



**Economic and Social  
Council**

Distr.  
GENERAL

ECE/MP.PP/2008/5/Add.7  
16 April 2008

Original: ENGLISH

---

**ECONOMIC COMMISSION FOR EUROPE**

MEETING OF THE PARTIES TO THE CONVENTION ON  
ACCESS TO INFORMATION, PUBLIC PARTICIPATION  
IN DECISION-MAKING AND ACCESS TO JUSTICE  
IN ENVIRONMENTAL MATTERS

Third meeting  
Riga, 11–13 June 2008  
Item 6 (b) of the provisional agenda  
Procedures and mechanisms facilitating  
the implementation of the Convention:  
Compliance mechanism

**REPORT BY THE COMPLIANCE COMMITTEE<sup>1</sup>**

**Addendum**

**COMPLIANCE BY ROMANIA WITH ITS OBLIGATIONS  
UNDER THE CONVENTION**

This document was prepared by the Compliance Committee in accordance with its mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties. It contains findings with regard to communication ACCC/C/2005/15 by the non-governmental organization Alburnus Maior (Romania) concerning public access to information and participation in decision-making on a proposed gold mine in Rosia Montana, Romania, as adopted by the Compliance Committee in March 2008.

---

<sup>1</sup> This document was submitted on the above date to allow due time for consultations with the parties concerned following the nineteenth meeting of the Compliance Committee (5–7 March 2008).

## I. BACKGROUND

1. On 5 July 2005, the Romanian non-governmental organization (NGO) Alburnus Maior submitted a communication to the Compliance Committee alleging violation by Romania of its obligations under article 6, paragraphs 3, 4, 7 and 8, of the Convention.
2. The communication alleged that the Party concerned had failed to comply with the provisions of article 6 of the Convention regarding decision-making on the environmental impact assessment (EIA) for the Rosia Montana open-cast gold mine proposal, in particular at the scoping stage of the procedure. The full text of the communication is available at: <http://www.unece.org/env/pp/pubcom.htm>.
3. The communication was forwarded to the Party concerned on 27 October 2005 following a preliminary determination by the Committee that it was admissible. In forwarding the communication, the Committee also raised a number of questions with regard to Romanian EIA legislation and the relevant institutional and practical arrangements in place.
4. At the same time, the Committee agreed that in deciding how to proceed with the case, it would take account of any further information provided by the communicant with regard to the availability and adequacy of domestic remedies, and any use made thereof.
5. The Party concerned responded on 22 March 2006, disputing the claim of non-compliance as well as providing information in response to the questions posed by the Committee when forwarding the communication. Further information was received from the Party concerned on 12 June 2006 and, in response to a request from the Committee dated 25 March 2007, on 25 May 2007.
6. Further information was also received from the communicant on 15 May 2006, 6 July 2006, 7 December 2006 and 27 February 2007.
7. The Committee discussed the communication at its twelfth meeting (14–16 June 2006), with the participation of representatives of the communicant and the Party concerned. Having considered the information presented by the parties concerned, the Committee agreed not to proceed with the development of findings and recommendations on the communication until the environmental agreement procedure in question had been completed.
8. At its fifteenth meeting (21–23 March 2007), the Committee considered additional information that had been provided by the communicant on 27 February 2007 which referred to certain alleged deficiencies in the public consultation process. The Committee expressed some concerns with regard to the alleged shortcomings in the public participation procedure and in particular noted the allegations of the communicant concerning restrictions on access to EIA documentation. These restrictions were of a general nature affecting all EIA documentation, not just the documentation associated with the Rosia Montana project.
9. The Committee invited the Party concerned by means of a letter from the secretariat dated 29 March 2007 to comment on the issues raised by the communicant, including the allegations with regard to access to EIA documentation.

10. On 24 April 2007, the Committee received a copy of an open letter written by the communicant to the Minister of Environment of Romania challenging a legislative proposal from the Ministry to amend a Ministerial order on the EIA, which included a possibility for the developer to request confidentiality of any part of EIA documentation on the grounds of commercial confidentiality and intellectual property rights.

11. The Party concerned provided its response on 25 May 2007 addressing the main allegations contained in the supplementary information provided by the communicant.

12. Taking note of the information provided by the Party concerned, the Committee, at its sixteenth meeting, expressed concern at the way in which the issue of public disclosure of EIA studies was handled under the current system in Romania. It communicated this to the Party concerned in a letter from the secretariat dated 5 July 2007.

13. Furthermore, in view of the uncertainty surrounding the timetable for the completion of any licensing procedure for the Rosia Montana plant, the Committee decided at its seventeenth meeting (26–28 September 2007) to address separately the issues concerning the confidentiality of EIA studies, which were of a general nature, with a view to preparing findings and, if appropriate, recommendations with regard to this particular issue at its eighteenth meeting. It informed the Party concerned of this intention by a letter dated 1 October 2007, and invited it to provide any comments by 9 November 2007.

14. The Committee agreed to return to the aspects of the communication concerning compliance with the provisions of the Convention in the decision-making on the Rosia Montana gold mine project at a later stage, in accordance with its earlier decision (ECE/MP.PP/C.1/2006/4, para. 19).

### **Admissibility**

15. The Committee at its ninth meeting (12–14 October 2005) determined on a preliminary basis that the communication was admissible. At its twelfth meeting (14–16 June 2006), the Committee confirmed that the communication was admissible.

### **Preparation and adoption of the findings and recommendations**

16. In accordance with paragraph 34 of the annex to decision I/7, the Committee prepared draft findings and recommendations at its eighteenth meeting. These were forwarded for comment to the Party concerned and to the communicant on 19 December 2007 with an invitation to provide comments, if any, by 25 January 2008. Comments were received from the communicant on 23 January 2008. The Party concerned provided its comments on 25 January 2008. The Committee, having reviewed the comments, took them into account in finalizing these findings and recommendations.

## II. SUMMARY OF THE FACTS, EVIDENCE AND ISSUES<sup>2</sup>

17. The communication submitted on 5 July 2005 concerned the alleged failure of the Party concerned to adequately involve the public in the early stages of the decision-making procedure with regard to the Rosia Montana gold mine, in particular the scoping stage of the procedure.

18. The communicant subsequently provided information with regard to the alleged failure by the Party concerned to ensure access to information contained in the EIA documentation.

19. In its written response, as well as during the discussions on the communication at the twelfth meeting of the Committee, the Party concerned pointed out, inter alia, that the environmental agreement procedure on the mine was still ongoing and that the public consultations would take place once the EIA report had been released. It also referred to public announcements and a planned public consultation process under the decision-making procedure.

20. On 27 February 2007, the communicant provided the Committee with supplementary information regarding alleged flaws in the public consultation procedures that had taken place in the second half of 2006. Among other things, the communicant brought to the attention of the Committee a letter by the Environmental Protection Agency of Alba-Iulia, dated 29 January 2007, which stated that upon the instructions of the National Environmental Protection Agency, only the conclusions of EIA reports were to be made public, but not the entire reports, unless the author of the report authorized their publication.

21. In its response provided on 25 May 2007, the Party concerned informed the Committee that the Romanian Copyright Office had informed the National Environmental Protection Agency that environmental impact studies were scientific studies protected by copyright law and therefore could be used, and in particular made publicly available, only with the express agreement of the author. The environmental protection agencies could make publicly available only the results of these studies. Complete studies could only be released with the agreement of their authors who could request the payment of copyright fees. The Party concerned also pointed out that neither the provisions of article 6, paragraph 6, of the Aarhus Convention<sup>3</sup> nor the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) define EIA documentation but rather refer to the minimum content of the documentation that should be made available.

22. The Party concerned further pointed out that various studies carried out in the course of EIA apply specific methodologies of assessment and modelling techniques which are reflected in EIA studies. The Party concluded that such studies are therefore protected by copyright law. It noted that in order to balance interests protected by the copyright and the need of the relevant authorities and the public to be aware of the potential environmental effects of a certain activity, only the outcome of the EIA study, and not the complete study, is provided to the relevant public authorities and the public.

---

<sup>2</sup> This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

<sup>3</sup> The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

23. In its comments on the draft findings and recommendations provided to the Committee on 25 January 2008, the Party concerned referred to a new letter sent by the National Environmental Protection Agency to its regional and local offices on 22 June 2007 informing them that the EIA report, the environmental report and the environmental balance report represented public documentation which should be made publicly available, except for data for which confidentiality had been requested by the project proponent and granted by the Ministry of Environment and Sustainable Development.

### **III. CONSIDERATION AND EVALUATION BY THE COMMITTEE**

24. Romania deposited its instrument of ratification of the Aarhus Convention on 11 July 2000. The Convention entered into force for Romania on 30 October 2001, i.e. the collective date of entry into force.

25. The Convention, as a treaty ratified by Romania, is part of the Romanian legal system and is directly applicable, including by the courts.

26. The communication as such addressed both issues concerned with public participation procedures and issues of access to information under article 6, paragraph 6, and article 4 of the Convention. The Committee, as noted in paragraph 15 above, took into account the uncertainty surrounding the timetable for the completion of the decision-making procedure in question, and in the light of its understanding, set out in its first report to the Meeting of the Parties (ECE/MP.PP/2005/13, para. 13), that decision I/7 does not require it to address all facts and/or allegations raised in a communication, decided only to consider the issue of the public accessibility of EIA studies in these findings.

27. Article 5, paragraph 1, of the Convention requires public authorities to possess and update information relevant to their functions, and requires Parties to establish mandatory systems ensuring an adequate flow of information about proposed and existing activities which may significantly affect the environment. It is the understanding of the Committee that as a minimum this should include EIA studies in their entirety, including specific methodologies of assessment and modelling techniques used in their preparation.

28. EIA studies are prepared for the purposes of the public file in administrative procedure. Therefore, the author or developer should not be entitled to keep the information from public disclosure on the grounds of intellectual property law.

29. The Committee wishes to stress that in jurisdictions where copyright laws may be applied to EIA studies that are prepared for the purposes of the public file in the administrative procedure and available to authorities when making decisions, it by no means justifies a general exclusion of such studies from public disclosure. This is in particular so in situations where such studies form part of "information relevant to the decision-making" which, according to article 6, paragraph 6, of the Convention, should be made available to the public at the time of the public participation procedure.

30. The Committee stated in its findings and recommendations with regard to communication ACCC/C/2004/3 and submission ACCC/S/2004/1 that article 6, paragraph 6, aimed at providing

the public concerned with an opportunity to examine relevant details to ensure that public participation is informed and therefore more effective. It is certainly not limited to a requirement to publish an environmental impact statement. Although that provision allows that requests from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Therefore, the Committee doubts very much that this exemption could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by disclosure. Decisions on exempting parts of the information from disclosure should themselves be clear and transparent as to the reasoning for non-disclosure. Furthermore, disclosure of EIA studies in their entirety should be considered as the rule, with the possibility for exempting parts of them being an exception to the rule. A general exemption of EIA studies from disclosure is therefore not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention.

31. The Committee also notes that general exemption of EIA studies from disclosure on the grounds of intellectual property rights was the subject of review in at least one other communication (ECE/MP.PP/C.1/2005/2/Add.3, paras. 16, 31 and 32). It therefore wishes to express its concern with regard to this practice. Equally, the Committee expresses its concern with regard to the legislative proposal referred to in paragraph 10.

#### IV. CONCLUSIONS

32. Having considered the above, the Committee adopts the findings set out in the following paragraphs.

33. The Committee finds that by having introduced a general rule exempting full EIA studies from public disclosure, Romania was not in compliance with article 4, paragraph 1, in conjunction with article 4, paragraph 4, and article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention. However, the Committee notes the information from the Party concerned to the effect that this situation has been remedied by the introduction of the new instructions with regard to availability of the EIA documentation, referred to in paragraph 23 above. Taking this into account, the Committee considers that the Party concerned is no longer in a state of non-compliance with article 4, paragraph 1, of the Convention in connection with the instructions on applicability of intellectual property exemptions to EIA documentation. It does so on the understanding that the possibility for exempting data from disclosure referred to in the letter issued by the Party in June 2007 is applied in a restrictive way and is limited to the list of exemptions referred to in article 4, paragraph 4, of the Convention, that reasons for application of such exemptions are clear and transparent and that the list of documents referred to in the letter covers the full EIA study and any other documents referred to in article 6, paragraph 6, of the Convention.

34. The Committee appreciates that the instructions of the National Environmental Protection Agency referred to in paragraph 23 have been reversed since it first raised the matter with the Party concerned in the course of review of this communication. The Committee, however,

deeply regrets that it was only informed of this fact in January 2008, despite having addressed the very same issue in its letters to the Party concerned on two occasions since the new instructions were issued (paras. 12 and 13).

\*\*\*\*\*