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**By email**

Geneva, 28 February 2019

**Re: Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania  
(ICSID Case No. ARB/15/31)**

Dear Mr President,  
Dear Members of the Tribunal,

Further to Procedural Order No. 21, the Respondent provides its comments regarding the submission by the associations Alburnus Maior, Greenpeace Romania, and the Independent Centre for the Development of Environmental Resources (ICDER) (the “*Amici*”) dated 20 December 2018.

As noted in the Respondent’s letter dated 23 November 2018, the *Amici* submitted their (initial) application and submission simultaneously. The Respondent reiterates its prior observations regarding the *Amici* application and submission, notwithstanding the *Amici*’s modifications thereto further to the Tribunal’s instructions in Procedural Order No. 19.

The Respondent makes the following additional observations regarding the *Amici*'s submission.

First, on page 5, the *Amici* refer to the adoption in July 2002 by the Roşia Montană Local Council of revised zoning plans for the area (the PUZ and the PUG) in view of the Project. They state:

“This also had a serious impact on how the government approached the local community. According to AM President Eugen David, ‘For 20 years the government left us on our own, they didn’t invest in any infrastructure or other type of development, apart from mining because of this Project. There were no subsidies for farmers or support for local activities. I wanted to build a tourist pension to show tourism is possible in Rosia Montana, and I asked to build it, but I was denied.’”<sup>1</sup>

As explained in the Counter-Memorial, these revised zoning plans were challenged in court by NGOs.<sup>2</sup> State authorities, both central and local, have continued to follow legal permitting procedures and to defend in court the administrative deeds and permits issued by them for the Project (including urban plans and certificates as well as archaeological discharge certificates).<sup>3</sup>

Second, the *Amici* refer to RMGC’s submission of a presentation report in December 2004, that “no participation took place during the scoping phase,” and that, in this regard, “Romanian authorities were not publicly transparent about the permitting procedure for the mining project and the company did nothing to alter the situation.”<sup>4</sup> They explain that NGOs raised, among other issues, the lack of public participation in the scoping phase before the Aarhus Compliance Committee via complaint dated February 2007.<sup>5</sup> In response, Romania argued in the proceedings before the Committee that the “environmental agreement procedure on the mine was still ongoing and that the public consultations would

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<sup>1</sup> *Amici* submission, p. 5.

<sup>2</sup> Respondent's Counter-Memorial, section 3.4 and section 4.5.

<sup>3</sup> *Id.* at section 3.4 and section 4.5; see also Annex IV.

<sup>4</sup> *Amici* submission, pp. 5 and 14.

<sup>5</sup> *Id.* at p. 15; see also Aarhus Compliance Committee Findings dated 16 April 2008, at **Exhibit R-203**, p. 4 (para. 17) where the Committee summarises the complaint of the NGOs as follows: “The communication submitted on 5 July 2005 concerned the alleged failure of the Party concerned to adequately involve the public in the early stages of the decision-making procedure with regard to the Rosia Montana gold mine, in particular the scoping stage of the procedure.”

take place once the EIA report had been released.”<sup>6</sup> In its decision dated 16 April 2008, the Committee addressed various issues but did not decide on the issue of public consultation during the scoping phase. In any event, the Committee held that, since the NGOs’ complaint, Romania had remedied any possible non-compliance with its transparency obligations under the Aarhus Convention.<sup>7</sup>

Hence, neither the Aarhus Compliance Committee nor a court of law has found that the Ministry of Environment acted improperly with regard to public participation in the scoping phase of the EIA Review Process.

Separately, the *Amici* note that the Aarhus Compliance Committee found that Romania had breached certain disclosure obligations.<sup>8</sup> Indeed, as explained in the Counter-Memorial, NGOs had challenged Romania before the Committee in March 2012 for, *inter alia*, non-disclosure of the study concerning the archaeological vestiges from Roşia Montană as well as the exploration and exploitation licenses.<sup>9</sup> Romania argued in the proceedings before the Committee that “the refusal to provide a copy of the archaeological study was legally correct, since the requested information is not encompassed by the term ‘environmental information’” under Article 4 of the Aarhus Convention.<sup>10</sup> Romania also contended that the mining licences were classified under national law and, thus, fell under Article 4.4(d) of the Aarhus Convention.<sup>11</sup> Following the Committee’s findings in June 2015, Romania has taken measures to implement the Committee’s recommendations.<sup>12</sup>

Finally, the *Amici* allege that RMGC sometimes harassed and threatened project opponents “and through physical violence from the locals and police force.”<sup>13</sup> They do not, however, specify when and how the police may have acted improperly nor have they demonstrated that any complaints were filed in

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<sup>6</sup> Aarhus Compliance Committee Findings dated 16 April 2008, at **Exhibit R-203**, p. 4 (para. 19).

<sup>7</sup> *Id.* at p. 6 (para. 33).

<sup>8</sup> *Amici* submission, p. 16.

<sup>9</sup> Respondent's Counter-Memorial, n. 589; Greenpeace Romania *et al.* Petition to Aarhus Convention Compliance Committee dated 13 March 2012, at **Exhibit R-253**.

<sup>10</sup> Aarhus Compliance Committee Findings and Recommendations dated 26 June 2015, at **Exhibit R-383**, p. 7 (para. 32).

<sup>11</sup> *Id.* at p. 7 (para. 35).

<sup>12</sup> *Id.* at p. 18 (para. 92).

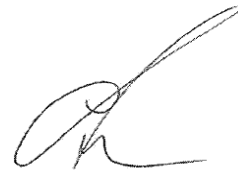
<sup>13</sup> *Amici* submission, p. 6.

response to police actions. There is no evidence of any misconduct, and the Respondent denies that there was ever any misconduct.

Yours sincerely,



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Matthias Scherer  
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- Enclosure: Exhibit R-383