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Re: Answers to the Government's response to the ACCC questions (Ref. ACCC/C/2012/69)

4. July 2013

Introduction:

On the official website of the Minister of Environment the EIA procedure is presented:

http://www.mmediu.ro/protectia_mediului/rosia_montana/rosia_montana.htm. On the same page you can see a map with the location of the project and appreciate the size of it: http://www.mmediu.ro/protectia_mediului/rosia_montana/pdf/localizare_harta.pdf.

Our comments:

a. **Regarding the first question:** Recent developments are not mentioned in the answer submitted by the Government. In 2013, the Waste Management Plan was submitted by the developer and it was analyzed by

the Technical Committee. However, this is not relevant to our communication but maybe for a future one, if the public from the neighboring countries will not be consulted for this documentation.

b. **Regarding PUZ documentation** please note that in case no. 1411/107/2007 Alba Court of Appeal annulled the urban documentation. The developer and the authorities completely ignored this decision and conducted a SEA for it. In 2009 Rosia Montana Local County *confirmed* the same documentation as valid, also disregarding the decision of the court. It is unclear to us what PUZ documentation the Government is speaking about on pg. 6. If the Government has recognized that the urban documentation is not valid, the entire EIA procedure should be cancelled and started over based on a new and legal documentation. However, the urban documentation (PUZ) is not an object to our communication so we will not go further on this.

c. **Regarding the mining license** that was transferred from the state mining company to SC RMGC SA, we received only the impact assessment study done in 1998 and nothing else. What the Government is claiming in page 14 is not true. We believe that they tried to produce *pro causa* evidence. In fact, the classification order issued by NAMR is still producing effects and all licenses with all the information contained **are still classified.**

   In our request for information we asked for the following information referring to all the exploration and exploitation licenses that are being executed at that moment: *the owners of the licenses, the location of the licenses and the period of time for which they were granted*. *We did not ask specifically for the entire Rosia Montana license or for entire licenses ever approved in Romania.*

d. **Regarding the surface rights** mentioned in page 6, the Government is actually speaking about the property right the developer must have before the building permit is issued. In this respect they promoted a project of law regarding special expropriation measures conducted by the developer that will totally infringe the private property right of the people. Unfortunately, ACCC is not competent for this issue, therefore we will not argue more about this.

e. **Regarding the discharge archeological certificate. Request for information. The archeological study**.

The request for information was done in 2010, *before the certificate was issued, because we intended to participate in the decision-making process.*

The answers in 2011 attached to the Governments‘ answer were given *after the certificate had been issued, therefore we do not feel that it is relevant for this communication.*

However we will argue that:

It was impossible for us to go to Alba County and study the thousands of pages mentioned due to the fact that the distance between Alba Iulia City and Bucharest is 351 km by car, and much more by train. Studying such documentation in the headquarters of the Local Administration in Alba Iulia is a great unjustified financial effort for us, the interested public. The Ministery of Culture, as declared in the answers submitted by the Government, is refusing to apply the Aarhus Convention. The Law no. 544/2001 (FOIA) fully applies to the following extent:

According to article 4 of Law 544/2001 all public authorities must have a department dealing with access to public information. In this sense, they shall have people employed and paid from public money especially for answering requests for information and for making Xerox copies. We never received a bill or any payment request for the material support for the information. The authority simply refused to send the documents, knowing that it will not be possible for us to go to Alba Iulia city and to study the documentation. Furthermore, all documents could have been scanned and sent via email. That never happened.

As it is written in the implementation guide of the Aarhus Convention, traveling a long distance, as in this case, 351 km and spending several days in Alba Iulia City to obtain the information requested is excessive and in breach with the Aarhus Convention.

In conclusion, we have to wonder ***why*** the Archeological Study, which the discharge archeological certificate is based on, was not public and is still not public today, if the study could have been studied in their headquarters, according to the answer attached to the Government’s response to ACCC questions?! We believe that the arguments presented by the Government in this respect are misleading the Committee.

f. **Regarding public participation for the discharge archeological certificate issuance**. We note that the discharge archeological certificate

is listed as a public administrative act, pre requisite for the building permit. The Government also explained on pg. 10 that the ***protection legal regime is based on the archeological study and given by the discharge archeological certificate. According to the Government and to the Romanian legislation, the protection regime ceases to exist when the discharge archeological certificate is issued.*** That clearly means that:

- in the EIA study, done **in 2007,** such information could not be presented since it had not been created yet; the discharge archeological certificate was issued in **2011**.

- the decision that the archeological site is no longer protected is taken through the archeological discharge certificate, without any connection to the EIA procedure. The fact that the two acts *are not* connected results also from the description of the procedure done by the Government in their answers.

In conclusion, we ask the ACCC to consider that the decision regarding what part of the galleries are going to be preserved, *in situ* or not, or if they are not going to be preserved at all, about how they will be preserved, must undergo a public participation procedure. The fact that the general public is not specialized in archeology is not a valid excuse by the Government for disregarding the Aarhus Convention and ignoring a public participation procedure. If such allegation is accepted, the Aarhus Convention and public participation procedures would never be applied.

We would like to emphasize that, as long as the protection regime is established (before the discharge archeological certificate is issued), mining activities are forbidden in that area (article 11 of the Mining Law no. 85/2003). Only from the moment the discharge archeological certificate was issued, mining activities are possible.

g. We did not understand the Governments' argument related to Law no. 55/1991. This law refers to the income taxes and has no relevance in this case.

h. We are also confused about what piece of Romanian legislation allows the authorities to issue the building permit without respecting the measures for protecting natural resources and cultural heritage. The building permits are issued by the local authorities (eg. local counties, regional counties). Such allegation is unfounded.

i. Regarding question 4 of the ACCC, we believe that regarding Baia Mare accident Romania had to pay Hungary compensation for. However as much as we tried to find out, this information is kept secret. We asked for information related to the Baia Mare case in our request for information, subject of case no 23774 (the decision is attached to our communication http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-69/Communication/AnnexVI_BucharestCourt23774_2010.PDF), , but it is also secret, as claimed in the answer of the public authority and during the trial.

j. As regards the content of article 20 of Law 182/2002 regarding the classified information, this article is granting the right to ask for declassification of state secret information (except for secrets of service). In these cases the plaintiff must prove an interest in declassification.

k. There is no provision in Law no. 182/2002 requiring the Government to approve all classifications of all secrets. Only state secrets are classified by Governmental decision. Secrets of service, are classified by a decision of the leader of any juridical person, without any criteria or guarantees that important information will not be kept from the public abusively. This legislation was submitted to the ACCC in translation for ACCC/C/2010/51, why we kindly ask you to revise it.

Best wishes,

Catalina Radulescu, Romania

On behalf of Crisanta Lungu, Greenpeace CEE Romania and Thomas Alge, Justice & Environment