

ALBURNUS MAIOR
Rosia Montană
W O R K I N G F O R

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Dear Mr. Wates,

Re: Communication to the ACCC regarding ACCC/C/2005/15

Thank you for your mail dated 19 June 2009 inviting us to comment on the Ministry for the Environment's response dated 12 June 2009.

Our communication dated 29 April 2009 aimed to reply to a letter by the ACCC dated 14 April 2009 whereby it suggested closing ACCC/C/2005/15 given that in March 2009 the Timisoara Court of Appeal ruled that Urbanism Certificate No. 105/2007 is suspended *de jure*. Our reply firstly explained the background and current status of the court cases on the three urbanism certificates and then assessed the position of the new minister for the Environment towards these cases and the Rosia Montana EIA procedure as a whole. We also highlighted that the court verdicts for the suspension/annulment of the urbanism certificates do not have the direct effect of obliging the Ministry to invalidate the EIA procedure. The Ministry has to act on them, in the sense of taking the administrative decision of invalidating the EIA procedure.

The Rosia Montana EIA procedure was suspended on 13 September 2007 under Attila Korodi, Romania's former minister for the Environment because it was considered that under Romania's new administrative litigation law 262/2007, Urbanism Certificate no. 105/27.07.2007 is suspended *de jure*, as it has the same content as Urbanism Certificate no. 78/26.04.2006¹ that had been suspended by the Cluj Tribunal on 20 July 2007. The Urbanism Certificate 78/26.04.2006 then was irrevocably annulled by the Cluj Court of Appeal on 26 March 2008. The *de jure* suspension of Urbanism Certificate no. 105/27.07.2007 then was confirmed by the Timisoara Court of Appeal in March 2009.

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http://www.mmediu.ro/departament_mediu/rosia_montana/pdf/NOTE_Suspension.pdf

To date the Ministry for the Environment has not acted upon the irrevocable court verdict that annulled Urbanism Certificate 78/2006 in the sense of invalidating the EIA procedure and returning the entire EIA documentation to the project owner. At the time of writing the EIA procedure is thus 'unchanged' in the sense of it still being suspended rather than invalidated.

In light of the above situation our communication dated 29 April 2009 thus aimed to assess the new Minister for the Environment's position towards the Rosia Montana EIA procedure. We quoted and attached a relevant press article to which Nicolae Nemirschi, Romania's new minister for the Environment replied to in this letter to the ACCC dated 12 June 2006.

According to the minister, his declaration made on 11 April 2009 'was not accurately taken over, and unfortunately represented by the media' and that 'The evaluation procedure that the minister was referring to in the declaration was related to the SEA procedure ...'. The journalists however, asked the minister a question about a 'suspended' procedure which is the EIA procedure and not the SEA procedure. '*When asked by journalists whether the evaluation of the Rosia Montana project has been taken up again after having been suspended by the former minister for the environment, Nemirschi declared, according to the Mediafax correspondent, that he has no information about such interruption of the evaluation and that there exists no official document to support such claim within the ministry.*' In the light of this article and given that the Ministry for the Environment has not made any clarifying statement to the media since its publication we can only conclude that Romania's minister for the environment rejects the grounds that led to the suspension of the EIA procedure and that he intends to re-activate it.

Due to the fact that Romania's Ministry for the Environment has not acted on the irrevocable court verdict issued over the respective urbanism certificate in the sense of invalidating the EIA procedure and returning the entire EIA documentation to the project owner we argue that there exist no grounds for closing ACCC/C/2005/15. It is only then that our case can be considered as having remained with no object. Until then we strongly encourage the ACCC to request from the Romanian Government further explanations on how it complies with the court verdicts issued over the urbanism certificates; on the actual stage of the EIA procedure and on all acts and measures that it is taking to ensure that the EIA procedure is compliant with the relevant laws and norms. A written statement from the minister for the Environment to clarify the substance of our communication would be welcome.

Yours sincerely,

Eugen David
President
Alburnus Maior