

TO: UNECE, ACCC Secretariat

Email: aarhus.compliance@un.org

REF: ACCC/C/2016/140

Dear Ms Secretary,

Please receive our answers to the committee's questions, concerning case no ACCC/C/2016/140:

Answer to Q 1 and 2 - The decision taken for permitting the extension of a quarry under the law of the Party Concerned:

- a. The EIA Permit – an administrative act issued by the Environmental Protection Agency. The conclusions of the EIA permit are final, and they can't be challenged later.
- b. The development consent (building permit) – it was not issued for the quarries in question. The Party concerned claims that the building permits issued for each quarry before 1989, during communism, are still valid.

In conclusion, the only permit issued for the quarries is the EIA permit, that is also the decision to which art 6 of the Aarhus Convention applies.

Answer to Q 3 - The documents made available to the public were:

EIA study, but not the annexes and studies that it was based upon, and not the revision of the plan. During the EIA procedure the screening decision was not issued at all, and the scoping was realized without public participation. The scoping decision was published only to inform the public. The public had no opportunity to challenge the screening or the scoping decision. The EIA study was commented by the public. The Party Concerned claims that changes were made to the study but the only communication that was received by the public was the answer to our question, not a revised version of the study as required by law¹. From the

¹ Art 24, Order no 135/2010 regarding the methodology of EIA procedure

EIA Study, the annexes and the scientific analyses quoted in the study that led to the conclusions of the study, were NOT communicated to the public.

All the other documents mentioned in the answer of the Party Concerned in May 2017 **were never** communicated to the public.

Answer to Q4 - We were not communicated the dates when the deforestation was executed for the quarries. Maybe it is a question that the Party Concerned could answer.

The deforestation procedures started in 2012, when the decisions of the Forest and Hunting Inspectorate were issued, as far as we know, before the EIA procedure started in 2015, but the exact dates were never communicated publicly. In 2012 the Party concerned issued EIA permits only for deforestation, claiming that EIA for the quarries is not needed. As a result of the court decisions that annulled such EIAs, the Party concerned was obliged in 2015 to start the EIA procedure for the entire quarries. During the case trials regarding the annulment of the decisions of the Forest and Hunting Inspectorate, (before 2015 when the new EIA procedure started) the Party Concerned had claimed that the forest was already cut and the cases should be dismissed on that ground. However, the courts rejected such argument and annulled the decisions of the Forest and Hunting Inspectorate. Please find attached the news Article – Panduru Newspaper (**Annex 1**) and the court decisions mentioning the fact that the forest was logged before the cases in court were finished. Civil sentence 3531/2013 and the other decisions retained the Party Concerned's arguments that the forest was already logged (**Annex 6 to Annex 10**).

We have to mention that The Forest and Hunting Inspectorate is called today the Forest Guard.

Answer to Q 13 - how the deforestation decisions of the Forest and Hunting Inspectorate come within the scope of article 6. The Forest and Hunting Inspectorate Decisions were issued based on EIA procedures that referred only to the deforestation but not the actual extension in surface of the quarries. According to the internal law and the opinion of the Party Concerned, the decisions were *the development consent*, the final decision for proceeding with the deforestation in order to extend the quarries. Therefore, they actually were the final decision of building the huge extensions of the

quarries. Therefore, such decisions were very important, some of the forests also being private property of the locals. The decisions were actually allowing the extension of the quarries, that was not possible without the deforestation procedure. The consultation procedure according to art 6 should have been provided by the authorities before the decisions were issued.

Answer to Q 14 - When the EIA study was published and the public had a small uninformed chance to make any comments, most of the forest was already logged, and the building works for the extension of the quarries had begun, without any public consultation. The public had 20 days² to study and make comments to the EIA studies published on-line. However, the deadline was too small for the local public to be able to obtain the documents, read it and make comments and also for us to obtain experts opinions and gather evidence concerning our allegations regarding the impact on the environment.

Answer to Q15 – clarifications concerning the documents that were object to the public consultation:

- a. Documents not complete: EIA Study that was revised according to the Party Concerned
- b. Documents not communicated:
 - i. The screening decision (that was never issued); it is different than the initial decision.
 - ii. The scoping decision – published when the scoping decision was already final, on website, without the opportunity to make any comments (the document is called in Romanian” îndrumar”
 - iii. Documents that the final decision was based upon, that should have been communicated so that the public could make pertinent comments: The presentation of the project, the report on field research, the urban certificate and the land use plans, the studies that the EIA report is based on, like: geological reports, health studies, annexes of the EIA study (Plan of the region and location of the project, Framing plan - geology of the region, Framing plan - historical

² Art 17 para 2, 3 of the Governmental Decision 445/2009 regarding the EIA procedure

monuments, Framing plan - protected areas, Framing plan - hydrography of the region, The situation of occupying the land according to nature and use categories, The situation of the lands at the end of the activity). In September 24th, 2015 we made a request of public information and asked the communication of some documentation that was missing (attached), but the information was not communicated (**Annex 7**).

Answer to Q16 – 140 villagers made observations to Gorj Environmental Protection Agency, showing the way the extension of the quarry will affect their health and properties (**Annex 11**). We attach the answer given by EPA Gorj (**Annex 12**) to the villagers and a list with the health issues and technical issues signaled by the villagers to us. The information regarding the villager's health difficulties and violation of the private life was realized by the communicant (**Annex 13**). **No answer was provided to the concerns raised by the local population, and the public debates were not reopened. (the request in Annex 2).**

There was no scientific evidence concerning the decision that the extension of the 10 quarries doesn't have any significant impact on the Natura 2000 Site, other than the distance from the site. Given the impact on the ground waters produced by the mine dewatering technique, needed to dig up the coal, that would make the ground water disappear, the Natura 2000 site, located along Jiu River, could easily be affected. However, no scientific evidence has been provided in this respect, according to art 6 of the Habitats Directive, although this problem was raised. Concerning the biodiversity in the project area, no scientific evidence concerning the species and habitats existing at the project location were provided. We made such request during consultation procedure, but no scientific analysis was made, and our comments were dismissed without being taken into consideration (**Annex 14**). During the case trial one of the three judicial experts, appointed by the court at our request, has discovered protected species living the area (Salamandra). We attach his expertise in this respect (**Annex 3**).

Answer to Q17 – The environmental permits, as the last decision made on permitting the execution of the quarry building, remained executory. Since 2015, when the permits were issued, until now the destruction of the environmental factors went on as the building

works went on (Annex 1 and the court decision findings concerning the fact that the forest has already been logged, case 3531/2013).

Garla quarry, for instance, was extended over the remains of a 10000 years old beach field with 10 000 year old snail and mussel shells. Please find the translated version attached (Annex 4).



Answer to Q18 – Garla quarry was shut down in 2016, therefore we did not pursue in court this quarry. The litigation regarding the Garla quarry regarded the deforestation carried out illegally without a consultation procedure and without EIA for the entire building of the quarry. One of the regretful destructions at Garla Quarry was the destruction of a 10 000 year old beach and shells, as shown in the news article presented above.

Answer to Q19 – Please find attached the updated table (Annex 5).

The main arguments of the courts for annulment of the deforestation permits: The decisions were issued by an administrative body that was not competent given the size of the deforestation needed for each quarry. The courts decided that splitting the area in fractions smaller than 1 ha so that the competence of the local Forest and Hunting Inspectorate would apply, is not legal. The arguments referring to lack of public consultation of the deforestation decisions, were not analyzed.

The main arguments concerning the annulment of the EIA permits regarding only the deforestation: the projects regarding the extension of the coal mine with more than 25 ha were wrongly included in Annex II point 1 letter d concerning *deforestation in order to change the land use category* and thus avoiding to realize an EIA procedure for the entire project regarding the extension of the coal mine with more than 25 ha, as it is provided by Annex I point 19 corroborated with point 22 from the Governmental Decision 445/2009 that was enforced at that moment, transposing the EIA directive.

Answer to Q 20 – Extracts from the court decisions, attached (Annex 6 to 10).

I have to mention that the final decision of the Bucharest Court of Appeal, that has annulled the EIA permit for the extension of the Rosia Quarry has not been communicated yet.

We have translated:

- the translation of one rejected injunctive relief – decision no 3531/2013. The legal arguments for all the other decisions concerning the rejection of the injunctive relief, are the same.
- the only injunctive relief we have one, concerning Lupoaia Quarry, case no 41690/3/2016.
- one decision for the EIA permits issued only for deforestation and not for the entire extension of the quarries (case no 11855/3/2015).
- One decision concerning the annulment of the deforestation decisions issued illegally by the Forest and Hunting Inspectorate, that were considered the development consent in the sense of the EIA directive – the final decision for the extension of the quarries, until the court has annulled all of them (case no 3872/3/2014).

Attachments:

Annex 1 – The Panduru News

Annex 2 – The request of 140 individuals - affected public

Annex 3 – The conclusions of the expert in Rosia de Jiu case trial, no 8089/3/2017.

Annex 4 – News articles concerning 10000 years old beach found at Garla Pit.

Annex 5 – The updated table

Annex 6 – The court decision case no 41690

Annex 7 - The court decision case no 3510

Annex 8 - The court decision case no 3872

Annex 9 - The court decision case no 11855

Annex 10 - The court decision case no 17633

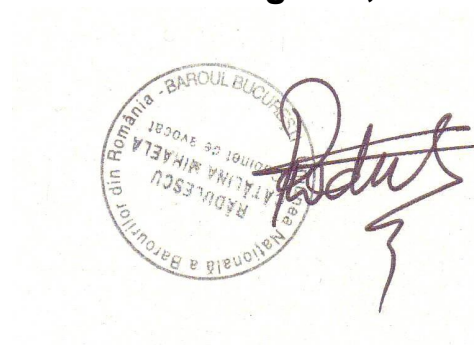
Annex 11 - Request of public information September 24th, 2015

Annex 12 - The answer given by EPA Gorj to the villagers

Annex 13 – Table concerning the health issues and difficulties of the local population

Annex 14 – Comments to the EIA Report

Best regards,

A circular stamp from the National Bar Association of Romania (Baroul Bucaresti) is visible. The text around the circle reads "Baroul din Romania - BAROUL BUCURESTI" and "Asociatia Nationala a Barourilor din Romania". In the center, it says "ADULESCU" and "MILIANA MIHAELA". To the right of the stamp is a handwritten signature in dark ink, which appears to be "Adulescu".