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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision VI/8h concerning compliance by Romania with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

Mindful of the conclusions and recommendations set out in its decision V/9j (see ECE/MP.PP/2014/Add.1) with regard to compliance by Romania,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9j concerning compliance by Romania (ECE/MP.PP/2017/42) and the findings of the Committee on communication ACCC/C/2012/69 (ECE/MP.PP/C.1/2015/10) in connection with access to information and public participation in decision-making regarding the Rosia Montana mining project,

Encouraged by the willingness of Romania to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Endorses* the finding of the Committee with respect to decision V/9j that the Party concerned has not yet fulfilled the requirements of that decision, while welcoming the initial steps taken by the Party concerned in that direction;
2. *Reaffirms* its decision V/9j and requests that the Party concerned:

GE.17-11525(E)



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(a) Take the necessary legislative, regulatory, administrative or practical measures to ensure that public officials:

(i) Respond to requests of members of the public to access environmental information as soon as possible, and at the latest within one month after the request was submitted, and, in the case of a refusal, to state the reasons for the refusal;

(ii) Interpret the grounds for refusing access to environmental information in a restrictive way, taking into account the public interest served by disclosure, and in stating the reasons for a refusal to specify how the public interest served by disclosure was taken into account;

(iii) Provide reasonable time frames, commensurate with the nature and complexity of the document, for the public to get acquainted with draft strategic documents subject to the Convention and to submit their comments;

(b) Provide adequate information and training to public authorities about the above duties;

3. *Requests* the Party concerned, in the light of its slow progress to date, to take urgent measures to fully address the above recommendations;

4. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2012/69:

(a) The Party concerned failed to comply with article 4, paragraphs 1 and 2, of the Convention in two respects: by its failure to provide the communicants with a physical or electronic copy of the requested archaeological study and for denying access on the grounds of intellectual property rights;

(b) Owing to its failure to provide the requested mining-related information or to redact those parts validly within the scope of the exceptions in article 4, paragraph 4, of the Convention and to disclose the remainder, the Party concerned is in non-compliance with article 4, paragraphs 1 and 2, of the Convention;

(c) By failing to ensure that the non-confidential portion of the information is made available, the Party concerned fails to comply with article 4, paragraph 6, of the Convention;

(d) By failing to provide reasons for the refusal of the request for the mining-related information in 2010, the Party concerned failed to comply with article 4, paragraph 7 of the Convention;

(e) By not providing for any public participation in the procedure for issuing the archaeological discharge certificate, the Party concerned failed to comply with article 6, paragraphs 3 and 7, of the Convention;

(f) The Party concerned has failed to ensure that the review procedures for information requests referred to in article 9, paragraph 1, of the Convention are timely and provide an effective remedy, as required by article 9, paragraph 4, of the Convention;

5. *Welcomes* the recommendation made by the Committee during the intersessional period with respect to its findings on communication ACCC/C/2012/69 in accordance with paragraph 36 (b) of the annex to decision I/7;

6. *Also welcomes* the willingness of the Party concerned to accept the Committee's recommendations, namely, that it:

(a) Take the necessary legislative, regulatory or administrative measures and practical arrangements, as appropriate, to ensure the correct implementation of the Convention with respect to:

- (i) Article 2, paragraph 3: the definition of “environmental information”;
 - (ii) Article 4, paragraph 4: the grounds for refusal and the requirement to interpret those grounds in a restrictive way, taking into account the public interest served by disclosure;
 - (iii) Article 4, paragraph 6: the requirement to separate confidential from non-confidential information whenever possible and to make available the latter;
 - (iv) Article 4, paragraph 7: the requirement to provide reasoned statements for refusing a request for access to information;
- (b) Review its legal framework in order to identify cases where decisions to permit activities within the scope of article 6 of the Convention are conducted without effective participation of the public (article 6, paras. 3 and 7), and take the necessary legislative and regulatory measures to ensure that such situations are adequately remedied;
- (c) Review its legal framework and undertake the necessary legislative, regulatory and administrative measures to ensure that the court procedures for access to environmental information are timely and provide adequate and effective remedies;
- (d) Provide adequate practical arrangements or measures to ensure that the activities listed in subparagraphs (a), (b) and (c) above are carried out with broad participation of the public authorities and the public concerned;

7. *Requests* the Party concerned:

- (a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;
- (b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;
- (c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

8. *Undertakes* to review the situation at its seventh session.
