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**MINISTRY OF THE ENVIRONMENT
UNDERSECRETARY OF STATE**

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**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. ACCC/C/2015/126.

Dear Ms. Marshall,

With reference to the case ACCC/C/2015/126 proceeded before the Aarhus Convention Compliance Committee I would like to take this opportunity and submit some comments on the Communicant's letter of 16 November 2018.

The Communicant in his letter made several unsubstantiated allegations of a very general nature with scarce connection to the merits of the pending case. To mention just a few notable examples:

- 1) point 1 of part I of the letter, the Communicant claims that violations of the right to information about the investment "is a standard in Poland";
- 2) in point 3 of the same part – the Communicant wrote that "existing legal regulations are often avoided".

The Polish Ministry of the Environment is not going to respond to these unproven accusations of a very general nature. This is my view, that they should be dismissed as unsubstantiated and unproven on the part of the Communicant. Nevertheless, I should provide some more detailed clarifications and comments with reference to the some points of the letter.

1. In **part I point 9** of the letter, the Communicant mentioned a press release which was published on the website "wysokienapiecie.pl". The Communicant claims that the statement made by the Lithuanian Minister of Energy Zygimantas Vaiciunas implies that the technical parameters of the power line are five times larger than it was presented for the environmental assessment.

However, this kind of allegation is not supported by any other source and there is no such information in the article.

2. In **part II point 2** of the letter, the Communicant indicated that in Annex 3.2.1 there are signatures of the members of the Healthy Community Association. However, it is unclear whether they signed the document as representatives of a non-governmental organization or as individuals on their own behalf. Article 2(5) of the Aarhus Convention sets forth the definition of “the public concerned”. That definition makes a clear and unequivocal difference between *individuals* and *non-governmental organizations*. The latter entities under the Aarhus Convention have a broader scope of rights than individuals. Therefore, to assess properly potential non-compliance with the Aarhus Convention, it is of utmost importance to determine who the author of a given document is. In my opinion, there is no evidence supporting the allegations of the Communicant.

3. In **part II point 6** of the letter, the Communicant stated that it is clear from the content of Annex 4.3.2. who the author and who the recipient of the document is. However, I am of the opinion, that this document cannot be treated as an evidence due to the uncertain authenticity of this document as it is not signed and it is not clear to whom these documents are addressed.

4. In **part II point 7** of the letter the Communicant claims that it is not true to find in relation to Annex 4.3.7 that the Voivode of Podlaskie Voivodship decided to conduct a public consultation on the variant OHL 2x400kV. However, the Communicant does not deny the simple fact that the consultation indeed took place. Moreover, the consultations were conducted twice, as the Voivode decided that at the first time the public had not been given enough time to submit the comments. Therefore, it is difficult to understand what the Communicant undertakes to prove by stating that the party concerned lies in this matter. It is not true that the Voivode was not obliged to carry out the public consultations in case of issuing the substitute order. The opinion of the Ministry of Infrastructure and Development that was sent to the Ministry of the Environment in the course of the correspondence related to the case ACCC/C/2015/126 confirms that no matter whether it is a substitute order or a local development plan, in both cases, there is an obligation for public consultations. The only difference is the authority who carries them out. Also in the literature related to that subject matter there are similar opinions¹.


PODEKRETYMA/STANU
Sławomir Mazurek

¹ Comment under redaction of A. Plucińska – Filipowicz and M. Wierzbowski on Act of 27 March 2003 on Spatial Planning and Management, Lex