

0. INTRODUCTORY NOTE

This document aims to present to the central and local public authorities involved in issuing the environmental agreements for the Rosia Montana Project, the recommendations of the PHARE technical assistance team on the implementation of the environmental impact assessment procedure in the concrete case of the Rosia Montana Project. It should be noted that the environmental impact procedure primarily involves consultation and negotiation based on a dialogue with stakeholders: on the one hand the project developer, his environmental consultants and funding providers, and on the other hand the public and other authorities, both within Romania and in the Affected Parties with the arbiter in such confrontations represented by the Romanian environmental authorities, in charge of correctly applying the legal provisions in force.

Unfortunately, the PHARE project consulting team can only anticipate the consultation process in very broad terms and therefore decline their responsibility in solving certain aspects that are unknown, unavailable, or unforeseeable at the present moment in time.

CHAPTER I

INTRODUCTION

SECTION 1

PRESENTATION OF THE ROSIA MONTANA PROJECT

The project proposed by the Rosia Montana Gold Corporation S.A. Company consists of refurbishing and extending the existing mining operation, used for the extraction of gold and silver at Rosia Montana. The main production activities include mining operations in four quarries and ore processing by: crushing in one step, wet grinding, gravitational recovery and regrinding, cyanide leaching and electrolytic extraction, and the relevant technological infrastructure, including a tailings pond.

The project also includes measures to mitigate environmental impacts caused by historic mining activities, activities related to cultural assets, support for the development of the local communities, assistance provided for the closure and redevelopment of the existing mining operations subsidised by the State, activities for the relocation and resettlement of population, as well as ongoing geological prospecting at the local and regional levels.

The company has prepared the necessary documentation for the permitting application as required for an environmental permit/ integrated environmental permit.

Section 2 Legal Framework

The Environmental Impact Assessment (EIA) process relates to the regulation of activities that have significant environmental impacts and is conducted based on the national environmental legislation, which in its turn transposes the relevant provisions of the Community environmental legislation.

Environmental Impact Assessment for projects is conducted based on the provisions of a number of national legal documents in the environmental (Table no. 1) and related areas (Table no. 2).

Enforcement and compliance with the provisions of a number of international Conventions (Table no. 3) is also of major importance in the case of the Rosia Montana Project.

A presentation of the general content and of the specific requirements for environmental impact assessment in the legislation and legal documents listed in the tables below is also contained in the brochure regarding the environmental impact assessment procedures published by the PHARE-RO 0006.14.02 Project.

This document includes comments on the legal requirements and specific recommendations for the implementation of the environmental impact assessment and environmental permitting procedures in the case of the Rosia Montana Project.

Table no. 1: **Relevant national environmental legislation and regulations**

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| <p><i>Environmental Protection Law no. 137/1995, as amended and completed according to GO 91/2002</i></p> <p><i>Law no. 86/2000 for ratification of the Convention on access to information, public participation and access to justice in environmental matters</i></p> <p><i>Law no. 645/2002 approving the Emergency Ordinance no. 34/2002 on integrated pollution prevention and control</i></p> <p><i>Law no. 22/2001 for ratification of the Convention on transboundary environmental impact assessment, adopted at Espoo on 25 February 1991</i></p> <p><i>Law no. 462/2002 approving the Emergency Governmental Ordinance no. 236/2000 on the regime of the natural protected areas, the conservation of the natural habitats, the wild flora and fauna</i></p> <p><i>Governmental Decision no. 918/2002 on the environmental impact assessment framework procedure and for approval of the public or private projects list subject to this procedure</i></p> <p><i>Governmental Decision no. 1115/2002 on freedom of access to information on the environment and MWEP Order no. 1182/2002 approving the methodology for management and dissemination of information on the environment held by the public authorities for environmental protection</i></p> <p><i>Governmental Decision no. 95/2003 on control of the activities which present major accident hazards involving hazardous substances</i></p> <p><i>MWEP Order no. 860/2002 for approval of the environmental impact assessment and the issuance of environmental agreement procedures</i></p> <p><i>MWEP Order no. 863/2002 for approval of the methodological guidelines applicable to the stages of the environmental impact assessment framework procedure</i></p> <p><i>MWEP Order no. 864/2002 for approval of transboundary environmental impact assessment and public participation in the decision-making procedures for projects with a transboundary impact</i></p> <p><i>MWEP Order no. 1388/2002 on organisation and operation of the Technical Review Committee at central level</i></p> |
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Table no.2: **Relevant legal requirements in building/activity permitting sector**

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| <p><i>Law no. 453/2001 for amendment and completion of Law no. 50/1991 on the construction works permitting and some housing related measures</i></p> <p><i>Order no. 1943/2002 on permitting of the construction works execution, according to Law no. 50/1991, with subsequent amendments and completions</i></p> <p><i>Governmental Decision no. 573/2002 on traders' permitting</i></p> |
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Table no. 3: **International Conventions:**

- *Convention on transboundary environmental impact assessment (Espoo, 1991)*
- *Convention on the transboundary effects of industrial accidents (Helsinki, 1992)*
- *Convention on the sustainable protection and use of the Danube water (Sofia, 1994)*
- *Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus, 1998).*

SECTION 3

AUTHORITIES INVOLVED IN PROJECT REGULATION/ISSUANCE OF THE “development consent”

According to the requirements of the MLPAT (the old Ministry of Public Works and Land Use Planning) Order no. 1943/2001, any development project must obtain a “Unique Agreement” issued by an *ad hoc* commission created at the municipality level, including representation of all the public authorities involved in issuing all the necessary legal regulatory documents required by the project promotion. The Unique Agreement corresponds to the European concept of “development consent” and is issued based on the licenses/agreements issued granted, under the law, by each separate authority and/or expressed in the joint meeting of such authorities convened on the Unique Agreement Commission.

The environmental licensing required for the issuance of a Unique Agreement for a projected activity entailing significant environmental impacts is based on the environmental impact assessment process which in its turn involves consultation with the other authorities involved in the project regulation.

Art. 2. – (1) The environmental agreement procedure shall be lead by the environmental public authorities for environmental protection, in accordance with the provisions of Chapter II, Section 1 of the Environmental Protection Law no. 137/1995, with its subsequent amendments and completions.

(2) The environmental permitting conditions and procedure must ensure an effectively integrated approach by information and participation of all involved authorities. For this purpose, the involved authorities shall be informed and consulted within a Technical Review Committee, according to the provisions of the present procedure (MWEP Order no. 860/2002).
MWEP Order no. 860/2002)

The public authorities for environmental protection are organised, with specific competencies, at the central, regional and local levels.

For the Rosia Montana Project:

The competent authority in conducting the environmental impact assessment and the environmental agreement procedures is the central public authority.

In certain cases, for the investment projects under its regulatory competency, the central authority for environmental

protection may ask or delegate the regional public authority with jurisdiction over the project site to participate or take over the solution of certain stages in the environmental agreement/integrated environmental agreement procedure, as applicable.

The environmental permitting procedure is conducted simultaneously with the other permitting procedures and provides for direct consultation with the authorities involved in such procedures in integrating specific requirements, according to the legal provisions established in both the building permitting and the environmental legislation.

The other public authorities involved in project permitting are consulted within the Technical Review Committees organised at the central (under MWEP Order no. 1388/2002) or local level (by order signed by the prefect/ president of the County Council).

SECTION 4

Identification of the Applicable Procedure and Legal Requirements

General comments:

The term “project” defined in EGO 91/2002 refers to both new investment projects and to those involving substantial changes to existing /implemented projects, including decommissioning projects.

As, by definition, a project means an investment project for the “execution of construction works or other installations or schemes, other interventions in the natural surroundings and landscape, including those involving the extraction of mineral resources”, these become subject to the relevant legislation regulating constructions permitting, and will require the issuance of a Unique Agreement.

Environmental Impact Assessment, however, is only conducted for projects entailing significant environmental impacts. Such projects will need to apply for and obtain an environmental agreement or integrated environmental agreement, as applicable.

Order 860/2002 specifies that the environmental impact assessment procedure for the issuance of an environmental agreement or integrated environmental agreement for projects related to activities with significant environmental impacts is termed as *a full environmental licensing procedure*.

For projects related to activities not entailing significant environmental impacts, and therefore not subject to an environmental impact assessment, the environmental public authorities may apply *simplified environmental licensing procedures* for the issuance of a Unique Agreement. Such projects will not require an environmental agreement /integrated environmental agreement, only an environmental permit, except for import-export activities under international conventions to which Romania is a Party, specified as such in the specific procedures.

Specific comments:

Application for an environmental agreement / integrated environmental agreement in the case of the Rosia Montana Project may be submitted both for the whole project, and by

component. For some preliminary work, such as prospecting drilling, environmental agreements have been applied for/ issued. The urban development master plans for the communities, with the necessary changes for the implementation of this investment, have been subjected to the environmental agreement procedures, as provided by the legislation in force at the time of the application, i.e. Law 137/1995, with subsequent changes and additions and MWEF Order no. 125/1996.

The environmental impact assessment procedure is aimed to the issuance of either:

- an environmental agreement, e.g. for the mining operation and,
- an integrated environmental agreement, e.g. for ore processing and relevant technological infrastructure, including the tailings pond.

Other types of relevant procedures, as applicable:

- simplified environmental licensing procedure for the issuance of a Unique Agreement (for the investment projects related to activities not subject to an environmental impact assessment) and environmental permitting procedures.

Conclusions:

In the case of the Rosia Montana Project, considered as an application for all of the investment works:

- (1) the competent authority for environmental protection is the central public authority for environmental protection, represented by the Department for the Environment of the Ministry of Agriculture, Forests, Waters and Environment.
- (2) The project must be subject to an environmental impact assessment procedure, as contained in Annex I.A of MWEF Order no. 860/2002.
- (3) The project contains components subject to the integrated environmental agreement procedures.
- (4) The project is the object of the Espoo Convention on transboundary environmental impact assessment.
- (5) The project is also subject to the provisions Convention on the sustainable protection and use of the Danube water (Sofia, 1994).
- (6) The proposed activities may use substances in quantities subject to the Romanian Government Decision no. 95/2003 on the control of activities entailing major accident risk involving hazardous substances.

SECTION 5

Recommendations for actions preceding application

1. Identify the stakeholders in the procedure and the Affected Parties (under the Espoo Convention)

A. NATIONAL LEVEL:

- A.1) environmental public authorities – Origin Party (lead the procedure);
- A.2) other authorities involved in the permitting procedure, consulted on the Technical Review Committee;
- A.3) project titleholder (legal representative thereof / certified expert);
- A.4) interested public;

B. INTERNATIONAL LEVEL:

- B.1) environmental public authorities and
- B.2) public of the **Affected Parties**

A. NATIONAL LEVEL:

A.1. The central environmental public authority will initiate the organisational and preparatory activities to start consultations and negotiation, under rec. 2.

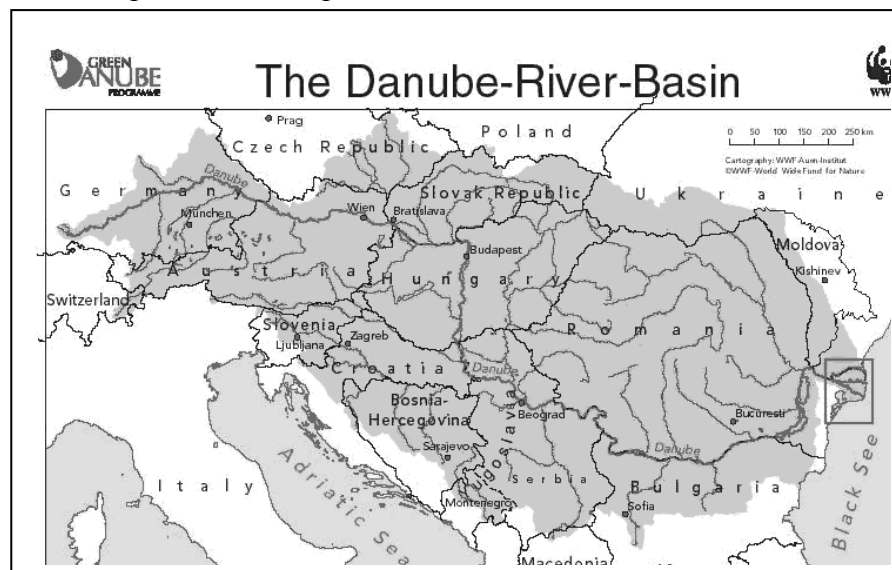
A.2. The composition of the extended Technical Review Committee will be established and its members will be informed of the process schedule.

A.3. The developer will be informed on the working teams of the environmental public authorities at the central and the local levels and on the organisational arrangements for public information.

A.4. The public will be notified of the organisational arrangements / location and program for obtaining information.

B. INTERNATIONAL LEVEL:

B.1/2. Identification of the Affected Parties (under the Sofia Convention, 1994, on cooperation for cooperation in the protection and sustainable use of the Danube)



Map 1. the Danube River Basin

Considering the accidental pollution of Danube tributaries as a potential transboundary impact, it is recommended that notifications should be sent to Hungary, Serbia-Montenegro, Bulgaria and the Ukraine (as potential Affected Parties), as well as to all the states that have expressed their intention to participate in the procedure. The Vienna Commission for the Danube Convention should also be informed (<http://www.icpdr.org>).

2. Constitution of the working groups/permanent secretariats/Technical Review Committees (at the central and local level)/ contact point and initiation of negotiations

In implementing the **Espoo Convention**, negotiations may begin before the initiation of the environmental impact assessment procedure, by the constitution of working groups/permanent secretariats, including TRC, and the establishment of the following items:

- = **institutional arrangements** –contact points/ central and local teams; the constitution of joint bilateral commissions;
- = **process planning**, including unofficial negotiations, especially at the beginning. These may be: between contact points, developer, and the authorities of the Origin Party; between the authorities of the Parties (regarding response times, e.g. to notification); between the developer, authorities and the funder; between the developer, authorities and NGOs;
- = **translations**;
- = **cost sharing** and other financial aspects (costs of special trans-boundary studies, translation, for public hearings and other forms of public participation in Affected Party countries. The costs may be covered by the developer, the Affected Party, the Party of Origin, the funder, or an association of the above.

2.1 The Technical Review Committee

The environmental agreement/integrated environmental agreement procedure is closely related and depends on the permitting procedures conducted by other authorities, as follows:

- The Water Management License issued by the National Administration "Apele Romane" through its river basin branches;
- Approval of the land use plan released by the County Office for Land Use Planning;
- The Urbanism Certificate, issued by the County Department for Urbanism and Land Use Planning (for communes) or by similar structures in each town, subordinated to the Local Government;
- The Health Certificate issued by the County Inspectorates for Public Health, subordinated to the Ministry of Health and Family;
- The Fire Prevention and Response Plan approved by the Commander of the County Fire Corps;
- The Disaster Response Plan and, as applicable, Action Plan for Radiological Emergencies, approved by the County Civilian Protection Committee;
- Approval of the Academy/Commission for the Protection of Natural Monuments and Archaeological Sites ;
- Other, for specific activities/sites.

Recommendations:

The Rosia Montana Project, under the competency of the central environmental public authority, will require the participation of a centrally constituted Technical Review Committee, as provided by MWEF Order no. 1388/2003. We recommend an extended Technical Review Committee to convene meetings at Alba Iulia, which would include the participation of the local Technical Review Committee, including representatives of the

decentralised central public authorities at the local level, and of the local government and experts designated by such authorities.

Table no. 4: Composition of the Technical Review Committee

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| <p>Chairperson: <i>–Secretary of State for the Environment (at the central level)–Executive Director of the EPA (at the local level)</i></p> <p>Members, representing: <i>–the Ministry of Agriculture, Forests, and Environmental Protection</i> <i>–the Ministry of Economy and Commerce</i> <i>–Regional Development Authorities (MEI)</i> <i>–the Ministry of Health</i> <i>–the Ministry of Transport, Construction and Tourism</i> <i>–the Ministry of Administration and Internal Affairs</i> <i>–the Fire and Civilian Protection Commandments</i></p> <p>Secretariat:– <i>Special Directorate in the MAFWE (at the central level)</i> <i>–the Permitting Department of the EPA (at the local level)</i></p> |
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Table no. 5: Composition of the extended Technical Review Committee

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| <p><i>–the Ministry of Culture and Denominations</i> <i>–the Ministry of Education, Research and Youth</i> <i>–the Authority for Privatisation and Administration of State Owned Shares</i> <i>–the National Agency for Mineral Resources</i> <i>–the Romanian Academy</i> <i>–the Ministry of Labour, Social Solidarity, and the Family</i> <i>–the National Control Authority</i> <i>–the Agency for Governmental Strategies</i></p> <p><i>–researchers, academics, specialists of recognised activity in the sector proposed by the authorities represented on the TRC</i> <i>–other authorities requesting participation</i></p> |
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The Technical Review Committee has the following tasks and responsibilities:

- a. to participate in all the steps provided for the environmental impact assessment procedure;
- b. to participate in the decision making process in issuing /rejecting environmental agreements;
- c. to request additional information in their specific area of competence;
- d. may request an expert review of the Environmental Impact Assessment Study Report;
- e. may participate in the public hearing session;
- f. to review and assess the developer's responses to public proposals and comments .

The work of the Technical Review Committee is regulated as follows:

- the chairperson convenes the TRC;
- the materials to be discussed are made available to the participants;
- the project developer's participation is ensured;
- the materials and documents are presented by the environmental authority;
- the position expressed by each member of the TRC goes on record and represents the point of view of the authority that designated that person;

- TRC members may send in writing the position of the authority they represent after the meeting is adjourned;
 - the TRC may agree to formulate, by consensus, a recommendation for the final decision.
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- the final decision lies with the competent environmental authority.

Section 6

Costs related to issuance of the environmental agreements

Based on art, 4, para. (4) of GD no. 918/2002, issuing an environmental agreement involves fees payable to the Treasury Bank, into the account of the Environmental Fund.

The provisions regarding payment of taxes and tariffs are included in art. 6 of Order 860/2002 and the amount of tariffs for each step of the environmental agreement procedures is as established in the Annex to MO 860/2002. The tariffs are payable to the main offices of the issuing environmental authority. In the cases where the central environmental public authority requests or delegates the local environmental public authority of jurisdiction over the project site, as applicable, to participate in, or take over the solution of certain steps of the environmental agreement / integrated environmental agreement procedures, the tariffs are collected by the public authority involved, for each step of the procedure.

The permitting tariffs must be paid in advance, in full, or by step of the procedure. At the developer's request, the competent environmental public authorities may provide professional assistance, and collect the relevant tariff.

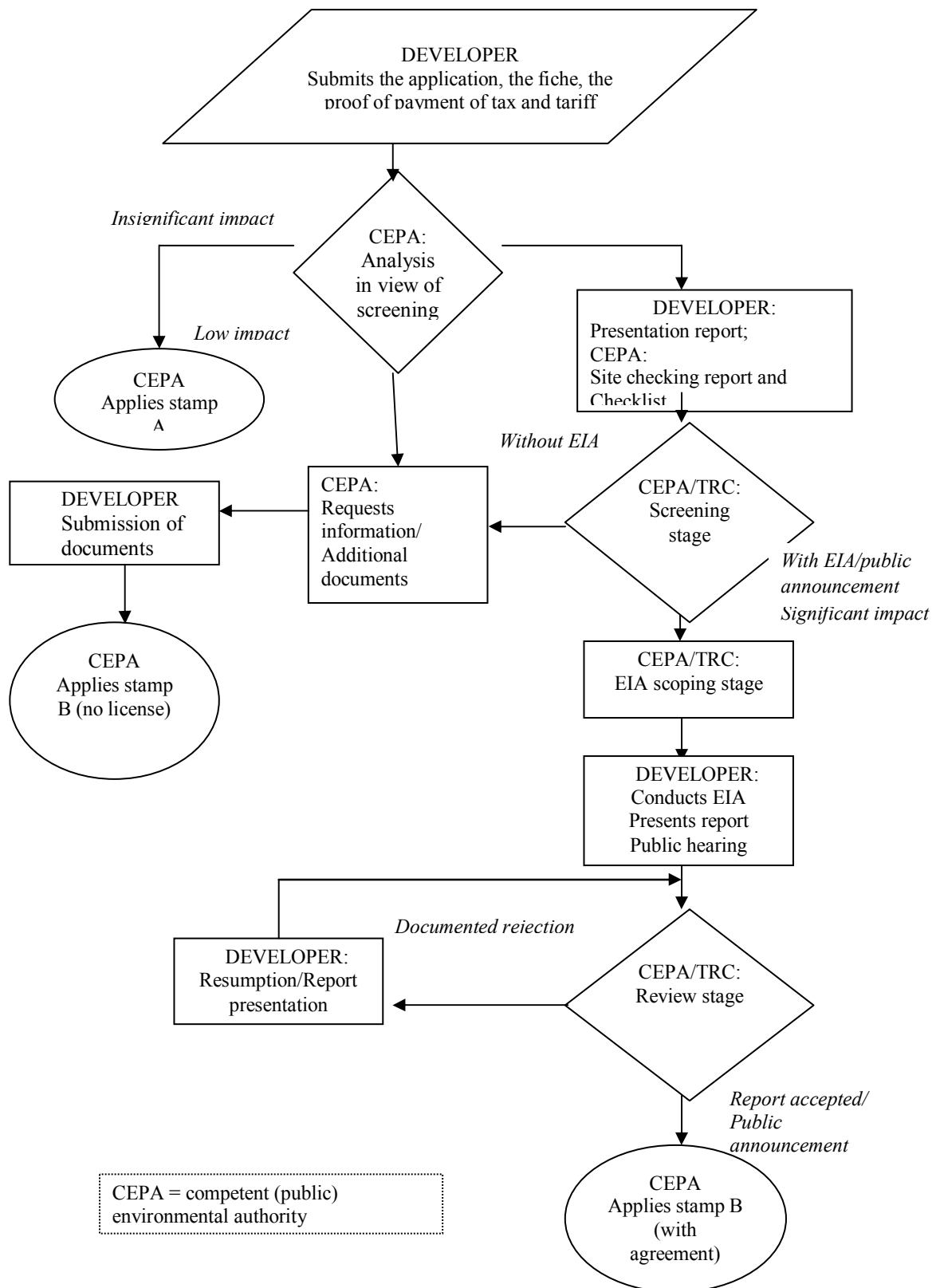
The tax for an environmental agreement must be paid prior to the issuance of the license.

CHAPTER II

THE STEPS OF THE ENVIRONMENTAL IMPACT ASSESSMENT AND ENVIRONMENTAL AGREEMENT PROCEDURES

The environmental impact assessment procedure is structured in steps as shown in the diagram of Figure no. 1.

Figure no. 1. Process outline (Flow-chart)



The procedure includes the three stages introduced by GD 918/2002, i.e. screening, scoping, and review of the quality of the environmental impact study report, preceded by the submission and initial evaluation of the application.

Between the scoping and the environmental impact assessment report quality review steps the environmental impact assessment study actually occurs (in the sense attributed by the definition of this term). During this step, the main role lies with the environmental impact study developer, the competent environmental public authority not being actively involved. However, as the development of the environmental assessment study is made based on the results of the scoping step, the two have been merged under the name of “*assessment scoping and environmental impact assessment development stage*”.

CHAPTER III APPLICATION SUBMITTAL AND INITIAL EVALUATION THEREOF

Section 1 *Starting the procedure*

Step 1:

The procedure proper starts once the project developer submits the application for an environmental agreement. The standard applications must reach the environmental public authority of jurisdiction over the selected project site. In practice, two different situations may occur.

- the project developer goes to the Unique Guiché to apply for a Unique Agreement; in these circumstances, the representative of the environmental public authority on the Unique Agreement Commission (UAC) picks up the application in view of initiating the procedure;
- the project titleholder submits the application directly to the environmental public authority, who then initiates the procedure

In both cases, the application must have attached a Technical Form regarding environmental protection conditions, actually an attachment to the Urbanism Certificate required in obtaining the Unique Agreement. On the Technical Fiche, the developer has to fill in the identification data for the investment (name, site, project number), as well as a number of technical data.

After receiving the application, the environmental public authority will perform an initial evaluation based on the data included in the Technical Fiche related to the site and the technical characteristics.

This initial evaluation is intended to establish from the start whether the project refers to an activity of insignificant impact, low impact, or significant impact.

Step 2:

The representative of the local environmental public authority fills in the application form with the following:

- a) **site classification** based on environmental impact: significant impact, must make the object of an environmental impact assessment (Annex I.1 to MWEP Order no. 860/2002);
- b) **type of procedure** and, as applicable, specific **procedural steps**: full environmental agreement procedure, or integrated agreement procedure, respectively; subject to the provision of the Espoo Convention (need to

- submit the technical presentation in English and Romanian, including in electronic format); followed by the scoping stage;
- c) **documents** required for permitting (2).

Step 3:

The project developer submits the following documents, based on the classification of the activity:

a) **project presentation report** (in English and Romanian, with an electronic copy attached), containing the project description and information needed in obtaining data on the environmental impact, including in a transboundary context, according to the model attached to **MWEPO no. 860/02**;

b) **notification** containing information on the identification of hazardous substances/substance categories, storage thereof, quantity and physical state, the activity of the storage unit, elements that might cause major accidents or enhance the consequences thereof, as provided in art. 6(1) of **GD no. 95/2003**;

c) **documented proof** of the information stated in the application and /or technical fiche;

d) **proof of payment** of the tariff.

Note:

The project developer may submit the documents under stage 3 directly, if, based on previous consultation, the nature of the documents to be attached has already been made clear.

Section 2

Notifications

Step 4:

The environmental agreement application and documents submitted to the local environmental public authority, together with a point of view regarding the organisation of the procedures expressed by the local authority receiving them, are then forwarded to the central environmental public authority within 5 days of receipt

Step 5:

The central environmental public authority sends to the Affected Parties a **notification** to include:

- **the notification letter**, indicating the response deadline and contact person;
- a **copy of the application** under discussion;
- a **copy of the technical presentation** regarding development of the activity to which the application refers;
- any available information regarding the **potential transboundary impact of the activity**;
- information on the **environmental assessment procedure** used by the Origin Party, if such information has not previously been communicated;
- the potential nature of the decision to **continue the procedure**;
- indication of a reasonable **time frame**, by which a response will be expected, based on the size, nature, and location of the proposed activity (unless already established in preliminary consultation);
- other **relevant information**, as applicable, in the national environmental impact assessment in a transboundary context.

SECTION 3

Initial evaluation of the application/Identification

Step 6:

At the national level, the competent environmental public authority conducts the following procedural phases:

- a) sends the technical presentation and the checklist form to all the TRC members and specialists, requesting the preparation of their points of view on specific competency issues, in order to finalise the scoping checklist during the joint meeting;
- b) informs the public on:
 - the content of the technical presentation and of the application and
 - the schedule of consultations,

by publishing these on its website and advertising them at its main offices;

- c) evaluates the application and inspects the site;
- d) the result of the evaluation and site inspection is recorded in a report based on the model provided in Annex no.II.3, which also includes the Scoping Checklist filled in during the site inspection. The report should also mention potential requests for further information or documents. The actions mentioned in indents c) and d) are detailed in the next Chapter;
- e) develops the public announcement for the submission of the technical presentation and the project inclusion in the environmental assessment process;
- f) communicates to the applicant in writing:
 - the decision to continue the procedure with the assessment scoping stage;
 - the need to provide further information, as applicable;
 - the public announcement developed for repeated publication, at the expense of the titleholder, in the local and central mass media.

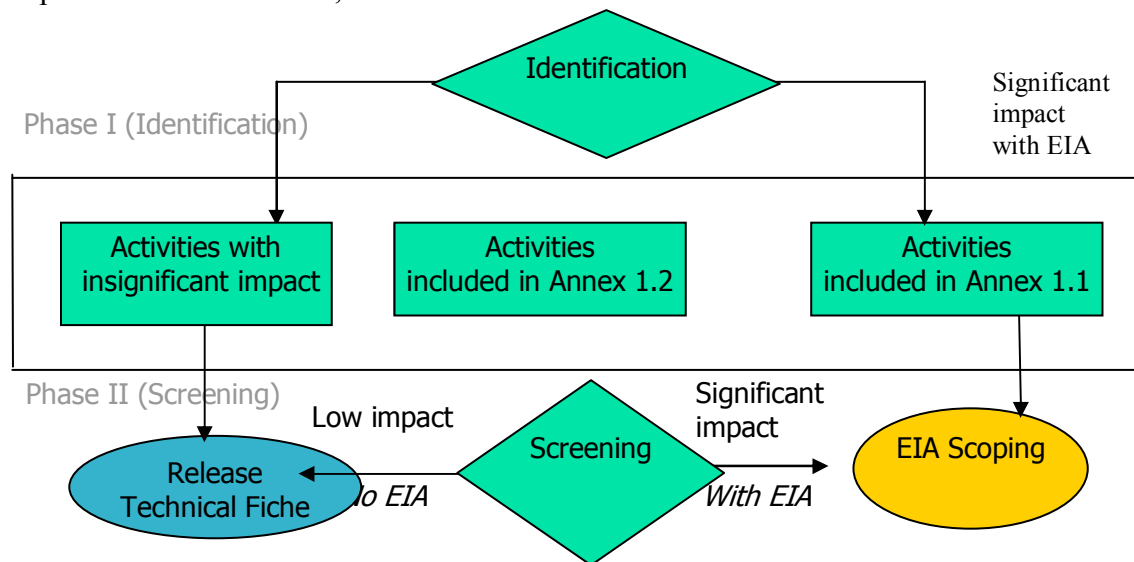


Figure no. 3 Alternative options of continuing the procedure, based on the initial application evaluation

NOTE:

The public announcement must indicate the following:

- the public may send comments and suggestions in the six months following the date the notice was published;
- comments and suggestions made by the target public, i.e. the public in Alba County and surrounding counties, must be sent to the offices of the Alba EPA, and those expressed by the public in the rest of the country must be sent to the Environmental Department of the MAFWE.

The project developer must publish the announcement for 10 consecutive days in the local and central media and send copies of the documents to prove publication to the PAEP.

The secretariat shall register the issuance dates thereof and keep the above documents.

MO 860/2003; Art. 22. - For all the projects, either provided in Annex no. I.1, or located in one of the areas of the NATURE 2000 environmental site, or projects which, after following the screening stage, are found to require an environmental impact assessment, the developer shall provide to the environmental authority all the information requested, as applicable, and bring proof of publication in the mass-media of the announcement drafted according to the provisions of art. 13, letter (c) of this procedure.

The provisions of this article refer to the transition from the screening to the assessment scoping step. The article contains two requirements that are applicable to the projects for which the EIA procedure continues with the assessment scoping step:

1. the project developer should provide to the environmental public authority all the information requested;
2. the project developer should present proof of publication of the notice regarding the decision of the environmental public authority to conduct an EIA for the respective project.

It is obvious that the requirements contained in this article are applicable to the Rosia Montana Project, as they refer to an activity listed in Annex I.1 of MO 860/2003.

For all the projects listed in Annex I.1 of MO 860/2003, the first requirement refers to the submission of a full application and relates to the provisions of the initial evaluation/identification step, as the screening step proper is no longer necessary.

CHAPTER IV

ASSESSMENT SCOPING STAGE

SECTION 1

Identification of aspects

The assessment scoping step is perhaps the most important, as it aims to point out all the aspects to be addressed by the environmental impact assessment, including:

- potential environmental effects generated by the project;
- significant effects that would require more in-depth analysis within the environmental impact assessment study;

- the components of the physical, social and economic environments impacted by the project effects;
- alternative project development options that should be considered
- other specific aspects of the respective project that need to be considered in assessing the environmental impact to be included in the EIA study report

In scoping, it is useful to take into account the aspects to be considered in issuing the other necessary approvals for the respective activity.

The comments and suggestions received from the Romanian public and from that of the potentially Affected Parties notifying their intention to participate in the EIA procedure must also be taken into account in defining the scope of the EIA.

Once the assessment scope has been defined, a guideline (Scoping document) must be developed based on it, and communicated to the project developer.

Assessment scoping must be conducted by the competent environmental public authority with support from the authorities included on the Technical Review Committee (TRC), in compliance with the methodology to implement the framework assessment procedure approved by Order no. 860/2002 and based on the indications included in the guidelines presented in Annex 2 to Order 863/2002.

MO 860/2003; Art. 23. – (1) Within 10 days of the notification of the final decision regarding the screening stage, or of receipt of the requested additional information and documentation, as applicable, the public authority for environmental protection shall conduct the assessment scoping stage, as follows:.....

As the Rosia Montana Project is listed in Annex I.1 to MO 860/2002, the screening step does not apply, and the information and additional documentation will be requested after the site inspection.

OM 864/2002; Art. 4. – (1) The environmental impact assessment, including the transboundary procedures, shall be carried out according to the legal provisions in force within the territory of Romania, except for the time frames provided for the actions of the public authorities for environmental protection, which shall be correlated with the times for response of the Affected Party, established by this Order and/or by bilateral or multilateral agreements.

Art. 10. – (1) The notification shall contain:.....

- g) an indication of a reasonable timeframe, but no longer than 4 weeks, within which a response is required;

Art. 12. - (1) The central public authority for environmental protection shall ensure necessary conditions in order to give opportunity to the competent authority of the Affected Party and any concerned members of the affected public to forward, in writing, within a reasonable time, before setting of the environmental impact assessment scope, their comments as to the supplied information.

(3) Within 6 weeks of receipt of the notification, the Affected Party shall transmit an accurate summary, in English, of the observations of the public and the competent authorities as regarding the proposed projects, together with requests for additional details identified from public individual requests.

SECTION 2

Categories of Scoping Actions

Considering all the actions that need to be undertaken by all the stakeholders involved in defining the scope of the assessment, it is recommended that the time dedicated to this step to be at least twenty weeks. The actions may be grouped into seven categories.

1. The first category includes preparatory actions for the assessment scoping step proper, conducted during the first week after the full application has been submitted.

Considering the complexity of the Rosia Montana Project, the technical report review must be conducted at the same time by all the members of the TRC, so that they all have the necessary time to prepare for the site visit organised for site inspection.

Comments and suggestions received from the public prior to application submittal, although considered unofficial documents from the point of view of the EIA procedure, should better be communicated to all the members and guests of the TRC. In this regard, the project developer must send a copy of such comments to the PAEP.

It is anticipated that the PAEP will have to implicate several experts in the review of the technical presentation and the development of the Guidelines. Therefore, the central environmental public authority and EPA Alba will have to designate as stable a team as possible, including at least two experts relieved of any other tasks, who would actually have to learn all the information contained in the technical presentation and then take part in all the steps of the procedure, and so provide continuity to the process;

1.1. The Secretariat will send the Technical Report to all the TRC members in electronic format; a copy of the technical presentation must be kept at the PAEP offices (the Department for the Environment of the MAFWE and EPA Alba, respectively), and made available to the TRC members for consultation;

1.2. Each public authority member of the TRC may, based on the review of the technical presentation, nominate one or several professionals in the relevant area of expertise to participate on the TRC as guests, and will send the Technical Presentation to them in electronic format.

1.3. The Secretariat will sort the materials received from the project developer in relation to suggestions from the public received prior to the application submittal, and distribute them into separate sections based on their nature, i.e.: technological, social, cultural, environmental, etc.

1.4. The Secretariat will notify the members and guests of the TRC that these materials are available for consultation.

2. Actions related to the site inspection visit will have to be undertaken in the following four weeks.

It is considered that both the PAEP and the other members and guests of the TRC will need at least two weeks to review the technical presentation and comments and suggestions obtained from the public prior to the application.

It is therefore recommended that the date scheduled for the undertaking of the site inspection visit should be chosen in the third week of this interval. Another recommendation is that the site visit should last for at least two days and to include all the TRC members and guests together.

- 2.1. PAEP and the project developer must agree on the date for the site inspection visit and communicate it to all the TRC members and guests;
- 2.2. The site inspection visit is undertaken;
- 2.3. During the technical report review and site inspection, the Checklist for the assessment scoping step must be filled in to the extent possible, particularly column 2 (types of significant environmental impacts generated by the project), column 3 (significance of impact) and column 4 (environmental media affected by significant impacts);
- 2.4. During the site visit, the members and guests of the TRC identify the need to obtain further information that has not been included in the technical report;
- 2.5. The site inspection report is completed, based on the model provided in Annex no.II.3 to MO 860/2002 also indicating the additional information identified as necessary to submit by the project titleholder
- 2.6. The site inspection report must be signed by all the members and guests of the TRC and sent to the project developer;

The cover letter to the Site Inspection Report addressed to the project developer will ask for all the additional information to be submitted to the Secretariat in electronic format within four weeks.

The additional information requested from the project developer and the date on which it was received must be registered by the Secretariat.

3. This is followed by 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.

- 3.1. After the site inspection, PAEP in cooperation with the project developer and the TRC members will organise a public hearing at both the national and the local level.
- 3.2. At the request of the potentially Affected Parties and in agreement with them, PAEP, in cooperation with the project developer, may organise a presentation of the project on the territory of the potentially Affected Parties, in order to discuss transboundary impact issues to be included in the EIA study.

Such presentations will be conducted according to rules jointly agreed with each potentially affected Party, in regard to: designating public representatives, keeping records of public comments, etc.

- 3.3. The central environmental public authority may organise meetings of the experts on the existing joint hydro-technical commissions with the potentially affected Parties, with the object of discussing aspects of transboundary environmental impacts on the waters to be included in the EIA study.

The conduct of such meetings must comply with the rules established in the operating regulations of each commission.

Reports of the results of the meetings under paras. 3.1 and 3.2 will be submitted to the Department for the Environment of the MAFWE immediately upon the conclusion thereof.

4. 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.

The review of information and documents further requested from the project developer, of the comments and suggestions received from the public and from the experts of the bilateral river basin committees of the potentially affected Parties must be simultaneously undertaken by all the members and guests of the TRC.

4.1 PAEP and EPA Alba, as applicable, will review the additional information and documents submitted by the project developer, the comments and suggestions expressed by the Romanian public and by the public and experts of the potentially affected Parties based on where they were received, will sort and classify them into separate categories according to their nature, i.e.: technological, social, cultural, environmental, and other issues.

4.2. PAEP and EPA Alba shall send each other the materials so sorted and the Secretariat will send all the materials to all the members of the TRC.

4.3. PAEP and EPA Alba formulate responses to the comments expressed by the public and experts.

5. Then, PAEP will develop the first draft of the Guidelines based on all the requirements of the legal procedures, within an interval of three weeks

MO 860/2003; Art. 23. – (1).....:

- a) review, as applicable, the requested additional information and documentation received from the project developer; finalise the Checklist attached to the site checking report...
- b) call the technical review committee and notify the applicant of the date established for project presentation to the technical review committee;
- c) present to the technical review committee the project
- d) compiles, based on the comments and observations received from the other authorities, a guideline/Checklist of specific issues to be included in the environmental assessment study and the list of regulations issued by the other authorities as required for the issuance of the environmental agreement, under the law.

MO 864/2002; Art. 13. – The information received from the Affected Party, together with its public comments, shall be included by the central public authority for environmental protection within the guidance developed when scoping the environmental impact assessment.

MO 860/2003; Art. 24. – (1) The contents of the Guidelines/Checklist needs to reflect the relevant environmental aspects..... and it shall be developed based on the model and instructions contained in the methodological guidelines for the scoping stage.

(2) For the activities and/or installations included in Annex no. I.1 to this procedure, which require an integrated environmental agreement, the Guidelines shall also specify the need of implementing the specific requirements for integrated environmental permitting, including those regarding pollutant limits in emissions in relation to the applicable best available techniques.

(3) For projects of installations/deposits involving hazardous substances and the amounts provided in Annex. no. 2 of the legal provisions on the control of the activities which present major accident hazards involving hazardous substances (SEVESO II), the need to elaborate and present reports on safety during exploitation shall be specified, in order to prevent major accident hazards (safety reports), according to the legal provisions and from the date of the entry into force thereof.

PAEP, as the leading authority in the EIA procedure, will develop the first draft of the Guidance for presentation to the TRC meeting. In this regard, the Checklist for the Assessment Scoping Step will be finalised taking into account all the additionally available information. The term “finalise” will mean here that the Checklist as developed during the site inspection must be completed with both column 3, with the additional answers not available at the time of the site inspection, and in the other three columns. This does not mean that the Checklist has become final, only that it is developed in the most advanced stage possible at the moment so as to be proposed for discussion in the meeting with the TRC members.

Completion of the Checklist and development of the Guidance must follow the indications contained in the Methodological Guidelines for the Assessment Scoping and Environmental Impact Study Report Development Step approved by MO 863/2002 of the MAFEP. A summary of these indications is presented in Annex no. 1.

5.1. PAEP finalises the Checklist; in this regard, it will also take account of the comments and suggestions received from the public and experts of the potentially affected Parties.

In completing the Checklist, special attention should be paid to the following items:

- questions 79 – 84 referring to potential social impacts
- the environmental media listed in Tabel no.3/Annex no. 2 of MWEP Order 863/2002, and marked: A, B, E, I, J P, T, R, KK, PP, QQ, RR, TT, UU, VV, WW

5.2. In preparing for participation in the TRC meeting, the other TRC members and guests may also similarly finalise the sections of the Checklist relevant to their scope of activity.

5.3. PAEP develops the first draft of the Guidance as a written document that, apart from the Checklist, will have to include:

- Identification of the project installations that fall under EGO 34/2002 approved and amended by Law 645/2002 (in the meaning attributed in MO 818/2003);
- A list of national legislation containing provisions regarding air and water pollutant emission limits (general requirements);
- Site specific requirements regarding air and water pollutant emission limits

- The requirement that the EIA Study Report should address the specific issues of integrated environmental permitting:
 - Application of the Best Available Techniques
 - Comparison of pollutant emissions to the limit values established in relation to these techniques
 - Management of raw materials, hazardous substances, and energy
 - Waste management
 - Noise minimisation
 - Risk management: *placing the pumping station for pond water recycling on a floating platform is a source of risk in case of extreme weather events (storms, frost)*
- The requirement that the EIA Study should review at least one alternative option of project development under each of the following concerns:
 - Production processes or technologies: *the alternative “carbon in-leaching” proposed in the project compared to the option “heap leaching”;*
 - Location of the project components: *e.g. locating the tailings pond*
 - Locations or alignments for roads and access
 - Structural designs
 - Types and sources of materials
 - Resource conservation or resource waste minimisation measures
 - Working methods
 - Project building, operation, and decommissioning schedules, including any deadline for the project phase in
 - Pollution control provisions
 - Waste management, including recycling, recovery, reuse and final disposal: *the option proposed in the project, of separating the sulphides from the ore to be mixed with the slurry prior to its disposal into the lagoon and separate disposal thereof into a contained basin*
 - Environmental management responsibilities and procedures
 - Staff training
 - Monitoring and response plans:
 - Management of decommissioning, site restoration and further use of the impacted land
- The requirement that in reviewing the alternatives the physical, social and economic environmental impacts should be identified for each option and that the justification of the choice of option presented in the Technical Report of the Project should be documented;
- The requirement to present the Safety Report for the installations /storage facilities involving hazardous substances and quantities listed in Annex no. 2 of GD no. 95/2003 regarding control of activities entailing major accident hazard involving hazardous substances (SEVESO II);
- The requirement that the team in charge of the EIA study contain specialists in specialist studies of environmental impact assessment of
 - the social environment (population welfare, quality of life, social cohesion, etc)
 - the economic environment (especially tourism);

- the cultural and ethnic conditions, especially regarding community division and relocation of population;
 - the cultural and historic assets;
 - the landscape.
- The list of regulations issued by other authorities, needed for environmental agreement under the law: licenses for the use of water resources and, possibly agreement to dispose of urban type waste.
- 5.4. The date for the TRC meeting to discuss the Guidelines is set and communicated to the TRC members and guests and to the project developer.
- 5.5. This draft of the Guidelines is made public by posting on the website of the Department for the Environment of the MAFWE
- 5.6. The Romanian public and that of the potentially affected Parties is notified that they may send comments and suggestions within a two week interval.

6. Actions to revise the Guidance will take the following three weeks.

6.1. The first week will be taken by the TRC meeting, which may require several daily meetings before exhausting all the aspects that need to be discussed; the TRC meeting might be developed in the following sequence:

- The project developer makes a brief presentation, if so desired;
- PAEP presents the Draft Guidance that contains a finalised Checklist.
- The other members and guests of the TRC discuss and make proposals regarding the content of the Guidelines, taking into account the amendments to the Checklist of control made by the public authorities they represent.

6.2. In the next two weeks, PAEP finalise the “Guidance” as proposed during the TRC meeting.

If further comments and suggestions are received from the public or potentially affected Parties in the advertised interval of time, they will have to be taken into account into the final Guidance.

7. The action involved in sending the Guidance to the project developer.

MO 860/2003; Art. 25. – Within 3 days of the completion of the scoping stage in the technical review committee, the competent authority for environmental protection shall send to the developer the guidance referred to in art. 23, para (1), letter (d) and in art.24.

In the week following finalisation of the Guidance, the Secretariat will formally forward this document to the project developer, with a cover letter.

NOTE

This Project included a Scoping Checklist filling in exercise. We therefore reviewed a draft Technical Presentation made available by the project developer and conducted a site visit during 24 – 25 September.

The filled in Checklist and the comments concerning some likely alternatives related to project achievement are presented in the Annex.

CHAPTER V

PUBLIC INFORMATION AND DEBATE OF THE REPORT

SECTION 1

Organisation and Progress

MO 860/2003, Art. 27. – (1) Within 5 days of receiving the environmental impact assessment study report and, as applicable, the safe functioning report, the public authorities for environmental protection, in agreement with the project developer, shall announce in the mass-media the opportunities for public participation in decisions related to the projected, on the developer's expense.

(2) Under the guidance of the competent authority, the project developer shall organise the public debate, and present the report on the environmental impact assessment study, as provided in arts. 39-44 of this procedure.

The provisions contained in this article make the transition from the assessment scoping to the report quality review step. The article specifies that, as soon as the report is completed and forwarded to the environmental authority, the developer must start consulting the public on the content of the report. Public participation in this step involves both an interval of public information and one of public consultation proper (in a public debate).

Considering that art. 39-44 presents this step in detail, this manual will include a separate section devoted to the organisation and conduct of the public debate for the Rosia Montana Project (see details in the specified articles). In interpreting this article, we only need to mention that the environmental authority has the obligation to develop the public announcement that the developer must publish in the mass-media.

Taking account of the size of the project and especially of the large number of non-governmental organisations and representatives of the general public that have expressed a wish to participate in decision making for this project, the notice will have to be advertised during a longer period of time simultaneously in the central and the local media. Apart from media advertising, in the case of this project it would be useful for information to be disseminated in a number of other ways: displayed at the offices of other local public authorities, on the internet websites of the developer and of the central/local environmental public authority. It must also be specified from the start that there will be more than one public hearing, during an interval of time in which successive public hearings will be conducted in different localities.

As the neighbouring countries have expressed their interest in participating in the procedure, in drafting and advertising the public announcement and in organising public hearing, the provisions of MAFEP Order no.864/2003 on EIA in transboundary context should also be taken into account, i.e. art.6 and art. 8 para. (1) letter b), stating that information on the date of the public hearing in the potentially affected country should be provided at least two weeks in advance. Details on the organisation of the public hearing and related recommendations can also be found in the detailed presentation of arts. 39-44. Considering that the copy of the environmental impact assessment study report is sent to the potentially affected Party together with notification of the date of the public hearing organised in Romania, the competent environmental public authority will have to harmonise the two regulations. In this regard, the local environmental authority will have

to ask the developer to submit an English version of the report to send to the potentially affected Parties.

Note: According to the provisions of the Espoo Convention and of Order no.864/2002 on transboundary EIA, the environmental impact assessment study report and information on the date set for the public hearing organised in Romania must be sent together with information on the potential nature of the decision. In the case of the Rosia Montana Project, it is premature to communicate a likely decision of the authorities at this stage. Therefore, the potentially affected Parties should be notified at this time that the potential nature of the decision will be communicated at a later date, after evaluating all the comments expressed by the public in country and abroad and after consulting and reviewing the quality of the environmental impact assessment study report in the Technical Review Committee.

Recommendations for the central environmental public authority, as the competent authority in this case:

- A clear mention together with the draft announcement forwarded to the developer (see recommended model in the Annex) of the interval of time during which it will be advertised (it is recommended that the notice should be published daily for at least 10 days), as well as of the advertising means. It is recommended that the announcement should be broadcast by radio and published in at least three central and two local papers. The announcement must include all the data and locations provided for the organisation of public hearings, distributed over a four-week interval.
- The authority must have in view that the announcement and the non-technical summary of the report are displayed in a visible place at the offices of the local public authorities, including: the Ministry of Agriculture, Forests, and the Environment, the Environmental Protection Agency Alba, Rosia Montana Mayor's Office, Abrud Mayor's Office, Campeni Mayor's Office, Bucium Mayor's Office, Alba County Council, Alba Iulia Mayor's Office, Alba Prefect's Office, throughout the period provided for the organisation and conduct of public hearings.
- The authority must have in view that the announcement and the non-technical summary of the report (the Romanian and English versions) are made public on the websites of: SC "Rosia Montana" Gold Corporation SA, the Ministry of Agriculture, Forests, and the Environment, the Environmental Protection Agency Alba and other local public authorities, as applicable, throughout the period provided for the organisation and conduct of public hearings.
- At the same time as sending the drafted public announcement to the developer, the local environmental authority will send to the central environmental authority the presentation to the environmental impact assessment study in English, as made available by the developer, together with the information on the dates and locations established for the public hearings.
- The central environmental authority will send to the potentially affected Parties the following documents: the report on the environmental impact assessment study, information on the dates and locations established for the public hearings,

information on communicating the potential decision at a later date (after discussing the above in the Technical Review Committee).

- The organisation of public information desks at the Mayor's offices in Rosia Montana, Abrud, Campeni, Bucium and at those of the local and central environmental public authorities. These desks will make available to the public the full texts of the report on the environmental impact assessment study in Romanian and English. The desks must be open throughout the interval in which the public hearings are organised and conducted.

SECTION 2

Analysis of Comments and Suggestions

MO 860/2003, Art. 28. – Based on the results of the public debate:

- a) the project developer shall prepare an evaluation of the well grounded comments of the public, containing solutions for the identified problems, according to the model given in Annex IV.2, and forward it to the competent authority for environmental protection;
- b) the well grounded proposals of the public contained in the developer's evaluation shall be presented by the competent authority for environmental protection, together with the report on the environmental impact assessment study, to the technical review committee in the project review stage

Art.28 actually prepares for the report quality analysis step by stating the actions immediately following conclusion of the public hearing.

In the case of the Rosia Montana Project, this is established upon conclusion of all the public hearings conducted in Romania, and on the territory of potentially affected Parties.

In this regard, as soon as the public hearings have been concluded, the developer will have to summarise all the comments received from the public

and assess **each** separate piece of information, reviewing and commenting on it. In order to facilitate the analysis of information it is recommended that the comments should be classified from the start into:

- Comments of the Romanian public expressed during the procedure and during the conduct of public hearings in Romania;
- Comments expressed by the public of the potentially affected Parties which should normally focus on the potential transboundary effects and impacts, expressed during the procedure and the conduct of public hearings on the territory of the respective countries.

The comments should then be classified into separate sections, based on their nature, i.e.: technological, social, cultural, environmental, and other issues. It should be noted that the assessment must include a comment/response to every public comment, with the developer identifying and highlighting all those that are considered well grounded. If, during the assessment, the developer deems that there are public information /comments that have been overlooked in developing the report on the environmental impact assessment study, it should inform the environmental public authority that it intends to redraft/complete the study, and resend an amended version at the same time as the evaluation of public comments.

Recommendations for the environmental public authority:

- In parallel to the assessment made by the developer, the local environmental public authority will conduct its own evaluation of all the comments received from the public participating in the procedures and public hearings in Romania. They will use the form in Annex IV.2, but the information will be structured as recommended for the developer's evaluation. The format should be agreed on in advance with the developer, so as to facilitate interpretation of the comments. The local environmental public authority will identify the well grounded comments from the public, but will express comments on each separate comment/item of information. The assessment will be submitted to the central environmental public authority.
- The central environmental public authority will make an evaluation of the comments received from the public participating in the procedures and public hearings in the potentially affected Parties identify pertinent and well-grounded comments and will send the assessment form for information to the local environmental public authority. The local environmental public authority will summarise all the evaluations into a sole document in the standard format presented in Annex IV.2.
- In order to allow sufficient time for the authorities to centralise and evaluate all the comments received from the public, considering that a large number of comments will be received, it is recommended that the authority conduct the assessment throughout the interval established for the organisation and conduct of public hearings. This is why the recommended interval for the centralisation, revision, and development of the final evaluation forms is of 2 weeks.
- If, during this interval, the developer has announced an intention to redraft /amend the report on the environmental impact assessment study, the local environmental public authority will inform the central environmental public authority thereof in writing.
- Upon receiving the developer's assessment and the redrafted/completed report, as applicable, the local environmental public authority will send these documents and their own centralised evaluation, as recommended above, to the central environmental public authority.

CHAPTER VI
REVIEW OF THE REPORT ON
THE ENVIRONMENTAL IMPACT STUDY DECISION MAKING STAGE

SECTION 1

Analysis Criteria

The review stage starts after the environmental impact assessment finalised by developing the report on the assessment study and involves an analysis of the way in which the issues established during the assessment scoping stage have been addressed.

Quality review of the report on the environmental impact assessment study must be conducted by the competent environmental public authority with support from the authorities represented within the Technical Review Committee (TRC), in compliance with the methodology for the implementation of the framework assessment procedure approved by Order no. 860/2002 and based on the indications contained in the guidelines presented in Annex 3 to Order 863/2002.

Quality review of the report to the environmental impact assessment study will ensure that the report meet the following two objectives:

- Provide the decision-makers with all the information necessary in deciding to approve/reject the environmental agreement application;
- Allow efficient communication with the consulted factors and with the general public, so as to enable them to present comments in a useful manner on the project and on the environmental effects thereof.

It should be noted that a report on the environmental impact assessment study is considered to be good if it has the following qualities:

- A clear description of the monitored processes;
- A clear structure with a logical sequence;
- References all information sources used;
- Is concise, comprehensive and objective;
- Is written in an impartial manner;
- Includes a full description of the proposed project;
- Uses diagrams, illustrations, photographs and other graphics;
- Uses consistent terminology;
- Presents a glossary of used terminology;
- Covers adequately the complex issues;
- Contains a good description of the methods used for the studies of each environmental topic;
- Covers each environmental topic in a way which is proportionate to its importance;
- Provides evidence of good consultations of all interested factors;
- Includes a clear discussion of alternatives;
- Makes a commitment to mitigation (with a programme) and to monitoring;
- Includes a non technical summary;
- Points out the way that the requirements of other regulations are complied with.

SECTION 2

Consultation with the TRC Members and with the Affected Parties

MO 860/2003, Art. 29. – (1) Within 10 days of receiving the public proposal evaluation from the project developer, the competent authority for environmental protection shall:

analyse the report on the environmental impact assessment study, the information and documents received from the developer, including the safe functioning report, as applicable;

call the technical review committee;

present to the technical review committee the conclusions regarding the report on the environmental impact assessment study, the safety report, as applicable, the public comments evaluation and the proposal regarding the continuation of the procedure.

(2) The authorities involved in the Technical Review Committee shall analyse, in their joint meeting, the report on the environmental impact assessment study and the evaluation of public comments. The competent public authorities for environmental protection shall invite the developer or the person empowered by the latter to take part in the meeting of the Technical Review Committee.

(3) The review stage shall be undertaken by the competent authority for environmental protection in accordance with the instructions contained in the Methodological Guidelines on the stage involving quality review of the report on the environmental impact assessment study, as approved by Order of the head of the central public authority for environmental protection.

(4) The authorities participating in the Technical Review Committee shall have the right to request the project developer, on well-documented grounds, to amend or correct the report on the environmental impact assessment study. The report, with all necessary amendments and corrections, shall be forwarded for a new review to the Technical Review.

(5) Following examination of the final report on the environmental impact assessment study, of the conclusions of the authorities involved in permitting the works, and the substantial analysis of the well-grounded public comments, the competent authority shall make a record of the technical review committee opinions regarding the execution of the proposed project for the respective site and establish, in consultation with the technical review committee, whether to issue or reject, on a well documented basis, the application for an (integrated) environmental agreement.

Paragraph 1 of Art. 29 provides a 10 day interval for the quality review of the report stage of the procedure. Considering that the 10 days refer to the analysis of the report proper, to the interpretation and evaluation of public comments, as well as the formulation of an opinion on the potential nature of the decision, this mentioned interval is not long enough. In this regard, MO, OM 864/2002 on transboundary EIA provides that the time periods established by MO 860/2002 are not applicable as regarding projects with likely transboundary impacts.

Considering that all these elements will have to be discussed and analysed in the following TRC meeting, its members must have sufficient time available for information and analysis. In this regard, the invitation to the TRC meeting will be accompanied by the report on the environmental impact assessment study in electronic format and by the summary of the public comments, both as developed by the developer, and by the environmental public authority. In calling the TRC meeting, the members established for the previous procedural steps, as well as the experts in the

relevant specialist fields, nominated by the public authorities represented within the TRC, will be had in view.

Presentation of the report, the evaluations of public comments, and of the potential nature of the decision in the TRC meeting must be conducted by the environmental public authority. Considering that the quality review of the report is based on the Checklist

provided in MO no.863/2002 Annex 3, for a good preparation of the TRC meeting, it is recommended that the local environmental public authority should, in consultation with the central environmental public authority, develop the Checklist and distribute it to all the TRC members in anticipation, in view of finalising it during the meeting.

Following the debates in the TRC meeting, the central environmental public authority will have two options:

- Decide on the potential nature of the decision;
- Request amendments/corrections of the report on the environmental impact assessment study.

In case that, following analysis in the TRC, it is established that the report needs amendments or corrections, the local environmental public authority, with the agreement of the central environmental public authority, will inform the developer of the necessary changes requested, and establish a clear deadline for the receipt of the amended version. Upon receiving the amended/corrected version of the report on the environmental impact assessment study, the local environmental public authority organises a further meeting of the TRC, to finalise the checklist and establish the potential nature of the decision.

At the time of establishing the potential nature of the decision, the central environmental public authority will initiate consultations with the competent authorities of the potentially affected Parties, as provided in art.16, para.1 of MWEP Order no.864/2002 on measures to mitigate or prevent the transboundary impacts of the proposed activity, consultations also taking into consideration the issues referred to under letters a), b) and c) of the same article. Art.16, para. 2 of MWEP Order no.864/2002 provides a period of time dedicated to such consultations, specifying that it should not be longer than 8 weeks. In the case of the Rosia Montana Project, this interval is not applicable, considering that consultations will probably involve four states: Hungary, Serbia-Montenegro, Bulgaria and Ukraine. Even if the consultations are held in parallel, it is recommended that a 4 week period should be established for each potentially affected Party. During these consultations, the potentially affected Parties are also presented the potential nature of the decision as established by the central environmental public authority in consultation with the TRC members.

Upon expiry of the 12 week interval provided for consultations with the competent authorities of the potentially affected Parties, the central environmental public authority will analyse the results of consultations with the potentially affected Parties, the comments of the TRC members regarding the quality of the environmental impact assessment report, the centralised evaluation of all the public comments (in Romania and abroad) and ask the local environmental public authority to invite the TRC members to review the proposed continuation of the procedure by the approval/rejection of the application for an environmental agreement.

Recommendations for the environmental public authority:

- The local environmental public authority should send the invitation to the TRC meeting at least 2 weeks in advance of the established date, together with a copy of the report to the environmental impact study in electronic format and the centralised comments, both as developed by the developer, and by the environmental authorities.

- The Checklist required in reviewing the quality of the report to the environmental impact assessment study must be completed by the local environmental public authority in consultation with the central environmental public authority, and forwarded to the TRC members before discussion during the meeting.
- The TRC meeting will also analyse the potential nature of the decision, which will be communicated to the potentially affected Parties.
- Within three days of the TRC meeting, the central environmental public authority will inform the competent authorities of the potentially affected Parties of the initiation of the consultation period and will also send for consultation the potential nature of the decision. It is recommended that the consultation period should be set to be 12 weeks.
- The result of consultations will be communicated to the TRC members in a further meeting, which will also analyse the continuation of the regulating procedures by the approval/rejection of the environmental agreement/integrated environmental agreement.

CHAPTER VII PUBLIC INFORMATION AND PARTICIPATION IN THE ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

The procedure for public participation in the EIA process is provided in Chapter III of MO 860/2002. This procedure was designed conceived for the EIA process, and it is not a self-standing procedure that may be used in environmental decision making in general. On the other hand, the requirements on public information and consultation comprised by the procedure represent minimum legal requirements for the purpose of implementing the provisions of the Aarhus Convention, and the competent public authority for environmental protection establishes specific public participation means, depending on the nature, amplitude and complexity of the project.

Section 1

Key Elements

The public participation procedure involves the following issues:

- Registration of the EIA process specific information on the public records
- Notification of the interested public on
 - receipt of the environmental agreement application for the project
 - possibility to get information on / consult the documentation involved
 - possibility to make comments and recommendations
- Consultation of the relevant documentation throughout the EIA process
- Communication to the public of the comments and suggestions on various stages of the EIA process
- Consideration given by the competent authority to the public comments and recommendations
- Information to the public on items concerning
 - the content of the adopted decision and all the conditions attached thereto
 - the reasons grounds on which the decision was based

- the possibility to consult the adopted decision, together with the information on the comments and recommendations sent by the public and on how they were used in making the decision
- the possibility to comment on the final decision

Section 2

Steps in Describing the Procedure

The inclusion of the public in the EIA process will not lead to positive results unless the public participation procedure is adequately organised, conducted and evaluated.

In order to facilitate the progress through the steps of the public participation procedure, we can define six separate stages:

1. Developing a **plan** for public notification and participation
2. Identifying **target groups / interested public** for public notification and participation
3. **Notifying** the public
4. **Collecting** the public comments and recommendations
5. **Analysing and making available** the public comments and recommendations
6. **Evaluating** the results of public participation

Stage 1. Developing a plan for public notification and participation

Before starting the public participation procedure proper, it may be useful to develop a simple plan of relevant activities. The plan for public participation is built on 3 pillars: objectives, time, and resources.

As many instances of public information are conducted by the project developer, the plan needs to be developed by the latter, in consultation with the environmental public authority.

Recommendations for the environmental public authority:

- Discuss with the Rosia Montana Project developer the possibility for such a plan to be developed prior to submittal of the integrated environmental agreement application. The plan should be developed by the developer in consultation with the local and central environmental public authorities.
- In developing the public participation plan, consideration shall also be given to the transboundary impacts and to the need for the public in the potentially affected Parties to participate.

Sample plan for the public participation procedure

| Topic | Example |
|--|--|
| Activities What is the basic activity of the proposed project? | <ul style="list-style-type: none"> • Public participation in the EIA procedure related to the project |

| | |
|--|---|
| <p>Objectives What do we want to get from the public participation procedure?</p> | <ul style="list-style-type: none"> • Notify the public on the project and decisions • Notify the public on how to participate and the responsibilities of the APPM • Notify the public on public participation process procedure • Allow the public to forward comments and recommendations • Analysis (and consideration, if possible) of the comments and recommendations before the final decision making |
| <p>Dates provided for the initiation and completion of the procedure?</p> | <ul style="list-style-type: none"> • Start-up: date • Public notification: date • Mass-media announcement: date • Dissemination of information materials: date • Project site inspection visit: date • Meeting with the interested public: date • Public hearing: date • Analysis of public comments and recommendations: date • Decision making: date, etc. • Completion: date |
| <p>Results and activities What are the expected results? What activities must be carried out?</p> | <ul style="list-style-type: none"> • Public participation plan • Public notification • Press announcement • Other information materials • Meeting with members of the public + meeting report • EIA report • EIA report evaluation • Documentation, including all the comments • Decision taken • Results of the public participation procedure, etc. |
| <p>Potential problems What problems might prevent the good conduct of the public participation procedure?</p> | <ul style="list-style-type: none"> • The public might have concerns about the proposed technology for the project. To discuss during the public hearing; • The public might have concerns regarding the social impacts of project implementation. To discuss during the public hearing; • Etc. |
| <p>Responsibilities of the PAEP and of the developer in the public participation procedure</p> | <p>PAEP</p> <ul style="list-style-type: none"> • xx hours – title of the person involved; purpose of involvement • etc. • total: xxx hours <p>Developer</p> <ul style="list-style-type: none"> • xx hours – title of the person involved; purpose of involvement • etc. • total: xxx hours |

| | |
|---|--|
| <p><i>Allocated financial resources</i></p> | <p>PAEP</p> <ul style="list-style-type: none"> • xx lei – public notification • xx lei – x additional copies of the EIA report for applicants • xx lei – site visit • etc. <p>Developer</p> <ul style="list-style-type: none"> • xx lei – announcement and conduct of the public hearing • xx lei – public notification of the screening decision • xx lei – public notification of the decision of the EIA report quality review • etc. |
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Stage 2. Identifying the interested public

Ord. 860/2002, Art. 35. — (1) Public information, by announcements in the mass-media and public participation in the environmental impact assessment process in the environmental agreement procedure shall be supported by the project developerui.

(2) The public authority for environmental protection shall encourage the project developer in identifying the public concerned and engaging a direct dialogue with the public concerned, in view of presentation of the project objectives, all along the procedure and even before its initiation

(3) The public authority for environmental protection shall make available to the public, on request, the relevant documents for the considered project, other than those supplied by the project developer, as applicable.

The interested public includes the citizens and structures on which the final EIA decision has an impact or a specific meaning of sorts, and makes it necessary for PAEP to identify and encourage their participation in the EIA process. The better the interested public is identified, the better chance for the decision on the project submitted to the EIA process to serve both environmental and public interests and those of the developer.

PAEP should also be interested in identifying the target public for the project screening step, i.e., for the Rosia Montana Project, for the scoping step. Considering that it is to be expected that, most frequently, the project developer may not provide the information on the characteristics of potential impacts due to the lack of specialist knowledge, site visits of the APPM will be necessary, as well as discussions between the APPM, developer,

TRC members, and the public. For the APPM to benefit from a real partner in the dialog, the public participating in such discussions must first be correctly identified.

The questions that might help this identification include:

- *Who is directly affected by the project?* (e.g. the citizens in a given region, certain companies, etc.)
- *Who will benefit from the project? Who will stand to lose something?* (e.g. the citizens in a given region, certain companies, institutions, etc.)
- *Who will be indirectly affected?* (e.g. environmental NGOs, certain local companies, citizens in other, indirectly affected regions)

- *Who will not be directly involved, but might influence opinion?* (e.g. local opinion leaders – church, professional associations, teachers, local mass-media, research institutes, universities, etc.)
- *Who might oppose the project?*
- *Who are those manifesting an unfounded negative attitude?*

Recommendations for the environmental public authority:

- Taking into account the comments received from the public prior to the development of the manual, before the procedure was initiated, the local and central environmental public authorities must communicate to the developer what public has expressed the wish to participate in the procedure, including the NGOs on the territory of Parties potentially affected by the trans-boundary impacts identified so far;
- Considering the potential transboundary impact of the project, the central environmental public authority will send to the competent authorities of the potentially affected Parties a list of the target public identified so far.

Stage 3. Public notification/information

Ord.860/2002, Art. 36. - The project developer shall inform the public on the following steps:

- Submission of the environmental agreement application for the project;
- The decision of the project screening stage;
- The Public debate of the report on the environmental impact assessment study;
- The decision of the project review stage.

Two aspects of the notification are notable:

- a) Active notification – the developer informs the public
- b) Passive notification – the developer and/or PAEP react to the public request for information

Key elements

- PAEP sends to the project the developer a model for the public notice for all the steps of the EIA process that provide for notification
- Public notification on a project subject to an EIA process must be repeated whenever:
 - essential amendments are made in the project
 - project implementation is delayed
 - project implementation is postponed
 - the project will no longer be implemented

Stage 4. Collecting the public comments and recommendations

Collection of public comments and recommendations is an essential aspect of the public participation procedure. Collection activities must be conducted for every step of the EIA process involving public participation.

The public has the right to submit both questions and comments regarding the technical aspects of the project and express emotional and non-technical opinions on it. PAEP must

take into account the fact that the final decision should be based on technical, rather than emotional considerations.

All the comments and recommendations received must be summarised in a report which should include the following:

- a summary of each comment, opinion, etc.
- the name of the person, institution, etc. that submitted the comments, opinions, etc.
- the comments of the PAEP, if necessary (e.g. an explanation that the comment sent by the public does not regard the issue under consideration, or is the result of misunderstanding of the technical aspects)
- where the comments/opinions are relevant, they may be grouped into types/subcategories to facilitate evaluation. The checklists for each separate step may represent guidance in finalising the definition of public comment/opinion categories.

Stage 5. Reviewing and making available the public comments and recommendations

In order to obtain real transparency of the decision making process in the EIA procedure, PAEP must assure the public that all their comments and recommendations have been reviewed and that the pertinent and well grounded comments have been considered in the final decision. Therefore, the APPM must explain to the public how their comments and recommendations have been taken into account in decision making. These explanations must be included in the documentation of the decision for each step of the EIA process.

As a suggested structure for the explanations, we recommend classification of the comments and recommendations into three categories:

- comments and recommendations taken into account
- comments and recommendations partially taken into account
- comments and recommendations not taken into account

Stage 6. Evaluating the results of public participation

After the conclusion of the public participation procedure (PPP) it is good to evaluate the efficiency thereof. Questions such as: “What has been done (or not done)?”, “Has the procedure been successful?”, “What could be further improved?” may be extremely useful in conducting future procedures.

The few sample questions presented below may help improve how you define the effects of the public participation procedure for every separate project:

- Have the general PPP objectives been attained?
- Has the public been adequately informed on the PPP and on the possibility to participate in the PPP?
- Has the public understood the purpose of participating (what did the public expect and what should it not have expected)?
- Was the public able to participate in the PPP correctly?
- Have the public comments and recommendations been taken into consideration? If not, why?
- Do the public feel that their comments and recommendations have been adequately considered?

- Has the PPP been conducted according to the initial plan (with regard to time and objectives – see Stage 1)? What was changed and why?
- Have the resources (time and money) been adequately allocated? If not, what are the differences between the initially planned resources and those actually allocated?
- Etc.

Section 3

STEP BY STEP PUBLIC PARTICIPTION

Ord.860/2002, Art. 37. – (1) In presenting the decision of the project screening stage, the developer shall inform the public, at public concourses (municipal council), in the national or local press, on radio or TV if possible, on the following:

- a) name of the developer;
- b) project and site presentation;
- c) where and when information regarding the project may be obtained;
- d) who should the well grounded public opinions regarding the environmental impact assessment for the project be addressed to.

(2) Public information on the data referred to in para (1) shall be within 10 days of receiving the decision of the screening stage for any project included in this stage.

(3) The public shall have the right to present to the competent authority for environmental protection a proposal to reconsider the decision regarding the screening stage, within 10 days of its publication.

The public participation procedure starts with the first public notice referring to the application submission. Such notice is often corroborated with the one referring to the screening stage.

In the case of the Rosia Montana, Project, considering that we face a project listed in Annex no.I.1 of MAWFEP Order no.860/2002 not requiring a screening stage, but which needs to take account of the provisions of MAWFEP Order no.864/2002 on the environmental impact assessment in a trans-boundary context, the public notice on submitting the application is mandatory.

This notice must inform the public on the initiation of the environmental impact assessment procedure and the presentation of the Technical Report, in Romanian and English, to the local and central environmental public authorities.

Taking account of the need to notify the potentially affected Parties, at this stage the developer will also have to provide the information on potential transboundary impacts of the project.

Recommendations for the environmental public authority:

- The local environmental public authority will ensure that the public notice regarding submission of the application should be published for at least 10 days in at least three central newspapers and two local ones, and that it contains the information provided in MAFWE no.860/2002, art.37, para.(1). The notice should also contain the date by which suggestions and comments from the public will be received (a 6 week interval is recommended) in order to be taken into account for the assessment scoping step.
- The central environmental public authority will notify the potentially affected Parties enclosing: the application proper, as submitted by the developer, the Technical Report in English, the date by which suggestions/comments should be received in order to be

taken into account during the assessment scoping stage (an eight week interval is recommended starting on the date the notification is sent), the potential nature of the decision to continue the procedure with the assessment scoping step, any available information on the potential trans-boundary impact.

- The central environmental public authority will establish, together with the competent authorities of the potentially affected Parties, the way and necessary timeline (no longer than eight weeks) for the transmission of potentially affected Party public and authorities comments on the assessment scoping stage.
- Considering the potential transboundary impact of the project, the central environmental public authority will send to the competent authorities of the potentially affected Parties a list of the target public so far identified.

Ord. 860/2002, Art. 39. - Once the environmental impact process is completed, and the report on the assessment study is developed, the project developer shall, using the above-mentioned information channels, provide the following information to the public, at least 10 days prior to the date set for the public debate meeting:

- a) the place and date of the public debate;
- b) the place and date on which the report on the assessment study will be made available for consultation;
- c) who should the justified proposals concerning the environmental impact assessment to be included in the assessment report be addressed to.

This article is closely related to the provisions of art.27, para. (1), the two having to be reviewed together. The specific comments and recommendations at this procedural stage were analysed in detail under art.27.

Considering that it is anticipated that several public hearings will be organised, the public notice will have to include all the possible locations and dates, two being the minimal requirement, in Alba Iulia and in Bucharest.

During the same interval negotiations will be held to organise public hearings on the territory of the potentially affected Parties, the recommended procedure being to organise them either at locations that might

be affected by trans-boundary impacts, or would be accessible to the respective public, as for example: Szeged, Belgrade, Rouse and Izmail.

The public hearings organised outside Romania must also be attended by the project developer and the representatives of the central environmental public authority in Romania.

Recommendations for the environmental public authority:

- The central environmental public authority will establish, together with the competent

MO. 860/2002, Art. 40. - (1) The public may forward justified proposals regarding the environmental impact assessment up to the date for which the public debate is set, and no later than this date.
 (2) In forwarding justified proposals concerning the environmental impact assessment, the members of the public shall state their name, surname, address, and the date that the competent authority for environmental protection shall record in a form based on the model included in Annex no. IV 1.

authorities of the potentially affected Parties, and in agreement with the developer, the dates and locations for the public hearings to be held on their territory.

- The representatives of the central environmental public authority must participate, together with the project developer, in all the public hearings organised outside Romania.

All the comments/suggestions received from the public prior to the public hearing will be summarised, using the same detailed system presented in the analysis of art. 28, by both local and central environmental public authorities. Considering that it is proposed that a Secretariat should be organised to conduct the EIA process procedure for the Rosia Montana project at the local level, the central environmental public authority will send the received comments to the local environmental public authority, who will then summarise all the information and communicate it to the developer.

The information/comments received from the public outside Romania during this interval will be summarised by the central environmental public authority and sent to the local environmental public authority, who will then forward all to the project developer.

Recommendations for the environmental public authority:

- The local environmental public authority will summarise all the information received from the Romanian public prior to the public hearing and send it to the developer.
- The central environmental public authority will summarise all the information received from the public outside Romania prior to the public hearing and send it to the local environmental public authority, who will forward it to the developer.

Ord. 860/2002, Art. 41. – The public debate meeting shall take place in the presence of the representatives of the competent authority for environmental protection, in the most convenient way for the public, on the territory where the project aims to be implemented, and after working hours.

Art. 42. – Before the public debate meeting, the project developer and the competent authority for environmental protection shall designate a chairperson and a recorder who would register the participants. The participants' opinions shall be recorded in a report/minutes. The meeting report shall be signed by the chairperson, recorder and, on public request, by a representative thereof.

The only issues raised in implementing the provisions of these articles relate to the locations established for the organisation of public hearings, which should be correlated to the identified target public that have expressed a wish to participate in the procedure. Taking account of the comments received so far, the recommended locations for the organisation of public hearings are as mentioned in the analysis of art. 39.

In regard to the organisation of public hearings outside Romania, it is recommended that the Chairperson and Secretary selected for the good conduct of the hearing should represent the competent authorities of the potentially affected Parties.

The conduct of the public hearings itself will have to comply with the provisions of art. 44, in correlation with the provisions and recommendations expressed under art. 28.

The quality review of the report on the environmental impact assessment study, the evaluation of public comments, the result of consultations with the competent authorities of the potentially affected Parties, as well as the result of consultations with the Technical Review Committee members will provide the basis for the final decision to reject the

application or issue an environmental agreement/integrated environmental agreement as provided in art.29.

Art. 46. – (1) Within 3 days of making the final decision, the competent authority for environmental protection shall post the following on its Internet page or display at its own offices:

a) the content of the adopted decision and all the attached conditions;

b) the grounds on which the decision was made;

a) information on the main measures to avoid, reduce and, is possible, remove the negative environmental impacts;

b) the date by which public comments may be received.

(2) The public comments shall be received within 10 days of the public announcement regarding the final decision and substantiates the environmental agreement issuance.

Taking into account the long interval of time dedicated to consultations which took place and allowed the environmental public authority to document its future decision, the three day period until decision posting may be feasible.

Decision drafting, with all the information that needs to be made public under art.46, para. (1), will be the responsibility of the central environmental public authority in consultation with the local environmental public authority.

All the information that is made available to the public in Romania will also be sent to the competent authorities of the potentially affected Parties who will make it public, collect public comments on the content of the decision and communicate them to the central environmental public authority.

Anticipating the large number of comments to be received in relation to the content of the decision and in order to allow reasonable time for the public to be informed, including in the potentially affected Parties, we think that public comments should be received during a 2 week period.

Recommendations for the environmental public authority:

- The central environmental public authority will draft the decision and make all the information under art. 46 available to the public, by displaying it at their offices and on their own website.
- The same notice will be posted at the offices of the local environmental public authority, and on their own website. The local environmental public authority will ensure that the decision and necessary information are made available to the public by display at the offices of the other local public authorities, as mentioned in the detailed presentation of art.27.
- The central environmental public authority will send the above information to the competent authorities of the potentially affected Parties to make available to their own publics, also mentioning the date by which their comments will be received.
- If the decision is to issue an environmental agreement/integrated environmental agreement, under the Environmental Protection Law no.137/1995 with subsequent amendments and completions, the latter will have to be issued by Governmental Decision. In this regard, the central environmental public authority will also prepare the draft GD, which will be made available to the public upon request.

Art. 47. – Within 2 days of receiving the final decision on the project, the project developer shall, using the information channels mentioned in this chapter, announce the decision received.

Note that the developer will only publish in the mass-media the notice regarding decision making on the project under debate.

The local environmental public authority will ensure that this notice should be published every day for 10 days, in the same conditions as mentioned for arts. 27 and 37.