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W O R K I N G F O R

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Dear Mr Wates,

**Re: Draft Findings and Recommendations of the Aarhus Convention  
Compliance Committee with regard to communication ACCC/C/2005/15**

Thank you for your letter dated 19.12.2007 including a copy of the draft findings and recommendations produced by the ACCC at its 18th meeting.

Our response follows the structure of the document entitled '**Findings and Recommendations with regard to compliance by Romania**':

II. SUMMARY OF FACTS, EVIDENCE AND ISSUES

By 'EIA study' we understand an assessment process of which an EIA report is the resulting document of the process submitted by the project owner to the authorities and the public for evaluation.

By 'EIA documentation' we understand all documents submitted by the project owner/developer – a request to obtain an environmental accord, annexes to the request, project presentation report/technical memorandum, environmental impact assessment report, public announcements, replies by the project owner/developer to public comments as well as any other documents or clarifications submitted following specific request by the competent authority – including relevant documents released by the competent authority such as scoping documents (list), public announcements, any specific requests of information and clarification to the project owner, final text of the decision to issue or reject an environmental record).

III. CONSIDERATION AND EVALUATION BY THE COMMITTEE

We disagree with the evaluation that competent authorities may, in individual cases, exempt parts of the EIA reports from disclosure to the public after deciding that disclosure would adversely affect intellectual property rights. The reasons why we consider that no information contained within an EIA report could be exempted from disclosure to the public based on intellectual property rights are as follows:

- An EIA report follows a structure established by law; a project owner/consultant only reply to questions/conditions set by the law and the authorities in the scoping stage. A scoping list in return is set both by the law and by the relevant environmental authorities (aided by public input) in reply to the project presentation report. A project presentation report also follows a structure set by law. An EIA report, scoping list or project presentation report therefore can not be regarded an original 'opus' protected by intellectual property laws. They do not imply a creative effort from the part of the EIA consultant and they lack originality from a structural point of view. **Even if we were to admit that environmental impact assessment reports could contain information susceptible to be protected under intellectual property rights, authors' rights protected in the relevant legislation are not infringed by disclosing these reports and information to the public/bringing them to public knowledge.** An infringement of these rights – non-patrimonial and patrimonial – only takes place when parts of these studies are multiplied for commercial purpose without prior consent from the authors; are included in scientific works without indicating the source; or when they are taken over by third parties in order to be included in works with a similar content.

- The aim of an EIA report is to help public authorities which in return are aided by public input to determine whether or not to issue an administrative act. Therefore, the aims for which EIA reports are made implies them being studied by competent authorities and the public, including specific methodologies of assessment and modeling techniques applied in the course of the EIA study. Excluding these reports from public disclosure blatantly infringes upon the aim for which the law stipulates their production, leaving space for the abusive and excessive invocation of intellectual property rights by the project owners and authorities.

#### IV. CONCLUSIONS

In the event that the Committee proceeds with its evaluation that information contained within EIA reports could be, following a case-by-case assessment, exempted by competent authorities from public disclosure based on intellectual property rights, we would welcome the following recommendations by the Committee to the Meeting of the Parties:

- Recommendation (ii) suggests "that, where information is exempted from

disclosure on the grounds set by article 4, paragraph 4, such exemption is applied only if there is sufficient reason in a specific case to believe that the disclosure would adversely affect the interests protected by the exemption;"

In the event of an exception that a particular information is exempted from disclosure it would seem important ***to ensure disclose to the public of the decision and motivations taken to exempt a particular information and this as early as possible, as well as information about administrative procedures or access to justice possibilities available to the public to contest/legally challenge this decision.***

- It is also important that the Government of Romania ensures the development and implementation of a clear methodology and guidelines including standards and norms to apply an exemption from the general rule that EIA studies are disclosed to the members of the public. Terms such as 'sufficient reason' and 'adversely affect' need to be defined for correct interpretation for all involved parties. Similarly, the EU Commission for the Environment has developed a methodology and guidelines that set the conditions to authorize a simplified EIA procedure in 'exceptional cases'.

***We would therefore welcome a recommendation by the Committee to the Meetings of the Parties to request the Government of Romania to ensure by means of regulatory provisions a set of clear methodology and guidelines as to how to reach a decision to apply the exemptions described/detailed in (ii) in order to safeguard the public interest served by disclosure as well as the requirements of article 4, paragraph 6, of the Convention.***

Yours sincerely,

Eugen David  
President  
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