

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

May 30th, 2016

COMMENTS BY THE RUDAMINA COMMUNITY ON THE ANSWERS
PROVIDED BY THE PARTY CONCERNED TO THE COMPLIANCE COMMITTEE ON
MAY 25th, 2016

Dear Sir/Madam,

Referring to the Letter by the Aarhus Convention Compliance Committee to the Republic of Lithuania (Party Concerned), dated the 11th of May, 2016 and in response to the Answers provided by the Party Concerned, received on the 25th of May, 2016, we would like to provide short comments by the Communicant.

1. *Was the reference to OHL in the 2002 General Plan legally binding for the subsequent decision-making?*

It was not legally binding in terms of deciding that an electrical power transmission interconnection Lithuania-Poland shall be constructed as such. The purpose of the General (Master) Plan of the Republic of Lithuania is to harmonize and define spatial planning of the territory of the country, as well as to reserve certain territories for future infrastructures. In the case of the power interconnection, its route was defined on the scale of 1:400 000, a location that later on was further detailed by the Master plans on the county and municipality levels, respectively. **The route specified in the General Plan (and detailed by the subsequent regional master plans) was different as compared to the one currently chosen for the construction of the OHL, i.e. it was not extending immediately across the environment of the members of the Communicant, i.e. the public concerned.** On the other hand, the graphical annex of the General Plan indicated that the power interconnection Lithuania-Poland (for which a land stripe was reserved in the map) shall be preferentially an overhead power transmission line (literally, an OHL). In this regard, we would like to point out that the General Plan of Lithuania was adopted by the Law No. IX-1154 of the Parliament 2002.10.29. The Aarhus Convention had been effective in Lithuania as of 2002.04.28. Thus, its provisions had to be fully applied to the adoption of the General Plan. To the best of our knowledge, no discussion with the public had been undertaken neither concerning location, nor a method for the construction of the power interconnection Lithuania-Poland prior adopting the General Plan. **The publicity highlighted in the answer by the Party Concerned was not according to the provisions of the Aarhus Convention, namely, it was not intended specifically to discuss the method and location of the power interconnection Lithuania-Poland.** Moreover, as concluded by the 3rd Meeting of the Parties, the Aarhus Convention was not fully integrated into the laws of the Republic of Lithuania as late as in 2008.

In the opinion of the Communicant, **the first binding decisions on starting planning and construction the power interconnection, was the Implementation plan of the National Strategy for Energy adopted by the Decision of the Lithuanian Government 2007.12.27, No. 1442, and the Decree No. 1-190, issued by the Minister of Energy 2009.10.19.** The Decision¹ was adopted without consulting the public, despite it clearly falls in the category of certain plans and programs, for which the provisions of the SEA Directive 2001/42/EC apply. Then the Decree of the Minister of Energy, in our opinion, was in breach with the Aarhus Convention as it imperatively specified the method of the construction, i.e. an **overhead** power line, OHL, without consulting the public.²

¹ It referred to a necessity to interconnect the electrical energy systems of Poland and Lithuania.

² The Minister of Energy decided: „<...> 1. To start preparation of a special plan on construction of a 400 kV power transmission **overhead** line "Alytus power substation - border of the Republic of Poland" in Alytus county. 2. To allow "Lietuvos energija" AB performing functions of the planning organizer in preparing of the special plan on construction of 400 kV power transmission **overhead** line "Alytus power substation - border of the Republic of Poland"

2. *If the reference to OHL in the 2002 General Plan was not legally binding, was the reference to OHL in the 2002 General Plan effectively politically binding on Alytus in practice?*

It was not even politically binding. As we pointed out in our Communication from 2013.12.30 (p.4), after the General Plan was adopted, in 2003 there was a study published by recognized international consultants that encouraged the Party Concerned to consider different technological alternatives, e.g. HVDC instead of HVAC technology. The study explained that the HVDC would be more environmentally friendly (in turn, it would have allowed even more flexibility in applying the underground cable technology). Also, during the legal disputes under the National Courts, the Communicant has consulted an expert in spatial planning, Ms Laimutė Janulienė, the author of different adopted master plans on the regional and municipality lever. Based on her experience, she stated³ that "...deviations from the preliminary routes designated in the strategic documents are possible" and that "this happened in the case of the planned route of Rail Baltica (the trans-Baltic railway project)."

Finally, the fact that in practice solutions of the master plans are not politically binding can be illustrated by another, the most recent related case. Currently, the Party Concerned is preparing for construction of another similar infrastructure, a Gas Interconnector Poland-Lithuania (hereafter GIPL). The valid master plans foresee two possible routes for the GIPL: one in Alytus County and the other in Marijampolė County. Despite of that, neither of these designated routes was chosen for construction. Instead, based on a feasibility study performed by a private foreign (Polish) consultant company, the GIPL route will be as much as possible aligned with the disputed OHL (a route that obviously represent the preferences by the other contracting party, the Republic of Poland). Thus, the Lithuanian authorities have selected a different route and brought the GIPL into the disputed environmentally sensitive area, despite previously they officially had assured the Standing Committee of the Bern Convention " ...that there are no other development or infrastructure projects planned in the area other than the power line building works."⁴

These examples show that the common practice by the Party Concerned is to decide on construction of heavy infrastructures and other environmentally risky objects not following the valid master plans but rather based on current political (and business) circumstances, always creating collisions and risks of noncompliance to the provisions of the Aarhus Convention. Also, the Communicant would like to remind that it suspects non-transparency and conflicts of interests of different political actors whose decisions have been important for the above projects.⁵

3. *If the reference to OHL in the 2002 General Plan was either legally or politically binding, was the 2002 General Plan subject to public participation prior to its adoption? If so, please describe the public participation carried out.*

Please see the answers above.

4. What was the scope of the decision-making in the EIA procedure approved by Decision No. ARV2-5-1810 of Alytus RED on 30 December 2010? For example, did the EIA procedure decide both routing and technology, or technology only?

The referred decision by the Alytus RED built on the completed EIA procedure and it decided both routing and technology, no further changes could be made without invalidating the decision.

5. *What was the scope of the decision-making in the SEA procedure finalised by order 1-211 of the Ministry of Environment dated 30 August 2011? For example, did the SEA procedure decide both routing and technology, or routing only?*

³ See Annex 6 in the original Communication.

⁴ Summary of case files and complaints under the Bern Convention, p. 35, April 2014.

⁵ See p.5 in the original Communication.

As of 2004.01.15, the Territorial Planning Law foresees the SEA procedure as one of the stages of general, special and detailed planning of territories (under the provisions of the Directive 2001/42/EC). The Minister of Energy had already decided to construct an **overhead power line** by his Decree No. 1-190, 2009.10.19. Thus, the SEA procedure was launched with the aim to identify and legalize a new route (for whatever purposes it was preferred by the project promoters and the authorities) for the OHL. The **SEA report prepared 2010.04.13 by the consultant companies Sweco Lietuva and Sweco International did not consider technological alternatives. It specified the power interconnection Lithuania-Poland explicitly as an overhead power line throughout the document.** The outcome of the SEA procedure was a new OHL route **identified without engaging the public** (and especially the Communicant as the public concerned). This new route and the OHL route specified in the General Plan were further taken into the EIA procedure (started while the SEA procedure was still going on).

6. *What was the legal relationship, if any, between the decision-making in the above SEA and the EIA procedures?*

The SEA and EIA procedures shall be conducted in compliance with the Directives 85/337/EEC and 2001/42/EC, respectively. The purpose of the SEA is to assess, as early as possible and in a systematic way, the possible consequences of certain plans and programs.

7. *Was the final route (i.e. the route now constructed) an option subject to public participation under (i) the EIA procedure or (ii) the SEA procedure or (iii) both?*

The SEA procedure was the first opportunity to inform and to consult the public about the new route of the OHL, but the private consult companies and the project promoters failed to do so. At that stage, there were more choices possible for identifying alternatives routes. However, having approved the solutions of the SEA report (**without engaging the public**), the private consultant companies and the project promoters restricted the choices to only two alternatives: the OHL route of the General Plan and the new SEA-derived route (**again, identified without engaging the public and especially the public concerned**). These two routes were further taken into the EIA procedure. The local community represented by the Communicant (the public concerned) became aware of the OHL project only after the EIA report had been published in July 2010, i.e. without having the opportunity to participate at the earliest stages when all the location alternatives were still open. At the EIA stage, the project consultants and the promoters did not accept any new alternative routes. **The above-referred decision by the Alytus RED on the route and technology were based on the completed EIA procedure.**

8. *Was the choice of technology (i.e. OHL or underground line) an option subject to public participation under (i) the EIA procedure or (ii) the SEA procedure or (iii) both?*

The technology alternatives was an option subject to public participation under the EIA procedure only. The SEA procedure was launched and carried out for an **overhead** power line only. However, as pointed out in our original Communication (p. 4 and Annex 5), even the short information provided in the EIA report concerning the feasibility of the underground technologies was incorrect and misleading. Notably, the Lithuanian authorities ignored the evidences collected by the Communicant, including the data provided by the Danish national grid operator on the feasibility of undergrounding and continued to refer to the incorrect and misleading data in the EIA report throughout the process of the disputes under the National Courts. Thus, the Party Concerned even in this regard has failed to ensure the access to information under the provisions of the Aarhus Convention.

Yours sincerely,

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Ramunė Ramanauskienė, advocate