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Undermining Rosia Montana?

Assessing Romania's capacity to implement harmonized environmental legislation

The aim of this paper is to help assess Romania's capacity to implement harmonized environmental and related legislation; this at time when the European Union is preparing its final conclusions regarding Romania's readiness to become a full EU member by 2007.

This report is a contribution by Alburnus Maior;¹ an NGO based in Rosia Montana/ Alba County. Its contents relate to issues arising from the NGO's legal work to stop the development of Europe's largest open cast gold mine at Rosia Montana and the response given by the relevant Romanian authorities. The majority of the cases analysed in this report are related to the Rosia Montana EIA procedure.

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¹ **Alburnus Maior** represents the interests of 300 families from Rosia Montana, Corna and Bucium. Local property owners opposing the involuntary resettlement that RMGC's project entails founded this association in September 2000. Alburnus Maior objects to RMGC's Rosia Montana mining proposal on social, environmental, cultural and economic grounds.

Glossary

Aarhus Convention	Convention on Access to Information, Public Participation and Access to Justice on Environmental Issues; adopted at Aarhus 1998
ANRM	Romania's National Agency for Mineral Resources
BAP	Best Available Practices
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
Espoo	Convention on Environmental Impact Assessment in a Transboundary Context; adopted at Espoo 1991
MMGA	Romania's Ministry for the Environment and Water Management
PPR	Project Presentation Report
RMGC	Rosia Montana Gold Corporation

Introduction

In December 2004, Rosia Montana Gold Corporation submitted a so-called 'Project Presentation Report' to the Romanian environmental authorities for obtaining an environmental permit for the Rosia Montana mine proposal. This launched the Environmental Impact Assessment (EIA) procedure for the Rosia Montana mine proposal. Given its nature and size (13Mt/a), Espoo was activated. Hungary has been the sole country to respond. To date the EIA procedure has gone through scoping. The project sponsor intends to submit the main EIA report on 29 March 2006.

1. Assessment of the implementation of the PHARE guidebook for the Rosia Montana EIA procedure

In order to improve MMGA's institutional capacity, a PHARE team elaborated in 2003 a step-by-step manual as to how the Rosia Montana EIA should be conducted in order to meet the relevant national, European and international legislation. The project was part of 'Technical Assistance to Ensure Compliance with EIA Directives' and carries Project Number RO 006.14.02.01.

Case Study I

Public Participation at the inception of the EIA Procedure

According to the PHARE manual the Romania's environmental authorities should have given the public a six week period to comment on the PPR.

There was **no six week public comment period** for the Rosia Montana PPR

Case Study II

Public Participation during Scoping

Public participation during scoping is guaranteed by the Aarhus Convention which has been ratified by Romania. It is also assured by the EIA Directive 97/11 /EC; as amended by Directive 2003/35 /EC.

According to the PHARE guidelines, the following steps should have been implemented:

- A number of actions related to consultation with the Romanian public and that of the potentially Affected Parties regarding the environmental aspects to be addressed by the EIA study. These actions will be undertaken after the site inspection visit, during a five-week interval.

- Public consultation is followed by a number of actions aimed to review the information and suggestions received from the public. These actions may require about three weeks.
- A scoping checklist is finalised according to OM 860/2002 and taking into account the comments and suggestions received from the public and experts of the potentially affected Parties.
- A first draft of the Guidance as a written document, apart from the Checklist, is developed. This draft of the Guidelines is made public by posting on MMGA's website.
- The Romanian public and that of the potentially affected Parties is notified that they may send comments and suggestions within a two week interval.

None of the above recommendations were applied during scoping

Case Study III

General Applicability of the PHARE Manual for the Rosia Montana EIA

Both MMGA as well as the project owner have publicly declared that the PHARE guidelines for the Rosia Montana EIA (Number RO 006.14.02.01.) procedure is but a recommendation and that there exists no obligation from their part for its implementation.²

The PHARE guidelines for the Rosia Montana EIA will not be enforced by MMGA

2. Review of the enforcement of MO 860/2002; transposing Council Directive 85/337/EEC

Case Study IV

Two weeks after the submission of the PPR by RMGC, Alburnus Maior submitted a detailed contestation to the Romanian Environmental authorities. The Document claims that the PPR violates MO 860/2002 - Annex II.2 entitled 'Standard Contents for the PPR necessary for issuance of the environmental agreement/ integrated environmental agreement.' Alburnus Maior requested MMGA to return the documentation to the project owner in order to complete it in accordance with the applicable legislation and at the same time requested MMGA to suspend the EIA procedure until a new technical memorandum is submitted.

Alburnus Maior and approximately 500 NGOs and individuals³ contested the content of the technical memorandum, detailing that:

- It omits to address the project's true impact on the social, natural and cultural environment;
- It was not made in accordance with the applicable legislation regulating the 'Standard Contents for the Technical Memorandum necessary for issuance of the environmental agreement/ environmental integrated agreement'
- It presents insufficient information on the project's owner, previous arrangements and contracts signed between the Romanian state and the project's owner (i.e. mining licenses) as well as compliance with Rosia Montana's Urbanism plans.

² See 'Raspunsul la Interogatoriul Formulata de Reclamanta' – MMGA, Directia Juridica; Document Reference No. 75834/DJ/30.11.2005

³ See www.apm-alba.ro

MMGA's reply⁴ while not responding to any of the PPR's deficiencies stated that the Romanian applicable legislation does not stipulate the possibility to suspend an EIA procedure. With regards to the information lacking in the PPR and requested by the NGOs, MMGA's reply passes on the plaintiffs to "the competent authorities" to collect the information on mining licenses, cultural aspects, urbanism plans, etc.

MMGA has **failed** to enforce the legal provisions of OM 860/2002

MMGA has **failed** to remedy violations of OM 860/2002

3. Analysis of the application of Best Available Practices for the Rosia Montana EIA procedure

Case Study V

The Directorate General for Environment of the European Commission has published various guidelines that detail "Best Available Practices" that need to be applied for each stage of an EIA. According to these guidelines⁵, successful scoping consultations may be facilitated by a range of means including:

- Initial announcements about the scoping process in local or national newspapers;
- Preparing a leaflet or brochure about the project giving brief details of what is proposed with a plan or map, describing the EIA process and the purpose of scoping, and inviting comments;
- Public meetings (it may be helpful to invite an independent person to chair public meetings);
- A Scoping Workshop at which participants work together through a structured program to identify matters to be addressed by the EIA process (this can be particularly helpful if the issues are complex and there are several groups interested in the proposals; an independent facilitator can be useful in ensuring workshops are successful);
- Establishing an expert or community based Scoping Group who will continue to oversee the environmental studies throughout the process (this can be useful for projects where the issues are complex or where the project is at an early stage in the planning process and the significance of issues is unclear);
- Publishing a draft Scoping Report for review and comment before completing the process.

Alburnus Maior together with 34 Romanian and international NGOs as well as several MEPs officially warned MMGA for not having applied these standards during the scoping stage of the Rosia Montana EIA. The contestation detailed the relevant irregularities and highlighted the unwillingness from the part of MMGA to apply BAP guidelines. The contestation asked for the re-initiation of the scoping stage. In its reply MMGA explicitly refused to re-initiate the scoping stage.⁶

⁴ See reply by MMGA with reference No: 60311/ 17.01.2004

⁵ "Guidance on EIA – Scoping", prepared by Environmental Resources Management (ERM) under a research contract with the Directorate General for Environment of the European Commission, June 2001. Copies of the guidance documents can be requested from Directorate General Environment of the European Commission at <http://europa.eu.int/comm/environment/eia/eia-support.htm>

⁶ See MMGA document with reference No. 61733/AF/11.08.05

The fact that BAP has not been applied during the Rosia Montana EIA is in contradiction with MMGA's repeated claims that the procedure in accordance with all national and international legislation and standards.

4. Evaluation of the enforcement of the Aarhus Convention during the Rosia Montana EIA procedure

Case Study VI

Following MMGA's refusal to act upon the irregularities that occurred during the scoping stage, Alburnus Maior submitted an official communication to the Aarhus Compliance Committee (communication number ACCC/C/2005/15). On 27 October 2005 Alburnus Maior received confirmation that its communication has been accepted in principle and that the compliance committee had notified MMGA to urgently submit clarifications and information concerning the issues raised in ACCC/C/2005/15.

MMGA refuses to submit the explanations requested by the Aarhus Compliance Committee

Case Study VII

Prior to the submission of the PPR approximately 100 NGOs and individuals from Romania and abroad registered on a special list at the local environmental protection agency (EPA) in Alba Iulia⁷ in order to be consulted during the entire Rosia Montana EIA procedure as concerned/directly affected parties.

EPA Alba refused to individually notify parties about the inception of the EIA procedure.

This violates art. 6/2 of the Aarhus Convention

EPA Alba refused to individually notify parties about inception of the scoping stage. This violates art. 6/2 of the Aarhus Convention

Case Study VIII

The absence of any public participation and consultations during the scoping stage of the Rosia Montana EIA procedure (see point 2) violates Art. 6, pct. 3, 4, 6, 7 and 8 of the Aarhus Convention; ratified by Romania with Law 86/2000. The absence of public consultation and participation for the Rosia Montana EIA scoping stage also violates Article 1 and 3 of Directive 2003/35/EC.

The scoping stage of the Rosia Montana EIA Procedure violates the Aarhus Convention and Directive 2003/35/EC

5. Assessment of the government's attitude to endorse judiciary decisions

Case Study IX

According to Ministerial Order 860/2002 a valid Urbanistic Certificate is required for carrying out an EIA procedure. An Urbanistic Certificate is generally granted for a one year period; with the option to prolong for another year. Following a legal action submitted by Alburnus Maior, the validity of RMGC's Urbanistic Certificate was suspended by the competent court in June 2005; this with a definitive and binding judgement. Since then Alburnus Maior has repeatedly communicated the court sentence to MMGA; asking it to

⁷ See www.apm-alba.ro

suspend the EIA procedure. Whilst it took seven months for MMGA to reply to Alburnus Maior's respective communications, the ministry still intends to accept the submission of RMGC's EIA Report on 29 March 2006.

MMGA's acceptance of the Rosia Montana EIA report in absence of a valid Urbanistic Certificate **violates** MO 860/2002.

Case Study X

In November 2005 the competent court at Alba Iulia suspended an environmental accord for 39 drilling points at Rosia Montana. The beneficiary of the permit was RMGC. According to article 33 of Romania's mining law, Romania's National Agency for Mineral Resources (ANMR) now has the obligation to suspend the beneficiary's mining license.

An authorised copy of the court sentence together with Alburnus Maior's request for the suspension of the mining license was communicated to ANMR via a juridical executor. Albeit several attempts from the part of the NGO to obtain an official reply, at the time of writing Alburnus Maior is still awaiting to hear whether ANMR will enforce the court sentence and apply article 33 of Romania's mining law.

6. Further Reviews

Case Study XI

Rosia Montana's land use plans - general urban plan and zoning plan - were modified in July 2002 in order to permit mining development related to the Rosia Montana project; this including ore mining and processing. The approval of these uses which featured 'a form of EIA submission'⁸ to the Alba Iulia EPA in the land approval process adversely prejudice their position as regards for further approvals for Rosia Montana. This includes the EIA approval. Importantly, with the environmental approvals granted for the land use plans to permit mining development related to the Rosia Montana project, involuntary resettlement was commenced by RMGC. Under normal circumstances such approvals take place either simultaneously or preferably by making an EIA approval a condition precedent to Land Use Planning Approval.

The environmental approvals granted by the Alba Iulia EPA for the Rosia Montana land use plans **adversely prejudice** the *effet utile* of the Rosia Montana EIA; including the public consultations

Case Study XII

A legal action brought forward by Alburnus Maior revealed that the Alba Iulia EPA applied a tacit EIA approval procedure in autumn 2003 to authorise open cast gold mining by Minvest S.A. at Rosia Montana.

Minvest Deva S.A. is a state-owned company and partner of Gabriel Resources in the joint venture known as RMGC. The exploitation license (No. 47/1999) for the Rosia Montana deposit was transferred from Minvest to RMGC in 2000.

The legal case was brought against the Chief Commissioner of the Alba Iulia Environmental Guard for not having taken measures to halt illegal exploitation at Rosia Montana. The case

⁸ 'Acord de Mediu 179/03.07.2002 pentru PUZ' and 'Acord de Mediu 181/03.07.2002 pentru PUG'; issued by the Alba Iulia EPA.

was rejected based on the chief commissioner's defence claiming that current mining activities at Rosia Montana are authorised by a tacit environmental permit.

Tacit EIA approval procedures used to authorise open cast gold mining violate OM 860/2002 and Romania's main environmental law OUG 195/2005

Conclusion

The case studies show that Romania's environmental authorities have neither the institutional capacity nor the will to implement harmonized environmental legislation.

This in return has caused blatant abuses of procedural rights such as the right to information, public participation and access to justice. This subsequently carries serious repercussions on substantial/constitutional rights such as the right to a clean environment, the right to a free economic initiative as well as the right to one's property.

All abuses described in this report were brought to the attention of the competent Romanian authorities in a timely and professional manner. The fact that no concrete action has been taken to either investigate and/or remedy these abuses shows that there exists no willingness

- a.) to take into account concerns raised by civil society representatives
- b.) to take into account concerns raised by members of the directly affected public
- c.) to implement harmonized environmental legislation
- d.) to remedy legal violations
- e.) to hold accountable those who endorsed those legal violations
- f.) from the part of Romania's government to critically evaluate the impact of major investments in which it has an economic interest and/or is a partner

This report lists concrete abuses; the majority of which have been occurring during the Rosia Montana EIA procedure. Whilst they can still be remedied, it is of the utmost urgency for the European authorities responsible for assessing Romania's capacity to implement harmonized environmental law to launch a critical evaluation of the Rosia Montana case. If no effective steps are taken now, then this will only propel additional violations during the remaining stages of the Rosia Montana EIA procedure. Ultimately, this would set a dangerous precedent to the rule of law and encourage low permitting standards to be applied for mining proposals in an enlarged EU and CEE.