



GOVERNMENT OF ROMANIA
MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE

Pollution Control and Impact Assessment Directorate

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To: Secretary to the Aarhus Convention Compliance Committee

Ref: Revised draft findings on communication ACCC/C/2010/51

To: **Ms. Fiona Marshall**
Secretary to the Aarhus Convention Compliance Committee
United Nation Economic Commission for Europe
Palais des Nations, Room 429-2
CH – 1211 GENEVA 10

Dear Ms. Marshall,

We have received and thank you for the information you sent concerning the Committee's decision to take the extraordinary measure of revising for a second time its findings and recommendations, and the Committee's agreement to take into account any comments when finalizing the findings at its forty-fourth meeting. We note at the same time that the Committee invited the Government to comment only on the text shown in track changes.

While the comments below refer to the indicated text, the Government has been recently made aware of possible errors and inconsistencies in the text of the draft findings and recommendations and it feels the need to point them out in its answer to the Committee.

I. Comments concerning the indicated text

1. Third request for information

The Committee notes in paragraph 17 of its draft findings and recommendations that the information that was declassified and disclosed to the public cannot be considered as the information that had been requested by the communicant in its third request for information. The Committee refers, in paragraph 32, to the third request for information made by Greenpeace CEE Romania about: the 4 possible locations on Someş River that were being studied, the quantity of water that could be used as a cooling agent and the capacity that the new NPP could have. The draft findings also reflect, in paragraph 33, the main points of the Ministry of Economy response to this request, namely that *the location study had not been completed yet*¹, the study was classified, an exact location would be established when all elements had been

¹ This would make it a "material in the course of completion" under article 4, paragraph 3(c) of the Convention.

analyzed, it was impossible to address the specific questions on the water used as a cooling agent and the possible NPP capacity, because *the study was still in progress*².

In paragraph 99 however, the Committee notes that the reply of the Ministry to the third request for information submitted by the communicant is limited to indicating that the decision regarding location of the NPP has not been taken yet and therefore according to applicable Romanian legislation the requested information should be considered a secret. But as noted by the Committee in paragraph 33 referred to above, the answer of the Ministry were not limited to what the Committee notes in paragraph 99. The Ministry clearly mentioned that the information requested by the communicant was not available. Thus, in respect of the 4 possible locations on Someş River, the Ministry underlined that the study had identified 103 possible locations, and that the study had not intended to narrow this number to one site, since choosing a certain location was contingent on the existence of an investor and its technology preferences.

The Committee also notes in paragraph 99 that there is no “mention of taking into account the public interest served by the disclosure or about the balancing the interests for and against the disclosure of the information requested by the communicant in its third request for information”. However, the Committee should take into account the fact that in its response to the third request of information from the communicant, the Ministry of Economy specifically referred to the exemptions provided in article 12, paragraph 1 (b) and (c) of Law no. 544/2001 on free access to information of public interest. In paragraph 20 of the draft findings and recommendations, the Committee finds that these exemptions stipulated for refusal of the authorities to provide information of public interest are broadly aligned to the exemptions under article 4 of the Convention. While the Committee excludes the application of the second exemption, the first remains applicable, provided the public interest served by the disclosure is taken into account.

Article 12, paragraph 1(b) of Law no. 544/2001 stipulates that “...the information regarding Romanian political and economic interests if, in accordance with the law, it belongs to the category of classified information” is exempted from disclosure. Thus, such information has to fulfill two conditions: to concern Romanian political and economic interests and to belong to the category of classified information. The RAAN-SITON study fulfills both conditions. Moreover, the public interest served by the disclosure has been duly taken into account. This can be easily inferred from the list provided by the Ministry of Economy of Romanian and European guarantees for public access to information concerning a NPP.

In conclusion, the Government considers that Romania complied with article 4, paragraphs 1 and 4 of the Convention in connection with the response to Greenpeace’s third request for information.

2. Information of public interest

The Government would also like to explain, once again, how “information of public interest” and “environmental information” are reflected in Romanian law. Environmental information as defined by Governmental Decision no.878/2005, which implements the provisions of the Aarhus Convention, is part of the general concept of “information of a public interest” regulated by Law no. 544/2001. While, art.2 (b) of Law no. 544/2001 defines “information of public interest” as “any information regarding the activities of a public authority”, art. 2 of the Governmental Decision referred to above, restricts

² See note 1 above.

“environmental information” to information on the state of elements of the environment, factors and the state of human health and safety, similarly to article 2 (3) of the Aarhus Convention. Therefore, all environmental information is of public interest, but not all information of public interest is environmental information. The Ministry of Environment and Climate Change by Ministerial Order no. 1182/2002 approved the *Methodology for the management of environmental information held by public authorities for environmental protection*. This document defines environmental information by following the provisions of the Aarhus Convention and stipulates the explicit criteria and specific procedure to classify and categorize the environmental information and distinguish from general information of public interest. The current Romanian legislation already responds to the Committee’s recommendations. Thus, for example, articles 31 to 34 of the Governmental Decision no.123/2002, regulate the responsibility of the official who does not fulfil his/her obligations to provide the information requested by the public in accordance with the provisions of Law no. 544/2001.

3. Professional secret

Under Romanian Law, namely Law no.182/2002 for the protection of classified information, Governmental Decision no. 585/2002 on the national standards of protection for classified information in Romania and Governmental Decision no. 781/2002 on the protection of professional secret information, all matters concerning professional and state secret information are exhaustively regulated. Thus, article 22 of Law no. 182/2002 explicitly provides that the classification of information by any public authority is subject to the Government’s approval.

“Article 22 (1) The public authorities elaborate their own lists including the categories of state secret information in their fields.

(2) Lists of state secret information on levels of classification elaborated or held by authorities or public institutions, is approved and updated by Government decision.

(3) The Governmental Decision regarding the approving of the lists containing state secret information is communicated to the Romanian Intelligence Service, Foreign Intelligence Service and, where appropriate, other intelligence structures, according to law”.

Furthermore, article 6 of Governmental Decision no. 585/2002 – “the National Standards”, stipulates that “public authorities prepare their own lists including the categories of state secret information in their fields, approved and updated by Government decision”, while according to article 17 of the same Decision: “information will be classified only if required their protection and the levels and terms of classification remain as long as the unauthorized disclosure or dissemination could prejudice the national defense, public order or the interests of legal persons public or private”.

4. Governmental Decision no. 878/2005

With respect to the recommendation “[t]o interpret grounds for refusal in a restrictive way and to take into account the public interest served by disclosure”, the Government notes that the Governmental Decision no.878/2005 includes a similar wording in article 12 para. (2): “The grounds for refusal [...] are to be interpreted in a restrictive way, taking into account, on a case – by –case basis, the public interest served by disclosure”, which reproduces article 4, para.4 of the Convention “[t]he aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure [...]”.

II. Possible errors and inconsistencies

As mentioned above, the Government would also like to point out some possible errors in the draft findings and recommendations. Paragraph 32 refers to a press statement of the Minister of Economy of October 2009, that there were 4 possible locations for the proposed NPP on Someş River. In fact, as the third request for information submitted by Greenpeace also mentions, this piece of information comes from a Romanian news agency, Mediafax, which quotes “governmental sources” (see <http://www.mediafax.ro/economic/a-doua-centrala-nucleara-in-apropierea-raului-somes-5026703>).

The Government would also like to note an inconsistency in the Committee’s draft findings concerning the refusal of environmental information in relation to the NPP and the implementation of article 4, paragraphs 3(c) and 4(d). Thus, on the one hand, the Committee implies in paragraph 87 of its draft findings, that the RAAN-SITON study is to be considered as “final document which could and should be publicly available” because RAAN-SITON is an independent entity. Thus, it seems that in the view of the Committee, only studies conducted by non-independent entities or by the authority itself could be considered internal communications. Studies undertaken by independent entities, such as RAAN-SITON, are “final”, state the draft findings, once they have been “completed, submitted to, and approved by ... [the] ministry”. On the other hand, the Committee has another understanding of the nature of RAAN-SITON in paragraph 92 of the draft findings and recommendations, where it considers its close relation with the public administration as a reason to find article 4, paragraph (d) of the Convention as not applicable.

The Government believes that the two draft findings are contradictory, and put RAAN-SITON in a difficult position. On the one hand, because of its “independence” the studies it undertakes are not to be considered as internal communications. On the other hand, because of its “close relation with the public administration”, the RAAN-SITON studies cannot be considered as “commercial or industrial information”. The Government respectfully requests for this matter to be clarified.

III. Recommendations of the Committee

We would like to confirm that experts in the Ministry of Environment and Climate Change and the Ministry of Foreign Affairs have began, based on the Committee’s draft recommendations, a thorough review of Romanian legislative, regulatory and administrative measures in order to identify measures to reach full compliance with the provisions of the Convention. Once this review will be finalized, its conclusions will be submitted to the Government for it to decide on the necessary measures, as well as on the allocation of funds for provision of additional information and training to public authorities.

Yours sincerely,

Director
Octavian PĂTRĂSCU

