



Commissioner Janez POTOČNIK

**Meeting with the Romanian Minister for Environment and
Climate Change, Ms Rovana PLUMB**

Thursday, 3 October 2013, 10.30

Your office

Member of Cabinet responsible:
Member accompanying:
DG participant(s): (including contact number)

TABLE OF CONTENTS

1) INTRODUCTION

SCENE SETTER

OBJECTIVES

2) POSSIBLE MESSAGES

3) BACKGROUND INFORMATION

TEXT OF THE EU PILOT SENT ON 13 SEPTEMBER 2013

EUROPEAN LEGISLATION RELEVANT FOR THE CASE

THE USE OF CYANIDE

4) ANNEX

CV OF MS ROVANA PLUMB

INTRODUCTION

SCENE SETTER

The meeting has been requested by the Romanian Minister for Environment and Climate Change, Ms. Rovana Plumb, to discuss the latest evolution on Rosia Montana gold mining project.

Rosia Montana is a major project of gold extraction for which a request for a permit has been introduced to the national competent authorities in 2004. The project is controversial in Romania. In summary, those defending the project highlight the economic benefits, job creation while fully respecting EU environmental standards. Those against have doubts about the respect of the EU standards in practice, contest the procedures so far, highlight the potential dangers of uncontrolled use of cyanide and propose alternative projects in this zone of scenic beauty, and UNESCO nomination.

Several questions on the use of cyanide in gold mining were addressed to the Commission by Members of the European Parliament¹, three petitions were submitted² of which two are still open and at least one complaint has been received by the Commission³. In this context, in December 2010 precise questions were addressed to the Romanian authorities in relation to the respect of various Directives during the on-going permitting procedures. On the basis of the answers provided by the Romanian authorities in February 2011, it seemed that all measures had been taken to ensure the full application of European Union legislation and no breach of European Union legislation could be identified.

State of play in the permitting process

At this time, October 2013, a permit has not been granted. However, there were some recent developments: on August 27, the RO Government approved a draft law "on certain measures related to the exploitation of the gold-silver deposits from Rosia Montana and stimulation and facilitation of mining development in Romania" which will be subject to debate and approval by Parliament ("Draft Law"). The law has as annex an agreement with Gabriel Resources Ltd. and Rosia Montana Gold Corporation S.A. If approved, this law will set out further rules for the permitting procedure and might result in shortened deadlines for granting the permits. The extraction operations are scheduled to begin in November 2016 but of course that will be subject to all permits having been granted by the national authorities by that time.

Although following the public protests that started immediately after the Government approval of the above mentioned law (and that continues to date) the Prime Minister declared that the law would be rejected by the Parliament, this was not the case.

¹ 6179/2012, 5917/2013, 6579/2013, 6951/2013, 6149/2013

² Petition 344/2006; petition 622/2010 and petition 628/2011

³ CHAP(2011) 03083

On 17 September, a special parliamentary commission was set up by Governmental Decision 56/2013. MPs should submit amendments by October 1st (on the very same day of the meeting). On that basis, and taken into account hearings organised with stakeholders, the Commission has to deliver a Report over the draft law by 20 October 2013.

Therefore, the adoption process is still ongoing.

On 13 September 2013, the Commission requested information from the national authorities via the EU PILOT system. In particular, the Commission inquired about:

- the impact of the draft law and of the agreement on the authorization procedures
- the reasons why the project was declared of "national public interest" and the implications on the application of the EU environmental legislation.

The deadline for Romania to reply is 22 November 2013.

On 24 September 2013, media reflected a declaration of Minister Plumb concerning the need to declare the project as "overriding public interest" project in order to apply exemptions under the Water Framework Directive. The project would involve diversion works on two rivers and therefore it can only go ahead if the conditions in article 4(7) of the Water Framework Directive are fulfilled. One of these conditions is that the project is of overriding public interest.

OBJECTIVES

- Allow the Minister to give an update on the latest developments in Romania (you had a phone call with her on 10 September)
- Stress again to the Romanian Minister that the environmental *acquis* needs to be followed

Minister Plumb will be accompanied with

- Cristian Badescu, Deputy Permanent Representative
- [redacted], General Director on EU affaires
- [redacted], adviser of the minister
- [redacted] environment attaché.

SUGGESTED MESSAGES

- We spoke on the phone 3 weeks ago. Since then, the opposition to the project has not diminished.
- To ask for an update: what has happened in Romania? What about the hearings organised by the Parliamentary Special Commission? Any sense of direction given by the amendments put forward by Members of the Parliament? Do you have first indications you can share with us?
- On our side, we are still closely following the authorisation procedures for Rosia Montana mining project and we have requested information from the national authorities via the EU PILOT system.
- As already said in our previous discussion, my objective is not to enter into the debate on economics v. environmentalism. My sole objective is to get assurance that safeguards have been put in place.
- This is the purpose of the EU-pilot we launched and we count on Romania's good cooperation on this matter.
- On a more precise aspect, the project involves the diversion of 2 rivers. This clearly involves a deterioration of these water bodies. In that case, the project should only go ahead if all the conditions under the Water Framework Directive article 4(7) are fulfilled. The project being of "overriding public interest" is only one condition. The project should have also been included in the river basin management plan and therefore subject to a public consultation. And this was not the case... In addition there is a need to include all practicable mitigation measures and to make the appropriate assessments to ensure that there are not better environmental options.
- Of course this could be included in the next River Basin Management Plan or you could even go for a revised RBMP. But this would require a public consultation. And you are back again to the key issue of "public acceptance"...
- Last question from my side: what are the next steps? How do you see things evolving?
- This being said, we expect Romania to pay due attention to the EU environmental standards and to put in place appropriate supervision that no accident can occur.

BACKGROUND INFORMATION

1. Text of the EU Pilot sent on 13 September 2013

Object: Authorisation procedures for ROSIA MONTANA gold mining project, draft Law and Agreement

The Commission received a significant number of messages and letters on the subject of a draft Law which would set up a series of measures for the exploitation of gold in Rosia Montana. The correspondence also refers to an agreement with Gabriel Ressources Ltd. and Rosia Montana Gold Corporation S.A., in its Annex.

The Commission would be grateful if you could provide us with the following information:

- 1. The text of the draft Law and of the Agreement in question.*
- 2. Information on whether the draft Law and Agreement contain provisions/measures which could be seen as derogations from relevant national environmental legislation transposing EU law.*
- 3. Information on the objectives of the proposed legal provisions and agreement as concerns the authorisation process for this project.*
- 4. Information on reasons having led to considering the project as of public utility and national public interest and on the implications, because of such a qualification, on the applicable national environmental legislation transposing EU law.*

We kindly invite the Romanian authorities to provide us with this information, within a 10 weeks timeframe from the receipt of the present letter.

2. European legislation relevant for the case

European legislation applicable to mining activities

There is a comprehensive set of rules in place to ensure safe mining in the European Union.

Directive 2006/21/EC on mining waste (further "the mining waste Directive") requires a permit, granted by national authorities, for mining activities. Before getting a permit, the operator has notably to draw up a waste management plan and to establish a financial guarantee covering the requirements of the permit. In addition, the permit should be based on the Best Available Techniques concept as described in the reference documents "BREFs" on mining waste. If the intention is to use and store cyanide in a pond, in addition to the obligation of reducing the concentration of cyanide as much as possible, specific limit values are foreseen in Article 13(6) of the Mining Waste Directive. A major accident prevention and information policy is also compulsory according either to the Directive on mining waste or the "**Seveso**" Directive. According to Article 15 of the Mining Waste Directive, the **Environmental Liability Directive** will also apply if and when the installation is in operation.

The Water Framework Directive 2000/60/EC⁴ requires Member States to achieve good status of all waters by 2015. It also obliges Member States to prevent the deterioration of the status of all water bodies. For new projects, exemptions to these obligations are possible only if certain conditions are met, namely that

- a) all practicable mitigation measures are taken,
- b) the reasons and justification for the project are set out and explained in the river basin management plan,
- c) the project is of overriding public interest, and
- d) there is no better environmental option which is not disproportionate expensive or technically unfeasible.

The Rosia Montana project involves the diversion of 2 rivers. This will cause a deterioration of status as the rivers will be made artificial. Therefore the project can only be developed if the conditions in Water Framework Directive article 4(7) are fulfilled.

The Directives on **Environmental Impact Assessment** on **Strategic Environmental Assessment** complement the set of rules, as well as the **Habitats Directive**, as the case may be.

Other relevant EU legislation

- **Transport of cyanide** is covered by the legislation on transport of dangerous goods by road and rail (Council Directives 94/55/EC⁵ and 96/49/EC).
- **The Water Framework Directive 2000/60/EC (WFD)** requires Member States to achieve good status of waters by 2015 but at the same time it allows for exemptions, including new modifications to the physical characteristics of surface water (Article 4.7), if all the following conditions are met:
 - (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
 - (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan and the objectives are reviewed every six years;
 - (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
 - (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

*

The details of these provisions are further discussed in a guidance document elaborated together with the Member States and stakeholders (Guidance Document No. 20 on the exemptions to the environmental objectives; <https://circabc.europa.eu/w/browse/a3c92123-1013-47ff-b832-16e1caaafc9a>)

Romania provided the Commission with its river basin management plans adopted in 2009. **The plans do not include the Rosia Montana gold mining project.**

- According to Article 15 of the Mining Waste Directive, the management of extractive waste is included into the scope of the stricter regime of **Directive 2004/35/EC on Environmental Liability**⁶. Under this regime, an operator can be held liable even if he has not committed any fault, though there are a few cases in which he can be exempted from liability, including natural phenomenon of "exceptional, inevitable and irresistible character" - Article 4 §1 (b). It is the duty of the national authorities to identify possible liable polluters and ensure that these undertake or finance the necessary preventive or remedial measures, which are detailed in the Directive.

3. Use of cyanide in gold mining activities

On 5/05/2010, the European Parliament adopted a resolution (P7_TA(2010)0145) in which it expressed the view that the use of cyanide in mines should be banned in the EU. It noted that cyanide is a highly toxic chemical classed in Annex VIII of the Water Framework Directive as a 'main pollutant'.

As detailed in the answer of the Commission to the Parliament Resolution, the Commission does not intend to propose such a general ban. There is a comprehensive set of rules in place (see above) to ensure safe mining in the European Union.

The competent authorities of the Member States have to ensure proper implementation, enforcement and compliance with the EU legislation. As guardian of the Treaty, the Commission will ensure that all the requirements of the existing EU legislation are fully respected.

ANNEX

CV OF Rovana PLUMB, minister of the Romanian Ministry of Environment and Climate Change (*previous Ministry of Environment and Forests*) since May 2012



Born on 22 June 1960, București

- Diploma, 'Increasing labour productivity via the organisation of work', Academy of Economic Studies (1987); Romanian Institute of Management (international trade) (1994); Diploma, 'Managing change and innovation', University College Dublin (1999); Diploma, 'Strategic management, George Washington University (USA, 1999); Diploma, 'EU enlargement and new trends in evaluating compliance' (Portugal, 2002); Diploma, 'specialist in security and control aspects of cosmetics and the protection of the environment' (Belgium, 2003); Diploma, 'specialist in consumer protection issues' (Greece, 2003); Doctorate in industrial systems management (2004).
- Trainee engineer (1984-1992); Commercial director, SC Miraj SA (1992-1994); Director, SC Gerovital Cosmetics SA (1995-2000).
- Member, PDSR (Party for Social Democracy in Romania) (from 1994); Member, PDSR National Council (from 1998); Member, Coordination Office, PSD (Social Democratic Party) (2004-present); President, PSD Women's Organisation (2005-present); Vice-President of the PSD (April 2005- present).
- Member of 'Prosafe' (2003-present); Member of SIW ('Socialist International Women') (2005-present).
- Knight of the National Order of Romania ('Faithful Service').
- Member of the European Parliament (2007-2012)
- Member of the Romanian Parliament (2004-2007)
- Romanian Government State Secretary and President of the National Consumer Protection Authority (2001-2004).

Minutes of the meeting with the Romanian Minister for Environment and Climate Change, Ms
Rovana PLUMB

Thursday, 3 October 2013, 10.30, Brussels

The Minister described to Commissioner Potočnik the difficult aspects involved with the Rosia Montana gold mining project in Romania. The Romanian Minister referred to the EU Pilot sent by the Commission, saying that reply will be provided soon. To this respect a couple of details were given:

- the draft law, if adopted by the Parliament, will not replace the environmental agreement and the operation authorization which are still to be issued according to the relevant applicable environmental legislation; it was mentioned that 4 years could elapse between the issuance of the environmental agreement and the issuance of the operation authorization.
- the draft law does not involve derogations from the EU Environmental legislation. If there are derogations, they are not related to environment.
- tough negotiations took place with the Company in order to incorporate environmental aspects such as:
 - the condition for a technology new in the EU based on a cyanide concentration of 3 ppm i.e. far less than the limit prescribed in the Mining Waste Directive which is 10 ppm
 - the financial environmental guarantee under the Mining Waste Directive doubled to 146 million USD compared to what was previously set and it is not a fix amount. If need be, it would be adjusted.
 - the guarantee under the Environmental Liability Directive was set to 25 million USD, based on 6 risk scenarios selected out of 45 taken into consideration. This amount could be adjusted as well.

The project would not be the initial project for which the application was submitted in 2004 but a new one, with more exigent requirements. The Minister ensured that all environmental acquis is well taken account of and that no accidents as in Baia Mare will occur.

Reasons for the draft law and the debate in Parliament:

- requirements set under Article 4(7) of the Water Framework Directive: when a project entails change of morphology of a river course, it has to be of overriding public interest. In Romania declaring a project of overriding public interest is done by Law, hence the involvement of the Parliament.
- to impose the Company the highest environmental standards

Polls:

The Minister showed national surveys which indicate that citizens support the project.

Bad ecological situation in Rosia Montana mining area:

The Minister underlined also the emergency of the situation in the light of historical legacy - 18 heaps - that needs to be remedied upon; investments of 300 million EUROS are needed, a sum Romania does not have.

EU Pilot:

The Minister said that Romanian authorities will reply to the EU Pilot as soon as possible. In the margin of the official reply (to be sent at the latest on 22/11), they will provide DG ENV with information related to the environmental aspects of the draft law. On that basis, the Minister would appreciate early warning/advice before the vote in the National Parliament (i.e. before end October).

In response to the above request, Commissioner Potočník underlined that the Commission's services can only warn the authorities according to the information in their possession at a certain time. New elements can arise and they will have to be assessed in terms of compliance with the EU Law.

Commissioner Potočník mentioned that it is not for the Commission's services to do a judgement of the economic opportunity of the project but needs to be reassured that all the applicable environmental legislation is fully observed.