

Ministry for the Environment and Sustainable Development
To the attention of: **CAT Committee – Rosia Montana EIA**
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Total of 18 pages.

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Contestation

The undersigned NGO ***Alburnus Maior***, headquartered in Berk Street, no 361, **517615-Rosia Montana**, Alba County, having duly read much of Gabriel Resources' voluminous Annex to the EIA report ('Annex') in the short time available for comment and being aware that the working language for this EIA procedure is Romanian and English, herewith submit the following comments:

General Comments:

On 8th May 2007, Romania's Ministry for the Environment and Sustainable Development (MESD) announced in a press release¹ written in Romanian language only, that it had received the replies to the questions from the project owner. The release says that "the material which contains a total of 91 volumes is posted on the ministries' official website www.mmediu.ro and will be given for consultation to those interested. In due course the ministry will provide information about the next stages of the EIA procedure for the Rosia Montana project."

The release does not inform the Romanian public what can be done beyond 'consultation'; i.e. it does not indicate a deadline; if or to whom to send comments to. At the time of writing the ministry has not provided any additional information about the next stages of the EIA procedure for the Rosia Montana project.

Usually after a 40 working day period, the CAT committee meets to give an opinion and it would thus have been useful to have a deadline in order know whether i.e. the public has 40 days to reply to CAT, or less if these comments are to be considered timely by CAT etc.

None of the information contained in the ministries press release was released in English; which together with Romanian is the official working language in this EIA procedure. Equally none of the information contained in the ministries communiqué was released in English to the interested public who officially registered² to be part of the EIA procedure.

At first MESD used <http://www.inmh.ro/index.php?id=342> as the link from where one can download the Annex. This website (www.inmh.ro) was also used previously by www.mmediu.ro to access the main EIA report. Later in time, a further link was introduced: http://www.mmediu.ro/home/Rosia_montana_07.html

¹ See <http://www.mmediu.ro/presa/08.05.07a.pdf>

² See http://www.apm-alba.ro/Rosia%20Montana/rmgc_lista.htm

The relevant 'inmh' link contains four folders of which only the information contained in the folder entitled 'Contestations and Replies to Contestations' is available in English and in Romanian. This means that the concerns collected in the Folder entitled 'Problems and Solutions' and 'Problems and Solutions by Domain' are replied to in Romanian only. All supplementary information contained in the Folder entitled 'Annex with Supplementary Information' is accessible in Romanian language only.

Only after careful checking and at a much later point in time, it became apparent that there are two different postings of the replies and that they are not identical.

The 'Problems and Solutions' Folder as posted on the 'inmh' website contains no explanatory note as to how the comments and replies are organised in order to help the public who participated - to readily access the project owner's reply to their particular comments. The folder contains roughly 5600 comments which are marked by numbers (rather than with the name of the person who asked) that make no explanatory sense to the person looking his/her particular reply. The folder does contain a content sheet but the information posted contains these meaningless numbers only.

The information posted on the http://www.mmediu.ro/home/Rosia_montana_07.html also contains several deficiencies. Volume 46 and Volume 47 are posted in Romanian language only. In contrast to the four folders posted on the 'inmh' site, none of the main categories posted on the 'mmediu' link include a content page to help the public to more readily access their relevant comment and any other additional information. This means that one essentially needs to download 118 individual pdf folders or 12600 pages - just to get going.

At the time of writing the inmh web page does not contain the annex any longer. In return, the Ministry published the Annex's volumes on its own web page www.mmediu.ro. Please notice that Volume 64 does not have a Romanian version, being published only in English. The link entitled "Volume 64" actually takes you to Volume 65, and the link entitled Volume 65 takes you to Volume 66. Therefore all references to Volume 64 in the present contestation were made using the English version.

The above described facts show that the interested public has not been provided with adequate access to information and information to effectively participate this particular stage of the EIA procedure. The Non-Romanian public involved in the EIA procedure including this stage has been discriminated against.

General Comments and Concerns on the Replies:

The official deadline for submitting comments on the EIA report was 25 August 2006. The IGIE report was published on 7 March 2007. In the Annex the project owner however replies to the IGIE report alongside the contestations/comments received until 25 August 2006. This particular reply should thus been excluded given that it replies to a document released after the deadline. Its inclusion creates a situation of unequal arms *vis a vis* the involved ministries and the public at large; to the advantage of the project owner.

On several occasions in the Annex the project owner refers to the IGIE report in a misleading manner. Page 90 of Volume 64 reads as follows: "... an ad hoc committee of European experts (International Group of Independent Experts – IGIE) has publicly stated that the EIA was well-developed, taking into considerations their

recommendations and suggestions. A copy of the IGIE report and RMGC's response is included as a reference document to the present annex of the EIA."

According to a relevant statement released by the IGIE committee posted on the MESD's website³, "The Ad hoc expert group provides hereby the following statement and makes it together with the evaluation report of the IGIE available. The Ad hoc expert group:

- states that this evaluation report is a working document and does not form the official opinions of the Hungarian and Romanian ministries,
- draws the attention to the observations of the report, which point out deficiencies and unclarified issues of the EIA document,
- on the basis of the report states that some points of query and concerns still remain open and desire further analysis,
- states that as the report – according to the mandate of the experts - analyses only certain chapters of the EIA documentation and gives opinion only on part of them, general conclusions regarding the whole EIA documentation cannot be drawn on the basis of the evaluation report of the IGIE."

The statement released by the IGIE committee is useful in defining at least what is actually meant by the word 'well developed.'

An independent assessment of the quality of the IGIE's report commissioned by the undersigned from Dr Robert Moran⁴ can be accessed at http://www.rosiamontana.ro/Aarhus2/rm_IGIE_Final_report_01_12_06.pdf and provides a well-worth read.

According to the content page for the Folder entitled 'Annex with Supplementary Information', volume 57 includes:

- RRAP 10,1 57 Terenuri achiziționate, concesionate de RMGC/Owned and 1
Concesioned Land by RMGC
- RRAP 10,2 57 Categori de proprietari in România Montană/Ownership Type of 1
România Montană

Volume 57 does not include information on 'Owned and Concesioned Land by RMGC.'

Volume 57 does not include information on 'Ownership Type of România Montană.'

Volume 52 contains a letter to Attila Korodi, Romania's Minister for the Environment signed by Yani Roditis of Gabriel Resources about the financial guarantee for the proposal. Gabriel Resources asks the ministry to indicate the time frame for when such guarantee would be needed. However the IGIE commission as well as the public at

³ See http://www.mmediu.ro/dep_mediu/rosia_montana/Punct_de_vedere_ad-hoc.pdf

⁴ Dr. Robert Moran has more than thirty-two years of domestic and international experience in conducting and managing water quality, geochemical and hydrogeologic work for private investors, industrial clients, tribal and citizens groups, NGO's, law firms, and governmental agencies at all levels. Much of his technical expertise involves the quality and geochemistry of natural and contaminated waters and sediments as related to mining, nuclear fuel cycle sites, industrial development, geothermal resources, hazardous wastes, and water supply development. In addition, Dr. Moran has significant experience in the application of remote sensing to natural resource issues, development of resource policy, and litigation support. He has often taught courses to technical and general audiences, and has given expert testimony on numerous occasions. Countries worked in include: Australia, Greece, Mali, Senegal, Guinea, Gambia, Ghana, South Africa, Oman, Pakistan, Kazakhstan, Kyrgyzstan, Argentina, Chile, Guatemala, Honduras, Mexico, Peru, Canada, Great Britain, United States and Romania.

large had asked during the consultation procedure for this issue to be answered to in the replies provided by Gabriel Resources. **The transferral of the reply to this question to the ministry means that Gabriel Resources failed to reply to the specific request formulated by the public on providing assurances for and evidence of a financial guarantee.**

Volume 52 contains a section entitled ‘Accredited authors of the EIA report’. Amongst the authors/institutions listed but not accredited by the relevant Romanian ministries are as follows:

1. Bob Mantley - www.allianceacoustics.com
2. AMEC Earth & Environmental, Fergus Anhorn - www.amec.com
3. Gifford consulting engineers, Tim Strickland - www.gifford.uk.com
3. Paul Brewer and Mark Macklin - www.fluvio.com
4. Wisutec, Christian Kunze - www.wisutec.de
5. Frederic Giovaneti, France

The contributions of these authors to the EIA report and to Annex should thus be excluded from assessment. Any deliberations on whether or not to grant an environmental accord should thus start from the premise that the EIA report thus is incomplete.

Volume 54 contains new reports drawn up by authors not ‘directly or indirectly’ accredited by the relevant Romanian authorities. It includes a study authored by Professor Paul Whitehead/ University of Reading.

Mr Whiteheads paper is a scientific study evaluating the potential transboundary impacts of the proposed mine; concluding that the mine will not create any potential transboundary impact. Such study should, according to the scoping list, have been part of the main EIA report and thus be put under public scrutiny. Its submission at this stage of the EIA procedure dramatically limits the public’s possibility to comment on the quality, impartiality and accuracy of this report.

It also includes a report authored by Tim Strickland/Gifford consulting engineers. To a certain extent the study by Tim Strickland/Gifford consulting engineers addresses the cultural value and the potential for touristic development of the area in the event that Gabriel’s proposal does not go ahead. Such study should, according to the official scoping list, have been part of the main EIA report and thus be put under public scrutiny. The scoping list of the Hungarian ministry for the Environment amongst others explicitly asked for the main EIA report to answer to the question ref. the cultural value and the potential for touristic development of the area in the event that Gabriel’s proposal does not go ahead.

These sort of replies submitted at this stage of the EIA procedure to requests submitted in the official scoping list falls outside of the scope and purpose of this particular exercise and stage of the EIA procedure. It is too little - too late.

In contrast to the main EIA report all additional reports contained in the folder entitled ‘Annex with Supplementary Information’ are clearly authored. This in return confirms the serious mistake made in this regard in the main EIA report.

According to the checklist enclosed in OM 863/2002 one of the main fulfilments of the EIA report is to demonstrate its objectivity - to an important extend this is verifiable by checking the name of the author of the respective reports.

The public was not able to verify the objectivity of numerous studies that form part of the Rosia Montana EIA report, given that many were not authored. This is also relevant given that entities listed as authors (OPUS) of a particular study that forms part of the Rosia Montana EIA report, officially declared that they are not assuming authorship and responsibility for the final version published by the project owner. If reports are not authored then nobody assumes responsibility for the accuracy, commitments etc. stated.

Contrary to the project owners' repeated statement, baselines studies are an integral and official part of the EIA report according to OM 863/2002. How can the impacts of a proposal be assessed in absence of matching baseline studies?

Volume 55 contains a report entitled 'Prevention and action plan for accidental pollution.' Annex 3 of this report is entitled SCHEMA LOGICA A PROCEDURII PRIVIND SISTEMUL DE ALERTA IN CAZ DE POLUARI ACCIDENTALE – **it consists of two empty pages.**

The report entitled 'Prevention and action plan for accidental pollution' transfers much of the responsibility for accidental pollution management to the local and regional authorities who in return do not have the capacity and experience to deal with the potential accidents scenarios described in the report. **This is a serious concern that in light of pertinent precedents has been addressed many times by the public. Unfortunately it has remained unanswered and insufficiently addressed in the EIA report (i.e. uncertainties and challenges ahead), in the Annex as well as by others; including the IGIE.**

On several occasions the project owner claims that hard copies of the EIA report were available at 48 locations.⁵ **This information is incorrect:**

On 15 January 2007, the undersigned wrote to the 21 libraries that according to the Ministry for the Environment's announcement displayed the EIA report and asked them to indicate their opening program for the year 2006. Out of the 21 requests send by fax, 15 replies were received. Noteworthy excerpts are translated below (for the originals see Annex B, C, D1, D2, E, F, G, H):

1. Library of the Vasile Goldis University/ Arad: "We would like to mention that between 8 August and 25 September 2006 the library was closed for inventory. ..."
2. Romania's National Library: "during the month of August our library was closed for cleaning. ..."
3. Municipal Library Ovid Densusianu: 2 fax replies. The first dated 16.01.2007. "During 2006 the County Library Ovid Densusianu changed its premises, the documentation regarding Rosia Montana could be consulted at our branch Nr.1 This branch was open during the whole year with the exception of Saturdays, Sundays and official holiday periods. "

⁵ In Volume 58 in a reply to the contestation No. 3043 (Dr. Radu Mititean, The Ecological, Civic, Sport & Tourism Association "Napoca Cycle-Touring Club")

The second reply is dated 17.01.2006 “With regards to your message 74/17.01.2006 we would like to inform you that the actual premises of the County Library Ovid Densusianu (str. 1 December Nr. 26) were closed for the whole of 2006 because we moved into new premises. The contacts for our Branch No.1 is Deva, str. 22 December, Bloc 41, ground floor.”

4. University Library Petrosani: “During the holiday period from Monday to Friday from 7.00-15.00. Holiday periods:
1- 22.01.06
27.02- 05.03.06
24.07- 30.09.06 ...”
5. University Library Baia Mare: “In 2006, the library was closed during the official holiday period and during the whole month of August. ...”
6. University Library Alba Iulia (University 1 December 1918): “from 01. July to 01.October 2006 the library was closed (to the public) for reorganization. ...”
7. Central University Library Bucharest: “In 2006 BUC-Bucharest was closed for users in the following periods:
01 - 03.01.2006
19 - 26.04.2006
10.07 – 20.08. 2006
22 – 31.12 2006 ...”

Based on the statements received by the relevant libraries/ institutions, the EIA report was unavailable or limited available during the public consultation period at seven different locations.

Noteworthy to add here is that university libraries are primarily opened to their students. Some of them accept members of the public (i.e. ASE library) who in return may need to go through an application procedure which may also include costs; others don't accept members of the public at all (i.e. Technical University Library Cluj).

Below 6 statements made by members of the interested public who attempted to access and consult the EIA report at the places indicated in the ministry's announcement during the public consultation period in the cities of Arad, Cluj-Napoca and Bucharest.

1. Codrutsa Nedelcu: Bucharest [Romanian](#) [Original](#) [English](#)
2. Radu Bona: Bucharest [Romanian](#) [Original](#) [English](#)
Letter to the Ministry for the Environment
- 2b. Radu Bona: Bucharest [Romanian](#) [Original](#) [English](#)
Complimentary message posted on the NGO list server
3. Elvira Dumbravescu: Bucharest [Romanian](#) [Original](#) [English](#)
4. Sonia Stupariu: Arad [Romanian](#) [Original](#) [English](#)
5. Demis Nemet: Cluj [Romanian](#) [Original](#) [English](#)
6. Roxana Pencea: Cluj [Romanian](#) [Original](#) [English](#)

Based on the statements made by members of the interested public, the EIA report was not available or available with time constraints at 4 places in Bucharest (incl. Bucharest City Hall), 4 places in Cluj-Napoca (incl. Cluj EPA) and 4 places in Arad (incl. Arad EPA, Arad County Library, Arad Town Hall); this at dates well after the official submission of the EIA report.

During the EIA procedure which commenced in December 2004, members of the public submitted contestations/comments at the various and different stages that mark the

permitting process. At that time approximately 7,000 people⁶ including the undersigned⁷ sent contestations, comments on the Project Presentation Report to Romania's ministry for the Environment. The then Minister for the Environment, Sulfina Barbu, replied, stating that these contestations and comments would be collected and submitted to the project owner who would need to reply to them at a later point of the EIA process. **To date this has not occurred and the replies now submitted by the project owner do not provide any answers to the comments submitted by the public on the Project Presentation Report. This in return means that suggestions made from the public that would have contributed to the quality of the EIA process and the EIA report have been ignored and left unanswered from the very inception of the procedure.**

Likewise the comments/suggestions⁸ made by the NGOs at the scoping stage of the EIA procedure and which enclosed a scoping list drawn up by Dr Robert Moran⁹ are not answered to by the project owner in the Annex to the EIA report. On 30th May 2006, Mrs. Angela Filipas from the ministry for the Environment sent a letter¹⁰ to the project owner asking it to add the NGO comments and suggestions to the list of issues it should address in an Annex to the EIA report. Whilst the scoping comments were intended to improve the quality of the EIA report and while their inclusion in the list of Annex Question is rather pointless, it is worth mentioning that **replies now submitted by the project owner do not provide any answers to the comments submitted by the public during the scoping stage of the EIA procedure. This in return means that suggestions made from the public that would have contributed to the quality of the EIA process and the EIA report have been ignored and left unanswered from the very inception of the procedure.**

Amongst the comments received by the MESD during the public consultation period for the EIA report is also a detailed assessment submitted by Professor Dr. Mircea Babes¹¹, who in return is a member of Romania's Archaeological Commission, Director of the faculty of Archaeology at Bucharest University and a main researcher Romanian Academy's institute for Archaeology (Vasile Parvan). Whilst Professor Dr. Mircea Babes' contribution to the EIA report ranks amongst the expert opinions submitted, the undersigned can not find a reply by the project owner to Professor Dr. Mircea Babes' submission. This in return means that **the project owner has failed to reply to comments/contestation submitted by experts during the course of the public consultation procedure.**

Amongst the comments received by the MESD during the public consultation period for the EIA report is also a detailed assessment submitted by Eugen Melinte. Registered with no. 110596/25.08.2006, Mr Melinte's submission used the contestation 'Type 1' (10 pages) as a frame to which he added several additional comments and concerns; resulting in a document with a total of 25 pages. When in February 2007, MESD released the list of comments submitted by the public, Mr Melinte's contribution was wrongly categorized as being a contestation 'type 1'. Mr Melinte informed MESD about this mistake in writing on 7 February 2007. MESD replied with document No

⁶ http://www.mmediu.ro/dep_meniu/rosia_montana/Formularul_IV.zip

⁷ The contestation can be accessed on

<http://www.rosiamontana.org/documents/pdf/AM%20contestation%20PPR%20RMGC.pdf>

⁸ <http://www.rosiamontana.org/documents/pdf/CONTESTATION.pdf>

⁹ <http://www.rosiamontana.org/documents/pdf/Alburnus%20Maior%20scoping%20list.pdf>

¹⁰ http://www.rosiamontana.ro/Aarhus2/AFilipas_Scoping.jpg

¹¹ http://www.rosiamontana.ro/img_upload/c77c3453789af5de5049783baaa35f31/Studiu_impact.MB.pdf

41001/CRP/23.02.2007 saying that the complaint had been re-sent to the project owner. The project owner's reply to Mr Melinte's contestation can be found in volume 90 of the folder entitled 'Contestations and Replies to Contestations.' According to a complaint sent by Mr Melinte to MESD on 28 May 2007; this reply to constitutes a standard reply to 'Type 1' in the sense that Mr Melinte's additional comments remain unanswered. This in return means that **the project owner has failed to reply to comments submitted by the public during the course of the public consultation procedure.**

Specific Concerns:

At the public hearing in Abrud, members of the interested public asked the project owner to clarify the issue over the fact that a sizeable proportion of the TMF facility now under assessment lies outside the project owner's current concession and whether the proposed TMF facility therefore is at all legal. The public also wished to know whether the Corna Valley TMF facility will be used for depositing tailings generated from the exploitation of the project owner's Bucium concession (phase 2). **According to UNEP¹² the most common cause for TMF failures are mine extensions.** The project owners' replies to these two issues are unsatisfactory. Importantly however one can find the answer to the second issue at another location of the Annex. Page 33 of Volume 59 reads as follows: "The tailings management facility (TMF) from Roșia Montană may also be used to store the Bucium tailings, due to the fact that the TMF is designed for approximately 250 million tons of tailings, while the amount of tailings to be stored in the TMF will be only 215 million tons. Consequently, there is extra capacity of approximately 35 million tons, which is sufficient to store the tailings resulting from the Bucium mine, estimated at approximately 17 million tons. **Therefore, there will not be another TMF in Bucium commune.**"

This completely changes all the current modelling, calculations etc. made by the project owner *vis a vis* the TMF Facility; regarding its safety, its ability to absorb abnormal climatic effects etc.¹³ Moreover it is worth mentioning that the project owners' Bucium license is significantly larger than the Rosia Montana license and that the 17 million tons estimate may well present an unrealistic estimate.

In light of the above it seems important to highlight that according to Professor John Monhemius from the Royal School of Mines at London's Imperial College who assessed Gabriel's proposal in for a PHARE project in 2003, "the tailings management facility (TMF) is the biggest (in size) environmental impact of the whole project. It is also the biggest source of potential environmental problems."

Related to this issue is the project owner's misleading reply on page 34 of Volume 59. It reads as follows: "In Bărbănta perimeter, the license titleholder is another company, S.C. Rom Aur S.A. This is an exploration license, which does not authorize any mining operations. The geological exploration programs are just beginning, therefore we may not talk about a deposit and its economic efficiency, as long as the research programs have not yet been completed."

According to page 36 of the project owner's 2005 Annual report in Romanian language, Gabriel Resources owns 100% of S.C. Rom Aur S.A.

¹² See www.mineralresourcesforum.org

¹³ Also see relevant replies submitted by the project owner – i.e. Volume 63 p. 127, p.158 etc.

Gabriel's ownership is thus organised as follows: Gabriel Resources (Barbados) Ltd. owned 100%, Gabriel Resources (Jersey) Ltd. owned 100%, Gabriel Resources (The Netherlands) B.V. owned 100%, Rosia Montana Gold Corporation S.A. ("RMGC") owned 80%, Rom Analyze SRL owned 80%, Rom AUR SRL owned 100%.

Gabriel's ownership details are important on several accounts. Canadian Companies registered in Barbados enjoy diplomatic immunity. The same was the case for Esmeralda, the Australian company that through Aurul SA its Romanian joint venture, was processing ore at the Baia Mare facility at the time of the accident in 2000.

Overseas companies operating in Europe like to be registered in the Netherlands to pressure their host country with commercial litigation cases at The Hague in the event that permits are not readily granted.

Related to this issue is the reply given by the project owner on page 67 of Volume 59. It reads as follows: "The usual way in industrial operations to cope with the conventional liability risk is to take out an insurance policy (or multiple for such a complex project). RMGC is in negotiation with insurance companies for this type of liability. As soon as the details become available, they will be disclosed to the public."

This reply means **that the project owner has to date been unable to secure an insurance policy or multiple for such a complex project that insures risk**. However in light of the Baia Mare example and in light of the fact that Gabriel Resources is registered in Barbados, these are assurances that the public demanded to receive at the latest in the Annex to the EIA report in order to assess and comment on whether indeed insurance is provided in a satisfactory manner. **A favourable recommendation for an environmental accord in absence of an encompassing insurance policy against risk and without a thorough expert analysis thereof, is simply irresponsible.**

Related to this issue are also the evasive and incorrect answers provided by the project owner on the Mining Waste Directive and the Environmental Liability Directive, the later of which at the of writing has been transposed into Romanian legislation. A relevant passage reads as follows: "RMGC is also fully aware of the Environmental Liability Directive (ELD) 2004/35/EC. The ELD encourages the use of appropriate financial instruments such as insurance to cover the risk of liability under the ELD. However, an insurance product does not yet exist because the ELD has not yet been transposed to Romanian legislation. Moreover, some requirements of the ELD still leave room for interpretation and need to be clarified with the European insurance industry before insurance products become available."

Further Concerns:

Page 68 of volume 62 reads as follows: "An assessment of the impact caused by the phenomenon called "cyanides rain" – generated by the TMF cyanide evaporation (see Air Management Plan). It is stated precisely that a "cyanide rain" phenomenon will not exist. This phenomenon never was encountered in other places or situations. Moreover, the specialty literature mentions only the "acid rain" phenomenon which has no connection with the behaviour of the cyanide compounds in the atmosphere."

And "The knowledge of the cyanide chemistry and on the grounds of the past experience, we estimated the following possible HCN emissions into air: 6 t/year from the leaching tanks, 13 t/year from the slurry thickener and 30 t/year (22.4 t, respectively 17 mg/h/m² during the hot season and 7.6 t, respectively 11.6 mg/h/m² during the cold

season) from the tailings management facility surface, which totals 134.2 kg/day of HCN emission. Once released into air, the hydrocyanic acid is subject to certain chemical reactions at low pressure, resulting ammonia.”

The project owner mentions that whilst these emissions meet or lie well below all relevant European emission norms, it also admits that there exists no relevant legislation on Air Quality on the European level for such kind of emission on the population’s health protection. The relevant passage from Volume 65 page 61 reads as follows: “The mathematical modelling of the HCN concentrations within the ambient air (*if the HCN released in the air is not subject to chemical reactions*) emphasized the highest concentrations being at the ground level, within the industrial site namely within the area of the tailings management facility and within a certain area near the processing plant. ... The HCN concentrations within the ambient air in the populated areas close by the industrial site will be of 4 to 80 µg/m³, more than 250 – 12.5 times lower than standard value stipulated by the national legislation for occupational safety – **the national legislation and European Union (EU) legislation on the Air Quality do not stipulate standard values for the population’s health protection.**”

In light of Gabriel’s significant HCN emissions per day during the 16 year mine life, this poses a serious health risk to the population. This issue has been left unanswered by the project owner. One assumes that the limits indicated by national legislation on occupational safety include safety provisions to which the regular population living nearby the TMF facility will not have access to (i.e. masks etc.).

Whilst there does not exist national legislation and European Union (EU) legislation on the Air Quality that stipulate standard values on hydrocyanic acid releases into the air, it is worth mentioning that hydrocyanic acid is registered as a toxic war gas banned by the 1993 Paris Convention on the Development, Production, Storing and Use of Chemical Warfare. Hydrocyanic acid was also used under the name of Zyklon B in the gas chambers of the Auschwitz and Maidanek concentration camps during World War2.

There are other misleading claims regarding the HCN emissions such as “...it is very clear that the HCN emissions can have a certain local impact upon the quality of the environment, *however below the legal standards ...*”, after few lines on top the same project owner states that **the national and EU legislation does not stipulate standard values for the protection of populations’ health**. While the project owner admits the fact that the HCN emissions may have ‘a certain local impact’, **the EIA report does not evaluate and describe the potential local and wider impact of HCN emissions**, which is extremely serious given that it’s an inhabited area. **As such, the Annex does not reply to the issue regarding the HCN emissions.**

Statements such as “the speciality literature does not contain information on the effects of a potential exposure of vegetation or of ecosystems to atmospheric pollution caused by HCN either on the effects on the fauna’s health following the inhalation of air containing HCN” are unacceptable in light of the potential risks, of the available scientific literature and of the applicable legislation. **The project owner failed to evaluate and offer replies regarding the impact of HCN emissions of the local fauna and flora as well as of those in the neighbouring areas, which is even more**

important in light of the fact that Rosia Montana hosts a rich biodiversity¹⁴ and that the Apuseni National Park is in the proximity of Rosia Montana.

The project owner likes to mention that with regards to cyanide management, the company adheres to the *International Cyanide Management Code* ('Code'). This code is a voluntary agreement and there exist no penalties for failure to comply. The Code was launched in November 2005, which means that this is a young initiative which still has to prove its efficiency. What is already known is that the Code was launched by the International Council on Metals and the Environment (ICME), a research institute financed by the mining industry. The development of the Code was funded almost entirely with industry funds, and the process was directed by the Gold Institute, an international trade association of companies that mine and refine gold. The Code was financed by the industry and thus is largely controlled by it. This means that to a large extent the Code reflects industry interests. Just because the project owner claims to conform to the Code, this does not mean that all the problems and concern *vis a vis* the use of cyanide will simply vanish. For example, the Code does not contain any effective measure to remedy a case of cyanide leakage into a river or a lake. This is relevant particularly in light of the Baia Mare and Baia Borsa accidents. The Code states that direct or indirect mine facility discharges to surface waters can contain up to 0.50mg/L WAD CN (weak-acid dissociable cyanide). Aside from recommending an analytical procedure (WAD) that fails to detect many of the toxic CN species, such a concentration would be lethal to most of the aquatic life in many settings - yet it is acceptable according to the Code (Moran 2002)¹⁵.

During the short time of its existence, there have been accidents at mines belonging to companies adhering to the Code. This raises question marks on the efficiency of the Code. In 16 June 2006, three months after Golden Star Resources¹⁶ became a member of the Code, there was at the Bogoso/Prestea mine¹⁷ in Ghana a spillage of tailings containing cyanide into the Ajoo stream, a tributary of the Aprepre river. The Bogoso/Prestea mine is operated by Bogoso Gold Limited, which is 90%-owned by Golden Star Resources. This mine caused a similar spillage in 2004 which in return shows that the Code does not effectively contribute to a safer management of cyanide.

In light of the above it seems irresponsible to claim that a voluntary code resolves all risk and problems associated with cyanide mining.

Page 83 of volume 63 reads as follows: "During the period 2000-2006, STANTEC has involved several teams of Romanian experts in the preparation/revision/completion of the biodiversity baseline studies. The first version of the study was drafted under the supervision of STANTEC (a multinational company based in Canada, specialized in environmental impact assessment studies (see www.stantec.com). The company was established in 1954 and offers a wide range of services, including design, ecological restoration, project management, etc. It has more than 6000 employees and 80 offices/work points in North America and the Caribbean. From the very beginning, STANTEC employed Romanian experts, who collaborated in the preparation and gathering necessary information of the biodiversity baseline reports."

¹⁴ http://www.rosiamontana.ro/img_upload/472936e3bca2bc61045730fbb1869240/Annex_1_engl.pdf

¹⁵ www.rosiamontana.ro/Aarhus2/RMoran_Assessment_IGIE_180207_eng.pdf

¹⁶ www.gsr.com

¹⁷ A mine operation in Ghana.

According to applicable legal provisions governing the accreditation of entities entitled to execute environmental/ biodiversity etc. studies by the MESD, not the employee of a company but the entity listed as the author of a relevant report has to be accredited. The above quote confirms that STANTEC wrote and thus authored the biodiversity baseline study; this although it is not accredited to do so. In light of this, the biodiversity baseline report authored by STANTEC and which forms part of the EIA report should be disqualified. **The EIA report thus contains no Biodiversity Baseline report and therefore is incomplete.**

According to the 'type 1' contestation the 'Meteorological Baseline Report' lists Radu Drobot for having prepared the paper. Radu Drobot is not listed amongst the Romanian Ministry for the Environment and Water Managements' accredited experts to carry out EIA related studies.

In light of this the **contribution of this author to the EIA report should thus be excluded from assessment. Any deliberations on whether or not to grant an environmental accord should thus start from the premise that the EIA report is incomplete.**

According to page 83 of volume 63 "The baseline reports and management plans submitted together with the Report were prepared with the support of specialized consultants and, according to the legal provisions, no certification by the Ministry of Environment and Water Management is required for this type of studies, plans and/or reports." This is incorrect; see for example the requirements enclosed in OM 863/2002; including the checklist.

Page 84 of Volume 63 reads as follows: "RMGC apologizes for any incomplete or imprecise translation into English. A total of 33 volumes were translated from Romanian into English and unfortunately some parts of the translation did not convey an accurate picture of the project. However, it should be mentioned that the conclusions reached by the study are not affected by the inaccuracies of the study translation into English,"

Contestation 'type 1' listed but one example of bad translation from the study entitled Technological Process, which after all is a rather important document. There exist several further examples of bad translation which were not listed due to lack of space. However, due to the bad translation an inaccurate picture of the project was indeed conveyed. Whilst the conclusions reached by the study *may* not have been affected by the inaccuracies of the study translation into English, a reader draws his/her conclusions from parts other than the conclusions presented by the project owner.

Page 104 of Volume 63 reads as follows: "Of those properties needed but not yet acquired, 98% have been presented for surveying by their owners – a step that implies an interest in selling the property to the company. The survey rate suggests that little more than a handful of properties are held by people who might prove unwilling to entertain a sale."

The surveying of properties at Rosia Montana is executed by the project owner free of charge. Due to the uncertain property regime present at Rosia Montana, many families whether willing or not to sell their properties have taken advantage of Gabriel's generous surveying offer. To those willing to sell it takes them a step closer to sell; to those unwilling to sell, it assures them of the validity of their property rights against the

project owner. The surveying of properties is thus unrelated to an interest to sell. This is reconfirmed by the fact that the project owner still needs to purchase 379¹⁸ family homes in order to commence construction; this although it has been purchasing since May 2002.

It also seems that when the project owner refers to properties; it refers to properties as build constructions. However, in order to commence mining the project owner needs to secure all properties under the project's footprint including the private lands, pastures, forests which in return represent the largest surface under the project's footprint. As of March 2006, the project owner thus held 17.9% of the properties at Rosia Montana (excluding Corna) which lie under the project's footprint.

Page 104 of Volume 63 reads that "Of the even smaller number of homes that are located in areas in which the construction and early operation of the mine will take place, the company will seek options to redesign the mine plan to allow those owners to retain their property, unaffected by the mine." This also seems to reconfirm that the willingness to be surveyed is unrelated to the willingness to sell.

Page 124 of Volume 63 reads as follows: "41 patrimonial buildings, but the real enemy is represented by their advanced deterioration, which will unavoidably lead to their collapse, in the absence of competent intervention. In another train of thoughts, **we must say that on the one hand we can't afford to pay for the rehabilitation of these houses classified as historical monuments, while on the other hand we will generate effects that will cancel all our rehabilitation efforts.** These two components shall function in a close connection because, in fact, they are part of the same project."

This seems to be an important statement in contradiction to the affirmations made in relevant chapters of the EIA report. It also seems relevant considering the project owner's replies regarding the changes made to the Foundation's responsibility and role.

Page 125 of Volume 63 reads as follows: "We mention that the Government Decision no. 349/2005 regarding waste storage ("GD 349/2005"), by which the Directive no. 31/1999 regarding waste storage was enacted, **is not applicable to the Roșia Montană Project.**

This is in contradiction with a relevant statement released by Stavros Dimas, EU Commissioner for the Environment.¹⁹ The relevant statement reads as follows: "Equally, it is the national authorities' responsibility to assess this and ensure compliance with Council Directive 1999/31/EC of 26 April 1999 on landfills of waste²⁰. Once Romania becomes a Member State, the Commission could only intervene if there is evidence showing that the authorisation has not met the requirements of the Directive."

In light of the project owners reply, the EU Commissioner for the Environment's answer confirms that the Rosia Montana project proposal does not meet applicable EU legislation.

¹⁸ See page 172 of Volume 74

¹⁹ Ref: P-3710/06EN and E-3711/06EN; Answer given by Mr Dimas on behalf of the Commission (29.9.2006)

²⁰ OJ L 182, 16.7.1999.

On page 158 of Volume 63 the project owner states that “As referred to Tailings Management Facility (TMF), a protective liner is incorporated into the design of the overall TMF and designed to Best Available Techniques (BAT) as defined by EU Directive 96/61/EC (IPPC). It is one of several measures to protect groundwater: The TMF design includes a clay liner system within the TMF basin to reduce leakage; a low permeability core for the starter dam and a cut-off wall within the foundation of the starter dam to further control seepage; and finally a seepage collection dam and sump below the toe of the tailings dam to collect and contain any residual seepage that might extend beyond the dam centreline.”

From the information above it seems that a clay liner system within the TMF will be used to reduce leakage. Whilst a clay liner does not constitute the best available technology in terms of liners for TMF facilities but is only part of a liner, the undersigned would like to know what kind of liner will be used as a base covering the entire TMF basin. This seems important in light of the significant surface and groundwater sources and in light of the composition of the tailings (cadmium, lead, zinc, mercury, arsenic, copper, chromium, manganese as well as Cyanide, Nitrate, Ammonia and dissolved oxygen).²¹ **Any consideration on whether or not to recommend an environmental accord should incorporate this aspect; not at least due to the fact that the proposal falls under Council Directive 1980/68/EEC. Article 4 requires the prohibition of direct discharges and the prevention of indirect discharges of substances listed above (List I of the Directive concerning substances to be prevented).**

According to page 62 of Volume 65²² “During the operation phase of the project, there will be no favourable conditions for ARD to be generated as a result of fast accumulation of saturated tailings in the TMF, which will limit exposure of sulfurs to oxygen.”

This is misleading and wrong. The tailings pond will also contain approximately 4% of unconsolidated sulphur (in sulphide minerals) **and will have a net acid producing potential.**

According to Professor John Monhemius from the Royal School of Mines at London’s Imperial College, “this is an AMD source which could last for decades, perhaps centuries. In the process, sulphide minerals are separated and later mixed back into the tailings before disposal. **This is bad practice.** Sulphides should be treated separately and disposed into a special lined tailings dam.” **Any consideration on whether or not to recommend an environmental accord should thus also incorporate this vital aspect.**

According to page 62 of Volume 65 “RMGC has committed to perform the discharge of waters generated by the project (including ARD) only if they comply with the discharge limits imposed by the technical Standards regarding collection, treatment and discharge of domestic wastewater, NTPA 001/2005. When the duration and level of ARD generation will be discussed (and thus, the period of time that the treatment is required for), one must keep in mind the fact that the mining project will remove most of the rock surfaces that currently generate ARD.”

²¹ See page 39 of Volume 76

²² <http://www.inmh.ro/index.php?id=342>

This statement essentially means that the project owner has not dealt with significant issues associated with the duration and level of ARD generation, which after all is the single largest environmental problem associated with mining *per se*. ARD generation by the Rosia Montana mine proposal has been addressed on several occasions; also within the EIA procedure. Regarding ARD generation in water, the project owner is only willing to apply the discharge limits imposed by the technical Standards regarding collection, **treatment and discharge of domestic wastewater, NTPA 001/2005**. Given that the discharge of waters generated by the project are industrial waters likely not to comply with NTPA 001/2005, this means that the **project owner will not perform the collection, treatment and discharge of these waters**.

This is in contradiction with project owner's promise that the Rosia Montana project proposal is a state of the art mine which has and will invest a significant amount of money to mitigate ARD generation via state of the art installations etc. **An overall mean sulfur grade of 1.9% has been calculated for the ore coming from the deposits at Rosia Montana. Material with sulfur grades greater than 1% can be expected to produce ARD; thus there will be significant ARD generation from the new mine. ARD can cause severe impacts to aquatic life in surface waters, through impacts from heavy metals and can also impact human health – primary through mercury, lead and cadmium contamination.**

The undersigned therefore firmly disagrees that “one must keep in mind the fact that the mining project will remove most of the rock surfaces that currently generate ARD.” Whilst this is factually incorrect, sulfide content of the waste will be similar to that of the ore and there will also be a significant potential for AMD in the waste rock; including tailings generated by the new mine.

ARD generation and treatment during operation, closure and post closure must be addressed during the EIA procedure, not at least because it presents an important environmental problem. Details for the long-term and perpetual treatment of ARD for a long time after the mine closes as well as guarantees to meet this financial commitment from the part of the project owner (i.e. via bonds), must in light of the Montana (USA) precedent be discussed at this stage of the licensing procedure. **Any consideration on whether or not to recommend an environmental accord should thus also incorporate this vital aspect in order to avoid for the true costs to be carried by the state.**

According to page 61 of Volume 65, “The questioner is correct that during operations an average of approximately two transport trucks will be required per day. During operations, our plans are to maximize the use of rail to a depot near the project site whenever possible. ... RMGC and its suppliers will fully comply with ADR, the European Agreement concerning the international carriage of dangerous goods by road) and RID, the European regulations covering the international carriage of dangerous goods by road or rail. Transportation routes will be selected, in consultation with administration.”

The transport route for the cyanide transport has been a concern addressed verbally and in written during the public consultation procedure; both in Hungary and in Romania on several occasions. The unsafe transportation of cyanide is the main cause of accidents involving cyanide. The project owners' above quote confirms that the **project owner has failed to reply to important issues raised by the public during the consultation**

procedure. In light of the state of Romania's roads and in light of additional risks that may arise from a particular (i.e. cheapest) choice of route and means of transport; it seems only natural to involve the public in decision-making.

Whilst a company supplying/ transporting cyanide may be compliant with all agreements possible as well as being insured; the cause for an accident involving the transport of cyanide is often linked to the road/rail conditions rather than to the supplier. It is for this reason also that the public wished to know the exact cyanide transport route during the public hearings.

According to page 203 of Volume 65 "the impact on protected flora and fauna will exist only locally, but this impact will not lead to the loss of any species."

This seems an extraordinary statement confirming amongst others, that the project proposal will have an impact on protected flora and fauna and is in contradiction to statements made in the EIA report. To any conservationist the issue is not on whether the impact on protected flora and fauna is local, likewise the issue is not on whether due to project implementation a species will disappear. There exists no such thing as 'local' impact given that birds, wolves etc. travel far distances.

Page 188 of volume 69 reads as follows: "the US EPA estimates that the INCO process depends on the temperature, mentioning slower reaction speed within the range of 25 to 50C." It is interesting to note that when civil society organisations quote US EPA cost estimates for mine closure segments to highlight the unrealistic figure of \$ 70.789.884 indicated by the project owner, the project owner replies by 'standing to his initial estimate'; dismissing the US EPA estimates. However, when in terms of the INCO process the US EPA provides useful arguments, then these estimates are of course, embraced.

The reason why this is worth mentioning is that the US EPA estimates' for mine closure costs submitted by the public remain very relevant; are realistic and the project owner simply 'standing by its initial estimate' is unrealistic and dangerous. In comparison with the US EPA, the project owner's experts have little experience in realistic cost scenarios for mine closure. This seems relevant particularly in connection with issues already raised - i.e. ARD treatment. **However realistic estimates for mine closure must be negotiated and secured at this stage in order to avoid for the true costs to be carried by the state.**

Page 32 of Volume 64 reads as follows: "The sentence was deleted by mistake during the final editing process." No comment.

The undersigned would like to receive a timely reply from the competent authority to each issue raised in this contestation. Invoking Romania's law on access to information (L 544/2001) the undersigned would also like to receive within the legal deadline of 10 working days, the names and official position of each member of the relevant CAT committee. With the exception of the composition of the IGIE committee, the undersigned would also like to receive the names and official positions of any further working groups or committees assessing or participating in the EIA procedure or assessing the EIA report and/or Annex.

This contestation does not aim to treat all the irregular issues inherent to the so-called Annex to the EIA report. Due to the lack of a deadline for submission, the

undersigned wanted to ensure that some of our comments reach the CAT Committee in time for analysis. It would be wrong to assume that the undersigned is therefore satisfied and agrees to all the issues not raised in this submission. On the contrary, the undersigned would argue that the Annex to the EIA report does not at all aim to explain and clarify the issues raised by the public during the official consultations.

Contrary to the project owner and the subjective advocates of this mine proposal, what is actually proposed at Rosia Montana is a destructive and incredibly risky mine proposal those true costs already now clearly outweigh any of the benefits promised. As can be seen from the Annex to the EIA report these promises do not hold any serious substance. Romania's economic indicators show strong and healthy growth, which in light of the EU accession are likely to be maintained. This in return means that the Rosia Montana mine proposal is unimportant to Romania's economy. If anything the project's implementation may well damage regional growth in the sectors of tourism, services etc.

Meanwhile the project owner is confident in receiving a favourable recommendation for an environmental accord. Recent public statements made by the project owner link this confidence to the significant amount of money already invested by its shareholders into the development of the Rosia Montana mine proposal. However in its relationship with the environmental authorities, the Rosia Montana project owner has to guarantee to meet applicable legal provisions which in return aim to safeguard relevant constitutional rights. Whilst many of these provisions have not been met, the MESD has, if it cares to look, sufficient arguments not to issue a favourable recommendation and to resist any pressures against such decision.

Yours sincerely,

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