



MINISTRY OF ENVIRONMENT,
WATERS AND FORESTS

General Directorate for Impact Assessment and Pollution Control

No. 94039/D.M./15.04.2015

To: Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Convention on Access to Information, Public Participation in Decision-making and
Access to Justice in Environmental Matters (Aarhus Convention)

Subject: **Communication to the Aarhus Convention Compliance Committee concerning compliance by Romania in relation to the permitting process for the Rosia Montana mining project (ACCC/C/2012/69)**

Dear Ms. Marshall,

I have the honor of transmitting the comments of the Romanian authorities concerning the *Draft findings for comment by parties (ACCC/C/2012/69/Romania)* which you forwarded on 23 February 2015. I also take this opportunity to thank the Compliance Committee for the extension granted.

While the Government maintains all previous representations made orally and in writing before the Committee, it notes with great surprise that the Committee found non-compliance with article 4, paragraphs 1 and 2 of the Convention in respect of the “failure to provide the communicants with a physical or electronic copy of the requested archaeological study “wand “for denying access on the grounds of intellectual property rights“. At the moment of the communication, the facts did not support this finding of the Committee. They are reflected in the Committee’s *Summary of facts, evidence and issues*, paragraph 28. It is stated there that the Alba County Department of the Ministry of Culture provided the communicants with a copy of the archaeological discharge certificate and invited them to consult the original of the documentation substantiating the issuance of the certificated at the office of that Department. The Government would like to stress that at the moment of the communication, the communicants were not denied access on the grounds of intellectual property rights. On the contrary, they had unimpeded access.

The Government disagrees with the Committee’s interpretation of article 4, paragraph 1. Paragraph 1 provides specifically that “ [e]ach Party shall ensure that ... public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation,

including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information“. Subparagraph (b) requires parties to provide the information „in the form requested unless: (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form.“

In the above mentioned provisions, the Government identifies two obligations: 1) to make the information available to the public and 2) to provide the public not only the information but the actual document that contains such information. Generally, a copy of such document would be provided, unless „it is reasonable for the public authority to make it available in another form ...“. Therefore, the word „form“ refers not to „the form the copies of the requested documentation is provided in, for example, paper form, electronic form, or on CD ROM ...“¹ but to another way of making available the actual documentation, for example by „allowing the applicants to examine the original“.²

Therefore, under article 4, paragraph 1, subparagraph b, parties are entitled to refuse providing copies of the actual documentation if it is reasonable to make the actual documentation available in another form and they give reasons for making it available in that form.

The Government considers that the reasonableness requirement should be evaluated on a case by case basis, taking into consideration the specific country situation. In the case of this communication, the Government kindly requests the Committee to consider that it was reasonable to allow the communicants examine the documentation (and to make copies) and that the Romanian authorities gave reasons for making it available in that form.

The Government would like to inform the Committee that on 13 February 2014, the Bucharest Court of Appeals handed down its judgment in the appeal lodged by the National Agency for Mineral Resources. Therefore, the last sentence of paragraph 25 of the *Draft findings* should be amended accordingly.

Turning to the recommendations, the Government would like to draw the attention of the Committee to points a.ii) and a.iii). At a.ii), the Government suggests inserting, after “public interest served by the disclosure” the following: “public or private interests that may be affected by the release, as well as cases in which the request for environmental information may be refused”. At a.iii), the Government again suggests inserting, after “whenever possible”, the following: “ taking into account relevant legislation on confidential and/or classified information”.

The Government would also like to make one editorial comment concerning the English translation of „Consiliul Superior al Magistraturii“ain the text of the *Draft findings*. The preferred English translation is the „Superior Council of Magistracy“i(see

¹ Para. 53 of the *Draft findings for comments by parties (ACCC/C/2012/69/Romania)*

² Implementation Guide, second edition, 2014, p. 80.

<http://www.csm1909.ro/csm/index.php?cmd=0&lb=en>) and not the „Superior Council of Magistrates“.

Yours sincerely,

**General Director,
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