



Our Ref: ACCC/C/2008/30

Date: 22 May 2009

**Subject:** *Communication to the Aarhus Convention Compliance Committee concerning compliance by the Republic of Moldova with provision of the Convention in connection with access to information on contracts for rent of forest land (Ref.ACCC/C/2008/30)*

Dear Mr. Wates,

With regard to your letter of 24 December 2008 please find below the reply to the questions:

1. *Since its entry into force has the Convention been directly applicable in the Republic of Moldova?*

The Republic of Moldova ratified the Aarhus Convention and this makes the convention directly enforceable in national court. The principle of direct application of international treaties is enshrined in the art. 8 of the *Constitution of the Republic of Moldova* of 29.07.94 " Republic of Moldova binds itself to respect the Chart of the United Nations Organization and treaties to which is a Party of, to build its relations with other states based on unanimously accepted principles and norms of the international law".

2. *On what date did the Regulation of Forest Fund Rent for the Purposes of the Hunting Management and /or Recreation approved by the Decision of the Government No. 187 of 20 February 2008 entered into force? What is the legal status of Decision No.187 in the hierarchy of "normative acts" in the Republic of Moldova?*

*The Regulation of Forest Fund Rent for the Purposes of the Hunting Management and /or Recreation approved by the Decision of the Government No 187 of 20 February 2008 entered into force on the date of its publishing in the Official Monitor No 42-44/254 of 29.02.2008.* In the sense of the article (art.) 2 of the *Law on normative acts of the Government and other local or central public administration authorities No 317-XV of 18.07.2003* "the normative act is the legal act, emitted by the Government and other local and central public administration authority in conformity with constitutional and legal provisions, that establish mandatory rules for application to an undetermined number of identical situations". According to the *Constitution of Republic of Moldova*, art.102 "The Government issues decisions, ordinances and prescriptions". In legal system of Moldova the Governmental Decision is the normative act subordinated to the Law.

3. *Did Moldovan legislation contain a requirement similar to that of paragraph 48 (e) of Decision No.187 prior to the entry into force of the Decision?*

In the sense of the par. 48 (e) of the Decision No.187, prior to its entry into force there were no similar direct enactments. According the par.7 of the *Provisory Regulation on Forest Fund Rent for the Purposes of the Hunting Management approved by the Decision of the Government No. 769 of 13.08.97 and repealed by the Regulation No.187* " the rent relations are regulated by the *Rent Law, approved by the Parliamentary Decision No.862-*

4. *In the Moldova legal system, can provisions introduced into the legislation have a retroactive effect, i.e. could paragraph 48 (e) of Decision No. 187 be applied retroactively to a request for information to which confidentiality provisions had not been applicable prior to the entry into force of that Decision?*

According to the Moldovan Constitutional Court (CC) Decision No. 32 of 29.10.98 on interpretation of the art. 76 of *Constitution of the Republic of Moldova* „Entrance into the force of the law”, the CC enacts that the effect of the law in time is guided by the principle of law activity, according to which the law is applicable to all activities during which it was in force, and is fully efficient and is applicable from the date of its entrance into force until its repeal. The law shouldn't be applied to the activities made before its entrance into force and thus doesn't have a retroactive effect. It regulated only the present and future and doesn't have legal effects on past activities, excepting the penal or administrative sanctions that are less strict. Thus, the above mentioned norm will be applied only for the actions or inactions of the lessor that were undertaken after the entrance into force of the *Decision No. 187*, but it will take into consideration that the responsibility of the holder refers to all information presented, regardless the fact if it was made available after or before entrance into force of the *Decision No. 187*. However it is recommended to **interpret** this norm through legal provisions, in such way that the legal provisions that determine/categorize the information as being secret will be interpreted also in the sense that should allow the free access to other categories of information, as well as the possibility of its declassification. At the same time this norm **cannot be interpreted** in the sense of the information protection, if according the law this information is public. In this regard the Ministry of Justice stresses with certainty that information cannot be considered as confidential if it reflects the infringements of the lessor/renter or lessee/landholder, as it is enacted in the art. 4 (f) and 5 of the *Law No. 171-XIII of 6/07/94 on Commercial Secret*.

5. *According to the paragraph 18 of the Decision No.187, a contract for rent is subject to “state Registration”. Could you please provide more detailed information on the State registration procedure, and indicate whether contracts so registered have to be available in the public domain?*

With regard to state registration procedure: the legislation doesn't contain the specific provisions for rent of forest fund, and thus usual rules of state registration provided by the *Law on Cadastre of Immobility Goods No. 1543 –XIII of 25.02.98, Land Code No. 828-XII of 25.12.91, Law on normative price and modality of purchase and sale of lands No.1308-XIII of 25.07.97, Civil Code, etc.* are applied. In general terms: all land related juridical acts (sale, rent, etc.) should be registered in the Immobiliar Cadastre. All further activities that are planned by lessee on rented forest fund territories have to be coordinated with the local public administration authorities.

There are no specific enactments in the legislation that prohibits access to this information of the public, however the legislation expressly enacts that the information of the Cadastre is the exclusive property of the state. For this purpose each territorial cadastre office establishes its own rules for structuring and making available the information (art.11 par 2(c) of the *Law No.828*).

6. *Does Moldovan legislation include any detailed procedures for the determination of confidentiality of particular information, and if so, how have these procedures been*

*applied by the Forest Agency Moldsilva in the consideration of the information request from Eco-Tiras?*

These aspects in national legislation are regulated by the Law No. 171 –XIII of 06.07.94 on Commercial Secret, Law No. 245-XVI on State Secret of 27.11.08, the Presidential Decree No. 1184-IV of 26.06.2007 on Approval of the List of Information Determined as State Secret. According the par. 2 of the Law No. 171 is established the criteria for the information that constitutes commercial secret: “ The following criteria should be present in order to consider an information as commercial secret:

- a) have a real or potential value for the entrepreneur
- b) in conformity with legislation do not be notorious or accessible
- c) have the mention that corresponds to measures undertaken by the entrepreneur for keeping the confidentiality through application of information classification system, elaboration of internal regulations/instructions for classification of information as being secret, duly mark/label the documents and other information bearer, organization of the secret secretariat works
- d) do not be/constitute a state secret and do not be protected by the author/intellectual and patent rights
- e) do not contain information of information on negative activities of natural persons and legal entities that could damage/endanger the interests of the state”. According the par. 3 and 5 of the same law, information may be classified as secret one if it relates to economic interests and if it’s intentionally undisclosed because it reflects specific aspects and fields of production, administration, scientific, financial activity of the entrepreneur, and this protection of information is conditioned by the interest of competition and possible endangering of economic security of entrepreneur” At the same time the Law enacts that is forbidden determination of accessible information as being secret one, in this case the entrepreneur bears the responsibility.

7. *Under Moldovan legislation, can a large volume of requested information be grounds for refusal of an information request? In the particular matter under consideration, has the volume of the requested information been the official grounds for refusal of the information request by the Forest Agency Moldsilva?*

Please be informed that Moldovan legislation do not contain such provisions. It only enacts that the requesting side should compensate the expenses for dispatching a considerable volume of information.

8. *Does paragraph 48 (e) of the Government Decision No. 187 designate information, including any environmental information, received from rent holders as confidential? If so, how is this interpreted in the light of other relevant provision of the domestic legislation concerning the confidentiality of information including where relevant, the Constitution and any legislation implementing the Aarhus Convention?*

According art.48 (e) of the Regulation, the lessor is obliged to ensure the confidentiality of the information provided by the lessee, without making difference of the kind and nature of this information. However these norms cannot be interpreted contrary to the law provisions and multilateral agreements that Moldova is a Party of. Thus, if the Law allows in some cases free access to information, the Law should be applied as a superior act. In this regard evocative are the provisions of the art .7 par.2 (b) of the *Law no 982-XIV of 11.05.2000 with regard to the access to information* “the access to official information cannot be limited , excepting confidential information related to business that are offered to public institutions with confidentiality title, regulated by the legislation related to the commercial secret and those related to production, technology,



administration, finance, or other aspects of economic life, divulgation of which could damage the entrepreneur's interests".

9. *In the Moldovan legal system, are there any situations where the provision of a contract, such as contract for rent of forest land, may remain valid despite of being in contradiction with any provisions of the domestic legislation and/or the Aarhus Convention?*

The contract is null/of no value for the part that contravene to the imperative norms of the law, and this effect is expressly foreseen by the law.

10. *What measure are available under Moldovan legislation to enforce final and binding decision made by court of law or another independent and impartial body in the course of a review procedure under art.9, paragraph 1 of the Aarhus Convention?*

What regards the procedures of enforcement of final and binding decisions, is applicable the *Execution Code*, approved by Parliamentary decision 443-XV of 24.12.2004. According to the art 149 of this Code, if the debtor refuses execution of the court decision, the executor officer of the court prepares a protocol to the court that has adopted the decision, and further the court decides on modality of decision execution. If the debtor is the only person that can execute the decision, the protocol is submitted to the chief of Court Decisions Executive Office to establish pecuniary penalty. Payment of penalty does not clear the debtor to execute the court decision.

Sincerely yours,



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