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**Answers to questions raised by the Compliance Committee related to case no 69,
Romania**

Question 1 – The Rosia Montana project EIA is not finished. The developer submitted the answers requested and completed the EIA report. We have no further knowledge about what is going on.

EIA report can't be challenged separately from the EIA permit. We can only attack in court the EIA permit that is considered an administrative act. The EIA Report is not an administrative act. It is considered a technical step before issuing the EIA permit. The courts refused to analyze the EIA report because they consider that the administrative court can't challenge the technical part, but only to check if the administrative steps were followed. From this point of view there is a violation of art. 9.1 – no possibility to challenge the substantive legality of the decisions.

Question 2 – There is no final EIA decision in Rosia Montana Case. We are complaining now about the discharge archeological certificate that is a relevant documentation for EIA procedure.

Question 3 – In law no 195/2005 art 1 paragraph 2 – The environment is the set of natural elements like air, water, soil, etc, including some material and spiritual values.

In art. 2 point 38 shows that information related to archeological sites and cultural values are environmental if the status of the environmental factors can influence their existence.

In the Order no 863/2002 that approves the guide for realizing the EIA study Annex 1 point 4.b, Tabel no 1 – the list of information needing for screening and scoping, the control list, Table no 3 - the list of environmental components potentially affected, the information related to the

existence of the cultural sites including archeological site should be included, and the impact of each site should be detailed; Part II – The structure of the EIA report, for each alternatives should be detailed the impact on the cultural sites including archeological sites and also measures regarding the mitigation measures (point 4.8), Annex 3 Table regarding the list of control for the analysis of the EIA Study, description of the effects of the projects on the cultural site – including archeological sites.

In this project the archeological sites are located inside the mountains that would be completely destroyed mine for gold. So the archeological site will disappear. That means that such information is relevant for environment and it should be integrated into the EIA report because the disappearance of the mountain will produce the disappearance of the archeological site so that it will affect the material and spiritual values that are part of the environment. By issuing the discharge archeological certificate, the Minister of Culture actually is saying that the archeological site is of no further importance. Therefore the description into the EIA Study of the location, of the effects and of the mitigation measures upon this site are also not important and are not going to be assessed as for an important and unique site, as it really is. The importance of this archeological site does not exist any more. The site is no longer protected. Therefore the discharge archeological certificate can't be issued other then in full respect of the art 6 of Aarhus Convention, with public participation procedures.

Also we want to remind, although it is a fact well known by the members of the committee that according to art 2 para 3 letter c the cultural sites are environmental information if they are going to be affected by the state of the environmental factors.

Perhaps we should emphasize that the archeological site is actually inside Carnic Mountain, one of the four mountains that would be destroyed by this project and it is made of unique mining galleries dating from pre roman and roman period.

Question 4 – regarding the decision 914/2011 where The Bucharest tribunal ruled in our favor, we want to show that the Court of Appeal, ruled in favor of the Minister of Culture, modified the decision 914/2011 and rejected our case. The court of Appeal reached its decision in October 4th 2012. The decision is not yet written and we don't know the legal grounds for this decision. Therefore, we are complaining violation of the access to information right regarding the archeological site – the report of the archeologist that was taken into consideration for the issuing of the discharge archeological certificate, and of any other relevant information that decision was based upon, as well as for violation of art 6 regarding the issuance of the discharge archeological certificate.

Question 5 – if you are referring for the relation between the EIA procedure and the information regarding “the exploration/exploitation licenses of non ferrous ore are going on today in Romania: who are the beneficiaries, for what perimeters, for what periods of time”, here would be included the Rosia Montana mining licenses. This information is relevant for EIA process as it contains information regarding the location of the projects, methods that can be used for exploitation, etc and it is currently classified as secret of service. Currently the case is still ongoing in court.

Question 6 – The high Court of Cassation and Justice rejected our request to move the case to another Court of Appeal, decision no 1963/06.04.2012, file no 1156/1/2012.

Usually it takes about two years to go through a procedure for access to environmental information, two court instances.

