytus county fire and rescue board and Alytus public health centre, therefore the Court agreed to the defendant's stated position that their non-inclusion into the EIA process was not absolutely necessary. It observed that according to the revision of the Law on EIAPEA that was in effect during the drafting of the EIA programme and its submission to EIA entities (adopted by law No X-1654 of 30 June 2008, took effect on 17 July 2008), EIA entities included public bodies in charge of healthcare, fire protection and protection of cultural properties as well as county and municipal authorities (Article 5(1)(2)). It pointed out that based on this legislative provision, the office of the Governor of the Alytus Region was involved in the EIA process and favoured the EIA programme (Report volume L-2, p.82). It added that according to Article 5(1)(2) of the revision of the Law on EIAPEA that was in effect at the time of co-ordination of the EIA Report (took effect on 1 July 2010), county (regional) authorities were no longer included in the aforementioned entities, therefore the non-submission of the EIA Report to the successor of the office of the Governor of the Region, the National Land Service reporting to the Ministry of Agriculture, by the competent authority was not a violation of the legislative provisions. It specified that the evidence contained in the file confirms that the National Land Service reporting to the Ministry of Agriculture has favoured the special plan of the aforementioned facility and has co-ordinated it without comments (Vol. III, p. 174-175). Whereas the administrative acts of the aforementioned authority have established easements for the parcels of land located in the contested area as regards the construction of the Line which members of the association "Rudaminos bendruomenė" have the right to contest in court, which, as the data of the court administration system, Liteko, they exercise (e.g. administrative cases No Ik-778-422/2012, Ik-777-414/2012, Ik-773-505/2012 etc.). Therefore the court came to a conclusion that the violations of the claimant's and its members' rights in connection with the functions of the aforementioned authority will be examined in other proceedings, so even if it is found that the involvement of the National Land Service in the EIA

process was necessary, the non-co-ordination of the EIA Report with NLS did not directly affect the claimant's rights. Similarly, the Court considered unfounded the claimant's arguments concerning the non-involvement of the Forestry Department reporting to the Ministry of Environment and the Lithuanian State Department of Tourism reporting to the Ministry of Economy in the EIA process because their participation in the said process is not mandatory. Furthermore, similarly unfounded are the claimant's arguments regarding the non-involvement of the Cultural Heritage Department reporting to the Ministry of Culture because it favoured the planned economic activity indicated in the Report (Report volume L-1, p. 454). The Court also observed that after a structured evaluation of Article 5(1)(2) of the Law on EIAPEA and Article 38 and Article 2(9) of the Law on Public Healthcare (hereinafter referred to as LPH), it should be considered that the assessment of the impact of planned economic activity on public health is carried out by a public health safety expert examination <...> based on the hygiene norms established by the Public Health Safety Regulation (Article 16 of LPH). It observed that the evidence contained in the file confirms that the Alytus Public Health Centre favoured the programme for the environmental assessment of the construction and operation of the line by letter No RI-205 of 11 February 2010 (Vol. II, p. 57) whereas the environmental impact assessment report was favoured on the basis of hygienic expert examination report No RI-973 of 27 August 2010 (Vol. II, p. 52-56). It pointed out that based on clause 5.1 of the hygiene norm HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines" approved by Order No 4 of 4 January 2001 of the Minister of Health, 330 kV and higher voltage overhead transmission lines must be planned preferably further from an urbanised area or residential buildings. 400 kV overhead transmission lines must be planned within at least 250 m away from residential buildings. In exceptional cases, when local conditions prevent from complying with this requirement, 330 and 400 kV overhead transmission lines can be planned closer to urbanised (built-up) territories but not closer than 20 or 30 m respectively, ensuring that the strengths of the electrical field of the overhead lines below the cables do not exceed 5 kV/m. The opportunity to bring the overhead lines to urbanised (built-up) territories must be co-ordinated with public health regulatory authorities. Based on clause 5.2, to protect the population from exposure to the harmful electrical filed of overhead lines, a sanitary protection zone (SPZ) must be identified. It observed that, as can be seen from the evidence contained in the file, to evaluate the EIA Report, the Alytus Public Health Centre reporting to the Ministry of Health of the Republic of Lithuania carried out a Hygiene expert examination of regulatory documentation and products on 27 August 2010. Expert examination report No R1-973 (Vol. II, p. 52-56) stated that the EIA Report assessed the negative exposure of the population to the physical factors caused by the power line and the substation. It was found that the impact on public health, once the localisation of facilities is properly addressed and safe distances are retained, would have low significance. For the purpose of examining the impact on ambient air, the background pollution level of territories where building of EEPOL is planned according to the chosen sub-alternative B1 was equated to the average annual pollution level of relatively clean Lithuanian rural areas named by the environmental protection agency. It has been foreseen that in the event of discharge of electricity during the operation of the line small amounts of ozone and nitrogen oxide will be released to ambient air, but increased levels of these substances are observed only within a few centimetres from electrical wires and will therefore have no impact on public health <...> Calculations have revealed that the planned noise levels do not exceed the ranges defined in HN 33:2007 "Acoustic noise. Noise ranges in residential and public buildings and in their surroundings" <...> Furthermore, it was found that the strength level of the Line's electrical field according to HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines" (Žin. Official Gazette, 2001, No 4-109) does not limit the time of people's exposure. The noise emitted by the transformer substation is not expected to present a negative impact on the population because the closest residential homestead is 250 m away and the closest settlement is 750 away from the Alytus transformer substation. After assessing the EIA Report, the aforementioned authority

provided a conclusion that the report on the environmental impact assessment of the construction and operation of a 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border is under co-ordination and that the performance of planned economic activity is not objected to, and pointed out that it is mandatory to legalise the established SPZs based on the requirements of the Special Conditions for the use of Land and Forests approved by Order No 343 of 12 May 1992 of the Government of the Republic of Lithuania (Žin. Official Gazette, 1992, No 22-652; 1996, No 2-43; 1999, No 104-2995). The Court pointed out that the file contains no evidence about the fact that the planning of the economic activity would violate the provision of clause 5.1 of HN 104:2000 concerning the 250 m distance between the power line and residential buildings (reduction of the protection zone), therefore separate co-ordination with the public health centre was not necessary.

Neither did the Court agree to the statement that the assessment of the impact on public health violated clause 1.3 of Resolution No 1610 of 10 October 2002 of the Government of the Republic of Lithuania implementing the Law on Public Healthcare of the Republic of Lithuania, which inter alia provides for the establishment of sanitary protection zones (hereinafter also referred to as SPZs). It observed that the subject of the proceedings at issue is the legality and justification of the EIA decision whereas the competent authority for healthcare, Alytus Public Health Centre, favoured the EIA Report by establishing requirements in its conclusion, also concerning the definition of the boundaries of the sanitary protection zone. It pointed out that the contested decision, based on the conclusion of the competent authority and in consideration of the proposals from the public, provided for measures to reduce impact on public health during the technical planning phase: 1) set up an integrated protection and sanitary protection zone of the planned EEPOL which is 30m wide from the outside wire; 2) establish a sanitary protection zone for the reconstructed and expanded Alytus transformer substation and for a new direct-current converter and a 400 kV substation within 16-160 m from transformers and filters according to the acoustic noise dispersal scheme only of technical measures to reduce excessive noise levels (e.g. sources of noise in closed facilities, installation of noise attenuating walls) are not applied or a different one – planning of noise attenuation systems that ensure noise levels of not more than 55 dBA during the night at the boundaries of the planned parcel of land; 3) ensure adequate compensation to residents for losses incurred due to EIA and the established restrictions on the use of land (Vol. I, p. 124, side II). The Court therefore concluded that the evaluation of the impact of planned economic activity on public health was carried out in line with the provisions and procedure set forth in legislation. It pointed out that the establishment of SPZs is a component of the territorial planning procedure which is implemented in the technical planning phase (clause 2.2 of the Special conditions of the use of land and forests approved by Resolution No 343 of 12 May 1992 of the Government of the Republic of Lithuania and clauses 1 and 2 of the Regulations for establishing sanitary protection zones and boundaries approved by Order No V-586 of 19 August 2004 of the Minister of Health of the Republic of Lithuania. In this specific case a special plan for the construction of the Line has already been approved and is not being contested by the claimant, therefore the claimant's arguments regarding the establishment of sanitary zones in the context of the existing factual circumstances found and legal regulation are viewed as being beyond the boundaries of the dispute.

Furthermore, the Court disapproved of the claimant's arguments that in this specific case, prior to the environmental impact assessment of the subject of the dispute, an environmental impact assessment and an individual territorial impact assessment was supposed to be preceded by a strategic environmental impact assessment. The Court observed that the national legal regulation of the strategic environmental is established 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 referred to as SEA Procedure approved by the Government) and the Procedure for selecting plans and programmes for strategic environmental assessment approved by Order No D1-456 of 27 August 2004 of the Minister of Environment

(hereinafter referred to as SEA Procedure approved by the Minister of Environment). It relied on Article 2(33) and Article 17 of the Law on Territorial Planning, Article 27 of the Law on Environmental Protection, clauses 2.1 and 2.3 of the SEA Procedure approved by the Government and clause 2.1 of the SEA Procedure approved by the Minister of Environment and considered that in the proceedings at issue, in consideration of the fact that the subject of the dispute (the planned 400 kV transmission line) falls within the activities named in clause 8.8 of the list of types of planned economic activity subject to an impact assessment established in Annex 1 to the Law on the Environmental Impact Assessment of Proposed Economic Activity and a strategic environmental assessment was supposed to be carried out in line with the procedure set forth in the aforementioned legislation. It pointed out that the documents submitted to the Court (the special plan for the construction of a 400 kV transmission line. A strategic assessment. Report) confirm that the aforementioned procedure was performed. Whereas the Court disagreed to the statement that the strategic assessment was supposed to be carried out before the EIA procedures because EIA and SEA are two separate processes whose performance and procedures are governed by different aforementioned legislation, but it does not provide that the SEA Procedure must precede the EIA Procedure. It pointed out that although the claimant relies on Directive 2001/42/EEC 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 and on directives 85/337/EEC and 92/43/EEC, these do not contain direct provisions regarding the precedence of SEA procedures over EIA procedures either. It observed that Directive 85/337/EEC of the European Council on the assessment of the effects of certain public and private projects on the environment, referred to as the EIA (environmental impact assessment) directive, requires that before they give their consent, national competent authorities must carry about an environmental impact assessment of specific projects that may have a significant impact on the environment, *inter alia*, on account of their nature, scale or location. Any public or private entity can offer projects. It relied on Case C-332/04 *Commission v Spain*, C-332/04, paragraph 38; Case C-427/07 *Commission v Ireland*, paragraphs 54–55 and observed that this Court has also pointed out that national courts may take account of the provisions of the EIA Directive, checking whether or not the national legislator has disregarded the limits of discretion defined in the directive (Case C-287/98 *Linster*, paragraph 38). It emphasised that although Directive 85/337/EEC is compulsory for all Member States, its implementing techniques is the prerogative of the Member States and by 2009, all the Member States have transposed Directive 2001/42/EEC (on SEA procedures) to their national legislation. It pointed out that Lithuania implemented EU Directive 2001/42/EC by adopting the Procedure approved by Resolution No 967 of 18 August 2004 of the Government, and furthermore, within the framework of the aforementioned directive, the Law on Environmental Protection of the Republic of Lithuania was revised. It also pointed out that it is apparent from Article 11 of EU Directive 2001/42/EEC and from the general principle of subsidiarity that a Member State must take account of the essential criteria defined in the Directive but the Member States are to decide upon their application in each specific case. It observed that in the original text of the official document - 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 effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC) and in its translation into Lithuanian, a connection with the aforementioned directive with other EU legislation should be pointed out, including with the EIA Directive (paragraph 4, sub-paragraph 4.1) and both directives are found to complement each other to a great extent: The SEA Directive is intended for the early phase and provides the best options for the early planning phase whereas the EIA Directive is intended for a later project implementation phase. In light of the above, the Court pointed out that the practice of implementing the aforementioned directives according to the effective national legislative provisions is diverse and neither is a specific procedure for implementing the directives in place, therefore the claimant's arguments regarding the prevalence of SEA procedures over EIA

procedures on account of illegality of implementing the SEA Directive in the specific case and, respectively, regarding the non-legality of the Contested Decision should be dismissed as unfounded. It also observed that Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora is implemented by adopting the Law on Environmental Impact Assessment of Proposed Economic Activity in the Lithuanian legislation (Annex 3 to the Law). Based on the evidence contained in the file, it was found that the defendant followed the procedure defined in the Law on EIA for environmental impact assessment, therefore the claimant's arguments concerning a separate territorial impact assessment in connection with the assessment of the territory of Žuvintas Reserve are unfounded. It pointed out that it has been established with EIA documentation and with the special plan of the subject of the dispute that the Line does not cross the territory of Žuvintas Reserve, which is included in the protected sites of Natura 2000, but the Line runs at approximately 200 m from Žuvintas Reserve. It observed that the Report acknowledges that the planned EEPOL section sub-alternative B1, in a small section, directly borders on Žuvintas Biosphere Reserve, but when compared with other considered alternatives, its negative environmental impact would be the lowest. In addition, it was found that during the EIA procedure there were consultations with the reserve's staff and naturalists to reduce the negative impact on the environment (EIA Report, Volume L-1, p. 203-210). It also pointed out that the aforementioned natural site does not wall within the residential area of Rudaminos bendruomenė, the claimant did not indicate specific violations of its rights related to this natural site, therefore it should be considered that its stated arguments cannot serve as a basis for the annulment of the solution either. The Court agreed that it is important to preserve cultural and landscape values and natural diversity but, in view of the strategic importance of the contested project to national interests, concluded that based on the aforementioned arguments there is no ground to annul the Disputed Decision.

IV.

The claimant, in disagreement with the judgement of Kaunas Regional Administrative Court of 5 July 2012, filed an appeal (Vol. VI, p. 8 – 12), asking to annul the contested judgement and to pass a new judgement and to satisfy its complaint.

It bases the appeal on the following essential grounds:

1. As regards its arguments in connection with the building of an alternative underground line, it points out that the Court should not have disassociated itself from evaluating the feasibility of building this underground line. It observes that the decision on the EIA Report decides about the permissibility of activities using the selected technique, which directly relates to BAT (Best Available Technique). It points out that the Court did attribute greater weight to the explanations of the originator of the EIA Report, and as a matter of fact an underground line, as an overhead line, produces the same synchronisation outcome, which is proven by examples of Western European countries.

2. It observers regarding compliance of sub-alternative B1 of the power transmission line with the general plans of Lazdijai and Alytus municipalities that it disagrees with the Court's ground that specification within the same municipality may derogate from the established solutions if specification takes places within the boundaries of the same administrative territorial unit. It also considers that the Court's ground that the solution for implementing the claimant's proposed line would take more time for the reason that co-ordination with Kalvarija and Marijampolė municipalities would be required is also unfounded because this project has been significantly behind schedule anyway. It relies on clause 12.2 of the general plan of the Republic of Lithuania approved by Resolution No IX-1154 of 29 October 2002 of the Seimas and underlines that by offering sub-alternative B1 the planner, UAB Sweco Lietuva, derogated from about 85% of the route provided on the drawing of the general plan of the Republic of Lithuania M1:400 000. Furthermore, the filed material of the strategic assessment of the effects of the special plan shows in

choosing the crossing point of the national border the planner limited itself only to the territory of Lazdijai district municipality. It states that when identifying the alternatives for a power line one should have taken account of all the effective documentation on territorial planning as well as of the general plan of Kalvarija municipality and one should have used the opportunity to examine the planning of a part of the Line's route up to the national border (a section of about 10 km) in the existing free infrastructure corridor on the territory of Kalvarija municipality. It underlines that in selecting sub-alternative B1, the EIA originator also ignored potential 100% integration of the planned Line with the already existing 110 kV line in the entire section between Alytus and Šeštokai and making use of the industrial zone between the settlements of Šeštokai, Jukneliškė and Mockava defined in the engineering infrastructure solution of the general plan of Lazdijai district municipality. It argues that once the planned Line is integrated with the aforementioned territories and with the infrastructure corridor provided in the general plan of Kalvarija municipality, the total length of the power interconnection between Lithuania and Poland in the section between Alytus and Punskas would decrease by about 8 km and it would run across territories with a lower population density and with fewer protected cultural heritage and natural properties compared to the planned sub-alternative B1.

3. It observes regarding the line's alternatives and cross-border consultations between Lithuania and Poland that the file contains no evidence that the consultative arrangement between the aforementioned countries bears the significance of a cross-border agreement. Furthermore, the website of the Ministry of Environment of the Republic of Lithuania provides an update on the upcoming drafting of a plan to develop the border area between the Republic of Lithuania and the Republic of Poland - a national-level special territorial planning document, which is expected to be approved in a few years and which aims inter alia to define essential provisions for the use and protection of the border area between the aforementioned countries.

4. It points out regarding the entities that were not involved in the evaluation of the IEA Report that it considered the conclusions of the National Land Service as necessary in that specific case because the planned power line was drawn across the parcels of land of land owners, thus distorting a rational use of land and intimidating people with the procedures of imminent administrative easements, therefore it disagrees to the conclusion that non-co-ordination of the EIA Report with the National Land Service did not directly affect the claimant's rights.

5. It observes regarding the impact on public health and sanitary zones that it considers the Court to have unreasonably concluded that in formal terms the assessment of the impact on public health was carried out properly. It argues that within a distance of 10 metres (on a 20-metre wide section) will be exposed to a maximum 8 kV/m electrical field, which means that simple walking within a distance shorter than 20 metres from a power transmission post present a health hazard. In addition, separate co-ordination of sanitary zones with the public health centre was required as there are people who live less than 250 metres away from the electricity line.

6. It observes regarding the Strategic Environmental Assessment and EIA that it disagrees to the Court's conclusion that the precedence of SEA procedures over EIA procedures is not established. It argues that the transmission of electricity through air is namely that first violation that was committed without consulting the public concerned at the earliest stage when all available alternatives are still available for consideration and choosing a decision. It points out that an overhead line was planned neither in the National Energy Strategy approved by a Seimas resolution in 2007 nor in the implementation programme of the National Energy strategy approved by the Government. It relies on clause 18, sub-clauses 2 and 3 of the section "Energy Infrastructure" of the General Plan of the Republic of Lithuania stating that the Contested Decision unreasonably indicates that the construction of the overhead power transmission line is acknowledged a facility of strategic national significance, according to clause 13, sub-clause 6 of the National Energy Strategy approved by Resolution No X-1046 of 18 January 2007 of the Seimas and clause 3.1 of the National Energy Strategy implementation plan for 2008-2012 approved by Resolution No 1442 of the

Government of the Republic of Lithuania. It argues that the aforementioned legislation contains no reference to the overhead line in the Alytus county. It underlines that no SEA of the Line implementation technique was carried out, the Minister of Energy had no ground to decide to begin designing and planning the construction of an overhead power transmission line. It argues that, in a broad sense, EIA is not only an approval of the environmental impact assessment report and that the EIA procedure includes a strategic environmental assessment. It points out that the legislation that requires a strategic environmental assessment and the succeeding environmental impact assessment was adopted on the national level before the point in time when the national energy strategy included the issue of synchronisation of power transmission lines, and it therefore considers that one should first have carried out a strategic environmental assessment procedure regarding the building of a 400 kV transmission line in the Alytus county or in another county and only after that a technique of building it (overhead or underground) could be decided. However, the Minister of Energy, without a strategic environmental assessment, decided that this will be an overhead line, bypassing the obligation to assess the strategic effects on the environment first and only then decide upon the technique of building a power transmission line, which is established in the Directives that govern SEA. It therefore concluded that the public concerned was not consulted regarding an overhead line, as required by Directive 2001/42/EC, to which the commitments of the Aarhus Convention for a Member State to ensure that the public is involved in the review of projects at the very earliest stage of project implementation when all opportunities are open for consideration have been transposed. It also points out that it is certain that within the meaning of Directive 2001/42/EC, SEA was supposed to be carried out in the phase of developing the national energy strategy (as a programme or plan) and the evidence contained in the file confirms that the discussion with the public of the SEA drafted also following the passing of the order of the Minister of Energy was inadequate because the public was mislead by an announcement of a 400 KW project instead of a 400 kV project and therefore did not participate in the discussion whereas the organisers failed to ensure the involvement of the public concerned and did not draw its attention to the fact that their advertisement in the Lazdijų žvaigždė paper is misleading. It observes that the Court, when interpreting the implementation of Directive 2001/42/EC in Lithuanian national legislation, also explicitly confirmed that proper performance of SEA procedures is a prerequisite for the EIA procedure. It pointed out that it disagrees to the Court's conclusion that it did not contest the special plan approved by the Minister of Energy in 2011 and therefore lost the opportunity to contest the EIA and/or SEA decisions. It argues that special planning can be lawful only when it takes place according to duly performed SEA and EIA procedures.

7. It observes regarding the Žuvintas Biosphere Reserve that it disagrees to the Court's conclusion that the Line does not cross the territory of the Žuvintas Reserve and only runs within 200 m from the Žuvintas Reserve, and that therefore the EIA Report and the Contested Decision which is based on it is adequate in this part. From this point of view it points out that the Court failed to justify the fact that comparing the choice of the contested line with other considered alternatives, the negative environmental impact would be the lowest. It states that the mere fact that the Žuvintas Biosphere Reserve is a Natura 2000 site means that it was necessary to carry out a proper assessment of the impact of the planned line on this site instead of limiting oneself to interviewing the reserve's staff or consultations with naturalists and providing for specific compensatory measures. It also points out that the Court wrongly found that Rudaminos bendruomenė as a claimant did not specify specific violations of its rights related to this natural site because the protection of the Žuvintas Reserve is a public interest.

The defendant, the Alytus Regional Environmental Protection Department of the Republic of Lithuania, filed a response to the claimant's appeal (Vol. VI, p. 29 – 42) asking to maintain the judgement of 5 July 2012 of the Kaunas Regional Administrative Court and to dismiss the claimant's appeal.

In support of its response, the defendant relies on the following essential defence:

1. It points out regarding the building technique of the Line that the claimant provided no evidence that the building of the Line under the ground is suitable for the interconnection between Lithuania and Poland and that an overhead line is not permissible. It considers that the Court had valid ground not to rely on the explanations of the appellant's representative but acted according to the explanations given by representatives of third parties concerned, Sweco and LitPol Link. It also points out that the appellant's statements concerning a supposedly lower environmental impact of an underground line are denied by other evidence contained in the file, i.e. an alternative comparison between the building of an overhead power transmission line and an underground cable from different aspects (textual attachment to Volume L-2 of the EIA Report). It observes that the construction of the Line is acknowledged an economic project of strategic importance to the state which also affects national security, therefore it is subject to high reliability requirements that, in this specific case, are better fulfilled by the overhead construction technique. In addition, one of the Line's goals is interconnection with the energy system of continental Europe for synchronised operation, which could not be ensured with the alternative proposed by the claimant.

2. It observed regarding new evidence that although the claimant indicates in the appeal that is collects evidence regarding an underground line as the optimal solution and will file a request to accept it to the case, such filing is not acceptable within the meaning of Article 138(3) of LAP because the claimant initiated this case on 14 February 2011 and the time span between the filing of the complaint and the end of the proceedings on the substance at a court hearing on 22 June 2012 is 1 year and 4 months, which means that it had sufficient time to collect all evidence that it deems necessary and to submit this evidence to a court of first instance, therefore submission of new evidence to the case in the appeal process is delayed and unfounded.

3. It argues that the planning of the Line in the infrastructure corridor on the territory of Kalvarija municipality and in the industrial zone between the settlements of Šeštokai, Jukneliškė and Mockava is not possible. It observes from this point of view that the infrastructure corridors provided on the general plan of the territory of Kalvarija municipality referred to by the claimant are not designed for the development of electricity transmission infrastructure, and furthermore, a preliminary evaluation of the feasibility of building a Line referred to by the claimant showed that the route proposed by the claimant, inter alia, is home to protected area which would be highly affected by the construction of the Line and this was disapproved by Marijampolė municipal authority. In addition, according to the performed evaluation, the route alternative proposed by the claimant would by by 7.9-11.5 km longer than alternative B1 offered by the originator of EIA documentation (EIA Report volume L-l, p. 479). It adds that the existing industrial zone between Šeštokai, Jukneliškė and Mockava cannot be used for constructing the Line either because it would not correspond to the technique of land use. It observes that it also agrees that the specific construction site of the Line was established in a Special Plan that was approved by Order No I-211 of 30 August 2011 of the Minister of Energy of the Republic of Lithuania whereas the claimant rebutted neither the order nor the special planning procedures.

4. It points out that the project of power interconnection between Lithuania and Poland is on schedule. It observes that construction work is planned to be complete by the end of 2015, just as foreseen in the National Energy Strategy, therefore the claimant has no ground to state that the project is significantly behind schedule.

5. It points out that the selected site of the Line does not come into conflict with the general plan of the territory of the Republic of Lithuania. From this point of view, it relies on Article 2(1) and Article 13(1)(3) of the Law on Territorial Planning and points out that a systematic interpretation of the aforementioned legislative provisions allows the assumption that the general plan provides only a principal territorial development concept whose individual principles are specified in special plans and where the conclusions set forth in special plans comply with the concept in the general plan, there is no need to change the general plan. It specifies that on the drawing "Technical Infrastructure" of the general plan of the Republic of Lithuania, a 400 kV

overhead line which runs across the territories of Alytus district and Lazdijai district municipalities is marked (Vol. V, p. 68). It claims that in view of the definition of a general plan, this solution of the general plan of the territory of the Republic of Lithuania should be considered only as a preliminary and schematic marking of the direction of the line and may not be treated as a specific site of the Line. It observes that namely in order to specify the solutions of the general plan of the territory of the Republic of Lithuania and to select a specific site for the Line, development of a special plan was started and in the course of this development an environmental impact assessment of all the Line's alternatives was carried out resulting in the selection of the alternative with the lowest environmental impact. Whereas in the case of an opposite interpretation, both the drafting of a Special Plan and the Line's EIA would lose sense. It observes that the Line's sub-alternative B1 is planned on the territory of Alytus district and Lazdijai district municipalities, i.e. it corresponds to the line's direction marked on the general plan of the territory of the Republic of Lithuania, therefore there was no legal ground to change the general plan because this did not change the principal territorial development concept.

6. It observes regarding the Line's alternatives and cross-border consultations between Lithuania and Poland that it considers the Court to have lawfully and reasonably acknowledged that the construction of the line on the territory proposed by the claimant would contradict the agreement reached through cross-border consultations concerning the border crossing point. Whereas the information given by the claimant about the plan to develop the border area between Lithuania and Poland which is underway does not justify its statements in any way either and is therefore unrelated to the proceedings at issue.

7. It observes regarding the non-involvement of the National Land Service in the evaluation of the EIA Report that the Court was right when it found that the EIA Programme and the EIA Report were co-ordinated with all EIA entities that are defined in the law on EIA. It underlines that once the legal regulation changed on 1 July 2010, regional authorities were excluded from the list of EIA entities, i.e. the function of county governor authorities was withdrawn. In addition, the regulations of the National Land Service reporting to the Ministry of Agriculture approved by Order No 194 of 14 June 2001 of the Minister of Agriculture of the Republic of Lithuania have never stipulated that one of the functions of this authority is examination of EIA programmes and reports or providing conclusions about EIA programmes, reports or the feasibility of planned economic activity. It therefore concludes that there was no legal ground to co-ordinate the EIA Report with the successor of the liquidated Alytus county governor's authority.

8. It points out regarding assessment of the impact on public health that the claimant provides a wrong interpretation of legislative provisions and of the results of the performed electrical field strength measurements. It observes that clause 4.1.5. of the Lithuanian hygiene norm HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines" provides that the strengths of the electrical field in a non-residential area, in areas accessible by vehicles and in areas of land use and the duration of people's exposure to them must not exceed 15 kV/m and 90 min respectively. At other times people can stay in an environment where the strength of the electrical field does not exceed 5 kV/m. Calculations of the strength of the future electrical field showed that the electrical field reaches a the maximum 8kV/m level at a distance of 10 m from the centre of support. Hence the maximum strength of the Line's electrical field does not exceed the permissible level defined by the aforementioned hygiene norm.

9. It observes regarding separate co-ordination of SPZ with PHC that the aforementioned hygiene norm employs two notions: SPZ and the distance from the overhead power transmission line to residential buildings, which are not identical. It points out that the distance between the overhead power transmission line to residential buildings is specifically defined in the hygiene norm - 250 m with the option of reducing it to 20 or 30 m if certain conditions are in place. Whereas the width of SPZ is not defined and depends on the strength of the electrical field: SPZ is established on a territory where the strength of the electrical field is over 1 kV/m. It observes that in

the appeal these two notions are unreasonably equated and furthermore, the case contains no evidence that there are residential buildings within less than 250 m from the Line. It also points out that PHC favoured the EIA Report (Vol. II, p. 54 – 56), therefore even if the distance between the Line and residential buildings is less than 250 m, there would be no ground to state a violation of legislation. It adds that SPZs are established by a territorial planning document, which in this dispute is the Special Plan, which the claimant did not contest. Furthermore, the currently effective Lithuanian hygiene norm HN 104:2011 "Protection of the population from electrical fields generated by overhead transmission lines" approved by Order No V-552 of 30 May 2011 of the Minister of Health of the Republic of Lithuania does not provide for SPZ for power lines.

10. It points out regarding EIA and SEIA that it disagrees to the claimant's statement that SEIA is included into the EIA procedure and was supposed to be carried out prior to EIA because it contradicts the effective provisions of EU and national legislation. It observes that the content of both EU and national legislation confirms that EIA and SEIA are two separate procedures: they are governed by different legislative acts whereas directives 85/337/EEC (EIA Directive) and 2001/42/EEC (on SEIA procedures) or the Law on EIA, which governs the performance of EIA do not define SEIA as a component of the EIA process. It points out that clause 2 of the Procedure for strategic environmental assessment of plans and programmes approved by Resolution No 967 of 18 August 2004 of the Government provides that assessment must be carried out at the time when plans and programmes are being developed, prior to their adoption and/or approval as well as in the course of selecting the best alternative of the plan's or programme's solutions. The aforementioned legal rule, in principle, replicates Article 4(1) of Directive 2001/42/EC. It underlines that legislation only provides that SEIA must be carried out prior to the approval of the plan or programme which is the subject of environmental assessment, but it does not regulate the issue of whether or not SEIA must precede EIA procedures. Furthermore, in the case of the power interconnection between Lithuania and Poland, the direct-current underground cable proposed by the claimant may not be treated as an alternative to an overhead line and the Line's EIA included a special evaluation and comparison between building an overhead line or an underground cable. Therefore the claimant had all available means guaranteed by law to express its opinion about the construction technique of the Line before the Contested Decision on the Line's EIA and the Order approving the Special Plan and received a reasoned response.

11. It points out regarding Žuvintas Biosphere Reserve that the legislation referred to by the claimant provides no special rules for assessing protected areas which are important in terms of protecting common habitats and birds. Furthermore, not only that the claimant itself does not contest the part of the Decision where the Line's sub-alternative B1 is planned between Alytus transformer substation and Žuvintas Reserve but it also demands selecting its proposed alternative, which runs much closer to Žuvintas Reserve that the one provided in the Contested Decision (Vol. I, p. 37-38). It therefore claims that it was correctly found that sub-alternative B1, compared with other considered alternatives, would present the lowest negative impact on the environment.

In its response (Vol. VI, p. 20 – 21) to the claimant's appeal, the third party concerned, Alytus Public Health Centre, points out that the impact on public health, once the localisation of facilities is properly addressed and safe distances are retained, would have low significance.

In its response to the claimants appeal (Vol. VI, p. 22 – 23), the third party concerned, the Alytus territorial office of the Cultural Heritage Department reporting to the Ministry of Culture, points out that the effective legislation governing the protection of cultural heritage was not violated during the Line's EIA procedures.

In their response (Vol. VI, p. 26 – 28) to the claimant's appeal, the third parties concerned, Litgrid, AB and LitPol Link Sp. z o. o. are asking not to change the judgement of 5 July 2012 of the Kaunas Regional Administrative Court and to dismiss the claimant's appeal.

They point out in their response that they support the defendant's opinion regarding the appeal's being unfounded and agrees to the reasons presented in its response to the claimant's complaint.

In its response (Vol. VI, p. 45 – 56) to the claimant's appeal, the third party concerned, UAB Sweco Lietuva, is asking to maintain the judgement of 5 July 2012 of the Kaunas Regional Administrative Court and to dismiss the claimant's appeal.

It points out in its response that the arguments raised by the claimant regarding the construction technique of the poser line in the context of the dispute which arose concerning the defendant's decision permitting the construction and operation of a 400 kV overhead power transmission line between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys are not significant from the legal point of view because, in view of the provisions of the Law on EIAPEA, the actual subject of the claimant's complaint (i.e. the technique of chosen economic activity) is not the subject of the dispute at issue. It points out that regardless of the fact that the originator of the EIA Report carried out a comparison of installing an overhead power transmission line and an underground cable from various aspects (see graphic attachment 9 to volume 2 of the EIA Report), which found that the technique of planned economic activity (installation of an overhead power transmission line) will have a significantly lower impact on the environment than the technique of economic activity proposed by the claimant (installing an underground cable). It also underlines that the installation of an underground cable would not ensure the operation of the power interconnection in synchronised mode with continental European electricity grids of the European network of transmission system operators for electricity, which would contradict the National Energy Strategy. It points out that that the site of the installation of the overhead power transmission line according to sub-alternative B1 is planned on the territory of Alytus district and Lazdijai district municipalities, i.e. it matches the direction of the overhead power transmission line marked on the general plan of the territory of the Republic of Lithuania, therefore the claimant's statement that the site selected for the overhead line according to sub-alternative B1 is not possible on account that it does not completely match the line marked on the drawing of the general plan of the territory of the Republic of Lithuania is unfounded from the legal point of view. It also underlines that the claimant's statement that the third party concerned, as the originator of the EIA Report, when selecting the crossing point of the power line, incorrectly limited itself to the territory of Lazdijai district municipality because it ignored the opportunity to plan a power line in the existing free infrastructure corridor on the territory of Kalvarija municipality and in the industrial zone between the settlements of Šeštokai, Jukneliškė and Mockava, has not legal justification. It argues that the claimant's proposed establishment of the point where the power line crosses the national border between the Republics of Lithuania and Poland in Kalvarija municipality is impossible in respect of effective territorial planning documentation and protected territories. It observes that the claimant is incorrectly interpreting the part of the judgement which refers to cross-border consultations between Lithuania and Poland regarding the power line's crossing point of the national border because the establishing of the crossing point of the border between the aforementioned states does not determine the building direction of the entire power line between the Alytus transformer substation and the national border with Poland. It points out that the claimant's statement that the National Land Service should have been involved in the evaluation of the EIA Report has no ground either. It relies on clause 4.1.5 of the hygiene norm HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines" and argues that the maximum strength of the electrical field of the planned power line does not exceed the maximum permissible level defined in the hygiene norm. It also relies on clause 3 of the Regulations for establishing sanitary protection zones and boundaries approved by Order No V-586 of 19 August 2004 of the Minister of Health of the Republic of Lithuania and states that the claimant's arguments concerning establishment of sanitary protection zones have no ground. It observes that the requirement to establish SPZ and the provisions of the

aforementioned hygiene norm HN 104 : 2000 (text missing - Translator's note). It considers that the claimant also has not ground to state that SEIA should have preceded EIA and that SEIA is a component of EIA. It relies on Article 3(1) and Article 2(5) of the Law on EIAPEA, clauses 4.10 and 6 of the SEIA procedure and observes that a systematic interpretation of the aforementioned legal rules makes it apparent that the subjects of EIA and SEIA are different and that these are two separate and independent procedures. In addition, neither effective EU legislation nor the national laws govern the order of performing these two procedures. It also observes that the issue raised by the claimant regarding the technique of planned economic activity is not being addressed during the process of the environmental impact assessment of planned economic activity and therefore considers its arguments regarding the non-performance of SEIA as insignificant from the legal point of view. Finally, it observes regarding the claimant's arguments related to Žuvintas Biosphere Reserve that the legislation referred to by the claimant provides no special rules for assessing protected areas which are important in terms of protecting common habitats and birds. It specifies that Resolution No 276 of 16 March 2004 of the Government of the Republic of Lithuania only governs the assessment of the location where it is planned to establish a territory which is important for the protection of habitats and birds whereas Order No DI-609 of 1 December 2004 of the Minister of Environment of the Republic of Lithuania indicated by the claimant is no longer valid since 1 June 2006.

In its response (Vol. VI, p. 58 – 61) to the claimant's appeal, the third party concerned, the Ministry of Energy of the Republic of Lithuania, is asking to maintain the judgement of 5 July 2012 of the Kaunas Regional Administrative Court and to dismiss the claimant's appeal.

It observes in the response that the main subject-matter of the case is the decision of the environmental department and not the order of the Minister of Energy. It pointed out that the Ministry of Energy is not an authority which is directly in charge of the organisation of a special plan and of drafting an environmental impact assessment report whereas Order No 1-190 of 12 October 2009 of the Minister of Energy on the development of a special plan for building a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic" was adopted in accordance with effective legislation, *inter alia* , Article 6(1) and Article 6(5) of the Law on Energy, within the competence of the Ministry of Energy. It observes that there is nothing to indicate that the construction technique was selected by the Order because the only aim of the Order is to start the special planning process. It also points out that the claimant misleads the Court by stating that the construction of an overhead line was not established by the 2002 general territorial plan approved by the resolutions of the Seimas of the Republic of Lithuania. It considers that the Court unreasonably found that the technique of planned economic activity (400 kV high-voltage electricity lines) was established in the regulation adopted in 2002, the General Plan, therefore there is no ground to state the opposite.

In its response to the claimant’s appeal (Vol. VI, p. 63 – 64), the third party concerned, Kalvarija municipal authority, asks to Court to pass a judgement at its discretion.

It observes in the response that as much as the appeal relates to Kalvarija municipal authority, it disagrees to the arguments in the appeal. It points out that it disagrees to the claimant's objective that a 400 kV power transmission line is built by extending it to the territory of Kalvarija municipality because the construction of the Line is not planned in the general plan approved by decision No T-46-39 of 18 June 2009 of Kalvarija municipal council. In addition, at the site of the Line proposed by the claimant there is Kalvarija Biosphere Ground (about 2,000 ha), which is a protected site of Natura 2000, the European network of nature protection areas.

In its response to the claimant's appeal (Vol. VI, p. 66 – 67), the third party concerned, Marijampolė municipal authority, points out that the judgement of 5 July 2012 of the Kaunas Regional Administrative Court is lawful and grounded and therefore should not be annulled.

It points out in the response that the claims brought by the claimant against Marijampolė municipal authority have no legal effects and therefore it is not interested in the

outcome of the case. It also points out that the alternative proposals provided by the claimant to build the Line across the territory of Marijampolė and Kalvarija municipalities contract the imperative provisions of the Law on Territorial Planning.

On 5 February 2013 (by date of receipt) filed a request to the Supreme Administrative Court of Lithuania to add new evidence to the case.

By its ruling of 6 February 2013 (Vol. VI, p. 181 – 182), the Supreme Administrative Court of Lithuania added the additional evidence provided by the claimant to the case: A review report prepared on commission from the European Bank for Reconstruction and Development in January 2003, a letter of December 2012 from the Danish company Energinet DK and documentation concerning the inclusion of Lake Galadusys into the sites of Natura 2000.

The panel of judges

hereby finds as follows:

IV.

The appeal should be dismissed.

The subject of proceedings is part of decision No ARV2-5-1810 of 30 December 2010 of the Alytus Regional Environmental Protection Department (hereinafter also referred to as defendant; Department; Alytus REPD) concerning the legality of the construction and operation of the 400 kV overhead power transmission line section between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys (part of sub-alternative B1) (hereinafter also referred to as Line) (hereinafter referred to as Decision).

It was decided by the Contested Decision of Alytus REPD (Vol. I, p. 122 - 126) that the construction and operation of the 400 kV overhead power transmission line between the Alytus transformer substation and the Lithuanian-Polish border is permissible according to the optimal section sub-alternative B1 which is provided in the environmental impact assessment report.

The construction of the 400 kV Line "Alytus transformer substation - border of the Polish Republic" was acknowledged a facility of strategic national significance, according to clause 13, sub-clause 6 and clause 31, sub-clause 3 of the National Energy Strategy approved by Resolution No X-1046 of 18 January 2007 of the Seimas of the Republic of Lithuania (Žin. Official Gazette, 2007, No 11-430) and clause 3.1 of the National Energy Strategy implementation plan for 2008-2012 approved by Resolution No 1442 of the Government of the Republic of Lithuania (Žin. Official Gazette, 2008, No 4-131).

The factual evidence contained in the file shows that the planned 400 kV 154 km overhead power transmission line between Alytus and the border of the Polish Republic is provided in the general plan of the territory of the Republic of Lithuania approved by Resolution No IX-1154 of 29 October 2002 of the Seimas of the Republic of Lithuania and in the general plans of Alytus and Lazdijai districts. The aforementioned Line is meant to interconnect the energy system of the Baltic States with the West European system because to date, the Lithuanian energy system has been connected only with Latvia, Estonia and the counties of the Commonwealth of Independent States.

The evidence in the case also shows that on 12 October 2009, the Ministry of Energy with his Order No 1-190 on the development of a special plan for building a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic" made the decision to begin developing a special plan for the construction of a Lithuanian-Polish power

interconnection and to permit AB Lietuvos energija (AB Litgrid is its successor) to perform the functions of a planning organiser. Based on an agreement signed on 22 October 2009, UAB Sweco Lietuva became the originator of the documentation of the environmental impact assessment of planned economic activity and in December 2009, drafted the Line's environmental impact assessment programme, which Alytus REPD approved by letter No ARV2-5-439 of 17 March 2010. In June UAB Sweco Lietuva also prepared a report on the environmental impact assessment of the contested facility (hereinafter also referred to as EIA Report).

The claimant contested the legality of Alytus REPD's Decision by, inter alia, questioning the choice of sub-alternative B1 according to the EIA Report. Namely, in its opinion, the Line should have been built not in the form of an overhead line but using the technique of laying a direct-current underground cable by fully integrating it with existing infrastructure and thus preventing distortion of the landscape and other elements. In the claimant's view, the Line was also improperly sited because sub-alternative B1 which was approved by the Decision derogated by 85 per cent from the General Plan of Lithuania and from the general plans of Alytus and Lazdijai districts and will distort the unique landscape, and furthermore, the environmental impact assessment took no account of the claimant's proposed alternative site of the Line which would have allowed for integrating the Line's planned route with areas intended for engineering systems and facilities and would have been shorter and cheaper. The claimant also argued that the environmental impact assessment procedure was violated and the requirements for official publishing of the Decision were not complied with and that the claimant, as the public concerned, was not sufficiently informed about the processes related to the adoption of the Decision.

After hearing the case, the court of first instance considered that the claimant's complaint is unfounded and dismissed it.

After checking the case, the appellate court supports the position of the court of first instance and considers that the claimant failed to prove the non-legality of the Contested Decision. In the opinion of the panel of judges, the file contained no objective evidence that duly proves that the building of the Line according to sub-alternative B1 will have an adverse effect on the environment and that namely the claimant's offered alternative method of constructing the Line will have the lowest environmental impact.

Regarding the claimant's right to apply to court

According to Article 5(1) of the Law on Administrative Proceedings (hereinafter also referred to as LAP), each entity concerned has the right, in accordance with legislation, apply to court for the protection of its violated or contested right or interest protected by law. Article 22(1) of LAP also provides that The right to lodge a complaint (application) concerning an administrative act adopted by an entity of public or internal administration or about the said entity's act (or omission) is vested in persons, other entities of public administration, including civil servants or local government employees, officials and heads of institutions when said persons believe their rights or interests protected by law have been infringed upon. These provisions apply both to natural persons and legal entities.

The right of individuals to healthcare and a healthy environment is ensured by Articles 53 and 54 of the Constitution of the Republic of Lithuania, which, apart from other provisions, establish the obligation of the state to take care of people's health, the duty of the state and of the entire society to protect the environment from harmful effects and the principal goals and areas of the environmental policy of the Lithuanian state. While interpreting these provisions, the Constitutional Court of the Republic of Lithuania (hereinafter referred to as Constitutional Court) has pointed out that Article 54(1) of the Constitution provides a wording of one of the goals of the state's activity - to ensure people's rights to a healthy and clean environment (ruling of 1 June 1998 of the Constitutional Court). Article 54 of the Constitution implies a duty for the state to ensure

such legal regulation and to act in such a way so as to protect the natural environment and individual objects of nature and to supervise sustainable use of natural resources, their restoration and increase. To this end, a respective system of public bodies must be in place and function properly and the state must earmark funds that are necessary for the protection of the natural environment and individual objects of nature and for supervising a sustainable use of natural resources, their restoration and increase. Article 54 of the Constitution also implies duties for all individuals who are present on the territory of the Republic of Lithuania: they must abstain from actions that may present harm to land, the earth's crust, water, air, flora and fauna (ruling of 13 May 2005 of the Constitutional Court).

The seventh recital of the preamble of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted in Aarhus on 25 June 1998 (Aarhus Convention), which was ratified by the law of 10 July 2001 and took effect in Lithuania on 28 April 2002 acknowledges every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. In order to contribute to the protection of this right and to fulfil the duties defined, the parties to the Aarhus Convention committed themselves to guaranteeing the rights of access to information, public participation in decision-making, and access to justice in environmental matters to protect the rights of each individual of the present and future generations to live in an environment adequate to his or her health and well-being (Article 1 of the Aarhus Convention). Based on Article 9(2) of the Aarhus Convention, members of the public concerned having a sufficient interest or, alternatively, maintaining impairment of a right, where the administrative procedural law of a party requires this as a precondition (the public concerned), have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 of the Aarhus Convention. According to Article 9(3) of the Aarhus Convention, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

It should be noted that the Aarhus Convention ensures access to justice in the area of environmental protection not for everyone but only for an entity concerned. According to Article 2(5) of the Aarhus Convention, the public concerned means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law is deemed to have an interest.

Similar access for the public concerned is guarantee by two EU directives which implement the Aarhus Convention: Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (2003/4/EC) (hereinafter also referred to as Directive 2003/4/EC); Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (2003/35/EC) (hereinafter also referred to as Directive 2003/35/EC).

Article 1(2) of Council Directive 85/337/EEC, which is amended by Directive 2003/35/EC, provides that the public concerned means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2) <...>. Article 10 a of this Directive provides that Member States must ensure that, in accordance with the relevant national legal system, members of the public concerned: a) having a sufficient interest, or alternatively; b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive. <...> What constitutes a sufficient interest and impairment of a right is determined by the Member States, consistently with the objective of giving the public concerned wide access to justice.

The Court of Justice of the European Union, in its case-law, when interpreting the provisions of Directive 85/337, underlined that national regulations should, on the one hand, ensure *wide access to justice* and, on the other, ensure the effectiveness of the provisions of Directive 85/337 related to the right to challenge a judgement at court (see Case C-240/09 [2011] *Lesoochranárske zoskupenie VLK* v *Ministerstvo životného prostredia Slovenskej republiky*, Case C-115/09 [2011] *Trianel Kohlekraftwerk Lüne*.

In national legislation, Article 7(1)(2) of the Law on Environmental Protection stipulates that the public concerned has the right to participate, in accordance with the established procedure, in the process of assessment of the effect of the planned economic activities on the environment. Paragraph 2 of this Article 7 also provides that the public concerned has the right, in accordance with the procedure laid down by laws of the Republic of Lithuania, to refer to court for defence of public interest disputing the substantive or procedural lawfulness of decisions, acts or omissions in the field of the environment and environmental protection as well as utilisation of natural resources.

Article 1(22) of the Law on Environmental Protection defines the public concerned as one or more natural or legal persons affected or likely to be affected by decisions, acts or omissions in the field of the environment and protection thereof as well as utilisation of natural resources or having an interest in the process of adoption of these decisions.

Article 2(10) of the Law on Environmental Impact Assessment of the Proposed Economic Activity (hereinafter also referred to as LEIA) also provides that the public concerned is the public affected or likely to be affected by decisions, actions or omissions in the field of environmental impact assessment, or having an interest in the process of environmental impact assessment. According to this definition, associations and other public legal entities (with the exception of legal entities founded by the state or a municipality or by their bodies) which have been founded according to the procedure established by law and promote environmental protection are considered the entities concerned at all times.

The articles of association of the claimant contained in the file (Vol. I, p. 19 – 24) show that the association Rudaminos bendruomenė is a public limited-liability non-profit legal entity whose object is to co-ordinate public interests. The articles of association indicate the claimant's domicile as Rudaminos miest., Lazdijų r. sav. (clause 1.7), and one of its objects - to represent and protect the interests of the Rudamina community in the public and at public authorities <...> (clause 2.2.3).

Based on the evidence contained in the file, it has also been undoubtedly established that plans are to build the Line next to the town of Rudamina and that the parcels of land of some of the

members of this community fall within the area of planned economic activity, which is confirmed by current litigation regarding the establishment of administrative easements, and furthermore, the claimant, exercising its right enshrined by the Law on Environmental Protection, was involved in the environmental impact assessment and proposed an alternative of building the Line, therefore the court of first instance reasonably found that the claimant has access to court to protect the interests of the community it represents.

The appellate court favours the aforementioned conclusion by pointing out that the claimant was the 'public concerned' within the meaning of Article 2(10) of the Law on EIAPEA, *ergo* had the right, according to LAP, to appeal against a violation of its rights as of a legal entity (association) or of its interests protected by law by challenging the Decision the legality of which is the subject-matter of the administrative proceedings at issue.

Regarding the subject-matter of the dispute and the order and severability of strategic environmental assessment and environmental impact assessment

The subject-matter of proceedings, as mentioned before, is part of decision No ARV2-5-1810 of 30 December 2010 of the Alytus REPD concerning the legality of the construction and operation of the 400 kV overhead power transmission line section between Žuvintas Biosphere Reserve and the Lithuanian-Polish border near Lake Galadusys (part of sub-alternative B1).

It should be noted that the subject of environmental impact assessment is planned economic activity that may have significant impact on the environment and is therefore subject to measures to prevent, reduce or compensate such negative impact or to liquidate its effects (Article 2(8) and Article 3(1) of LEIA).

Based on Article 15 (2) of the Law on Environmental Protection, legal entities or natural persons planning to engage in economic activity must, at their expense, identify, describe and assess the potential impact of planned economic activity on the environment, draw up environmental impact assessment documentation and make it available to the participants of the environmental impact assessment process in a manner prescribed by law.

According to Article 3(5) of LEIA, the process of environmental impact assessment of the proposed economic activity consists of: 1) screening for environmental impact assessment, information of participants in the process of environmental impact assessment and communication to the public of the adopted screening conclusion; 2) development of a programme for environmental impact assessment of the proposed economic activity, informing the public of the developed programme, co-ordination and approval thereof; 3) drawing up of a report on environmental impact assessment of the proposed economic activity, co-ordination thereof and granting of access thereto to the public; 4) adoption of a decision and informing the participants of the process of environmental impact assessment of the decision adopted.

The mandatory nature of an environmental impact assessment of the contested economic activity according to Article 7(1) of LEIA was not the subject-matter of the proceedings at issue because the planned economic activity fell within the planned economic activity subject to an environmental impact assessment as listed in clause 8.8 of Annex 1 to LEIA (Construction of

overhead electrical power lines (with a voltage of 220 kV or more and a length of 15 km and more))). The Contested Decision, in turn, was adopted to implement Article 10 of LEIA – Alytus REPD, having examined the report, the conclusions of environmental impact assessment entities regarding the report and the feasibility of planned economic activity as well as proposals from the public concerned, as a competent authority (Article 6(1) of LEIA), adopted a decision to allow engaging in the planned economic activity. Hence, a dispute arose regarding the solution of the environmental impact assessment of planned economic activity whereas the appellate court, relying on this conclusion, must check whether the contested decision is not illegal (Article 89 of LAP).

One of the core aspects that the claimant uses to prove the faulty nature of the Decision is that the environmental impact assessment was supposed to be preceded by a strategic environmental assessment (hereinafter also referred to as SEA) so that, based on the claimant's logic, the public is involved in the review of projects at the earliest project implementation stage when all the opportunities are still open for consideration. The panel of judges disagrees to such arguments of the claimant for the reasons provided below.

The Supreme Administrative Court of Lithuania in its case-law (ruling of 16 December 2011 of the Supreme Administrative Court of Lithuania in administrative case No A^{492}-12/2011) has pointed out that the national legislation which is applicable to the legal relations of the dispute treats the environmental impact assessment of planned economic activity and the strategic environmental assessment of plans and programmes are independent (separate) procedures. In the context of EU legislation, the aforementioned procedures are governed by Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) and by the Directive of the European Parliament and of the Council of 27 June 2001 (2001/42/EC) on the assessment of the effects of certain plans and programmes on the environment, but it should be pointed out that the national legislators did not make use of the opportunity provided by the EU legislation to establish a harmonised or common procedure for these assessments.

Article 4 of LEIA provides for the following objectives of environmental impact assessment: to identify, describe and assess the likely direct and indirect 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 (sub-paragraph 1); to minimise the adverse effect of the proposed economic activity on public health and other components of the environment listed in sub-paragraph 1 of this Article or to prevent this effect (sub-paragraph 2); to ascertain whether the proposed economic activity may be permitted in the selected location upon evaluating the nature and environmental effect thereof (sub-paragraph 3). Article 1(10) of the Law on Environmental Protection provides that environmental impact assessment means the process of determination, description and assessment of the likely effect of the planned economic activities on the environment.

Strategic environmental assessment means the process of determination, description and evaluation of the likely effects on the environment of certain plans and programmes, in the course of which documents of strategic assessment of consequences for the environment are collected, consultations provided, account is taken of the results of the assessment and consultations prior to adopting and/or approving a plan or a programme, and the information relating to the adoption and/or approval of a decision regarding the plan or programme is provided (Article 1(17) of the Law on Environmental Protection).

Clause 5 of Resolution No 967 of 18 August 2004 of the Government of the Republic of Lithuania approving the Procedure for strategic environmental assessment of plans and programmes (hereinafter also referred to as the Procedure for strategic environmental assessment of plans and programmes) enlists the objectives of such assessment: to identify, describe and assess the potential significant effects of plans and programmes on the environment (clause 5.1); to ensure consultations with specific public and municipal authorities and the public and that account is taken of the results of those consultations and other publicity procedures (clause 5.2); to ensure that organisers of plans and programmes have comprehensive and reliable information about the potential significant effects of plans and programmes on the environment and take it into consideration (clause 5.3). Where this assessment is carried out during detailed territorial planning, the first thing to do at the stage of determining the concept of the territorial planning document is to draw up a document determining the scope of assessing the solutions of the territorial planning documents (clause 19 of the Strategic environmental assessment procedure), which defines the content of the strategic environmental assessment report, the issues that should be covered by the report and the scope and level of detail of the information to be provided therein (clause 4 of the Strategic environmental assessment procedure). This document, inter alia, describes the axes of the concept and their alternatives, the main objectives and correlation with other plans and programmes (clause 21.1 of the Strategic environmental assessment procedure) and information on the environmental components and effects that will be looked at during assessment (clause 21.3 of the Strategic environmental assessment procedure). The assessment is followed by an assessment report which describes and evaluates potential significant environmental effects of a plan or a programme, and in the case of solutions of territorial planning documentation - the axes of the concept and their alternatives, profoundly examines all the issues covered by the scope definition document and provides the information listed in Annex 2 to the Strategic environmental assessment procedure. The scope and level of detail of the information required depend on the objectives and geographic coverage of a plan or programme, the content and level of detail of a plan or programme and the level of decision-making and planning related to a plan or programme (clause 25 of the Strategic environmental assessment procedure).

Hence, environmental impact assessment is focused on the implementation of a specific project, i.e. it aims to evaluate whether an economic activity is feasible in a chosen area whereas strategic environmental assessment looks at the interaction of many territorial plans and projects from the environmental aspect (from this aspect also see the ruling of 16 December 2011 of the Supreme Administrative Court of Lithuania in administrative case No A^{492}-12/2011). In any case, neither applicable national legislation nor Directive 85/337/EEC or Directive 2001/42/EC explicitly provide that strategic environmental assessment must precede the environmental impact assessment procedure.

On the contrary, the position of strategic environmental assessment is established only in territorial planning procedures. Article 17(4) of the Law on Territorial Planning *inter alia* provides that in cases where under the Law on Environmental Impact Assessment of the Proposed Economic Activity 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 25(4) of the Law on Territorial Planning, in turn, provides that the stage of assessing the effects of the solutions of the planning document is necessary for assessing the effects of the territorial planning documents according to the procedure established by the Government. In the process of developing a detailed plan, strategic evaluation of the effects of the solutions of the territorial planning document on the environment is carried out only where provided by laws and

regulations. Where under the Law on Environmental Impact Assessment of the Proposed Economic Activity 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 detailed plan.

Clause 9 of the Procedure for assessing the effects of the solutions of territorial planning documentation approved by Resolution No 920 approving a Procedure for assessing the effects of the solutions of territorial planning documentation also provides that in the course of assessing the effects of the solutions of general, special and detailed plans, the material of the report of strategic environmental assessment (where strategic environmental assessment is performed as per legislation and other regulations) is used as an initial document. Where under the Law on Environmental Impact Assessment of the Proposed Economic Activity of the Republic of Lithuania 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 a special and a detailed plan. Environmental impact assessment of planned economic activity is carried out in a manner prescribed by the Law on Environmental Impact Assessment of the Proposed Economic Activity of the Republic of Lithuania. The assessor of solutions continues the impact assessment of the solutions where the competent authority decides that the planned economic activity is permissible.

In summary, it should be noted that all the environmental impact assessment procedures ensure the implementation of the principle of prevention in the field of environment as well as integrated environmental protection. The principle of prevention in the field of environment obligates individuals planning to engage in economic activity with potential significant negative impact on the environment to prevent the occurrence of negative environmental impact (Article 53(3) of the Constitution and Article 4 of the Law on Environmental Protection). Environmental impact assessment is a procedure aimed at evaluating the effects of the implementation of strategic documentation (plans, programmes) and the effects of implementing the planned economic activity, namely its impact on the environment and on its individual elements. Once the environmental impact assessment procedure is complete, it is decided regarding the feasibility of planned economic activity. By subject of examination, environmental impact assessment can be strategic, of planned economic activity and cross-border. Strategic environmental assessment is a procedure to assess the effects of implementing strategic documentation (plans, programmes). Environmental impact assessment of planned economic activity (individual environmental impact assessment) is a procedure to assess the effects of implementing the planned economic activity and its impact on the environment.

Hence there is no doubt that SEA and EIA are separate procedures, but these are environmental impact assessment procedures that must ensure implementation of and compliance with environmental principles. It has already been pointed out that in the case of special planning, strategic environmental assessment is carried out in the territorial planning process and therefore allows for an integrated analysis of environmental impact assessment and ensures implementation of the principle of sustainable development and the principle of integration in the field of environment. The principle of sustainable development is aimed at finding measures and techniques to ensure long-term functional preservation of the ecosystem whereas integrated preservation of natural resources calls for protecting all elements of nature (Article 54(1) of the Constitution, Article 4 of the Law on Environmental Protection). To ensure implementation of the aforementioned environmental principles, strategic environmental assessment of planned economic activity must be carried out at the earliest stage of the investment process. The primary objective of the environmental impact assessment of planned economic activity is to evaluate the effects of

implementing planned economic activity and to select an ultimate project alternative, ensuring involvement of the public in this process. In view of the aforementioned primary objectives of the environmental impact assessment of planned economic activity established in the EU regulations, environmental impact assessment must be carried out at the earliest stage of the investment process, when the alternatives (including technological) of the planned activity are known and can be evaluated both from the location and from the technological point of view. Thus both SEA and EIA should be carried out at the earliest stage into the investment process so as to ensure that the environmental principles and the objectives of these two procedures are achieved, therefore it is important that, where prescribed by legislation, the said procedures are carried out and that their duration is also based on the aforementioned assessment criterion, therefore the claimant's statements categorically defining the order of these two procedures and that an EIA procedure must always be preceded by a SEA procedure are incorrect and contradict the aforementioned regulations on special territorial planning. It should also be pointed out that the essential time criterion determined for the EIA procedure is that this procedure is carried out during the planning / designing of economic activity, i.e. it is the environmental impact of economic activity which is being planned rather than being implemented that must be assessed.

The evidence contained in the file shows that strategic environmental assessment in the proceedings at issue was carried out in April 2010 by UAB Sweco Lietuva (see the Strategic environmental assessment report) after the Minister of Energy of the Republic of Lithuania adopted Order No 1-190 of 12 October 2009 on the development of a special plan for building a 400 kV overhead power transmission line "Alytus transformer substation - border of the Polish Republic" . The aforementioned procedure included the identification, description and assessment of the potential effects of implementing the developed special plan when SEA documentation was drawn up, consultations were provided, the results of assessment and consultations were taken into account, etc. Whereas a comparison between EIA and SEA from the time perspective shows that these procedures were carried out in parallel, which, as explained above, is not prohibited by law (see p. 17 of the Special Plan).

In light of the foregoing, the panel of judges has no ground to draw a conclusion contrary to the one drawn by the court of first instance, namely that in the case at issue the order of EIA and SEA was not violated because legislation contains no such provision that a SEA procedure must precede an EIA procedure whereas SEA and EIA should be treated as two separate procedures.

Regarding compliance of the chosen Line sub-alternative B1 with general plans

The claimant challenged the decision of Alytus REPD also on the ground that sub-alternative B1 described in that decision supposedly derogates both from the general plans of Lazdijai and Alytus municipalities and from the general 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 derogation from latter, according to the claimant, was even 85 per cent).

In this respect, it should be noted that a general plan by nature is an integrated territorial planning document, which, according to the levels and objectives of territorial planning, provides a spatial concept of developing the planned territory and principles for the use and protection of the area (Article 2(1) of the Law on Territorial Planning). It follows that the general plan provides only a principal development concept of the area with individual principles being detailed in special plans. The solutions of special plans, in turn, inter alia, must be compliant with the special provisions on land use established by the laws or the Government's resolutions, applicable general

territorial planning documentation of the respective level and other legislation (Article 18(2) of the Law on Territorial Planning).

It was also established in the General Plan of the territory of the Republic of Lithuania that it is *inter alia* a document which serves as basis for reserving territories required for infrastructure, industrial or security facilities of national interest (paragraph 2, sub-paragraph 4 of the Introduction, Vol. V, p. 50). In the aforementioned plan, the energy infrastructure section, with a view to integrating into international energy markets, it was planned to build a powerful interconnection with Poland for integration into the electricity system of Western Europe and thus to ensure the operating reliability of the Lithuanian electricity system through consistent reduction of dependence on the Russian electricity system (ES) (clause 18). It was also reflected in the graphic image of technical infrastructure of the General Plan (Vol. V, p. 68).

In the general plans approved by Alytus district municipality and Lazdijai district municipality (Decision No K-79 of 24 March 2009 of Alytus district municipal council, Decision No 5TS-648 of 5 December 2008 of Lazdijai district municipal council) the said infrastructural route was also reserved (Vol. IV, p. 196 – 197).

Given the above and the purpose of the general plan as a territorial planning document, the panel of judges does not consider the claimant's arguments regarding the possible derogation of sub-alternative B1 from the general plans and the statements that during the planning phase the planner, UAB Sweco Lietuva, selected a totally different site of the Line at its discretion, to be significant. In the view of the panel of judges, it can be validly argued that, in disagreement to the specification of the principle concept of developing the territory, the claimant could have challenged the special plan which was approved by Order No 1-211 of 30 August 2011 of the Minister of Energy of the Republic of Lithuania and which concretized the Line's infrastructural route but did not do so. As stated above, the subject-matter of the proceedings at issue is the decision adopted during the procedures of environmental impact assessment, which first of all relates to ensuring environmental requirements, rather than during territorial planning procedures, which are directed towards the development of a spatial concept, therefore the panel of judges will not elaborate on the claimant's reasons on the said aspect.

It should be added that based on the reasons provided above, the court of first instance has validly found that the claimant's proposed alternative of the site of the Line where the proposed routed would fall with the territories of Marijampolė and Kalvarija municipalities would contradict the approved territorial planning documentation, which the claimant did not challenge. Namely, the general plan of the territory of the Republic of Lithuania referred to above shows that a 400 kV high-voltage overhead power transmission line for building the contested Line was reserved namely on the territories of Alytus and Lazdijai municipalities, therefore without changing the higher-level territorial planning documentation, the implementation of the line on the sites proposed by the claimant would contradict that documentation.

Regarding assessment of impact on public health and establishment of sanitary protection zones

In its appeal, the claimant also disapproves the during environmental impact assessment, the establishment of sanitary protection zones (hereinafter also referred to as SPZ) was not separately co-ordinated with the public. In the claimant's view, co-ordination of such sanitary protection zones was absolutely necessary because some members of the Rudamina community live less than 250 metres away from the planned Line, which is not compliant with hygiene norm HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines" approved by Order No 4 of 4 January 2001 of the Minister of Health (currently, the aforementioned hygiene norm is replaced with Lithuanian hygiene norm HN 104:2011 "Protection of the population

from the electromagnetic field generated by power lines" approved by Order No V-552 of 30 May 2011).

It should be noted from this aspect of the case that the assessment of effects on public health is a component of the environmental impact assessment of planned economic activity (Article 9(1) of LEIA). In the case at issue, the environmental impact assessment report looked at the potential negative impact of the physical factors caused by the power line and the substation on the population, whereas the Alytus public health centre, in turn, on the basis of the normative documentation of 27 August 2010 and the report from the hygiene expert examination of products (Vol. II, p. 54 – 56) supported the programme of the environmental impact assessment of the construction and operation of the Line (Vol. II, p. 57). The aforementioned authority, when giving its consent, also found that it is planned to legalise a SPZ for the planned economic activity according to the provisions of clause 2.3 of resolution No 343 of 12 May 1992 of the Government of the Republic of Lithuania. In light of the foregoing, the panel of judges has no doubts that the impact on public health in the case at issue was assessed properly.

EIA and SEA documentation confirms that the environmental impact assessment procedures examined the impact on public health by associating it with the electromagnetic impact of the power transmission line. According to the Electricity protection rules approved by Order No 1-93 of 29 March 2010 of the Minister of Energy and the Special rules for the use of land and forests, 330 – 400 kV overhead transmission lines are subject to a minimum 30 metre electricity protection zone - land sections and the air space on both sides of the line from outside cables. According to the aforementioned HN 104:2000 "Protection of the population from electrical fields generated by overhead transmission lines", for 330 kV an higher voltage overhead transmission lines, it is proposed to retain a distance of 250 m between these lines and residential buildings and the distance can be reduced to 30 m if the strengths of the overhead line's electrical field under the cables do not exceed 5 kV/m. Based on the strength calculations of the electrical and magnetic fields simulated by the professionals of Sweco International, AB (Sweden), within a distance of 30 m from the outside cable, negative impact is not foreseen according to the Lithuania's standardised electrical component of the electromagnetic field of power transmission lines, i.e. the strength of the electromagnetic field according to the electrical component does not exceed the marginal 100 MicroT level recommended by the European Council (1995/519/EC) (EIA PEA report. Volume L-1, chapter 3.4.6.2).

For reasons stated above, the claimant's arguments regarding the unacceptable electromagnetic impact of the planned transmission line are unfounded. The claimant's arguments are denied by the aforementioned information provided in the PEA report based on research that explains the potential impact of an electromagnetic field on people's health and on the environment. The planned economic activity does not violate the requirements for protection from electromagnetic field because the permissible values of electromagnetic field parameters are not exceeded, namely, in the case the established values are lower than permitted therefore people's unlimited exposure to the established electromagnetic radiation causes no hazard or negative impact on health.

It should also be pointed out that Article 24(1) of the Law on Public Health provides that persons designing, constructing, reconstructing, managing or owning buildings which are used for carrying out activities that are epidemiologically relevant or related to the pollution of the human living environment must design and set up sanitary protection zones around these buildings. Boundaries of a sanitary protection zone are established in the process of drawing up general, special and detailed pans or during reconstruction of business entities or modernisation or transformation of the production process, which alter the type or intensity of planned economic activity. The organiser of territorial planning arranges the establishment of the boundaries of sanitary protection zones.

Based on this provision it can be observed that the establishment of SPZs is part of the territorial planning process whereas LEIA does not include special provisions related to the setting up of specific SPZs, therefore the panel of judges views the claimant's reasons in the part of the case as going beyond the boundaries of the dispute.

Regarding dismissal of the alternatives proposed by the claimant as ground for illegality of the Decision

As one of the essential reasons for disagreeing to the contested Decision of Alytus REPD, the claimant also points out that its proposed technological solution - an underground line building technique - was not chosen and no account was taken of its proposed alternative site of the Line.

The claimant was trying to prove that the underground building of the Line generates the same synchronisation outcome, at the same time being more advantageous than an overhead Line because it allows for more efficient use of already existing infrastructure corridors, and in addition, it is less polluting and present a lower impact on the different components of the natural environment.

The panel of judges of the appellate court disagrees to the claimant's arguments stated above. Selection of alternatives relates to strategic environmental assessment. One of the main documents which is adopted during strategic environmental assessment is the assessment report, which, on the one hand, describes the current environmental situation, and on the other, envisages potential environmental impact and proposals to prevent potential negative impact or to reduce or restrict potential negative impact of planned economic activity. A strategic environmental assessment report must contain information on project alternatives with justification of their choice and a description of techniques that were used for choosing the said alternatives (clauses 2, 5, 25 and 37 of the Procedure for strategic environmental assessment and clause 8 of Annex 2). Assessment of planned economic activity must include drawing up of an environmental impact assessment report one of the main objectives of which is analysis of the option chosen by the documentation originator (or organiser of planned economic activity) and analysis of a rational, alternative and the most environment-friendly option (Article 9 of LEIA). Assessment of planned economic activity is associated with the duty of the documentation originator to provide several options of planned economic activity, which, in turn, should help the authority that decides upon the permissibility of planned economic activity to make the right decision.

The Contested Decision pointed out that the search for the site of the most suitable sections for PEA, construction of EEPOL, was being carried out using the gradual approximation technique through SEA and EIA PEA procedures of the conceptual solutions of the special plan. The PEA sections singled out in the SEA report during environmental impact assessment were compared with each other in the context of environmental impact and impact on people's health. The outcome of the assessment is one priority section which is the most suitable for building EEPOL. The aforementioned statements of the Contested Decision are confirmed by DEA and EIA documentation. THE SEA and EIA PEA procedures carried out by the organiser of planned economic activity, which are stipulated in detailed in the aforementioned legislation, presented factual and legal assumptions to select the priority section, which is the most suitable for the construction of EEPOL, and to adopt the Contested Decision. Given the reasons above, the claimant's arguments in favour of a different site of the line would deny all the performed procedures, therefore the court of first instance was right in treating these arguments of the claimant as stepping beyond the boundaries of control of the administrative decision at issue, and at the same time, as stepping beyond the boundaries of these administrative proceedings.

After reviewing the content of the Contested Decision, the panel of judges finds that the defendant has fully evaluated and examined the alternative proposed by the claimant but selected an optimal section of planned economic activity - sub-alternative B1. The defendant chose the aforementioned section for the Line as an optimal one based on many criteria, and, inter alia, with account of the impact of the alternatives on the natural and social environment and their technological properties.

Whereas a more detailed comparative analysis between an overhead line and an underground cable was carried out by the originator of the documentation of the environmental impact assessment of planned economic activity – UAB Sweco Lietuva (see Report volume L1, chapter 2.2, chapter 5, L-2, p. 220 – 229). The presented material, inter alia, shows that faults can be localised and repaired must easier with an overhead line and namely this technology can ensure to a greater extent that the objectives for the Line in terms of electricity synchronisation, uninterrupted power supply and sale of electricity are achieved. Furthermore, the EIA report analysed and evaluated both alternating-current and direct-current alternatives of the Line and it was decided that an alternating-current power line is the most suitable in light of the objectives. The aforementioned (overhead) technology is also more beneficial when it comes to the area required for the route and lower restrictions on land use, etc. For this reason the claimant's statements that the benefit of the overhead line as a more acceptable technological solution was not proved with any objective evidence in the case should be treated with criticism. On the contrary, the claimant itself, when pointing out that the overhead line distorts landscape, ignores the benefits of building the said line, which, with both technological solutions treated integrally, as was proven, outweigh its drawbacks. Furthermore, a critical view should also apply to the claimant's statements that the selection of an overhead line was largely dependent on financial costs (building an overhead power transmission line costs much less than laying a similar line under the ground) because such statements are unfounded.

The panel of judges also observes that the existence of alternatives *ipso facto* does not eliminate the acceptability of the phenomenon for which an alternative is being proposed or of other alternatives proposed for that phenomenon, i.e. in the event of many alternatives, they do not automatically deny each other. In other words, both alternatives can be both correct and wrong. In the context of the proceedings at issue, it was found that all the alternatives of planned economic activity examined by the defendant (from the proposed section alternatives A, B and sub-alternative B1) will have a negative impact on the environment. It was also found that both the overhead line and the underground cable meet the criteria of the best available technique and both these techniques are therefore used for different projects. However, during the environmental impact assessment, in view of the above-quoted objectives of this procedure, *inter alia* – the aim to minimise or prevent the negative impact of planned economic activity on public health and on the components of the environment, the most important thing was to identify the benefits and drawbacks of the alternatives, compare them in a reasoned way and select an ultimate alternative which is the most favourable from the point of view of negative environmental impact under the circumstances at issue. According to the Court, it is exactly what was done properly in this case. Meanwhile the right and the lawful interest of the claimant as the public concerned in the case at issue as that its proposed alternative be examined and evaluated in a detailed and justified way in line with all the procedures laid down in legislation. It is important, however, to point out that proposing of an alternative as such does not automatically determine its acceptability only because it is optional.

The latter conclusion, in the opinion of the panel of judges, undoubtedly relates to the advisory function of the public concerned in environmental impact assessment. Therefore although based on Article 6 of the Aarhus Convention each decision related to negative environmental impact must reflect the results of public involvement, the law does not confer upon the public concerned the right to finally decide either about the nature of planned economic activity or about

its site – it is the right of the organiser of planned economic activity to do so because namely the latter participant of the environmental impact assessment process plans economic activity and carried out the environmental impact assessment procedures prescribed to it by LEIA at its expense (LEIA, Article 2(3), Article 6(2).

Thus in summary of the above-stated arguments, it should be pointed out that there is no ground to acknowledge the Contested Decision as having been illegal on account that it did not approve the alternative – underground – technique of building the Line offered by the claimant.

Regarding the relation between Line's alternative proposed by the claimant and cross-border agreement

In its appeal the claimant disagrees to the conclusion of the court of first instance and the claimant's proposed site of the Line would contradict the cross-border agreement between Lithuania and Poland on the border crossing point.

Evidence in the file shows that Lithuania and Poland, in view of the fact that although the environmental impact assessment of planned economic activity will be carried out separately on the territory of each state, having a contact zone between the states and a common single vision of the project – the LitPol Link, started cross-border consultations according to the provisions of the 1991 UN Convention on Environmental Impact Assessment in a Transboundary Context (hereinafter referred to as Espoo Convention) and of the cross-border agreement on the implementation of the Espoo Convention (Žin. Official Gazette, 2004, No 92-3353). During a co-ordination meeting on 20 April 2010, it was decided that cross-border environmental assessment procedures regarding LitPol Link will not be continued (see Report volume L-2, p. 215 – 218). It was also decided during that meeting that consultations regarding the border crossing points will not be carried out according to Article 5 of the Espoo Convention and it was agreed during working consultations that the PSE Operator S.A. project director will communicate AB Lietuvos energija information about the Seinai district territorial planning document through the project co-ordinating company LitPol Link <...> . UAB Sweco Lietuva, when drawing up EIA and SEIA documentation at the border crossing points and a special plan, will attempt to plan the border crossing point at the site which is indicated in the said plan, also taking account of the solutions of general planning documentation that apply on the territory of Lithuania.

In light of the foregoing, the panel of judges observes that the claimant is right in stating that no binding cross-border agreement within the meaning of the 1969 Vienna Convention on the Law of Treaties regarding a specific border crossing point was not reached. On the contrary, during working consultations of departmental authorities it was decided to select the border crossing point based on territorial planning documentation of each of the countries, therefore the reasoning of the court of first instance that according to the alternative proposed by the claimant the Line would cross the Lithuanian-Polish border on the territory of Kalvarija municipality, which would basically contradict the reached cross-border agreement, is not precise. However, this, in the opinion of the panel of judges, does not change the outcome of the case because the content of the Decision of the Alytus REPD shows that it was not the essential reason for dismissing the claimant's alternative, which is being questioned in the proceedings at issue, and furthermore, according to international legal rules, treaties are not changed but can be amended by mutual agreement between the contracting states (Article 39 of the Vienna Convention).

Regarding assessment of Žuvintas Biosphere Reserve and Lake Galadusys as Natura 2000 sites

The claimant argues that environmental impact assessment and the decision of Alytus REPD based on it were illegal also from the aspect that no assessment was being made of potential direct

or indirect impact of the building of the Line on Žuvintas Biosphere Reserve and Lake Galadusys, which are the sites of the European network of nature protection areas, Natura 2000.

From the aforementioned aspect, the panel of judges of the appellate court considers the claimant's arguments to be unfounded. It should be noted that the Natura 2000 network consists of two types of nature territorial of EU interest: Areas important for bird conservation to ensure that the provisions of the EU Bird Directive (79/409/EEC) are met and areas important for the protection of habitats identified by the EU Habitats Directive (92/43/EEC) to preserve protected sites.

Article 10(7) of LEIA, in turn, stipulates that if it is found that planned economic activity will have significant negative effects on the sites of the European network of nature protection areas, Natura 2000, and there are no alternative solutions of planned economic activity, planned economic activity can only be permissible when its solutions relate to public health, preservation of specific components of the environment or, in line with the opinion of the European Commission, other important reasons. In such cases all available compensatory measures required for retaining the integrity of the European network of nature protection areas, Natura 2000, must be planned and implemented. <...>. It should be noted, however, that the law provides no special rules as regards assessment of sites having a Natura 2000 status.

In the proceedings at issue, it was found from the evidence contained in the file that sub-alternative B1 does not directly cross Natura 2000 sites (Report volume L-2, p. 285). Whereas the impact on the minor parts of Žuvintas Biosphere Reserve that fall within the corridor of planned economic activity was duly assessed during EIA, no significant negative effects were identified and measures to reduce impact on the landscape were provided in the EIA Report (Report volume L1, l. 206).

It should also be mentioned that based on publicly available information Lake Galadusys is not included in Lithuania's Natura 2000 sites, which is not contested by the claimant itself, therefore the panel of judges dismisses the claimant's arguments as to the disregard of the lake's status during EIA. Furthermore, the claimant's arguments concerning the assessment of this lake are essentially new and provided to the appellate court, therefore the panel of judges will not elaborate on them (Article 138(3) of LAP).

Regarding entities not involved in the evaluation of EIA Report and other procedural aspects

In its appeal the claimant also expressed disagreement regarding the non-involvement of the National Land Service reporting to the Ministry of Agriculture (hereinafter referred to as NLS) in the co-ordination of the environmental impact assessment report. In the claimant's view, the evaluation of the aforementioned authority was important because the planned Line will cross the parcels of land of private owners where administrative easements will be established.

The panel of judges points out that the court of first instance has already elaborated on this aspect of the case and the appellate court supports the conclusions provided by the court of first instance in the contested decision. It should be underlined that the EIA Programme and the EIA Report must be co-ordinated with all the entities listed in Article (1)(2) of LEIA, i.e. with public authorities in charge of healthcare, fire protection and protection of cultural properties: regional authorities and municipal authorities (the revision which was valid during the drawing up of the EIA Programme and its co-ordination with EIA entities). Whereas following changes to legal regulation on 1 July 2010, regional authorities were excluded from the list of EIA entities, i.e. this function of governors' authorities was annulled, therefore there is no ground to argue that in the case at issue the EIA Report was supposed to be co-ordinated with NLS as successor of the liquidated Alytus county governor’s authority.

It should also be pointed out that neither has the panel of judges any doubts concerning other procedural aspects of EIA. Evidence contained in the case shows that the defendant has examined all the proposals of the public concerned regarding planned economic activity and provided a reasoned reply to every representative of the public (Vol. I, p. 155 – 157). The EIA Report was also being corrected, adjusted and supplemented according to the proposals of the public (Vol. I, p. 165 – 166). In the course of EIA, the public concerned was being duly briefed both on the EIA Programme and the EIA Report, which was discussed in detail by the court of first instance in its judgement and which is essentially not challenged by the claimant in its appeal. Therefore, it should be concluded that in the process of EIA compliance with the defined procedures was ensured and no violations of the rights of the claimant, as the public concerned, were found in the proceedings at issue.

Regarding the analysis of the European Bank for Reconstruction and Development and the Danish case

To prove its statements, the claimant presented the court with new evidence, *inter alia* – a review on the Lithuanian and Polish high-voltage power transmission interconnection project prepared by the European Bank for Reconstruction and Development (hereinafter also referred to as EBRD) in January 2003 (Vol. VI, p. 115 – 117) and the letter of 14 December 2012 received from a Danish company Energinet DK (Vol. VI, p. 124 – 125).

The aforementioned evidence, as it should be understood, should prove that the claimant's proposed alternative of constructing the Line was more acceptable from the point of view of negative environmental impact. However, the panel of judges contests the additional evidence provided by the claimant for reasons stated below.

First, it should be pointed out that the ERPB review, where, according to the claimant, a solution was recommended for Lithuania (construction of a direct current (HVDC) Line using the underground cable technology) should be treated with criticism. It should be noted that an examination of the content of the EBRD review shows that by its nature it is not a comprehensive environmental analysis but more of a cost and benefit analysis performed from the economic aspect. Such a conclusion also follows from the fact that according to the evidence contained in the file, the preparatory work of the LitPol Link interconnection in Lithuania was financed from the Ignalina International Decommissioning Support Fund, which was managed namely by the European Bank for Reconstruction and Development. Furthermore, according to publicly available information, the said bank by nature is an investment bank that provides funding to other banks and business projects, thus supporting the transmission of planned economy to a free market. This bank first of all aims to protect the interests of its shareholders (64 states and 2 inter-governmental institutions), therefore the panel of judges expresses concern regarding its capacity to propose the ultimate alternative for planned economic activity from the environmental rather than economic point of view.

It should also be pointed out that, as stated above, the subject of environmental impact assessment is planned economic activity, which for its nature, scope or *planned site* may have significant impact on the environment (Article 3(1) of LEIA). In light of the foregoing, the appellate court was not convinced that the fact that successful construction of underground lines in Denmark reflected in the evidence presented by the claimant can prove that the aforementioned technological solution would also be the most favourable to the environment on the contested site.

In summary of the arguments stated, the panel of judges points out that the court of first instance found the circumstances that are significant to the case, interpreted and applied the rules of substantive and procedural law correctly in principle and passed a reasoned and legal judgement. There is no ground to accept the claimant's appeal based on the arguments stated therein, therefore

the appeal is dismissed and the judgement of 5 July 2012 of Kaunas Regional Administrative Court is retained.

In accordance with Article 140(1)(1) of the Law on Administrative Proceedings of the Republic of Lithuania, the panel of judges
decides as follows:

The appeal of the claimant, association Rudaminos bendruomenė, is dismissed.
The judgement of 5 July 2012 of Kaunas Regional Administrative Court is retained.
No appeal shall lie for this ruling.

Judges Ramūnas Gadliauskas
Veslava Ruskan
Arūnas Sutkevičius