

ROME AND NIA

THE COURT OF SATU MARE

SECTION II CIVIL, ADMINISTRATIVE AND FISCAL LITIGATION
File no. 1192/83/2023

CIVIL JUDGMENT NO. 414/ CA/ 2023 Public
hearing of **November 2, 2023** Court composed of:

President Simona Coste-
Palincaş
Registrar Simona
Tarşa //

The ruling of the case in the matter of administrative and fiscal litigation is pending, regarding the plaintiff **SOCIETATEA CARPATINA ARDELEANŢ SATU MARE**, with its registered office in [REDACTED] at the Căştălina Mihaela Rădulescu Law Office, in opposition to the defendants **AGENŢIA DE PROTECŢIA MEDIULUI ARAD**, with headquarters in the Municipality of Arad, Splaiul Mureşului fn, Arad county and **SC WEST POWER INVESTMENTS SRL**, with headquarters in Bucharest, Sector 1, Piaşă Charles de Gaulle no. 15, Charles de Gaulle Plaza, floor 16, conventionally represented by SPRL Clifford Chance Badea, with headquarters in Bucharest, Academiei street no. 28-30, Excelsior Business Center, floor 10-12, with the object of suspending the execution of an administrative act and canceling an administrative act.

Legally completed subpoena procedure, under the conditions of art. 396 Code of civil procedure.

At the same time, it is noted that the trial of the case on the exceptions took place on 11.10.2023, the date on which the arguments of the parties were recorded at the end of that meeting, which is an integral part of this sentence, postponing the ruling to 26.10. 2023, as well as on 02.11.2023.

When following deliberation,

COURT

Deliberating on the present civil case, it finds: Through the summons registered to the court of Satu Mare, on 31.07.2023, in file no. 1192/83/2023, the applicant Societatea Carpatina Ardeleană Satu Mare, pursuant to art. 1 and 11 of Law no. 554/2004 of the administrative litigation, we are suing the Arad Environmental Protection Agency and SC WEST POWER INVESTMENTS SRL, requesting that the following judgment be issued:

1. Cancellation of environmental notice no. 1/25.07.2022 issued for "PUZ and related RLU construction and connection of the Arad photovoltaic park in the outskirts of the towns of Grăniceri and Pîlu".
2. Suspension of the environmental notice no. 1125.07.2022 issued for "PUZ and related RLU construction and connection of the Arad photovoltaic park in the outskirts of the towns of Grăniceri and Pîlu".

In the justification of the request, it shows that it has filed a prior complaint against the opinion of medium no. 1/2022 for the following reasons: I.

Factual reasons:

The proposed photovoltaic park is completely located inside the Natura 2000 Sites ROSAC 0231- Nădab - Socodor - Vărsand and ROSPA0015 - Câmpia Crişului Alb and Crişului Negru.

1. The object of the environmental agreement and the studies underlying its issuance.

"The present study is developed within the framework of the environmental assessment procedure for the related PUZ & RLU zonal urban plan - construction and connection of the Arad 1 photovoltaic park in the outskirts of the Grȃnicheri and Pȃlu localities, Arad county.

The study evaluates the impact of the plan/project on the protected natural areas of community interest in the project area (ROSAC0231 Nȃdab-Socodor-Vȃrsand and ROSPA0015 Cȃmpia Criȃului Alb ȃi Negru)."

The zonal urban plan aims at the change of use from agricultural land to construction yards of a land with an area of 1064.4484 ha, out of a total of 1318.5 ha studied, located in Arad county, on the territory of the Pȃlu and Grȃnicheri territorial administrative units, in order to build a photovoltaic plants with a power of 1065MWdc.

Changing the use of the land in courtyards-buildings practically means that that land is removed from the agricultural circuit and makes it unusable for the wild animals that live there and that are the object of the protection of the Natura2000 sites ROSAC0231 Nȃdab-Socodor-Vȃrsand and ROSPA0015 Cȃmpia Criȃului Alb and Black.

2. Regarding the conservation objectives of ROSAC0231 Nȃdab-Socodor-Vȃrsand.

The lands on which the photovoltaic park is intended to be built had meadow vegetation, which was destroyed by illegal conversion to arable land. In the Natura 2000 standard form of the site in section 4. Site description, point 4.1 General characteristics of the site, it appears that when the site was designated 91, i.e. 71 15.42 ha, was pasture. This fact also emerges from the biodiversity study, which identifies the plant species on these lands, which are constitutive species of the habitat of priority community interest 1530* Pannonian and Ponto-Sarmatic saline meadows and marshes. The authors of the study even state the opinion that this habitat of community interest would have pre-existed on these lands.

In accordance with Art. 6.2 of the Habitats Directive, the member state has the responsibility to prevent the deterioration of habitats of community interest, as well as the disturbance of species of community interest on the territory of Natura 2000 sites.

The fact that a habitat of community interest (priority) from a Natura 2000 site (site of community importance) has been damaged, in accordance with the Habitats Directive Art. 6, should lead to the obligation of the Romanian state authorities responsible for the management of natural areas protected to ensure their recovery. So the creation of a photovoltaic park, which has as a side effect the restoration of meadow vegetation, should not be considered ecological reconstruction.

Thus, on page 5 of the environmental notice, the existence of the habitat and its deterioration is noted, but it is decided to change the category of land use and to use the land for construction, and not to restore the habitat as would be legal from the point of view of the conservation objectives of ROSAC 0231- Nȃdab - Socodor — Vȃrsand.

3. Regarding the conservation objectives of ROSPA0015 Cȃmpia Criȃului Alb ȃi Negru.

The area of the site, especially due to the narrowing of the areas flooded with water, of the Heleste from Socodor (which at the time of the designation of the Natura 2000 site was the most important wet habitat of the site), is one of the most important bird agglomeration areas in the Pannonian bioregion (Western Plain) of Romania. Being a few kilometers from the border with Hungary, this agglomeration of birds gives the project a cross-border character.

Salt marshes (salt meadows destroyed by conversion to arable land) with large areas inundated by stagnant water during wet periods of the year—especially during bird migration periods—provide habitat for large numbers of birds. This fact is also revealed by the data extracted from Open Birds Maps, a public database, which contains biotic data collected unsystematically by field ornithologists in Romania and which shows the regular presence of some bird species typical of water areas, such as: *Anas acuta* — mallard, *Anas crecca* — little duck. *Anas penelope* — whistling duck, *Anas platyrhynchos* — mallard, *Anser anser* — summer goose, *Branta ruficollis* — red-necked goose.. In this see the generated Open maps <https://drive.google.com/driveff01ders/1T2b2sLuDUBIGMX12nvOwOq08WxX6AYW>.

on the base dATES FROM

The appropriate assessment study identifies this richness of avifauna, being observed here

87 species of birds with a total of 35268 individuals. Of these species, 26 are listed in Annex I of the Birds Directive.

The appropriate assessment study, wrongly, does not assess this impact on bird species. Thus: a. large or very large

birds By covering the surface of 1064.45 ha

in proportion to 80% with photovoltaic panels and technological roads, these birds practically lose the habitat necessary for their life. A significant part of the birds that use the site as a habitat are large or very large (eg *Grus grus* - cocór, *Ciconia ciconia* - white stork, *Ciconia nigra* - black stork, *Aquila heliaca* - field eagle, *Haliaeetus albicilla* - white-tailed eagle, *Egretta alba* — great egret, *Egretta garzetta* — little egret), which do not have the possibility to land between the photovoltaic panels:

Aquila heliaca (Annex I - Birds Directive) - field eagle. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The study does not discuss the impact on the species, although it was identified during the implementation of inventory protocols, according to chapter 32.5 (0.90-92). Although the surface of the species' habitat is large, considering the fact that it is a sedentary species, it considers the general state of conservation of the species as unfavorable-inadequate.

Aquila pomarina (Annex I - Birds Directive) — lesser screaming eagle. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat. Although the surface of the species' habitat is large, considering the fact that it is a summer guest species (migratory species present in Romania only in summer), he considers the general conservation status of the species to be unfavorable-inadequate. It can also nest near the site (for example in the Socodor Forest) or appears in migration.

Ciconia ciconia (Annex I - Birds Directive) — white stork. The species uses the site as a feeding territory during the breeding season. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Ciconia nigra (Annex I Birds Directive) - black stork. The species uses the site as a feeding territory during the breeding period, but also during passage. It may be affected by the realization of the photovoltaic park through the loss of feeding habitat, the impact on the species is not discussed in the study, although it was identified during the implementation of the inventory protocols. according to chapter 3.25 (p. 90-92).

Egretta (Ardea) alba (Annex I Birds Directive) — great egret. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat.

Egretta garzetta (Annex I Birds Directive) — little egret. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Haliaeetus albicilla (Annex I Birds Directive) — white-tailed eagle. Species with permanent presence, uses the site as a feeding (hunting) habitat. It may be affected by the realization of the photovoltaic park through the loss of feeding habitat, the impact on the species is not discussed in the study, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p. 90-92).

Hieraaetus pennatus (Bird Directive Annex) — little eagle. It is a species with a permanent presence in the Natura 2000 site in a very small number: 1-2 pairs. Although the surface of the species' habitat is large, considering the fact that it is a sedentary species, it considers the general state of conservation of the species as unfavorable-inadequate.

It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Grus grus (Annex I Birds Directive) — cockerel. It is present during passage. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.25 (pp. 90-92).

Platalea leucorodia (Annex I Birds Directive) — shoveler. Species present both during breeding and passage. Use permanently covered areas for feeding

or temporarily with water. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. b.

Birds of prey Birds

of prey, even small ones, are embarrassed to hunt between the panels without hitting them or the wire mesh fences that are proposed to enclose the site. Such species are:

Asio flammeus (Annex I Birds Directive) — field grouse. It is present during both breeding and wintering periods. It can be affected by the loss of both feeding and breeding habitat, being a ground-nesting species.

Circus aeruginosus (Annex I Birds Directive) — eretes It is a species present throughout the year (mainly during the nesting period and in passage 2) and uses the site as a feeding habitat. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Circus cyaneus (Annex I Birds Directive) — erete hunted The species is present on the site during the wintering period, using it as a feeding habitat. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat.

Circus pygargus (Annex I Birds Directive) — erete sur. It is a nesting species on the territory of the site with a presence of 6-9 pairs in the entire site. It may be affected by the realization of the photovoltaic park through the loss of feeding and breeding habitat. The general conservation status of the species is unfavorable-inadequate, the impact on the species is not discussed in the study, although it was identified during the implementation of the inventory protocols. according to chapter 3.2.5 (p. 90-92).

Falco cherrug (Annex I Birds Directive) — Danube falcon. The species is present during the nesting and passage period. Species with a large range of activity during the nesting period. Nearby (Grȳniceri — ȳicliȳu) there are 2-3 nesting pairs every year. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The general conservation status of the species is unfavorable-inadequate, the impact on the species is not discussed in the study, although it was identified during the implementation of the inventory protocols. according to chapter 3.2.5 (p.90-92P).

Falco columbarius (Annex I Birds Directive) — winter falcon. The species is present on the site During the spawning period. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Falco peregrinus (Annex I Birds Directive) — peregrine falcon. The species is present on the site during the passage and wintering period. It may be affected by the realization of the photovoltaic park through the loss of feeding habitat, the impact on the species is not discussed in the study, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p. 90-92).

Falco tinnunculus (Appendix 48. OUG 5712007) — red kestrel. Species present throughout the year, using the site with high frequency for feeding. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Falco vespertinus (Annex I Birds Directive) — evening tern. The species present in both breeding and passage, using the site with high frequency for feeding. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Milvus migrans (Annex I Birds Directive) — black jay. The species is present in the area during the breeding period in small herds: 2-3 pairs and uses the area as a feeding habitat. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

Pernis apivorus (Annex I Birds Directive) — wasp. The species is present with a very small breeding population: 2-3 pairs throughout the Natura 2000 site. Although the surface of the species' habitat is large, given the fact that it is a sedentary species, the general state of conservation of the species is considered unfavorable inadequate. c. Particularly rare birds The

proposed site is one of

the few nesting habitats of the shore sitar — *Limosa limosa*, a wading (shore) species that has become very rare in Romania. By making

photovoltaic park, this species would lose an important nesting habitat. See the map with the distribution of nesting habitats.

d. The species *Circaetus gallicus* - snake (Annex I Birds Directive). It was not analyzed by the environmental report within the SEA procedure and the impact of the plan on this species was not evaluated, even though the species is present during the reproduction period.

4. Cross-border impact: considering the proximity of the border with the Republic of Hungary, the authority of the environment had to establish the need for cross-border impact assessment.

5. Studies on the impact of photovoltaic panel fields on natural protected areas: Turney and Fthanakis state that

the major impact on species and habitats in large-scale solar parks are due to the direct occupation of the land of the park itself.

Hernandez et al point out that this can vary considerably depending on land use efficiency (including panel spacing and layout), footprint and infrastructure design. In the present case, the very small space between the rows of panels means that large and very large bird species are unable to use the occupied territory.

Solar parks occupy relatively large areas, but the impact on biodiversity will obviously depend on the type of land occupied. Feedback from the stakeholder consultation project "Assessing and mitigating the impact of renewable energy development on habitats and species protected by the Birds and Habitats Directives" implemented by the European Commission revealed that extensive agricultural land, valuable grassland and steppe habitats are particularly vulnerable because they are often favored for the implementation of solar farms. due to the lower economic value of these types of land and their better accessibility. These habitats often harbor important populations of EU-protected bird species. These species are already in sharp decline due to extensive habitat transformation caused by changes in agricultural management. In the present case even the appropriate assessment study reveals that the proposed PV park area provides habitat for at least 35268 bird individuals belonging to 87 species.

Habitats converted to solar farms are affected by a wide range of impacts, such as reduced vegetative cover, soil compaction, reduced infiltration, increased runoff, decreased soil activity, decreased soil organic matter, and impaired water quality (Department of Environmental Protection in New Jersey. 2017 5). In addition, construction actions (eg earthworks and clearing) also create suitable habitat for invasive alien species.

Habitat degradation is also caused by microclimate change. Photovoltaic panels will cause shading, change the temperature and change the distribution of precipitation (impacting soil moisture) and therefore change the microclimate¹⁶ When no light or rain reaches the soil, it will degrade and no vegetation will be

able to grow develop 7. The distance between the matrix lines is very small, which prevents sunlight from reaching the vegetation and soil. Another disadvantage of fixed panels is that they redirect all collected rainwater to a narrow outlet across the width of the panels. Under the panels, the soil is at risk of being compacted with the formation of a crust.

Solar parks of considerable size consist of open habitats without trees or shrubs and are fenced. This causes solar PV farms to cause habitat fragmentation and isolation for species (ie farmland birds). Barriers to wildlife lead to depletion of feeding and resting sites and genetic isolation of metapopulations.

Conclusions:

- although they were identified on the territory of the site, a number of 7 species of high conservative interest did not make the objective of the impact assessment;
- a species of community interest. *Circaetus gallicus* — the snake was not analyzed in the study;

- when analyzing the impact on bird species, the authors try to demonstrate the positive aspect of photovoltaic parks by citing scientific works in this regard, but which refer to other bird species, not those that are the object of conservation of the Natura 2000 site. Many of the species brought as example (e.g. *Alauda arvensis* — the lark, *Asio otus* — woodpecker, *Athene noctua* — the cuckoo, *Strix aluco* — the little owl) are relatively common species in our country, which are not subject to protection, precisely because they are very well adapted to humanized areas. These opportunistic species are not the object of protection precisely because of their ability to adapt to areas modified by man, instead the protected species, which were the basis for the designation of the Natura 2000 site, are vulnerable precisely because they cannot adapt to the changes induced by man. And habitat modification will lead to their disappearance from this Natura 2000 site. Either way, the purpose of Natura 2000 sites is to at least maintain (ideally increase) the population of the species for which they were created.

Similarly, the statement that according to the cited study from Germany the diversity of species and the abundance of certain species has increased is likely to mislead those who analyzed the quality of the study, because the simple increase in the number of species present or the number of individuals in a certain area does not necessarily imply an increase in the conservation value of that territory. The appearance of common species and with very large populations cannot be an argument for the slaughter of some species of community interest, for whose protection the Natura 2000 site was established.

The appropriate assessment study does not deal with the issue of habitat loss at all, although the study commissioned by the European Commission carried out in the framework of the project "Assessment and mitigation of the impact of renewable energy development on habitats and species protected by the Birds and Habitats Directives", analyzing the specialized bibliography as well as the opinions of the interviewed specialists, consider that one of the most important negative impacts of large-scale photovoltaic parks is habitat loss and fragmentation.

According to the study cited above, best practices for impact reduction photovoltaic parks:

"(...)is appropriate site planning by avoiding locations that are important for EU protected species and habitats. To achieve this goal, it is advisable to develop sensitivity/exclusion maps for priority species and habitats potentially more sensitive to the implementation of these energy infrastructures. These maps also play an important precautionary role, so that the promoters of these infrastructures know the most important areas for biodiversity and those managers dealing with the environmental assessment processes evaluate solar energy project proposals more accurately. In principle, not only Natura 2000 sites, but also land functionally linked (ecological functionality) to a Natura 2000 site, e.g. as a

feeding area, as well as the distribution area of the associated threatened species, should be avoided, as this could affect the integrity of the site and the favorable conservation status of the species in the Natura 2000 site.

The same principle applies to the habitats of species from Annex IV of the Habitats Directive, ideally, solar parks are located in the vicinity of natural habitats already altered by infrastructures (paved roads, railways, etc.) or buildings (urbanized areas). It is recommended to establish buffer zones around these humanized areas to promote this energy development, also taking into account the need to avoid fragmentation and promote biodiversity connectivity.

Another suitable option is to install solar parks on abandoned industrial areas with low biodiversity value or other types of degraded land with low biodiversity values, in these cases, solar parks can significantly improve biodiversity.

This is, for example, the case when former agricultural land is converted into extensively managed pasture. If properly located, solar PV farms could increase the value of buffer zones around Natura 2000 sites, especially when intensive agriculture in the immediate surroundings of a Natura 2000 site could be replaced by a more extensive type of land management (less or no fertilizers, pesticides),

such as a solar farm, which would also allow groundwater levels to rise, major benefits for biodiversity. It would be achieved (Peschel, 2010) compared to the baseline situation.

So the clear recommendation is to avoid Natura 2000 sites and ecological corridors or feeding areas of protected species. The areas proposed for such objectives are the degraded ones outside the protected natural areas or those located in already urbanized areas.

II Grounds of law and well-justified case

1. Violation of art. 7 in conjunction with art. 6 of the Aarhus Convention ratified by Romania through Lg. 86/2000.

The procedure for issuing the environmental opinion was not made public according to the law. The environmental notice was not even published on the website of APM Arad, being communicated by email as a result of a request for information, on December 14, 2022.

GEO 195/2005 on environmental protection was violated, HG. no. 1076/2004, the Aarhus Convention ratified by Lg 86/2000. 2. Violation of art.

'34 of HG 1076/2004 regarding the environmental assessment for plans or programs with a potential significant effect on the environment in a cross-border context as well as the Espoo Convention ratified by Romania through Law no. 22/2001 Article 34 (1)

"When a plan or program is likely to have a significant effect on the environment of another state or when another state may be significantly affected requests information on the plan or program, the central public authority promoting the plan or the program sends a copy of the draft plan or program and the environmental report, including the monitoring program effects on the environment.

(2) If the state that received the documents provided for in para. (1) communicates the intention to enter into consultations before adopting the plan or program or submitting it to the legislative procedure, the central public authority promoting the plan or program, within the framework of bilateral relations, will make the arrangements for consultations regarding the possible environmental effects cross-border effects of the implementation of the plan or program and on the measures envisaged to reduce or compensate for these effects. These arrangements must ensure the following: a) informing the

authorities involved in the environmental assessment procedure in the potentially significantly affected state and, through them, the interested public in that state; b) the participation of the central

public authority for environmental protection from the state of origin of the proposed plan or program project; c) a time frame agreed upon by the interested parties for the duration of the consultations.

(3) The central public authority that promotes the plan or program informs any state that has been consulted according to the provisions of this article on the decision to issue the environmental opinion.

(4) The Ministry of Foreign Affairs supports the central public authority that promotes the plan or program according to the provisions of para. (1)-(3) and takes the necessary steps to apply these provisions, including in the case of plans or programs with possible significant effects on the territory of Romania, initiated in other states".

Art. 2 point 4 of Law 22/2001 regarding the ratification of the Espoo Convention: "The party of origin will ensure, in accordance with the provisions of this convention, that any proposed activity, mentioned in annex no. I, which may cause a significant negative cross-border impact, to be notified to the affected parties".

In this case, Hungary was not notified, illegally considering that there would be no cross-border impact even though the project produces effects on some lands and on bird populations that are also of interest to biodiversity in the neighboring state.

According to paragraph 4 of the preamble of the Poultry Directive and art. 28 of the 1 final sentence of GEO 57/2007, birds are of community interest and are protected wherever they are and in relation to any activity that may endanger their feeding, nesting, etc.: (4) "The species of wild birds that are found naturally on the European territory of the member states they are mostly migratory species. Such species constitute a common heritage and the effective protection of birds is a typical transboundary environmental issue involving shared responsibilities."

3. Violation of GEO 57/2007 and regarding the regime of protected natural areas, conservation of natural habitats, flora and fauna and Order 19/2010 for the approval of the Methodological Guide on the adequate assessment of the potential effects of plans or projects on protected natural areas of community interest > according Art. 28 of GEO 57/2007: (1) " (1) Activities within the perimeters of natural areas protected

of community interest that may generate pollution or damage to habitats, as well as disturbance of the species for which the respective areas were designated, are prohibited, when these activities have a significant effect, considering the objectives of protection and conservation of species and habitats For the protection and conservation of wild birds, including migratory ones, activities outside protected natural areas that would produce pollution or damage to habitats are prohibited.

(2) Any plan or project that does not have a direct connection or is not necessary for the management of the protected natural area of community interest, but which could significantly affect the area, alone or in combination with other plans or projects, is subject to an evaluation adequate of the potential effects on the protected natural area of community interest, taking into account its conservation objectives.

According to art. 28 of (9) "In the situation where the sites included in the "Natura 2000" network, identified according to the legislation in force, harbor a type of priority natural habitat and/or a priority species, the only considerations that can be invoked for issuing the environmental agreement , the environmental notice or the Natura 2000 notice, as the case may be, are those concerning:

a) public health or safety; b) certain beneficial consequences of major importance for the environment; c) other imperative reasons of major public interest on which the point of view of the European Commission was obtained." In this case, on this

land the object of conservation is the habitat of priority community interest 1530* Meadows and marshes, Pannonian salt marshes and ponto — Sarmatian mentioned in Annex I of the Habitats Directive as, 1530* Pannonian salt marshes and steppes" and also 26 species of birds that constitute priority species being mentioned in Annex I of the Birds Directive that will be affected by the installation of the photovoltaic park. In this sense, Article 4 of the Directive provides:

Article 4 (1) "The species mentioned in Annex I are the subject of special measures for the conservation of their habitats, in order to ensure their survival and reproduction in the area of distribution, in this context, the following bird species are taken into account:

(a) endangered species; (b) species vulnerable to certain changes in their habitat; (c) species considered rare due to small populations or limited local distribution; (d) other species that require special attention

due to the specific nature of the habitat The provisions of art. 4 of the Birds Directive have direct applicability according to the principle of direct effect of European Union law 13 established by the ECJ Judgment Van Gend en Loos v. Dutch tax administration and Van Duyn v. Home Office, from which it follows that a directive has direct effect if its provisions are unconditional and sufficiently clear and precise and if the Member State has not transposed the directive within the stipulated period. In this case, art. 4 is clear and its application is unconditional, the special conservation measures of these 26 species of birds being

priority over the realization of this plan, which

it can be moved with the same yield to other lands outside the Natura 2000 Sites, as I stated above.

The methodology for carrying out the appropriate assessment procedure is described by the Order 19/2010, in force on the date of issuance of the environmental opinion:

Article 2.1 para 7 — For plans and programs falling under the provisions of art. 28 of the Government Emergency Ordinance no. 57,2007 regarding the regime of natural protected areas, conservation of natural habitats, flora and fauna, approved with amendments and additions by Law no. 49/2011, with the subsequent amendments and additions, the presentation memorandum must include the following information: a) the brief description of the PP and the distance

from the protected natural area of community interest, as well as the geographical coordinates (STEREO 70) of the PP location. These coordinates will be presented as a vector in geo-referenced digital format, in the Stereo 1970 national projection system, or as an electronic table containing contour coordinates (X, Y) in the Stereo 1970 national projection system; b) the name and code of the protected natural area of community interest; c) the presence and numbers/surfaces covered by species and habitats of community interest in the PP area; d) it will be specified if the proposed PP is not directly related to or is not necessary for the management of the

conservation of the protected natural area of community interest; e) the potential impact of the PP on the species and habitats of the protected natural area of community interest will be estimated; f) other information provided in the legislation in force The competent authority may request any other information, if the quality of the information presented cannot lead to a decision being taken. Smoked information must be verified through site visits".

The presentation memo does not indicate the presence of all bird species that are affected by this plan, nor does it estimate the impact on all species, as I have shown above in point 1.3.

Although the defendant APM Arad could observe from the management plan of the Natura 2000 sites and from the checks in the field that the estimated impact on all bird species that are the subject of conservation measures within ROSPA0015 Câmpia Crișului was not described and was not analyzed White and Black, it did not request the completion of the documentation and issued the laconic environmental opinion without considering all the species that benefited from special protection.

Moreover, according to the year. 28 of 9 of GEO 57/2007 prohibits issuing this notice considering the presence of a damaged priority habitat that required restoration measures and also of some priority bird species.

As a result of the gaps in the presentation memorandum, art. was also violated. 2.2 of the Order 19/2010 — Adequate assessment study stage.

"At this stage, the competent authority for environmental protection analyzes the appropriate assessment study, which contains the measures to reduce the impact, which were requested from the PP holder. if the impact reduction measures are not sufficient to ensure the integrity of the protected natural area, the appropriate assessment study will also include the alternative solutions analyzed for the PP.

The appropriate assessment study does not contain any mitigation measures for one of the mentioned bird species and does not contain any reference to some bird species even though they are present on the site. In this sense,

the ANANP opinion was issued on the condition of "respecting the measures to reduce the impact on the fauna species of community interest that are the object of the designation" of the two protected natural areas. Or, as can be seen from the content of the documentation, there are no measures to reduce the impact for all species of fauna of community interest, although their behavior is different, requiring the analysis of each species and the adoption of its own measures.

Order 19/2010 at art. 2.2 disposes, in paragraph 4 et seq.: - in order to take a decision regarding the approval of the PP. the competent authority for environmental protection must ensure through the documentation submitted by

the owner that: a) the alternative proposed for approval is the one that least affects the habitats, species and integrity of the natural area protected by

Community Interest; b) in the decision regarding the choice of the alternative proposed for approval, the economic aspects were not taken into account and that there is no other feasible alternative that affects to a lesser extent the natural area protected by

community interest; c) there are imperative reasons of major public interest, including "those of a social and economic nature".

The competent authority for environmental protection considers the alternative solution of the PP which has the least negative impact on the natural area protected by community interest and which ensures its integrity. Annex II of the methodological guide approved by Order 19/2010 THE CONTENT-FRAMEWORK of the appropriate assessment study, the method of selecting alternative solutions and the method of assessment point II:

Alternative solutions:

The appropriate assessment study will include, as appropriate, alternative solutions .

Alternative solutions identified at this stage will be evaluated separately, using the same criteria used to evaluate the initial version of the PP. The alternative solutions are identified, including the zero alternative", which means that no intervention is carried out. The evaluation of the alternative solutions of a PP is done taking into account the species and/or habitats of community interest for which the protected natural area of community interest has been designated , costs, delays or other aspects of the alternative solution.

Types of alternative

solutions: a) alternative locations (for example, new locations for photovoltaic panels, variants for building a road, etc.). An alternate location consists of implementing the same PP in different locations than originally planned. The result must be the reduction of the impact on the protected natural area of community interest. For example: changing the location/alternative route of the PP will cause the reduction/elimination of the impact on species and/or habitats of community interest, the loss of their surfaces, etc.; b) alternative solutions to achieve PP (for example, railways instead of highways, underground cables instead of above-ground ones, unregulated water courses instead of regularized courses, resizing of PP, noise barriers, modification of the work execution calendar, etc.).

The evaluation of alternative solutions

consists in: a) the description of the alternative solution/solutions that lead to the elimination or reduction of the significant impact on the protected natural area of community importance. Alternative solutions must be examined by comparison with the original proposal, on the same scientific criteria and the same

standard; b) each alternative solution identified will be evaluated separately in order to choose the alternative with the least impact on the natural area protected by community interest; arguing the decision to propose an alternative PP by highlighting the additional positive aspects compared to the other alternative solutions, in this phase, the economic criteria or other evaluation criteria cannot prevail over the ecological criteria".

In the adequate evaluation study this chapter is completely missing, no other alternative location of this PUZ being analyzed.

> GD no. 1076/2004 art. 16 seq.: (1)

The owner of the plan or program designs possible alternatives, taking into account the objectives and the geographical area of the plan or program, as well as the information provided in art. 15 para. (2). Possible alternatives are brought to the attention of the working group.

(2) The working group evaluates how the proposed alternatives meet the environmental objectives relevant to the plan or program.

Article 17

Based on the working group's recommendations, the plan or program holder elaborates in detail the alternatives that meet the environmental objectives relevant to the plan or program.

Article 18 (1)

The certified persons, together with the hired experts, as the case may be, analyze the significant effects on the environment of the alternatives proposed by the owner of the plan or program, using the criteria provided in annex no. 1, and establish the measures to prevent, reduce, compensate and monitor the significant effects of the impact on the environment for each alternative of the plan or program, making recommendations in this regard".

At the same time, no location alternatives were analyzed in the environmental report either, but only the same location with differences in the size of the PUZ surface.

They are carried out in accordance with the EU Guide on SEA on the Implementation of Directive 2001/42/EC. Art. 5.II and the following. These refer to effective location alternatives, not to increasing or decreasing the plan area.

It specifies that the existence of a chapter of alternatives in the environmental report does not exclude the need to include the analysis of alternatives in the appropriate assessment report, as they have different content and objectives. The correctly established alternatives would have led to different locations and the detailed analysis of the impact of each on the protected species and habitats, being mandatory according to Order 19/2010, the choice of the one that "affects the least habitats, species and the integrity of the natural area protected by Community Interest". 4. Violation of Article 27 of 1 of GEO 5712007.

"The definitive or temporary removal from the agricultural or forestry circuit of lands within the radius of the protected natural area of national/international interest, with the exception of those located in sustainable development areas, can only be done for objectives aimed at ensuring national security, ensuring security, people's health and animals or for the objectives intended for scientific research and the good administration of the protected natural area".

In this case, through the PUZ, the category of use is changed, as lands are removed from the range protected natural areas from the agricultural circuit.

5. Violation of the Management Plan of protected natural areas, approved by Order 1181/2016.

According to art. 21 of 4 of GEO 5712007: " Compliance with management plans and regulations is mandatory for the administrators of protected natural areas, for the authorities that regulate activities on the territory of protected natural areas, as well as for natural and legal persons who own or manage land and other assets and/or who carry out activities in the perimeter and in the vicinity of the protected natural area.

(5) Spatial development plans, local and national development plans, as well as any other plans for the exploitation/use of natural resources in the protected natural area will be harmonized by the issuing authorities with the provisions of the management plan.

The management plan approved by Order no. 1181/2016, orders the following measures related to species and habitats on the site proposed for PUZ Chapter 5.2. table 14, pg 165ff: on habitat 1530*: 42: Recreating suitable habitat where and when necessary.

43: Restoration of anthropogenically affected habitats through appropriate works.

55: Reduction to elimination of human activity if safe nesting territories of the species are identified throughout the range of the nesting period. It refers to the bird species: *Circaetus gallicus*, *Ciconia nigra*, *Hieraaetus pennatus*, *Aquila pomarina*

97: Prohibition of new constructions. It refers to habitats: 1530*, 6440, 6510, 6430.

99: Ecological reconstruction of degraded meadow areas on the site. Refers to: 1530*, 6440, 6510, 6430 103 Inclusion of species

and habitat conservation objectives in management plans
town planning of the communes. Covers: all species and habitats of conservation interest

Therefore, according to the management plan, recreation, renaturation and reconstruction of habitat 1530* is mandatory where it is degraded, any activity is prohibited

human including constructions in the areas where this habitat is present. The management plan also provides for the inclusion of species and habitat conservation objectives in urban planning plans.

Therefore, the preparation of the PUZ that is the subject of the case did not take into account the provisions of the management plan, violating art. 21 of 4 and 5 of GEO 57/2007.

Imminent Damage

The incomplete analysis of protected species as a result of non-compliance with the legal rules that impose and describe the legal procedure for this leads to endangering the conservation status of the species for which the Natura 2000 Site was established and to the loss of biodiversity, a fact that violates the conservation objectives of the natura 2000 Site as well as the objectives generated by the environmental protection rules, respectively the precautionary principle in decision-making regulated by art. 191 of the TFEU and art. 3 lit. b of GEO 195/2005 on environmental protection. This principle requires that all necessary measures be taken before placing a product on the market, so that it is scientifically proven beyond any doubt that there will be no negative effects on the environment. In this case there are clear indications that this scientific analysis is not complete, and there are serious environmental risks that may lead to damage to bird populations that feed and nest in the project area. Once these negative effects are produced, they cannot be repaired, the loss of biodiversity and habitat in the project area being irreversible. Thus, the application of the environmental permit will lead to the issuance of the construction permit taking into account technical specifications incompatible with the survival of some species. The environmental conclusions are final, these aspects are no longer discussed afterwards. In this case, APM Arad considered that it is no longer necessary to carry out another adequate evaluation study. the conclusions regarding the impact on the environment in this case being definitive once the environmental opinion is issued. Thus, it is necessary to suspend the effects of the administrative act, taking into account that until the substantive resolution of the case, a period of time will pass in which the project will be built and the harmful effects will already be produced irreversibly. affecting the right to a fair trial which is regulated by year 6 of the ECHR and by recommendation R(89)8 adopted by the Committee of Ministers of the Council of Europe on 13.09.1989.

Courts have ruled in the same sense. Thus, it attaches to the file civil decision 1409/2019 given by the Bucharest Court of Appeal and Decision 339/2019 given by the Bucharest Court of Appeal, in which environmental regulatory acts were suspended for similar reasons.

Therefore, it requests the admission of the request for suspension of the contested administrative act.

Evidence: 1.

documents 2. Specialized study prepared by an ornithologist specialist certified to carry out environmental studies according to Order Law 292/2018 regarding the assessment of the impact of certain public and private projects on the environment and the Order of the Minister of Environment, Water and Forests no. 1 134/2020 regarding the approval of the conditions for the development of environmental studies, the criteria for the attestation of natural and legal persons and the component and the Regulation on the organization and operation of the Attestation Commission with the following objectives:

a. analysis of the documentation that was the basis for issuing the environmental notice and verification of the existence of conservation measures for all 26 potentially affected bird species and for the identified priority habitat b. Site verification and confirmation

of existing wetlands c. Compatibility analysis of the project with the mentioned bird species 3. Expert witness— Szabó Dóniel-Zoltán, 407505 Sývődísla, Cluj county, no. 446, Romania 4.

Distribution maps of the mentioned species ***Through the response (pages 31-61), the defendant SC***

WEST

POWER INVESTMENTS SRL requests the rejection of the request for suspension as lacking interest, and in the alternative as unfounded.

On the merits of the case, it requests the rejection of the annulment request as inadmissible, and in the alternative as lacking interest and

unfounded. In the justification of the objection, it states that (I) The request for annulment/suspension formulated against the Environmental Notice no. 1/25.07.2022 (hereinafter, the "Environmental Notice") for the "PUZ and related RLU Construction and connection of Arad I photovoltaic park in the Extravillan of Grȃniceri and Pilu Townships" (the "Plan") is a confusing string of incorrect and unsubstantiated statements about a legal and very well characterized Plan, which went through the environmental approval procedure for approximately 15 months (the period April 2021 — July 2022) and which proposes the development of a green infrastructure element (photovoltaic park, with all the constructive elements and connection to the network 400 kV power line in the area), on a land intended, for the most part, for intensive agriculture (1064,448 ha).

(2) APM Arad considered in a substantiated and documented manner, with site studies, that the Plan will not only not affect the two Natura 2000 sites (ROSAP0015 — Cȃmpia Crișului Alb and Crișului Negru and ROSAC0231 Nȃydab — Socodor — Vȃjȃnd), which overlap on the site, but even offer real possibilities for the conservation and restoration of the old habitats registered in the two sites, including the habitat 1530* referred to in the action, as the Plan envisages the reforestation (i.e. the restoration of the old meadow destination) and the installation of solar panels at a reasonable distance that allows exactly the restoration of the vegetation (ie, at least 2 m distance between rows and at least 1.5 m apart).

(3) The public was repeatedly encouraged to express its opinion. The plaintiff would have had the opportunity to express the concerns inserted in the content of the Summons Request at any time during the stages regulated by GEO no. 57/2007 and HG no. 1076/2004 (which represents the applicable legal framework):

(i) The first stage regulated by art. 3 of HG no. 1076/2004 (the framing stage of the Plan in the environmental assessment procedure) took place between April and May 2021:

(a) 04.05.2021 and 07.05.2021 - the owner of the Plan informed the public through the local media about the submission of the request to obtain the Environmental Approval. The public was informed that the first version of the Plan can be consulted at the headquarters of APM Arad and that observations and suggestions can be sent to APM Arad in writing within 18 (respectively 15 days for the second announcement) from the date of publication of the announcement (Annex 2)).

According to art. 9 para. (3) from HG no. 1076/2004, the public had 10 days to formulate comments / proposals; No one has submitted any comments;

(b) 13.05.2021 — APM Arad issued the Decision of the Recruitment Stage no. 7133, through which the appropriate assessment study was required to analyze the impact of the Plan on the environment, including from the perspective of the two Natura 2000 sites (Annex 3).

(c) 14.05.2021 — The Decision of the Placement Stage was published in the local media (Annex 4), according to art. 12 of HG no. 1076/2004. The public was informed that written requests for reconsideration of the decision by APM Arad can be made within 10 calendar days from the date of publication of the announcement.

According to art. 12 para. (2) from HG no. 1076/2004 the public had 10 days to formulate proposals for reconsideration of the decision of the framing stage; The public did not formulate

comments / proposals for reconsideration of the Decision of the Enrollment Stage. (ii) The second stage regulated

by art. 3 of HG no. 1076/2004 (the stage of finalizing the draft plan or program and drawing up the environmental report) took place between June and December 2021:

(a) 08.06.2021 — WPI submitted the Plan Presentation Memorandum, through which presented the preliminary findings of the environmental assessment (Annex 5);

(b) 09.06.2021 — ANANP (National Agency for Natural Protected Areas) requested the preparation of the appropriate evaluation study (Annex 6); (c) July 2021 — the expert

appointed by WPI prepares the final Report on the potential impact of the Plan on biodiversity (Annex no. 7);

(d) 12/13/2021 — WPI submitted the Appropriate Assessment Study, which contains the assessment detailed on the impact of the Plan on the environment and biodiversity (Annex 8);

(iii) The third stage regulated by art. 3 of HG no. 1076/2004 (the environmental report quality analysis stage) took place between January and July 2022: (a) 14.02.2022 — WPI drew up the

Environmental Report, which contains the final assessment of medium 4 (Appendix 9);

(b) 21.02.2022 and 24.02.2022 - the owner of the Plan informed the public through the local media about the initiation of the public debate, following the completion of the Environmental Report. The interested public was invited to consult all the environmental impact assessment documentation at the APM Arad headquarters and to formulate any observations/comments in writing, as well as to participate in the public debate meeting on 14.04.2022 (Annex 10);

According to art. 31 of GD no. 1076/2004 the debate session had to be announced through two media announcements (with an interval of 3 days between them) at least 45 days before the date set for the debate; The public

debate took place on 14.04.2022, not being recorded, from the public notifications/proposals/observations regarding the implementation of the project" (Appendix 10);

(c) 30.06.2022 — the favorable opinion was issued by the National Agency for Natural Protected Areas ("ANANP"), as administrator of the two Natura 2000 sites, according to art. 28 para. (5) from GEO no. 5712007 (Appendix 11); (d) 07.07.2022 — APM Arad issued the Decision

regarding the issuance of the Environmental Notice.

According to art. 25 para. (l) from HG no. 1076/2004, APM Arad had the obligation to issue the Decision within 15 days from the date of the public debate (Annex 12); (e) 8-11.07.2022

— APM Arad made public its Decision to issue the Environmental opinion, according to art. 25 para. (3) and art. 32 of HG no. 1076/2004 (A*ex; 13). The interested public was invited to submit written observations or suggestions for reconsideration of the Decision within 10 days; According to art. 9 para. (3) from HG no. 1076/2004, the

public had 10 days to comment on the proposals.

The public did not formulate proposals for reconsideration of the Decision to issue the Environmental Notice within the 10-day period granted by APM Arad; (f)

25.07.2022 — The decision to issue the Environmental Notice was finalized, according to art. 25 para. (4) from HG no. 1076/2004 (Annex I).

(4) The plaintiff did not submit any comments or observations during the procedure.

(5) The plaintiff became aware of the project initiated by the respondent from the publicizing phase of the PUZ procedures, in front of the local public authorities. The plaintiff was aware of the initiation of the Plan as early as February 2021 because, on 12.02.2021, the SCA sent the PUZ Designer a position statement, through which he expressed his concern about the potential impact on the environment, but without indicating any concrete reason for the impact or impact (Appendix 106).

(6) During the procedure for obtaining the Environmental Approval, the Complainant did not formulate any point of view. None of the criticisms and/or claims and assertions inserted in the Summons Request were ever mentioned during the approval process. Moreover, the plaintiff did not even participate in the public debate on 14.04.2022, although on that date, all biodiversity studies and reports were available.

(7) For this reason, the criticisms formulated by the plaintiff, more than a year after the date of the public debate, can only be seen as a harassing attempt to unjustifiably delay the Plan.

II. The annulment action is inadmissible because the plaintiff filed late prior complaint

(8) The plaintiff filed the prior complaint in January 2023, although the APM Decision to issue the Environmental Notice was made public in the local media as early as July 2022. The prior complaint submitted by the plaintiff was filed late, the subsequent action in administrative litigation being from this reason, inadmissible.

(9) According to art. 193 para. (2) C. proc. civil corroboration with art. 7 para. (3) from Law no. 554/2004, under the sanction of the inadmissibility of the action, the Claimant had the obligation to file a preliminary complaint "within 30 days from the moment when the injured person became aware, by any means, of the content of the act". The Claimant became aware of the content of the act on through the public announcement in the local media and on the APM Arad website.

(10) The public and transparent nature of the environmental assessment procedure regulated by GD no. 1076/2004 assumes/attracts exactly the consequence of the information. The public is presumed to have become aware of the act issued on the day of publication (even more so, a non-governmental organization that claims to have as its object the protection of the environment).

(11) The letter sent on 12.02.2021 proves beyond doubt that the plaintiff was aware of the start of the PUZ approval procedure. The applicant is presumed to have been aware of the legal provisions relating to approval procedures, including the environmental impact approval procedure, and that she should and could, to the extent she was interested, follow the legal stages, which were carried out in a transparent manner.

(12) Including art. 22 of Law no. 292/201810 provides that the prior complaint must formulated "within 30 days from the date of making the decision known to the public".

(13) The publicity formalities of the Decision regarding the issuance of the Environmental Notice have been met in July 2022, as follows:

(i) On 08.07.2022 — APM Arad announced on the official website the issuance of the Decision to issue the Environmental Notice; (ii) On 11.07.2022 — the local media published the APM Decision to issue Environmental Notice (at the request of the Plan Holder).

(14) Since the purpose of the publication is precisely to allow interested parties (including those who may claim an injury) to be informed, the legal term of 30 days for the formulation of the preliminary complaint must be calculated (at the latest) from the date of publication in the local media, taking place on 11.08.2022. The plaintiff filed the preliminary complaint long after the expiration of the 30-day period, namely in January 2023.

(15) The lateness of the prior complaint is equivalent to its absence, making it inadmissible action for annulment.

(16) Judicial practice has adopted the same position, constantly maintaining that the 30-day deadline for the formulation of the preliminary complaint runs from the completion of the publicity formalities provided for by law: "There

were no objectionable observations from the public and no requests were registered consultation of the documentary, following public announcements in the local mass media at the headquarters of the Nырpradea Municipality, the APMS website. Also, at the public debate on the Report on the impact on m_____ elaborated on _____ project, organized at the headquarters of Nырpradea Municipality on 23.07.2013, no public interest in the project was presented.

The petitioner had the opportunity to be informed about the steps taken by SC Smart Construct SRL in order to obtain the regulatory documents, respectively the Environmental Agreement and the Environmental Authorization since the procedures for issuing these documents started on 04.03.2013 — the agreement environment etc. 15.05.2014 — environmental permit.

D__ being the fact that the exception of the lack of prior procedure is an absolute one, being regulated by an imperative legal norm, the court will not be able to pass over this aspect, going to admit the exception of the lateness of the prior procedure and reject as inadmissible p_____ the failure to carry out the prior procedure in time"

"Thus, through a normative act (nn HG no. 1076/2004) which was not annulled, the manner in which the content of the decision of the recruitment stage is made known to the public was established.

As long as this normative act, published in the Official Gazette no. 707 of August 5, 2004, was not annulled, the claims of the appellant-claimant in the sense that the right of access to justice and the principle of impossibility nulla est obligatio were violated cannot be retained.

Similarly, laws, government ordinances or normative administrative acts are binding from the moment of their publication in the Official Gazette, without the need to prove that this publication has been consulted.

Another interpretation could lead to the conclusion that they can be ignored until communicated individually to each recipient. " (17) In conclusion, it requests

the rejection of the request to cancel the right Environmental Notice inadmissible.

III. The plaintiff does not prove a legitimate private interest, so the cancellation request is uninteresting.

(18) According to art. 1, para. (l) from Law no. 554/2004, only the person who "considers himself injured in a right or in a legitimate interest" can file a legal action against the said administrative act. Therefore, the plaintiff must prove the existence of a legitimate private interest.

(19) ICCJ established that the obligation to prove the existence of a legitimate private interest also persists in the case of non-governmental organizations:

"In order to exercise legality control over administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to legality control and the direct purpose and objectives of the association, according to the statute."

(20) The plaintiff did not even indicate in the action what his legitimate private interest consists of, much less could we talk about proof of said legitimate private interest affected by the issuance of the Environmental Notice,

(21) The Claimant's action is flawed by the lack of interest to act, from at least three perspectives: (i) The Claimant does not operate in the area where the Plan is to be implemented, (ii) the act whose annulment is requested belongs to a previous phase, exhausted on the date of the present litigation and (iii) the Claimant, in fact, participated in the public consultation procedures (even prior to the procedure for obtaining the Environmental Approval), at which she did not raise the criticisms exposed in the action, and, after the start of the procedure for obtaining of the Environmental Opinion, the SCA did not in any way show its opposition to the impact of the Plan, showing itself to be disinterested. The plaintiff thus does not justify in the case a legitimate private interest to request the suspension and cancellation of the Environmental Notice,

(i) The plaintiff does not justify interest, as it does not act in the area in which it follows and be implemented the Plan

(22) The plaintiff does not operate within the Arad county, in order to be able to justify a private interest.

(23) According to the association's website, SCA identifies itself as "the most representative NGO in the county (known as Satu Mare) with an ecotourism and environmental protection profile". The objectives of the association are presented as belonging to the local interest, i.e. Satu Mare county.

(24) The characteristics publicly described by SCA have nothing to do with the Plan and/or the contested Environmental Notice,

since: The Plan proposed for approval will be implemented in Arad County, which is not even bordering Satu Mare County, being at a distance of approx. 230 km from the location of the photovoltaic park; The main profile

of the association is touristic (not environmental) unrelated to the activity regarding protected natural areas.

(25) Geographical location was considered in jurisprudence as a relevant element in the analysis of the private interest of non-governmental associations: "from

the above, it is noted that the plaintiff has not proven that he has a material, direct, legitimate, just and immediate interest in attacking the environmental agreement as long as dom. or is in Bucharest and has not proven the existence of his property right over any building located in the bordering area of environmental agreement no. 1/16.03.2020 or exploration license no. #####, issued in the name of the defendant, so the court held that she has no interest in the case."

"Therefore, through the action brought, the natural persons and legal persons under private law must first prove that there has been a violation of their private legitimate right or interest, after which they must support the request and the harm to the public interest, arising from the act administratively attacked. By adopting the criticized text, the legislator sought to "paralyze" the so-called "popular actions" filed by some individuals or legal entities under private law who, having no arguments to prove an injury to a right or legitimate private interest of their own, resort to the actions based exclusively on the grounds of harming the public interest.

Returning to the present case, the court finds that the plaintiff did not present proof of a subjective right or a legitimate private interest that was injured, he only invoked the right to health and safety of the residents of the cemetery area, given that he is not among those residents. "

(ii) The claimant does not justify interest, as the contested act belongs to an administrative phase exhausted on the date of the present.

(26) The act that is the object of the action is an environmental opinion issued in July 2022, in connection with the elaboration of the "PUZ and RLU related to Construction and connection of the Arad 1 photovoltaic park in the Extravillan of the Grȳniceri and Pilu Townships". Or, the PUZ and RLU represent a documentation which, according to construction legislation, belongs to an earlier phase of the procedure concerning the authorization of the construction of the photovoltaic park.

(27) The Environmental Notice has exhausted all its legal effects, through the approval of the PUZ by the deliberative bodies UAT Grȳniceri and UAT Pilu, having been issued the Decisions of the Local Council of Pilu Commune no. 33/14.03.2023 and of the Municipality of Grȳniceri no. 34/14.03.2023", both regarding the approval of the "PUZ and RLU related to Construction and connection of Arad Photovoltaic Park".

(28) The fact that, through the decisions of the local council of the two targeted localities (Grȳniceri and Pilu), the PUZ that was the subject of the Environmental Notice was approved, proves that the action is inadequate for the purpose apparently pursued by the Complainant. These local decisions are acts entered into the administrative circuit for approximately 6 months, produce legal effects autonomously and benefit from the presumption of legality that is characteristic of any administrative act.

(29) In other words, the act that is the subject of the present is a historical one whose effects were completely exhausted on the date of the present, through the approval of the PUZ. Through the Suspension Request, the Claimant seeks to prevent the actual development of the photovoltaic park, but this is related to the stage of issuing building permits, which is not the subject of this case and is not influenced by the solution on the Environmental Notice, from the PUZ approval phase.

(30) The Claimant has not demonstrated what is the effective, legitimate and current benefit that it believes it will be able to obtain in support of the action, considering the way in which the Claimant understood to outline the procedural framework.

(31) It emphasizes that these aspects constitute both an element of a nature to demonstrate the lack of interest in the formulation of the action, as well as the omission to demonstrate the fulfillment of the condition of imminent damage, an aspect analyzed separately in section V(iii) infra. (iii) The

plaintiff does not justify a legitimate private interest, since she participated in the proceedings of public consultation that preceded the procedure of issuing the Environmental Notice

(32) In the introductory section of the response (see: para 3-7 above), the stages in which public participation was effectively achieved in the analysis and determination of the Plan that was the subject of the Environmental Notice were set out. He showed that the applicant did not participate in the public debate of 14.04.2022, where the interested public was invited to consult all the environmental impact assessment documentation at the APM Arad headquarters (available including on the authority's website) and to formulate any comments to comments in writing. This conduct on the part of the plaintiff indicates only bad faith and a vexatious intent to delay the Plan. This bad faith is all the more obvious, however, given that, previously, the Complainant actively participated in the public consultation procedure on other occasions, being present at the relevant meetings, but without showing any reservations or opposition at any point against the Plan or to challenge the criticisms listed in the action.

(33) In the context of this litigation, these aspects are reflected as an omission on the part of the claimant to justify a legitimate private interest, since (i) the Claimant participated in

certain relevant meetings from the early phases of the preparation of the Plan, however, (ii) with the start of the approval procedure by APM Arad and the publication of the environmental studies, he did not show any interest in studying them and raising relevant criticisms / observations at the times which, according to the law, such criticisms would have had to be raised, in order to be analyzed by APM Arad before the issuance of the Environmental Notice, (iii) choosing to contest directly (and belatedly) the Environmental Notice, suggesting in falsely that he did not have the opportunity to take cognizance of the previous opinion 14.12.2022.

(34) As such, since the determined, legitimate, personal, born and current interest is a condition of the right to action, according to art. 31 C. proc. civ., requests the rejection of the Request for cancellation of the Environmental Notice as devoid of interest.

(35) All grounds for annulment invoked by the SCA (starting with publicity and ending with the alleged lack of analysis of the impact on several categories of birds) are manifestly unfounded, as we detail below.

(i) The environmental assessment procedure complied with the legal advertising and transparency councils.

(36) The plaintiff claims that the procedure for issuing the environmental opinion was not made public. Without indicating what the alleged procedural flaw would consist of, the plaintiff simply appeals to the principled provisions of the Aarhus Convention (art. 6 and 7, which regulate the right of the public to participate in the procedures for assessing the impact on environment).

(37) The Plaintiff's claims are obviously unfounded. As I presented in detail in the very introductory section, the public was aware of the procedure for issuing the environmental opinion, had the opportunity to study all related documents (the Adequate Assessment Study and the Environmental Report) and had multiple opportunities to - express his point of view. (a) The framing stage - It was announced in the local media that the application

for the issuance of the Environmental Notice was submitted; - It was announced in the local media that the APM Arad had issued the Recruitment Decision; (b) The project finalization stage and the creation of the environmental report:

- The submission of the Adequate Assessment Study and the Environmental Report was announced in the local

media"; (c) The stage of analyzing the quality of the report and making the decision: - The organization of the public debate was announced

in the local media: - The public debate on the Study was held of Adequate Assessment and the Environmental Report, on 14.04.2022;

- The APM Decision to issue the Environmental Notice was announced in the local media; - The Decision to issue the Environmental Notice was announced on the APM website".

(38) The plaintiff's absence during the procedure is not due to the lack of publicity, but to the lack of relevant arguments. It is unacceptable, from the perspective of good faith, that, after a public procedure carried out for more than 12 months, the insufficiency of environmental studies should be argued in court. All the plaintiff's criticisms concern the environmental studies and should have been raised during the procedure, at the latest during the public debate on 14.04.2022.

(39) The provisions of art. 25 para. (3) from HG no. 1076/2004 do not provide for the obligation publication of the Environmental Notice on the website of APM Arad.

(40) All these elements undoubtedly contradict the claimant's claim regarding the alleged failure to inform the public about the procedure for issuing the environmental opinion. The criticisms formulated by the SCA are thus clearly unfounded.

(ii) Compatibility of the Plan with Natura 2000 sites. Legality of the change of land use from agricultural to construction land

(a) The plan is compatible with Natura 2000 sites (41)

The plaintiff claims that art. 28 para. (9) from GEO no. 57/2007, for the simple fact that the Plan was allowed to be carried out in a Natura 2000 site. The claims are unfounded.

(42) In reality, the overlap of the Plan "over the special conservation area ROSAC0231 Njydab — Socodor — Vjyand and over ROSAP0015 — Cmpia Criyului Alb and Criyului Negru" does not remove the right to implement the Plan.

(43) The compatibility of the Plan with Natura 2000 sites is recognized by the very Regulation of the two sites, which expressly refers to the possibility of developing green infrastructure projects (the photovoltaic park being exactly an element of green infrastructure):

"Art. 54. - On the territory and in the vicinity of the AP Criyuri Complex, the development of green infrastructure and ecological corridors will be promoted, as a condition for preserving the structure and functions of ecosystems, for the preservation of biodiversity. In the meaning of this Regulation, the need to preserve and develop green infrastructure is understood as a material support for the provision of ecosystem services, for the ecosystems characteristic of the region - watercourses, meadow forests, meadows, agroecosystems, respectively the economic value of these ecosystem services.

Art. 59. - Infrastructure development and economic development projects that use green technology, with low emissions of greenhouse gases and low consumption of fossil fuels will be promoted on the territory and in the vicinity of the AP Criyuri Complex.

Art. 60. - The production of green energy is promoted on the territory of the AP Criyuri Complex, but only in accordance with the need to preserve the landscape, develop green infrastructure/ecological corridors and local traditional/bio production. "

(44) The environmental authority checked the compatibility of the Plan with the Natura 2000 sites. The competent authorities thoroughly analyzed all environmental details and concluded the positive approval from the perspective of the impact on protected natural areas and biodiversity: The Adequate Assessment Study was carried out, according to art. 28 para. (2) from GEO no. 57/2007. The study evaluated the site, habitats and biodiversity, established the current state of the site and the possible direct and indirect effects of the implementation of the Plan and indicated the necessary measures for the conservation and monitoring of the existing habitat during the operation of the project.

The Adequate Assessment Study highlighted the current state of habitat degradation, caused in particular by the practice of intensive agriculture, which is why it concluded that the implementation of the Plan not only cannot have a significant negative effect on existing habitats and biodiversity, but on the contrary, no could have a beneficial effect on biodiversity as it would determine the vegetation of the site's surfaces, possibly with species of the natural meadow type (the one existing before the introduction of the lands into the agricultural circuit)". (ii) The favorable opinion no. 11/30.062022 of ANANP was issued according

to Article 28 paragraph (5) of GEO No. 57/2007. ANANP is the direct authority competent to pronounce on the impact of any project on Natura 2000 sites, because ANANP is the administrator of the two sites itself. ANANP's opinion was based both the analysis of the environmental documentation and the own site analysis of the site.

The ANANP opinion confirms the compatibility of the activities proposed by the Plan with the legal protection regulated for Natura 2000 sites'. The ANANP opinion contradicts the claims of the Claimant regarding the alleged damage to the feeding habitats.

The plaintiff did not contest the ANANP Opinion.

(iii) The consequences of the Plan on the Natura 2000 sites were analysed. The Environmental Opinion found the beneficial effects of the photovoltaic park: "the present site overlaps entirely on arable land, where intensive agriculture is practiced. The implementation of the project and the change of land use, at least during the operation of the photovoltaic park, it will lead to an increase in biodiversity, both in the number of species and in the conservation value of these species".

(45) Furthermore, it emphasizes that the plaintiff is in error, regarding the applicability of art. 28 para. (9) from GEO no. 57/2007. (46)

First, this article only imposes restrictions on priority natural habitats and/or priority species, provided that neither the habitat nor the species mentioned

in action they are not priority. In this sense, priority habitats and priority species represent legal categories, which are established individually in Annex no. 2 to GEO 57/2007.

(47) Thus, art. 4 of GEO 57/2007 makes a distinction between natural habitats of community interest and priority natural habitats.

(48) The first category, natural habitats of community interest, are defined in art. 4 para. (3), a provision that further establishes with regard to them that "these types of habitats are provided for in annex no. 2".

(49) The second category, priority habitats, are defined in art. 4 para. (4) of GEO 57/2007, a provision that further establishes regarding them that "these types of habitats are indicated by an asterisk in annex no. 2".

(50) The habitat in question is identified as 1530, it is indeed found in annex no. 2, but is not marked with an asterisk. Under the GEO 57/2007 regime, habitat 1530 has thus always been a habitat of community interest, but not a priority one.

(51) Similarly, GEO 57/2007 distinguishes between species of community interest (art. 4 para. (7) GEO 57/2007) and priority species (art. 4 para. (8) of GEO 57/2007), being provided in the list in Annex 3 of the GEO, with the mention that the priority species are marked with an asterisk. Analyzing the list provided in annex 3, none of the species mentioned in the SCA action is a priority.

(52) The plaintiff thus induces a false problem, the article invoked by her, art. 28 para. (9) not being applicable to the factual situation in the case. (53)

Secondly, even if the habitat in question would be considered a priority one (although the SCA did not give concrete reasons for considering it so), art. 28 para. (9) from GEO no. 57/2007 however does not prohibit the issuance of the Environmental Notice, considering the damaged nature of the habitat and the beneficial effects on the environment that the implementation of the Plan will have.

(54) It would also have been absurd for the authority to refuse the approval of the Plan, although the environmental reports undoubtedly highlight the fact that the habitat conditions are currently not met 1530* Pannonian and Ponto-Sarmatic saturated meadows and marshes. At the date of the adoption of the contested administrative act, the respective habitat existed only in writing, in the old records of the Natura 2000 sites, not in reality, since the current destination of the land is that of intensive agriculture: "Plot

Grȳniceri 4 is occupied exclusively by agricultural crops, without elements could be highlighted that would allow the reconstitution of the pre-existing vegetation. Plots Grȳniceri_1, 2, 3 and 5 are plowed and partly with agricultural crops (plots 3 and 5). Species and/or plant communities characteristic of habitat 1530 have been identified on all these plots and their adjacent areas, but the state of degradation and the destination of the land (arable land) do not prove that it belongs to this habitat.

(55) That being the case, the provisions of art. 28 para. (9) from GEO no. 57/2007 invoked by the Claimant are not applicable, the actual situation on the site not falling within the legal rule's assumption of the existence of a priority natural habitat.

(56) Thirdly, the provisions of art. 28 para. (9) lit. a) and b) from GEO no. 57/2007 would have allowed the favorable approval of the Plan, even in the hypothesis of a priority natural habitat, since: (i) The Plan

responds to the imperative of increasing the energy security of the region through investments in green infrastructure (art. 28 par. (9) letter a) of GEO no. 57/2007), and

(ii) The plan also presents beneficial effects on the environment (art. 28 par. (9) letter b) of GEO no. 57/2007), by ensuring the possibility of restoring habitat 1530*, as an effect of "greening", as noted in the Environmental Report and in the Adequate Assessment Study. In this sense, we quote the following passages:

" Correlating these with the results, namely the nature of the use of the site — intensive arable land, the salinized structure of the soil and the presence of salt species, we consider that there is a great opportunity to install the 1530 habitat on the site during the operation period of the photovoltaic park"

"Originally, the land was occupied by halophilic communities, from the 1530 habitat, which at this time cannot be taken into account because of the intended land use — arable land."

"Grȳnicerii plots_1, 2, 3 and 5 are plowed and partly with agricultural crops (plots 3 and 5). On all these plots and in their adjacent areas, species and/or plant communities characteristic of the 1530 habitat were identified, but the state of degradation as well as the destination of the land (arable land) do not prove that it belongs to this habitat"

"7. 1530* Pannonian and Ponto-Sarmatic salt marshes and meadows The overall conservation status of the habitat 1530* is unfavorably unfavorable. The trend of the general conservation status of the habitat 1530* is to maintain the condyles."

(57) This last point needs to be emphasized. Thus, even if the 1530 habitat would be priority and art. 28 para. (9) from GEO no. 57/2007 would be applicable, however the project falls under the exception from point b): "certain beneficial consequences of major importance for the environment". Even just changing the land use category from agricultural is a consequence of major importance, since it removes the main factor that led to habitat degradation (ie, intensive agriculture) and contributes to habitat regeneration.

(58) In conclusion, the plaintiff's criticisms regarding the incompatibility of the Plan with the sites Natura 2000 are unfounded.

(b) Legality of the change of land use from agricultural land to construction land (59) The plaintiff

claims that the Environmental Notice violates art. 27 para. (l) from GEO no. 57/2007.

(60) When invoking the change of use, the plaintiff does not, as was natural, consider the change of use of the land from agricultural land dedicated to intensive agriculture to a photovoltaic park, but refers to the alleged loss of the old meadow destination, a destination that is no longer currently exists.

(61) The reason for illegality is clearly unfounded. (62)

First of all, any analysis of the legality of the change of use must start from the current destination of the land — intensive agriculture. This destination makes inapplicable the provisions of art. 27 para. (l) from GEO no. 57/2007 which refers to the "definitive or temporary removal from the agricultural or forestry circuit of lands within the radius of the protected natural area of national / international interest, not of some lands intended for agriculture.

(63) Secondly, anyway the sites affected by the Plan do not constitute protected natural areas of national/international interest, but are Natura 2000 sites. For them, art. 27 para. (2) from GEO no. 57/2007 stipulates that "the permanent or temporary removal from the agricultural or forestry circuit of lands within the radius of the protected natural area of community interest, (...) is done in compliance with the provisions of art. 28". As detailed in the previous section, the Environmental Notice was issued in compliance with art. 28 of GEO no. 57/2007.

(64) Judicial practice confirmed that art. 27 para. (l) from GEO no. 57/2007 is not applicable in the case of natural areas of community interest / Natura 2000 sites:

"The legislator in the content of the same normative act mentioned in art. 5 categories of protected natural areas, expressly establishing the existence of four categories and by art. 27 cited by the appellant, only the lands located within the range of the natural area protected of national/ international interest are mentioned, so that the interpretation given by the first instance to the indicated legal text appears to be correct. (...)

The corroborative interpretation of the legal texts in relation to their content and respecting the hierarchy between the normative acts reveals that it cannot be noted that disp. Art. 27 of GEO no. 57/2007 are also applicable to the Fȳgetul Clujului — Valea Morii site.

In addition, expressly the method of permanent or temporary removal from the agricultural or forestry circuit of lands within the radius of the protected natural area of community interest was regulated distinctly so that the first instance correctly established that the provisions of art. 27 of GEO no. 57/2007 are not incidents in question."

(65) Thirdly, the removal from the agricultural circuit is allowed by the location of the respective lands in a sustainable development zone", as recorded/confirmed in:

Regulation of Natura 2000 Sites — art. 2 of the Regulation: "The purpose for which SPA Crişuri, SCI Crişul Alb, SCI Socodor and SCI Teuz were established is to maintain and even improve the state of conservation of popular species and habitats of community and national importance on their territory, through the sustainable development of local communities and in particular through the sustainable use of natural resources"; and (ii) ANANP Opinion no. 11/30.06.2022 which notes that one

of the reasons behind the favorable approval is "the sustainable development of the region, which will diminish the danger of the loss of residents and jobs in the near future" (Annex 11). (66) The entire argumentation of the Claimant regarding the alleged violation of 27 of GEO 57/2007

represents in itself an eloquent indication of its bad faith. According to the environmental studies, the introduction of land into the agricultural circuit and intensive agriculture were what damaged the habitat. Maintaining the land in the agricultural circuit is precisely what prevents the remediation, the reconstruction of the habitat. As such, the action has as its definite aim/consequence the continued deterioration of the habitat, by maintaining the circumstances that led to its deterioration in the first place, (67) In conclusion, this plea must also be rejected as unfounded. (iii) Compliance with legal standards regarding the assessment of the impact of the Plan on biodiversity

(68) The complainant criticizes the environmental studies (ie, the Adequate Assessment Study and the Environmental Report) carried out by the holder of the Plan (WPI), claiming that the impact

on to some species of birds, respectively the risk of loss of feeding habitat and no alternative locations were provided".

(69) First of all, it reiterates the fact that all environmental studies were public and were the subject of public debate (published including on the APM Arad website) during the approval procedure: "The documentation subject to public debate (adequacy assessment study, final report regarding the potential impact of project implementation on biodiversity (environmental report) was or is accessible on the website of the Arad Environmental Protection Agency."

(70) The applicant had the legal opportunity to formulate the necessary observations during the public debate procedures. The applicant did not formulate those observations. After the completion of the procedure, no more criticism can be brought to the environmental studies. (71) In any

case, the criticisms are clearly unfounded, as we demonstrate below. (a) The Adequate Assessment Study assessed the impact on each of the bird species mentioned by the SCA (72) The Adequate Assessment Study was carried

out in compliance with the Methodological Guide approved by Order no. 19/20204, the framework content corresponding to that provided in annex no. 2A of the Guide. The study contains and deals in detail with all the points provided by the framework content, including "the impact on each species and each habitat of community interest in each protected natural area of community interest possibly affected by the implementation" of the Plan.

(73) SCA's assertions regarding the lack of analysis of the Plan's impact on some bird species are false. In Annex A of the present complaint, for each species of birds mentioned by the applicant, he pointed out the relevant section of the Adequacy Assessment Study where the analysis of the impact on that species can be found.

(b) The Adequate Assessment Study analyzed the risk of habitat loss and indicated/established appropriate measures to reduce the impact of the Plan

(74) The Claimant's claims regarding the lack of analysis of the risk of habitat loss (especially feeding) are false. Moreover, the applicant does not even mention the measures indicated in the Environmental Notice.

(75) First of all, the plaintiff's claims are unfounded because the Opinion of Environment (page 10) contains the necessary measures to reduce the impact of the Plan:

"-to ensure the permeability of fauna species after the construction of the photovoltaic park and to limit the access of large predators (roaming dogs, foxes), in the lower part of the fence, between the fence and the normal tail of the land, a 20 cm gap should be left free or the meshes the fence should be 20 cm; - keeping a buffer zone

between the photovoltaic panels and the peripheral fence of 7 meters; - the distance between

the rows of photovoltaic panels should be at least 2 m, and the panels photovoltaics will be placed above the ground at a height of 1.5 m".

(76) Secondly, the Claimant's claims are unfounded because the Adequate Assessment Study assessed these risks as not significant, the environmental experts identifying an important beneficial effect: "The loss of habitat is

not sustainable in this context, because the photovoltaic park will initiate the formation to another habitat much more heterogeneous and rich in the diversity of plant species, moreover much more capable of supporting more diverse and abundant bird populations, providing food, new nesting and resting places. Thus, it considers the impact on nesting species in arable land to be insignificant during construction (disturbance / leaving the area) and not in the case of a potential loss of habitat (table 31). In the operation phase, the impact on bird species is zero or positive, this fact

being shown by numerous studies to be positive for bird species"

(77) The experts' conclusion is converging with previous studies carried out and recorded in the European Commission Report".

(78) The European Commission's report confirmed in turn the potential beneficial effect of photovoltaic parks in the case of their development on land previously used for intensive agriculture:

"Another suitable option is to install solar parks on industrial land with low biodiversity value or on other types of degraded land with low biodiversity values, in these cases solar parks can significantly improve biodiversity. This is, for example, the case where former agricultural land is converted into extensively managed grassland. If properly sited, solar PV parks could increase the value of buffer zones around Natura 2000 sites. Especially when intensive agriculture in the immediate vicinity of a N2000 site could be replaced by a more extensive type of land management (where there are fewer fertilizers or pesticides or none at all), such as a solar farm, which would also allow groundwater levels to rise, major biodiversity benefits would be achieved (Peschel, 2010) compared to the baseline .. (...)

The ecological benefits of siting solar parks on former agricultural land have been demonstrated in several studies, in most cases the results also indicate a low level of ecological value with respect to the current agricultural landscape in the vicinity of the solar park. Armstrong et al, (Armstrong, Ostle, & Whitaker, 2016) demonstrated the development of a species-rich grassland habitat in the open areas (although seeding operations were carried out) of a solar farm located on former arable land (panels fixed, angle of 30 0, gap of 11.2 m between rows. facing south, see Figure 11)."

(79) Thirdly, the plaintiff's claims ignore the multiple measures regulated by the Plan, for the stage of the execution of the works and the operation of the project, through which the impact on the environment can be reduced (including the monitoring of the impact on the environment during the entire period of operation of the park)".

(80) That being the case, the Complainant's criticisms are unfounded. (c) The Adequate Assessment Study does not require site alternatives (81) According to art. 2.2 of the Methodological Guide (Order 19/2010), the need to present site alternatives in the Adequate Assessment Study exists only "if the measures to reduce the impact are not sufficient to ensure the integrity of the protected natural area". (82) In the case of the Plan, the measures to

reduce the impact on the environment were considered sufficient both by ANANP and by APM Arad.

(83) WPI was not required to complete the Adequacy Assessment Study with other alternative site locations, as the environmental impact reduction measures were deemed sufficient by:

(i) the National Agency for Natural Protected Areas (ANANP - site admirer), which issued the favorable opinion no. 11/30/06/2022; and

(ii) APM Arad, which issued the Environmental Notice.

(84) According to art. 20 of HG no. 1076/2004, the alternatives must be presented only in the Environmental Report: "The environmental report identifies, describes and evaluates the potential significant effects on the environment of the implementation of the plan or program, as well as its reasonable alternatives, taking into account the objectives and the geographical area of the plan or program'.

(85) The Environmental Report prepared by WPI provides in detail two different alternatives of the Plan, presenting the advantages and disadvantages of each". The claim of the Claimant, that the alternatives would have been established incorrectly, since WPI had to propose "different locations" of the site, are clearly unfounded, the law not imposing such a requirement.

(iv) The plan does not have a cross-border character, since Arad APM is not obliged to notify Hungary

(86) The plaintiff claims that the Environmental Notice would violate art. 34 of GD no. 1076/2004 and the Espoo Convention, as the Plan would have a cross-border nature, in which case APM Arad would have had the obligation to notify Hungary.

(87) The ground of illegality is unfounded.

(88) Art. 34 of GD no. 1076/2004 provides for the state's obligation to monitor the significant effects that a plan/program may have on the environment in another state, according to the bilateral relations between the two states. In the relationship between Romania and Hungary, the Espoo Convention is applicable.

(89) According to the Convention, not every activity proposed for approval must be notified to the bordering state, but only those activities expressly provided by Annex I of the Convention, considered to have a potential negative cross-border impact on the environment. The Romanian state has the obligation to notify only the plans provided for in Annex I of the Convention, according to:

(i) Art. 2 point 3 of the Convention: "The Party of origin will ensure, in accordance with the provisions of this Convention, that any proposed activity, mentioned in annex no. I. which may cause a significant negative cross-border impact, to be notified to the affected parties." (ii) Art. 3 of the Convention: "For a

proposed activity, mentioned in annex no. I which is likely to cause a significant negative cross-border impact, the party of origin will notify, for the purpose of sufficient and effective consultations according to the provisions of art. 5, to any other party that it considered could be an affected party, as soon as possible, but not later than the moment of informing its own public, about the proposed activity.

(90) Photovoltaic parks are not part of the activities provided for in Annex I of the Convention, so the Romanian Statute had no obligation to notify Hungary, according to the Espoo Convention.

(91) Thus, in the meeting of the Technical Analysis Commission of 30.03.2022, APM Arad analyzed and correctly noted that the proposed Plan is not cross-border in nature and does not fall under the scope of the Espoo Convention, since "it is not found in annex no. I - List of proposed activities "from

(92) Law no. 22/2001" on the ratification of the Convention

Therefore, these criticisms of the plaintiff are also unfounded.

V. The request to suspend the Environmental Notice is unfounded (93)

In view of the blatant groundlessness of the cancellation request, the request to suspend the execution of the administrative act is clearly unreasonable and unjustified. It reiterates that none of the reasons indicated in the introductory application were ever mentioned during the public debate procedure.

(94) According to art. 14 of Law no. 554/2004, the admission of the request for suspension of the administrative act requires the fulfillment of two cumulative conditions: (i) proof of a well-justified case; and (ii) preventing imminent harm.

(95) Plaintiff proves none of the statutory requirements — well-pleaded case and imminent harm.

(i) The plaintiff did

not prove a legitimate private interest (96) The plaintiff's

lack of interest regarding the cancellation of the Environmental Notice (see: paragraph 18-33 above) is also reflected in her request for the suspension of the administrative act.

(97) Thus requests the rejection of the request for suspension as devoid of interest.

(ii) The SCA did not prove the existence of a well-justified

case (98) The plaintiff did not indicate the way in which it proves the existence of a well-justified case, but it was summarized to develop the criticisms of the illegality of the Environmental Notice, which were combated in detail in the previous sections of the welcome. However, the request for suspension cannot be based on the global reference to the grounds for annulment, without specifically indicating which of the grounds for annulment could be considered in a prima facie analysis.

(99) The plaintiff does not prove a well-founded case. (100)

First of all, the SCA did not indicate what those "circumstances evident in fact and/or by law", which can be verified by the court prima facie, without prejudice to the merits.

(101) Jurisprudence qualified as insufficient the simple reiteration of criticisms of the nullity of the administrative act developed in the annulment action, precisely because of the restriction resulting from the impossibility of proceeding to the merits of the case:

"Thus, the analysis of the defenses formulated by the plaintiff in proving the well-justified case preempts the merits of the case (lack of Natura 2000 approval, environmental approval; issuance of the order without an assessment of the impact on the protected areas: non-existence of maps showing the spaces occupied by the species and habitats priority that are the object of conservation within the protected areas where the forests that are the object of the development are located or the non-identification of the protected species and the lack of any analysis regarding the potential impact of the proposed plan on them).

Thus, the Court notes that, in proving the well-justified case, the plaintiff understood to invoke reasons of illegality that do not meet the requirements provided by art. 14 para. 1 of Law no. 554/2004, since those reasons cannot be analyzed in the procedure specific to the request for suspension of execution, because it would prejudice the merits of the litigation. It is obvious that, in order to assess the aspects of illegality invoked by the plaintiff in support of the request for suspension, it is necessary to examine the merits, an aspect that is not possible in this procedural framework, characterized by the summary investigation of the appearance of the right, since the well-justified case is not refer to criticisms of illegality of the administrative act, but to circumstances related to the state of facts and law which are of a nature to create serious doubt regarding the legality of the administrative act, (102) Secondly, none of the reasons for annulment

invoked by SCA do not lead to

the prima facie conclusion of a well-founded case:

The multiple forms of publicity during the procedure for issuing the Environmental Notice (described in detail in the introductory section) contradict both prima facie and on the merits the claims regarding the alleged failure to inform the public of the Procedure for issuing the Environmental Notice (see: para 3 above). The evaluation procedure lasted approximately 15 months (April 2021 — July 2022), during which the public had access to the environmental studies and decisions of APM Arad. At each intermediate stage provided by HG no. 1076/2004, there were public notices for submitting comments/observations on the impact of the Plan or for participating in public debates. The plaintiff did not respond to any such invitation, remaining passive, although she was aware of the intention to implement the project.

(ii) The prima facie analysis does not lead to the conclusion of the alleged violation of art. 28 para. (9) from GEO no. 57/2007,

since: The lands in question do not fall into the category of priority natural habitats, as follows from the clear and precise content of art. 4 para. (4) by referring to annex 2 of GEO 57/2007, the error of the Claimant in this regard affecting one of the main arguments of the action;

The Adequate Assessment Study revealed the lack of a significant negative impact on the environment and biodiversity precisely because of the current state of land degradation (due to the intensive agriculture practiced until now) and the beneficial effect (recovery of habitats) that the park can have on biodiversity photovoltaic which proposes "winterization";

The same conclusion of the lack of significant negative impact is also supported by the favorable opinion issued by ANANP (the administrator of Natura 2000 sites), according to art. 28 para. (5) from GEO no. 57/2007 — uncontested by the Claimant; The same conclusion

results from the Regulation of Natura 2000 sites, which expressly allows the development of green energy sources within the sites. (iii) The non-classification of the lands in the category

of sites of national/international interest contradicts (at least prima facie) the alleged violation of art. 27 paragraph, (1) of GEO 57/2007, especially under the conditions in which art. 27 para. (l) of GEO 57/2007 would have allowed the removal of land from the agricultural circuit anyway, this article not being applicable to Natura 2000 sites / of community interest. (iv) The non-inclusion of photovoltaic parks in the list of activities requiring notification,

based on the Espoo Convention, blatantly contradicts the claims regarding the alleged cross-border impact and the lack of notification to Hungary. APM Arad analyzed and correctly noted the lack of cross-border impact of the project, since art. 3 of the Convention "provides the mandatory notification only for the activities provided for in Annex I of the Convention, which does not include the construction of photovoltaic parks.

(103) The Complainant's criticisms regarding the lack of assessment of some bird species cannot be the subject of a prima facie analysis, as they presuppose a thorough review of the environmental studies and reports drawn up. Anyway, as I stated previously, all the bird species indicated by the applicant were evaluated both in the Adequate Assessment Study and in the Environmental Report (see: Annex A).

(104) In conclusion, the Claimant did not demonstrate a well-justified case, and the request for suspension is unfounded. (iii) The

SCA did not prove the occurrence of imminent damage (105) The

Law of Litigation (art. 1 para. (l) letter ȳ) defines imminent damage as future and foreseeable material or, according to; foreseeable serious disruption of the functioning of a public authority or a public service".

(106) The applicant claims that it wants to prevent the risk of building the photovoltaic park, due to the "harmful effects" it could bring to biodiversity, SCA has not proven the existence of imminent damage. (107) First of all, the "harmful effects" do not are the result of the

Environmental Notice and cannot be prevented by suspending the Environmental Notice: (i) The construction of the photovoltaic park is carried out on the basis of a building

permit, not an Environmental Notice. was developed exclusively for the PUZ and exhausted its effects on the date of approval of this PUZ by the located authorities (Annex 17).

(ii) The contested Environmental Notice does not constitute a document underlying the building permit. For issuing the building permit, Law no. 292/2018 provides for a separate procedure (and subsequent to the issuance of the Environmental Notice) for assessing the impact on the environment, which is completed by issuing another administrative act (environmental agreement / classification decision).

(108) Secondly, the alleged "harmful effects" are pure speculation, contradicted by the environmental studies and the ANANP opinion, which, following an on-site assessment, which lasted approx. 12 months, they noted the opposite — the beneficial effect of photovoltaic parks on the current biodiversity, degraded due to intensive agriculture. (109) In the courts they have

constantly confirmed that such criticisms cannot justify the imminent damage: "The arguments presented

by it in support of the existence of the imminent damage consisted in the fact that "the lack of identification of the protected species and habitats of the two Natura 2000 sites and the lack of maps with their distribution would lead to the possibility of carrying out works

forests in sensitive areas that endanger the state of conservation and the very existence of protected species and habitats".

By the simple fact that the approval of the arrangement could foreshadow the realization of forestry works, the requirement of imminent damage, as it was understood by the legislator, cannot be considered fulfilled. The plaintiff's action cannot be justified in this case by the possibly damaging effects of other acts/facts, the existence of which is uncertain." (110) Thirdly, the effect of issuing the

Environmental Notice was exhausted, by the adoption of the PUZ (by the Pulu Local Council, by Decision no. 33 of 14.03.2023 and by the Grÿniceri Local Council, by Decision no. 34 of 14.03. 2023 (Annex 17). (111) The Environmental Notice does not have the effect of an act prior

to the construction authorization, which the Claimant attributes as justification for the Suspension Request. Jurisprudence has assessed that the suspension is not justified when there is no direct effect on alleged harmful situations:

"In order to be able to suspend the execution of the administrative act, it is necessary for it to be capable of execution, in other words to produce effects in progress, the stopping of which tends to be achieved through a request, a condition which, in the case of the Decision to issue the opinion environment no. 5218/18.06,2021 and of the Environmental Notice BV 02 of 28.06.2021, is not fulfilled, given that the act whose issuance was approved by the respective acts was adopted, this being the one that currently produces effects, not being suspended or canceled.

From the perspective of the legal effects of the opinion that was followed by the adoption of the final act of the authority, it is found that the opinion does not produce legal effects that can be viewed independently, these being limited to the procedure for issuing the administrative act and being resorbed, in full, in the effects produced by the final act of the authority.

Therefore, since the acts whose suspension is requested in this case have fully produced their legal effects with the adoption of the Waste Management Plan in County ##### (2020-2025) approved by Decision no. 264/26.08.2021 of the Council ##### and are, consequently, no longer likely to produce legal effects after this moment, this request for suspension cannot be accepted."

(112) Since the Environmental Notice has fully produced its effects, through the approval of the PUZ by the Pulu Local Council and the Grÿniceri Local Council, the Complainant does not justify the urgency of suspending the effects of the administrative act.

(113) Finally, it is worth noting that, far from justifying imminent harm, the plaintiff's action is actually likely to contribute to the deterioration of the habitat that the plaintiff claims to be trying to protect. According to what was analyzed above (see in particular: points 54 and 62 above), the maintenance of the land in the agricultural circuit is what led to its deterioration and which further prevents the restoration of the habitat, an aspect repeatedly emphasized in environmental studies, but also through the Environmental Notice.

(114) Not only did the plaintiff not prove the existence of imminent damage deriving from the contested act (based only on mere speculation), but there are clear documents on file (consisting at least of an evaluation study and an environmental report prepared by specialists in the field, within administrative procedures regulated by environmental legislation), from which it unequivocally follows that the applicant's request is the one harmful to the environment and that the project currently underway is a beneficial one, contributing to the restoration of the meadow habitat from previous state of land intended for agriculture, unsuitable for that habitat.

(115) Therefore, the plaintiff did not prove the fulfillment of the condition of imminent damage.

Considering all the previous reasons, it requests the rejection of the request for suspension as lacking interest, or, alternatively, as unfounded.

It also requests the rejection of the annulment request as inadmissible, or, alternatively as uninteresting, and in any case unfounded. In law:

the texts of the normative acts invoked herein; In probation, he

requests documents, as well as any other evidence the necessity of which will emerge from debates.

By way of objection (pages 55-60 Vol. III), the defendant Arad Environmental Protection Agency requests to establish, by way of exception, the lateness of the prior complaint filed against the environmental opinion no. 1/25.07.2022, the plaintiff's lack of interest, and on the merits it requests the rejection of the request for annulment/suspension of the environmental notice no. 1/25.07.2022, formulated by Societatea Carpatina Ardeleană — Satu Mare, against APM Arad, as unfounded and groundless.

193 para. (2) C. proc. Civ. in conjunction with art. 7 para. (3) from Law no. 554/2004, under the sanction of inadmissibility of the action, the plaintiff should have formulated the preliminary complaint "within 30 days from the moment when the injured person became aware, in any way, of the content of the act".

The public and transparent nature of the environmental assessment procedure is regulated by the provisions of GD no. 1076/2004 - on establishing the procedure for carrying out the environmental assessment for plans and programs. The public is presumed to have become aware of the act issued on the day of publication: according to art. 2 lit. D) from GD 1076/2004: "public - one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups;"

He believes that the plaintiff could, to the extent that she was interested, follow the course of the legal stages and state all her objections in a substantiated manner before any litigious action. The plaintiff did not submit any comments or observations during the procedure for issuing environmental notice no. 1/25/07/2022.

The publicity formalities regarding the issuance of the Environmental Notice have been fulfilled according to the provisions of art. 25 of HG no.

1076/2004: "(1) The competent authorities for environmental protection take the decision to issue environmental opinion within 15 calendar days from the date of the public debate.

(3) The competent authorities for environmental protection inform the holder, in writing, of the decision to issue the environmental opinion, which is made public by displaying it on its own website, within 3 calendar days of its taking.

(4) The issuing decision is embodied in the environmental notice provided in annex no. 3 and which.

includes: a) the reasons underlying its issuance, in accordance with art.

24; b) the measures decided regarding the monitoring of the effects on the environment, in accordance with art. 27, including additional monitoring measures, as appropriate;

(5) The draft plan or program, in the form approved by the competent authority for environmental protection, is made available to the public, upon request, at the headquarters of the competent authority for environmental

protection." Considers the fact that the plaintiff filed the prior complaint registered with APM Arad with no. 572/16.01.2023 (annex 1) against the environmental opinion no. 1/25.07.2022 (annex 2), in January 2023 although the environmental notice was issued on 25.07.2022, and the public announcement on the decision to issue the environmental notice for "Construction and connection of the photovoltaic park Arad 1 extravilanul of the towns of Grȃniceri and Pihu" — holder SC West Power Investments SRL was made public by the undersigned in accordance with the legal provisions on 07/08/2022 (annex 3).

It specifies that HG 1076/2004 does not stipulate the obligation for the competent environmental protection authority to publish on its website the Environmental Notice, but only the decision to issue the environmental notice", a decision which was published by APM Arad. APM Arad also posted on the website the draft of the Environmental

Notice (annex 4) In conclusion, the preliminary complaint submitted by the plaintiff is formulated late and the action in administrative litigation is inadmissible.

Judicial practice has consistently held that the 30-day deadline for filing a preliminary complaint runs from the fulfillment of the publicity formalities provided for by law. By way of example, we mention a recent decision of the Bucharest Court of Appeal, Section VIII Administrative and Fiscal Litigation - Decision no. 1184/20.05.2021.

From the aforementioned, it unequivocally follows that the appellant did not respect the 30-day deadline mentioned imperatively by the legislator, which is why he believes that the complaint

prior notice was communicated late, after the expiration of the deadline mentioned by the legislator for its transmission.

2. Invokes the exception of the plaintiff's lack of interest.

According to art. 32 para. (1) lit. d) NCPC, any request can be formulated and supported only if its author justifies an interest, a provision that applies, accordingly, also in the case of defenses. According to the provisions of art. 33 NCPC "the interest must be determined, legitimate, personal, born and current. However, even if the interest is not born and current, a request can be made with the aim of preventing the violation of a threatened subjective right or to prevent the occurrence of an imminent and irreparable damage."

By imposing the requirement of interest, which corresponds to a famous maxim: "pas interet, pas yaction", the aim was to avoid not only some litigations devoid of any utility for the plaintiff, purely vexatious, but at the same time to manage the time of the magistrates whose role not to be burdened with such causes. In the judgment of March 25, 1999, pronounced in the case

of Gencor Ltd. v. EC Commission, T-102/96, the Court of First Instance stated that "an action for annulment filed by a natural or legal person is admissible only to the extent in which the applicant has the interest to obtain the annulment of the contested act" referring in this regard to the decision of the Court of November 9, 1994, the case of Scottish Football v. Commission, T-46/92.

According to art. 1 paragraph (1) from Law no. 554/2004, only the person who "considers himself injured in a right or in a legitimate interest" can file a legal action against the said administrative act. Therefore, the plaintiff must prove the existence of a legitimate private interest.

The plaintiff did not indicate in the action what her legitimate private interest is, the plaintiff does not operate in the area where the project is built.

Moreover, according to the law, the applicant's interest should have been manifested throughout the period of effective communication between the competent public authorities and the interested public. Throughout the procedure for issuing the contested environmental opinion, the plaintiff did not raise the criticisms presented in the action, did not submit written observations/comments. Assuming good faith in the exercise of rights, if she had an interest, the plaintiff would have been obliged by her non-profit and public purpose to act.

According to the association's website, the plaintiff identifies itself as "the most representative NGO in the county (known as Satu Mare) with an ecotourism and environmental protection profile.

The objectives of the association are presented as belonging to the local interest, i.e. Satu Mare county. The plan proposed for approval will be implemented in Arad county, which does not border Satu Mare county, and the main profile of the association is touristic.

Last but not least, the applicant did not participate in the public debate on 14.04.2022 organized at the Grȃniceri Town Hall headquarters, Arad county, starting at 1 p.m., at which the interested public was invited to consult the environmental impact assessment documentation at the APM headquarters Arad and formulate possible comments. (annex 5) For the reasons mentioned above, requests the admission of the exception.

Considerations regarding the request for suspension.

The institution of suspension of the execution of the administrative act regulated by Law no. 554/2004, with subsequent additions and amendments, requires its own conditions of admissibility, which the plaintiff must meet, conditions that exclude the verification of the merits of the case.

According to art. 14 para. I from Law no. 554/2004 "in well-justified cases and to prevent imminent damage, after notification, under the conditions of art. 7, of the public authority that issued the act or of the hierarchically superior authority, the injured person can ask the competent court to order the suspension of the execution of the unilateral administrative act until the judgment of the substantive court. If the aggrieved person does not file an action to annul the act within 60 days, the suspension ceases by law and without any formality".

From the text of the law stated above, it follows that the request for suspension must cumulatively fulfill the following conditions: - the presence of a well-justified case; - prevention of imminent damage.

A. With regard to the first condition regarding the presence of a well-justified case, it is of the opinion that the applicant has not motivated the request in any way so that it follows that this condition would be fulfilled.

A.1. The plaintiff's reasoning according to which the suspension is imposed, related to the fact that art. 7 in conjunction with art. 6 of the Aarhus Convention ratified by Romania through Law no. 86/2000, does not represent a sufficient doubt to remove the presumption of legality enjoyed by the administrative act issued, it is not likely to prove "the fulfillment of the well-justified case condition" for the following: A.1.1. The Arad Environmental Protection Agency (APM

Arad) completed the entire regulatory procedure in accordance with and in compliance with the provisions of Government Decision no. 1076/2004 on establishing the procedure for carrying out the environmental assessment for plans and programs with subsequent amendments and additions (specific normative act), which transposes the provisions of Directive 2001/42/EC of the European Parliament and of the Council of June 27, 2001 on the assessment of the effects of certain plans and programs on the environment, published in the Official Journal of the European Communities (JOCE no. L 197 of July 21, 2001) and in accordance with/in compliance with Law no. 86 of 2000, with subsequent amendments and additions for the ratification of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on June 25, 1998, and Emergency Ordinance 195/2005 on environmental protection, approved by Law 265/2006 with subsequent amendments and additions.

The procedure for issuing the contested environmental opinion has been brought to the public's attention since the initiation stage of the plan or program development process and the realization of its first version, throughout and until the analysis of the procedure as follows — annex 7:

Initiation of the procedure (press - Jurnalul Arȳdean from 04.05.2021 and Jurnalul Arȳdean from 07.05.2021); the first version of the plan was posted on the APM Arad website, the decision of the framing stage (press - Jurnalul Arȳdean from 14.05.2021 and the APM Arad website on 14.05.2021); releasing the draft plan, finalizing the environmental report including the Public Debate (press - Jurnalul Arȳdean 21.02.2022 first announcement, 24.02.2022 second announcement and APM Arad website 18.02.2022); the environmental report and the appropriate assessment study were posted on the APM website, the decision to issue the environmental opinion (press - Jurnalul Arȳdean 11.07.2022 and the APM Arad website from 07.08.2022).

It also states that in the text of GD 1076/2004 and Law 86/2000, there is no article/provision referring to the obligation for the competent environmental protection authority to publish the Environmental Notice on its website, but only the decision to issue the environmental opinion", a decision that was published by APM Arad. APM Arad also posted the draft of the environmental opinion on the website.

The draft plan or program, in the form approved by the competent authority for environmental protection, is made available to the public, upon request, at the headquarters of the competent authority for environmental protection (art. 25 (6) of II.G no. 1076/2004) .

A.2. The plaintiff's reasoning according to which the suspension is imposed, based on the fact that art. 34 of GD 1075/2004, in a cross-border context as well as the Espoo Convention ratified by Romania through Law no. 22/2001, does not represent sufficient doubt to remove the presumption of legality enjoyed by the administrative act issued and is not likely to prove the fulfillment of the condition of the well-justified case" for the following:

The need for cross-border impact assessment is carried out according to the legislation in force in Romania, respectively Law no. 22 of 2001 with subsequent amendments and additions for the ratification of the Convention on environmental impact assessment in a transboundary context, adopted in Espoo on February 25, 1991 with subsequent amendments and additions".

The plaintiff falsely claims that APM Arad had the obligation to notify Hungary. According to the Espoo Convention, since not every activity proposed for approval must be notified to the bordering state, but only those activities expressly provided for by Annex I of the Convention, considered to have a potential negative cross-border impact on the environment.

The Romanian State has the obligation to notify only the plans provided for in Annex I of the Convention:

Photovoltaic parks are not part of the activities provided by Annex I of the Convention. therefore, the Romanian State had no obligation to notify Hungary, according to the Espoo Convention.

A.3. The applicant's reasoning according to which the suspension is imposed, related to the fact that the provisions of GEO 57/2007, OM no. 19/2010, and of the Management Plan of the protected natural areas, approved by OM 1181/2016, does not represent sufficient doubt to remove the presumption of legality enjoyed by the administrative act issued and is not likely to prove "the fulfillment of the condition of the case well justified " for the following:

A.3.1 The overlap of the Plan, over the special conservation area ROSAC0231 Njydab — Socodor — Vjyand and over ROSAP0015 — Câmpia Criyului Alb and Criyului Negru" is possible, according to the law, in the conditions where the appropriate environmental assessments have proven the compatibility of the project with the sites Natura 2000. This possibility is recognized even in the Regulations of the two sites which expressly refer to the possibility of developing green infrastructure projects:

"Art. 54. - On the territory and in the vicinity of the AP Criyuri Complex, the development of green infrastructure and ecological corridors will be promoted, as a condition for preserving the structure and functions of ecosystems, for the preservation of biodiversity, in the sense of this Regulation, the need to preserve and develop green infrastructure is understood as material support for the provision of ecosystem services, for ecosystems characteristic of the region - watercourses, meadow forests, meadows, agroecosystems, respectively of the economic value of these ecosystem services.

Art. 59. - Infrastructure development and economic development projects using green technology, with low emissions of greenhouse gases and low consumption of fossil fuels will be promoted on the territory and in the vicinity of the AP Criyuri Complex,

Art. 60. - The production of green energy is promoted on the territory of the Complete AP Criyuri, but only in accordance with the need to preserve the landscape, develop green infrastructure/ecological corridors and local traditional/bio production."

In the case of this project, the compatibility of the project with Natura 2000 sites has been thoroughly checked. All environmental analyzes concluded that the project has a positive impact on protected natural areas and biodiversity: An Adequate Assessment Study was

carried out, according to art. 28 para. (2) from GEO no. 57/2007. The study evaluated the habitats and biodiversity on the site, established the current state of the site and the possible direct and indirect effects of the project implementation. The Adequate Assessment Study assessed the current state of habitat degradation — very high — and concluded that the project could have a beneficial effect on biodiversity as it would cause "(...) the greening of the site's surfaces, possibly with species of the natural meadow type (the one existing before the introduction of the lands into the agricultural circuit)"

The favorable opinion no. 11/30.06.2022 of ANANP, according to art. 28 para. (5) from GEO no. 57/2007. ANANP is the competent authority to pronounce on the impact of any project on Natura 2000 sites. As the administrator of the sites, ANANP has carried out its own site analysis of the site. The plaintiff did not contest the ANANP Opinion. — Appendix 8

In conclusion, all the consequences of the project on the Natura 2000 sites were analyzed and the Environmental Opinion found the beneficial effects of the photovoltaic park: "The implementation of the project and the change of land use, at least during the operation of the photovoltaic park, will lead to an increase in biodiversity, both the number of species as well as the conservation value of these species".

Mentions the omission of the plaintiff on the fact that art. 28 para. (9) from GEO no. 57/2007 applies only to priority natural habitats and/or priority species. If

therefore, neither the habitat nor the species mentioned in the action are priority. GEO 57/2007 distinguishes between species of community interest (art. 4 par. (7) GEO 57/2007) and priority species (art. 4 par. (8) of GEO 57/2007), establishes them in a list to annex 3 of the GEO and mentions that the priority ones are marked with an asterisk. None of the species mentioned in the action are priority. In conclusion, all the

plaintiff's criticisms regarding the incompatibility of the project with the Natura 2000 sites are unfounded.

A.3.2. The plaintiff claims that the Environmental Notice would violate art. 27 para. (1) from GEO no. 57/2007. However, it is not about a change of use from the initial state of the land, as it was mentioned when the Natura 2000 protected area was established, but a remediation of what happened later in that area.

The change of use was imposed to save the land from its current destination — intensive agriculture, to meadow, as the land was originally considered when it was included in Natura 2000 to protect the habitat of the species identified in the area. This perspective makes inapplicable the provisions of art. 27 para. (1) from GEO no. 57/2007 which refers to the "definitive or temporary removal from the agricultural or forestry circuit of lands within the protected natural area of national/international interest".

Art. 27 para. (2) from GEO no. 57/2007 states that "the definitive or temporary removal from the agricultural or forestry circuit of lands within the radius of the protected natural area of community interest (...) is done in compliance with the provisions of art. 28". The Environmental Notice was issued in compliance with art. 28 of GEO no. 57/2007.

However, the removal from the agricultural circuit is allowed by the respective location land in a sustainable development zone, as recorded/confirmed in:

Regulation of Natura 2000 Sites — art. 2 of the Regulation: "The purpose for which SPA Crişuri, SCI Crişul Alb, SCI Socodor and SCI Teuz were established is to maintain and even improve the state of conservation of species populations and habitats of community and national importance on their territory, through the sustainable development of local communities and in particular through the sustainable use of natural resources" and ANANP Opinion no.

11/30.06.2022, which notes that one of the reasons behind the favorable approval is "the sustainable development of the region, which will reduce the risk of loss of residents and jobs in the near future.

A.3.3. The claimant's claims are untrue, the Adequate Assessment Study assessed the impact on each of the bird species mentioned by the applicant.

The Adequate Evaluation Study was carried out in compliance with the Methodological Guide approved by Order no. 19/2020. The study contains and deals in detail with all the points provided by the framework content, including "the impact on each species and each habitat of community interest in each protected natural area of community interest possibly affected by the implementation".

The Adequate Assessment Study analyzed the risk of habitat loss and indicated/established appropriate measures to reduce the impact. The claimant's claims regarding the lack of analysis of the risk of habitat loss (especially feeding) are false.

"Habitat loss is not sustainable in this context, because the photovoltaic park will initiate the formation of another habitat that is much more heterogeneous and rich in the diversity of plant species, moreover much more capable of supporting more diverse and abundant bird populations, providing food, new nesting and resting places. Thus, we consider the impact on nesting species in arable land to be insignificant during construction (disturbance / leaving the area) and zero in the case of a potential loss of habitat (table 31). In the operating phase, the impact on bird species is zero or positive, this fact being demonstrated by numerous studies to be positive for bird species. "

The Environmental Notice contains the necessary measures to reduce the impact of the Plan; In the present case, the administrative act enjoys the presumption of legality, which in turn is based on the presumptions of authenticity and veracity being itself an enforceable title. The environmental notice was issued by APM Arad in compliance with the legal provisions in the field of environmental protection.

Not executing the administrative acts, which are issued on the basis of the law, is equivalent to not executing the law, which in a state of law is unthinkable, this under the conditions in which the administrative acts are executed ex officio.

According to the provisions of art. 2 para. 1, lit. t, from Law no. 554/2004, with subsequent amendments and additions, the well-justified case is defined by the legislator as consisting of those circumstances related to the state of facts and law that are capable of causing the court a serious doubt regarding the administrative act. The existence of a well-justified case can be retained if there is a strong and obvious doubt on the presumption of legality, which is one of the foundations of the enforceability of administrative acts.

With regard to the condition of the well-justified case, in order to establish that this condition has been met, the court must not proceed to analyze the criticisms of illegality on which the request for annulment of the administrative act itself is based, but must limit its verification only to those circumstances evident in fact and/or of law that have the capacity to cast serious doubt on the presumption of legality enjoyed by an administrative act. In this sense, it can constitute a well-founded justified case: the issuance of an administrative act by an incompetent body or in excess of competence, the administrative act issued on the basis of legal provisions declared unconstitutional, the lack of reasons for the administrative act. On the other hand, in order to meet the condition of a well-justified case, it is necessary to have a strong doubt on the presumption of legality enjoyed by the administrative act.

As such, those highlighted by the plaintiff in the content of the suspension request could not constitute sufficient reasons for the removal of the presumption of legality enjoyed by the environmental notice no. 1/25.07.2022, the cited legal provisions expressly refer to factual and legal circumstances, and not to statements and allegations of the nature of those found in the justification of the request regarding the suspension of the aforementioned environmental notice.

B) Regarding the second condition regarding the prevention of imminent damage, it shows that the measure of suspension can only be justified if the administrative act contains provisions, which if they were carried out before the exercise by the court of judgment of the legality control over them, would produce consequences that are difficult or impossible to remove and the imminence of damage is not presumed but must be proven by the injured person. Therefore, even the condition of a future and foreseeable damage does not constitute a basis for ordering the suspension of the execution of the act, but only one that is difficult or impossible to repair even in the case of the subsequent admission of the action on the merits.

The notion of imminent damage is defined by art. 2 para. 1, lit. ȳ, from Law no. 554/2004 and represents future and foreseeable material damage or, as the case may be, foreseeable serious disruption of the functioning of a public authority or public service. In this

case, it cannot be a matter of future and foreseeable material damage, since the "harmful effects" are not the result of the Environmental Notice, nor can they be prevented by suspending the Environmental Notice: (i) The construction

of the photovoltaic park is carried out under an authorization of construction, not of an Environmental Notice. Moreover, in the case before the court, the Environmental Notice was drawn up exclusively for the PUZ and exhausted its effects on the date of approval of this PUZ by the local authorities.

(ii) The contested Environmental Notice does not constitute a document underlying the building permit for issuing the building permit, Law no. 292/2018 provides for a separate procedure (and subsequent to the issuance of the Environmental Notice) of environmental impact assessment, which is completed by the issuance of another administrative act (environmental agreement / framing decision).

The alleged "harmful effects" are pure speculation, contradicted by environmental studies and the ANANP opinion, which, following an on-site assessment, found the opposite — the beneficial effect of photovoltaic parks on the current biodiversity, degraded due to intensive agriculture.

Appreciates the fact that the plaintiff must produce evidence from which it can be concluded that she is in a situation where there is the prospect of imminent and irreparable damage,

the simple allegations contained in the request for suspension do not de facto lead to the finding of the existence of a damage.

In relation to the provisions of art. 16⁴ of the LCA "When the legal report deduced from the judgment requires it, the administrative litigation court will discuss with the parties the necessity of introducing another person in the case. If none of the parties requests the introduction of the third party in the case and the court considers that the case cannot be resolved without the participation of the third party, it will reject the request without ruling on the merits." in conjunction with the provisions of art.

78 CPC paragraph (2) contentious matter, when the legal report deduced from the judgment requires it, the judge will discuss with the parties the necessity of introducing other persons into the case. If none of the parties requests the inclusion of a third party in the case, and the judge considers that the case cannot be resolved without the participation of the third party, he will reject the request, without ruling on the merits" as the National Agency for Natural Protected Areas — Arad Territorial Service as authority responsible for the protected natural areas ROSPA0015 — Câmpia Crișului Alb and Crișului Negru and ROSAC0231 Nădab-Socodor-Vârsand (former ROSC10231 Nădab-Socodor-Vârsand) checked and approved favorably in the regulatory procedure the documentation of the PUZ and RLU project for the construction and connection of the photovoltaic park Arad 1 in the outskirts of the towns of Grăniceri and Pîlu, Arad county", and this authority is in a position to clarify those aspects of the case that concern the legislation applicable to protected natural areas, it is of the opinion that the National Agency for Natural Areas should also be consulted/introduced into the matter Protected — Arad Territorial Service, based in the Municipality of Arad, Episcopiei str. no. 32. ap7. 1st floor, postal code 310084. phone 0371/471856. email: ar.ananp@ananp.gov.ro.

Based on the factual and legal considerations presented, it requests to admit the exceptions invoked in the litigation brought before the court and on the merits to reject, as unfounded and groundless, the request for annulment/suspension of the execution of the administrative act.

Taking into account the provisions of art. 248 paragraph 1 of the CPC, according to which the court will first rule on procedural exceptions, as well as substantive ones that render useless, in whole or in part, the administration of evidence or, as the case may be, the investigation In substance, the court will proceed to resolve the objections invoked in the response.

Regarding *the exception of the inadmissibility of the action* as a result of the lateness of the formulation of the prior complaint, the court notes the following:

Through the present action, the defendant requests the suspension and cancellation of *the Environmental Notice no. 1/25.07.2022* issued for "PUZ and RLU related to the construction and connection of the photovoltaic park Arad 1 in the outskirts of the towns of Grăniceri and Pîlu" (f. 117-124, vol.I), for the purpose of building a photovoltaic park and connecting it to the national energy system, by the defendant Arad Environmental Protection Agency, at the request of the defendant West Power Investents SRL.

According to art.7 paragraph 1 of Law 554/2004 on administrative litigation (1) *Before addressing the competent administrative litigation court, the person who considers himself injured in a right or in a legitimate interest by an act the individual administrative authority addressed to him must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of notification of the act, its revocation, in whole or in part. For well-grounded reasons, the injured person, addressee of the act, can file a preliminary complaint, in the case of unilateral administrative acts, and beyond the term provided for in paragraph (1), but no later than 6 months from the date of issuance of the document.*

Also, according to art.7 para.3 of the same normative act (3) *The injured person is also entitled to file a preliminary complaint in his right or in a legitimate interest, through an individual administrative act, addressed to another subject of law.*

The preliminary complaint, in the case of unilateral administrative acts, shall be filed within 30 days from the moment when the injured person became aware, by any means, of the content of the act. For well-grounded reasons, the preliminary complaint can be formulated beyond the 30-day deadline, but no later than 6 months from the date on which he became aware, by any means, of its content. The term of 6 months provided for in this paragraph, as well as that provided for in paragraph (1) are limitation periods.

At the same time, according to art. 22 paragraph 1 of Law 292/2018 regarding the assessment of the impact of certain public and private projects on the environment (1) *Before addressing the competent administrative court, the persons provided for in art. 21 have the obligation to request the public authority issuing the decision provided for in art. 21 para. (3) or to the hierarchically superior authority, the revocation, always in part, of the respective decision. The request must be registered within 30 days from the date of bringing the decision to the public's attention, and according to art. 21 of the same normative act (1) Any person who is part of the interested public or who considers himself injured in a right of his or in a legitimate interest can address the competent administrative litigation court to challenge, from a procedural or substantive point of view, the acts, decisions or omissions of the competent public authority that are subject to public participation, including development approval, according to the provisions of the Administrative Litigation Law no. 554/2004, with subsequent amendments and additions.*

(2) *Any non-governmental organization that meets the requirements set out in art. 2 lit. f), considering that they are harmed in a right of theirs or in a legitimate interest.*

(3) *Acts or omissions of the competent public authority that are the subject of public participation are challenged in court together with the decision of the framing stage, with the environmental agreement or, as the case may be, with the decision to reject the request for the environmental agreement, respectively with the development approval or, as the case may be, with the decision to reject the request for development approval.*

From the legal provisions given above, it follows that the prior procedure is a condition for the admissibility of the action in administrative litigation, the plaintiff being required to request, prior to promoting an action in court, the public authority issuing the contested administrative act or the higher public authority, if any, within 30 days, its revocation in whole or in part. Regarding the moment from which the 30-day term is

calculated, according to the provisions of art. 22 paragraph 1 of Law 292/2018, it runs from the date of bringing the decision to the public's attention and the method of bringing the hiring decision to the public's attention is provided by the provisions of art. 12 of GD no. 1076/2004 regarding the establishment of the procedure for carrying out the environmental assessment for plans and programs, according to which (1) *The competent authorities for environmental protection inform the public of the reasoned decision of the framing stage, through publication on its own Internet page, within 3 calendar days from the decision being made. The decision is published in the mass media by the owner.* (2) *The public can formulate comments regarding the decision of the framing stage, which they send in writing to the competent authority for environmental protection, within 10 calendar days from the publication of the announcement.* (3) *The competent authority for environmental protection may reconsider the decision regarding the framing stage, based on the justified proposals of the public within the consultations carried out in the specially constituted committee, within 15 calendar days from the date of expiry of the term provided for in para. (2). The final, reasoned decision is made known to the public within 3 calendar days, by posting it on its website. The final decision is published in the mass media by the owner.*

In this case, from the documents submitted to the file, it appears that the APM decision to issue the Environmental Notice was published on the APM website and in the local press between July 8 and 11, 2022 (f. 111-114, vol. V), the publication including the entire decision, together with the reasoning, as required by the provisions of art. 12 of GD no. 1076/2004.

However, the plaintiff filed the preliminary complaint on 13.01.2023, being registered under no. 572/16.01.2023 (f. 69-71, vol. V), exceeding the 30-day deadline stipulated by the above-mentioned legal provisions .

The claimant's claims that she learned about the contested environmental opinion only on 14.12.2022, as a result of formulating a request for information of public interest, cannot be accepted, as long as this decision is brought to the attention of the appropriate public. art. 12 of HG no. 1076/2004 and the 30-day term, in which the plaintiff had the obligation to file a prior complaint, runs from the date of the decision being made known to the public through the publication of the decision on its own website.

Also, the plaintiff's criticisms regarding the violation of the obligation to publish the environmental opinion are unfounded, in relation to the provisions of art. 25 of GD 1076/2004, which regulates the publicity formalities regarding the issuance of the environmental opinion, providing the following:" (1) *The competent authorities for environmental protection take the decision to issue the environmental opinion within 15 calendar days from the date of the public debate.*

(3) *The competent authorities for environmental protection inform the owner, in writing, of the decision to issue the environmental opinion, which is made public by displaying it on its own Internet page, within 3 calendar days of its taking.*

(4) *The issuing decision is embodied in the environmental notice provided in annex no. 3 and which*

includes: a) the reasons underlying its issuance, in accordance with art.

24; b) the measures decided regarding the monitoring of the effects on the environment, in accordance with art. 27, including additional monitoring measures, as appropriate;

c) measures to reduce or compensate the significant effects on the environment and significant cross-border effects, as the case may be.

(5) *The draft plan or program, in the form approved by the competent authority for environmental protection, is made available to the public, upon request, at the headquarters of the competent authority for environmental protection."*

In the same way, the plaintiff's references to the provisions of GD no. 878/2005 and of GEO no. 195/2005, the definition of environmental approval provided by art. 2 point 2 of GEO no. 195/2005 not establishing any publication obligation, on the one hand, and on the other hand, not modifying the procedure regulated by GD no. 1076/2004. Nor the provisions of art. 22 of HG no. 878/2005 do not impose any obligation to publish the opinion. GD no. 878/2005, does not even regulate the procedure for issuing the environmental opinion, but only covers the obligation of the authorities to make available to the interested public information related to acts with an impact on the environment - an obligation respected by APM Arad. Anyway, in all cases, the procedure for bringing to the public's attention is regulated by GD no. 1076/2004, regardless of whether we are talking about the administrative act issued in the PUZ procedure or for the building permit.

Moreover, the plaintiff became aware of the project initiated as early as February 2021, since on 12.02.2021 he sent a point of view to Grȃniceri Town Hall, expressing his concern about the potential impact on the environment (f.117, vol.V).

Therefore, as long as in the case the plaintiff filed the preliminary complaint exceeding the 30-day deadline provided by law, the court considers that the invoked exception is well-founded.

Consequently, being a condition for the exercise of the right to the action in administrative litigation, the non-fulfillment of which within the terms and conditions provided by the law attracts the inadmissibility of this action, as the plaintiff did not prove that the preliminary procedure was completed within the 30-day period provided for in art. 22 paragraph 1 of Law no. 292/2018, the court will reject the present action as inadmissible and related to this aspect, it considers that the analysis of the second invoked exception is superfluous.

FOR THESE REASONS, IN THE
NAME OF THE LAW
DECIDES

Accepts the exception of the inadmissibility of the request, invoked by the defendants in response.

Rejects the action in administrative litigation, **SOCIETATEA** formulated by the plaintiff

CARPATINA ARDELEANȚI SATU MARE, with registered office in [REDACTED] Bucharest

municipality, District 6, at the Cȃtȃlina Mihaela Rȃdulescu Law Office, in contradiction with the

defendants **AGENȚIA DE PROTECȚIA ARAD ENVIRONMENTAL PROTECTION**, with registered

office in Arad municipality, Splaiul Mureșului fn, Arad county and **SC WEST POWER INVESTMENTS**

SRL, with registered office in Bucharest municipality, Sector 1, Piața Charles de Gaulle no. 15,

Charles de Gaulle Plaza, floor 16, conventionally represented by SPRL Clifford Chance Badea, based in the municipal Bucharest, str. Academiei no. 28-30, Excelsior Business Center, floor 10-12, as inadmissible.

With appeal within 15 days of communication. The appeal request will be submitted to Satu Mare Court.

Pronounced today, 02.11.2023, by making the solution available to the parties through the mediation of the court registry.

President,
Simona Coste-Palincas

Clerk,
Simona Tarta

Red. SCP/ 28 November 2023

Tehnored_SP /28 November 2023

Ex. 5

com. each 1 ex. with: Societatea Carpatina Ardeleană Satu Mare, Arad Environmental Protection Agency and SC WEST POWER INVESTMENTS SRL.