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Answers to the Party Concerned written explanations

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a. **If our communication refers to environmental information – archaeological study, archaeological discharge certificate; if public participation is needed for the latter;**

We will refer our response with extras from the Aarhus Convention Implementation Guide posted on your website at http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf.:

"The definition of environmental information includes "any information in material form relating to the state of the elements of the environment"

The cultural sites are explicitly included in art 2 paragraph 3 subparagraph c from Aarhus Convention to the extent that they are or may be affected by the elements of the environment**, or by the factors, activities or measures outlined in subparagraph (b).**

The term "cultural sites" covers specific places or objects of cultural value. The Convention Concerning the Protection of the World Cultural and Natural Heritage gives the following definition: "works of man or the combined works of nature and

man, and areas **including archaeological sites** which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view" (art. 1)".

It means that information regarding the archaeological site from Rosia Montana is environmental information because the integrity of the site is affected both by:

- the discharge archaeological certificate release – a decision
- the development of the project

These are activities and measures referred in art.2 paragraph 3 subparagraph b that will affect the cultural site through the factors mentioned in art.2 paragraph 3, subparagraph a – "land".

The discharge archaeological certificate means that *the site is no longer protected* because **based on the archaeological study that was denied to us because is classified,** the authorities decided that is has no archaeological importance. **That means that the land is restored to human activities**. *The human activity approved by the land use plans for that land is the gold mining project*. So the archaeological values can be subject to a gold mining project that aims to cut down the mountain piece by piece, destroying in the process the entire site. The site consists of mining galleries from roman and pre roman period, illumination facilities, etc. The EIA procedure declares that some parts of the galleries will be moved in a museum. However, the uniqueness of the site **is the quality and most of all quantity** of the galleries. 2 metres of stone in a museum will mean nothing.

The scientific study that substantiates this decision is the archaeological study that is classified and the decision that the land can be restored to human activities (the decision to issue the discharge archaeological certificate) was taken without any public participation procedure.

Major effects of the discharge archaeological certificate

According to art 11 from Law no 85/2003 regarding the mines, "the mining activities are forbidden in areas where there are (...) archaeological sites of

interests (...)". The discharge archaeological certificate means that the site is no longer of interest and the mining activities are allowed.

Therefore, we would like you to consider that public participation is mandatory for this decision.

Relation to EIA process

The allegation of Romanian Government that the EIA chapter also refers to the archaeological values is false. In the EIA process no information related to the archaeological study that sustained the discharge archaeological certificate and no information about the reasons for taking such decision, that the archaeological study is no longer of importance, were made public.

b. If our communication refers to environmental information - If licences for exploration/exploitation is environmental information under Aarhus Convention

According to Law no 85/2003 regarding the mines, subparagraph 7 of art 3, "**the licences** are *the juridical acts regarding the concession or administration* of the mining activities (exploration/exploitation).
According to the same article, subparagraph 1, **the mining activities** are defined as: "*the set of works regarding prospecting, exploration, development, exploitation, preparation, concentration, marketing of the mining products, conservation and closure of mines, including the works relating to the environmental rehabilitation*".
In our case the license was given to a private commercial company as a concession. The mining concession is defined in art 3 subparagraph 8 as "a juridical operation given by the state for a determinate period of time that concern the transfer of the right and the obligation *to execute mining activities regarding the mineral resources* provided by the law [Law 85/2003 regarding the mines] in exchange for a royalty..."
The exploration licences are given after a process similar to the public procurement process (art 15 paragraph 2, Law no 85/2003). The exploitation licences are given **after a process similar to public procurement**, or **directly** to *the owner of the exploration licences* (art. 18, Law no 85/2003).

We will conclude that the licences are **decisions taken by the Romanian State to give a private person the right to extract mineral resources**, in our case, gold. From Aarhus Convention perspective, it **is a decision taken by the state to allow mining activities *on a certain area***. The mining activities have an impact on the environment, as the law itself is including the environmental rehabilitation works in the definition. Therefore, the mining activities have a negative impact over the environmental factors – cultural site, according to **art.2 paragraph 3** of Aarhus Convention.
In our case, the concrete impact of the gold mining project means dissolving four mountains in cyanide to clear out the gold. The impact over the environment of this activity is therefore obvious.
We believe that *any licence* that confers the right **to develop any mining activity *on a certain area* must be public information**. Such information is subject to Aarhus Convention because it is a decision likely to have an impact over the environmental factors according **art.2 paragraph 3** of Aarhus Convention.
After the licence is granted, no reason regarding economical, commercial or financial interests can be applied. **The licence and all information attached must be public.**

What information are we actually requesting when we ask for the exploration/exploitation licence? What information we asked for and it was denied? What exactly is classified as secret of service?

According to art. 15, 16 of Law 85/2003, the information attached to an *exploration license* is:
- The area of exploration;
- The mineral resource that is likely to be exploited;
- An exploration program proposed by the bidder that consists of the annual volume of exploration and the necessary expenses;
- Information regarding the technical and financial capabilities of the bidder;

According to art.20 of Law 85/2003 the information attached to an *exploitation* license is:

- The area of exploitation
- Mineral resources that will be exploited
- The feasibility study;
- The development plan of the exploitation according to the technical instructions of the competent authority (The National Administration for Mineral Resources);
- The environmental impact assessment study (it is realized in EIA procedure) *or* the environmental balance report (that is done for authorisation of ongoing activities);
- Technical project and the plan regarding the rehabilitation of the environment, according to the technical instructions given by the competent authority;
- The social impact assessment and the social abatement assessment according to the technical instructions given by the competent authority in labour area;
- The permit issued by The National Administration "Romanian Waters", according to art 19 paragraph 5 of Law 85/2003 regarding the mines;

We would like to show that it is not relevant whether licences and the discharge archaeological certificate are included or not in the EIA process. It is enough to be a decision likely to affect the environment as defined in art **art.2 paragraph 3** of AC to be subject of the public participation process. If the mentioned information would have been included in EIA process, then the public participation process organized in this procedure could have been enough, *if the process took place before any decision regarding the release of the certificate or of the license was taken*.

But in our case, as the Government of Romania recognises*, the decisions (licence and archaeological discharge certificate) were taken before the EIA process was finalized, the information were not included in the EIA process, and no public procedure took place for either of them.*

Please not that we didn't ask specifically for the licence of Rosia Montana project, but for all of them, this one including. In this case the mining company, SC RMGC SA owns, as far as we know, an exploitation licence no 47/1999.

This licence was transferred from the state mining company. The state mining company, MINVEST DEVA SA, was developing mining activities only in CETATE Mountain, *on a different perimeter* then the one proposed through the mining project. Therefore, the public interest asks that the content of the licence is released so that the public would know if the licence regards the area proposed by the new mining project, as SC RMGC SA, the mining company claims, or if a new licence should be issued. We feel that the refuse of the state authorities to release the content of the mining licences might be hiding major illegalities and corruption regarding the way the state is giving the right to develop such activities with high impact over the environment.
Another point of interest is if, according to the licence, the mining company has the right to exploit other rare metals known to be present on the same site like: selenium, indium, gallium, germanium, arsenic, titanium, molybdenum, nickel, vanadium, cobalt. All those were known to be found in the area exploited by the state company, Cetate Mountain, according to declarations of well known geologists that used to work there. The presence of such rare metals is known from the reports done for closure of mines nearby like Baia de Aries (http://ump.minind.ro/EMP/1_EMP_Baia_de_Aries_site.pdf). The existence of such metals would launch a new perspective on EIA procedure and the environmental risks generated by the project, as some of those rare metals might be dangerous to be found on the waste deposits at Roşia Montana, or might be dangerous to extract using cyanide.

c. Regarding the applicability of EU Directives

What information is requested by the EIA Directive 2011/92/EU, codified version, is not relevant. Aarhus Convention is an international Convention that is higher in hierarchy then EU Directives. If the EIA Directive is narrower than Aarhus Convention in respect of the definition regarding the environmental information, then the EIA Directive might be in non compliance with Aarhus Convention.

d. Regarding the national law, relation between Governmental Decision 878/2005 and Law no 544/2001

According to art 108 from the Romanian Constitution, *"decisions [issued by the Government] shall be issued to organize the execution of laws".* The Governmental Decisions issued by the executive body can't modify or add to

laws issued by the legislative body. This is the principle of separation of powers in a democratic state. Therefore, GD 878/2005 can never be *lex specialis* to Law 544/2001, because it is issued by the Government while the latter is issued by The Parliament that still has in Romania the legislative power.
However, we consider that in this case, it is not relevant which national law applies, because the Committee is called to apply only the Aarhus Convention. The Committee could verify if the national law is complying with the Convention, but this was not the object of our communication.

e. Regarding the time needed to obtain a final decision in court

A simple research done on *http://noulportal.just.ro/ and www.scj.ro could prove how long it takes to any case to be solved. Only the first hearing is set to more than one year since the moment the case is registered. At The High Court of Cassation and Justice the terms could be even longer.* The allegations of the Government regarding 6 month needed for each level of jurisdiction is false. For the cases mentioned in our communication:

Case no 59715/3/2010 – the case was registered at The Bucharest Tribunal in 09.12.2010, and the first court reached a decision after exactly one year, in 09.12.2011
http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=3&d=MzAwMDAwMDAwMzY4Njg1.
The Court Of Appeal registered the appeal in 15.03.2012 because that long was needed by The Bucharest Tribunal to communicate the written decision. We had 15 days to file the appeal since the date we received the written and motivated decision. The Court of Appeal reached the decision in October 4th 2012. Today, 04.02.2013 **the decision is still not written and we are not aware of the motives of the court to reach such decision**. **2,2 years**

Case no 23774/3/2010 regarding access to information – exploration, exploitation licenses – suspended until case no 9623/2/2011 will be decided. The latter has another hearing in 13.03.2013. **Until now, 2.3 years**

Other cases regarding access to environmental information and annulment of environmental acts:

Case no 31328/3/2010, access to information regarding forest management plans, also not public information in Romania – registered to The Bucharest Tribunal in 08.08.2012. The first hearing set was in 02.10.2013. We asked the tribunal to set a shorter term and the judge change the first hearing to 13.03.2013 http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=3&d=MzAwMDAwMDAwNDkzMjY3. **Until now, only in first court 7 month until the first hearing.**

Case no 8078/2/2011 regarding the annulment of the classification of a study concerning the location of a new nuclear power plant – registered by The Court of Appeal in 15.09.2011 and solved in 04.04.2012 http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=2&d=MjAwMDAwMDAwMjc0OTcw.
The appeal was registered to The High Court of Cassation and Justice in 22.08.2012. The first hearing was set in 14.03.2014. We asked the judge to change the first hearing term *and the judge* ***denied*** *our request.* *http://www.scj.ro/dosare.asp?view=detalii&id=200000000274970&pg=1&cauta*= **Until now 3.6 years.**

Case no 10833/3/2011 – access to information, list of polluted locations in Romania, Bucharest Tribunal. Case registered in 10.02.2011 and solved in 11.11.2011. http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=3&d=MzAwMDAwMDAwMzg0MDc3. The decision was motivated and communicated in July 2012. The Court of Appeal registered the case in 13.07.2012 and solved it in 28.01.2013. http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=2&d=MzAwMDAwMDAwMzg0MDc3. **2 years and waiting for the reasoning of the appeal court.**

Case no 8184/2/2011 – annulment of a decision to grant functioning authorization to a nuclear factory fuel production – Court of Appel registered the case in 20.09.2011 and solved it in 21.03.2012. The appeal was declared in September 2012 and the first hearing was set in 15.02.2013 ***after the request for modifying the first hearing was granted***.

http://www.scj.ro/dosare.asp?view=detalii&id=100000000273544&pg=1&cauta=
1.6 years and counting

Case no 3227/3/2012 – annulment of environmental permit issued for deforestation of ove.r 50 ha – Bucharest Tribunal – case submitted in 01.02.2012, the first hearing was set in 26.03.2013. **1.1 years in the first court until the first hearing.**

Case no 72/2/2011 – annulment of Governmental Decision regarding granting state subsidies for building second and third reactor to Cernavoda Nuclear Factory – The Court of Appeal registered the **file in 04.01.2011** and reached a decision in 07.02.2012 http://noulportal.just.ro/InstantaDosar.aspx?idInstitutie=2&d=MjAwMDAwMDAwMjU0MzQ5.
The High Court of Cassation and Justice registered the appeal in June 2012 (it was communicated to us in the same month) and set the first hearing in November 2013. We asked the judge to set another term and the judge accepted our request and set the first hearing to 28.03.2013. **2,2 years and counting.**

You can see that accesses to information cases are about 2 years long as the cases regarding the annulment of administrative acts are. 2 years is too much for simple cases regarding access to information and the decisions are coming too late anyway because after two years the environmental information is not relevant anymore. It is actually too much for annulment cases too, as injunctive relief is almost nonexistent in Romania in environmental cases due to the very difficult conditions imposed by law, and due to the fact that Aarhus Convention is wrongly translated, not mentioning the injunctive reliefs in the text or article 9.4.

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