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**MINISTRY OF THE ENVIRONMENT
UNDERSECRETARY OF STATE**

Sławomir Mazurek

DZŚ-IV.465.271.2018.JM

**Ms Fiona Marshall
Secretary to the Aarhus Convention
Compliance Committee
UN Economic Commission for Europe
Environment Division
Room 429-2
Palais des Nations
CH-1211 Geneva 10
Switzerland**

Ref. No. ACCC/C/2015/126

Dear Ms. Marshall,

As we have learnt about the Communicant's letter submitted to the Aarhus Convention Compliance Committee I would like to provide you with some important comments and clarifications concerning its content which are essential to understand the subject matter of the case ACCC/C/2015/126.

First of all, please allow me to note that the Communicant reiterated a few points in his letter which have already been addressed in his earlier correspondence. Nevertheless, there is a pressing need for the Party Concerned to take a firm position on some of these points. Please find below the response to the points specified by the Communicant.

As to the point 1) There is no obligation for the Parties to the proceedings before the ACCC to provide the correspondence related to the case in native language of the Communicant. Some of the letters that have been sent to the ACCC were not formulated in Polish language but originally drafted in English with the only purpose to be presented before in the proceedings. It is to be noted that the need to deal with the case in many languages also puts some unnecessary burden on the Party concerned.

As to the points 2) and 3) Although the ACCC has the sole competence to assess the evidence presented before it, we argue that the press article cited by the Communicant cannot be regarded as a reliable evidence in the case. It is quite obvious that large infrastructural projects are triggering the attention of the public opinion and give rise to the questions related to its impact on the public concerned which is often reflected in media publications. However, the role of the

public authorities is to ensure that the investment procedures have been carried out in compliance with applicable law. Therefore, all arguments presented in the case before the Aarhus Convention Compliance Committee should be based on the relevant evidence and should not be relied on press articles (in particular when they are not related to the case at issue) which have not been substantiated with any other evidence.

As to the point 4) Again, the Communicant makes his allegations on the basis of the press release. Moreover, it is to be noted that this article is cited from Lithuanian press and accordingly the Party concerned also has some difficulty in learning its content. Furthermore, Polish government cannot be made responsible for the statements of the member of Lithuanian government. The information that the Elk-Alytus power line has been built for 4 times more power than it is shown in the documentation as alleged by the Communicant is difficult to understand. Does this allegation mean that the line was actually designed for 1600 kV? We are not aware of any such a line in Europe or in any other country. Let me remind that the environmental decision in this case mentions only 2x400 kV power line. Any upgrades of the power line that might have had any significant impact on the environment would require the issuance of a new environmental decision.

As to the point 5) The doubts of the Party concerned related to the legal status of some individuals in the course of public participation in the decision making process (comments on EIA) were already pointed out in the letter of 19 December 2018 and the Communicant did not clarify that issue so far. Therefore, the Party concerned must uphold its earlier stance on this matter.

As to the point 6) The Party concerned has already presented evidence that the consultations were carried out twice by the Voivode of the Podlaskie Voivodship. In the opinion of the Party concerned there is no need to further examine this issue. Nevertheless, if the Compliance Committee wishes to obtain any additional information related to this matter, we would be happy to provide some further explanations concerning specific points of our answers.

As to the point 7) The Communicant does not present any evidence or any additional information to support its allegations. Therefore, the Party concerned is of the opinion that there is no point in further exploring this issue.

As to the point 8) The Party concerned cannot agree with the Communicant's allegation that the presented legal opinion suggests how to manipulate a local authority in any way. The opinion only answers some questions related to the procedure concerning the Polish spatial planning. It is quite obvious that its aim is not to give any advice on matters alleged by the Communicant.

As to the point 9) In my opinion these are only general remarks of the Communicant and they do not prove in any manner that the investment was carried out in a way that might violate the Aarhus Convention.

Lastly, I would like to draw the Committee's attention to the fact that public authorities both in correspondence related to the case ACCC/C/2015/126 and in the course of the decision-making process concerning building Elk-Alytus 400 kV electro-power line addressed the issue of environment protection many times. For example, decisions of regional director of environmental protection and General Director of Environmental Protection regulated the investment's impact

on bats and birds, impact of electromagnetic fields, soil degradation etc. Public authorities also comprehensively explained that underground cable is effectively more destructive for the environment than OHL. In contrary, arguments presented by the Communicant, apart from these concerning the procedure, only scarcely addressed such problems and they seem to be more focused on issues related to the potential loss of the value of real estates located next to the power line. It is, of course, the right of the interested party to bring that issue before the public authority and before the court of law. However, this should not be a matter of consideration of the Aarhus Convention Compliance Committee as such issues exceed the scope of the Aarhus Convention.

best
PODSEKRETARZ STANU
Edward Matuszak

