
INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

**GABRIEL RESOURCES LTD.
AND GABRIEL RESOURCES (JERSEY) LTD.**

Claimants

v.

ROMANIA

Respondent

ICSID CASE NO. ARB/15/31

**CLAIMANTS' RESPONSE
TO AMICUS CURIAE BRIEF DATED SEPTEMBER 18, 2022**

October 18, 2022

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**CLAIMANTS' RESPONSE
TO AMICUS CURIAE BRIEF DATED SEPTEMBER 18, 2022**

TABLE OF CONTENTS

	Page
A. The Amicus Brief Is Premised on Multiple Erroneous Contentions	1
B. The Legal Arguments in the Amicus Brief about the Implications of the Ploiești Court of Appeal Decision and the UNESCO Inscription Are Unsupported and Wrong	5
1. The Foreseeable Risks Associated with the NGO Challenge to the Second Cârnic ADC Already Were Reflected in Gabriel's Stock Price.....	7
2. The Ploiești Court of Appeal Decision Does Not Alter that Assessment	8

1. This submission responds to the Amicus Curiae brief dated September 18, 2022 admitted by the Tribunal by email to the Parties dated October 3, 2022.

2. The Amicus brief, which seeks to address the UNESCO inscription and the February 2022 Ploiești court of appeal's decision to annul the second Cârnic ADC,¹ presents a series of unsupported arguments premised on multiple erroneous contentions. It is thus entirely unreliable. The brief's arguments also are not relevant to this case. Thus, the Amicus brief does not provide any assistance to the Tribunal.

3. Claimants address below (A) several of the fundamental misstatements contained in the Amicus brief, and (B) the principal reasons why its arguments are not supported nor relevant.

A. The Amicus Brief Is Premised on Multiple Erroneous Contentions

4. The Amicus brief is unreliable because it contains multiple misrepresentations. This is evident from the following several examples.

5. First, the Amici assert that Roșia Montană, “including the Cârnic Massif, has been classified as a monument of national interest on Romania’s List of Historical Monuments (“LHM”) since 1992.”² The contemporaneous evidence shows that is not correct. The State, through Minvest, mined in the Cârnic and Cetate massifs for decades continuously until 2006 without any archaeological intervention.³ The Amici refer to a 1992 draft list of historical monuments that was never issued, implemented, or formally approved.⁴ Rather, the Government approved and the State issued the Roșia Montană License in 1999, which covered the area of the Cârnic massif; and, in accordance with legal requirements adopted in 2000, the State itself undertook archaeological research in the License area to assess whether to permit mining.⁵ Based on the State’s own research and with the National Archaeology Commission’s approval,

¹ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694).

² Amicus Curiae Brief dated Sept. 18, 2022 (“Amicus Brief”) at 1.

³ C-Opening (2019) vol. 2:41.

⁴ Reply ¶ 248, n. 555; Schiau-I § VA.1 ¶¶ 127-183; Schiau-II § IV.B ¶¶ 73-164.

⁵ Memorial ¶¶ 104, 143.

in 2004 the Ministry of Culture issued ADC No. 4/2004, discharging the Cârnic underground area except for a special site at Pietra Corbului designated for *in situ* conservation.⁶ The first LHM was issued by law later in 2004,⁷ and in the area of Roşia Montană it reflected the extensive archaeological research that the State’s culture authorities by then had undertaken.⁸ Thus, the 2004 LHM reflected the conclusion of ADC No. 4/2004 for Cârnic, and so did not list the entire Cârnic massif as an historical monument, but rather listed only Pietra Corbului, noting its precise coordinates.⁹

6. Second, the Amici assert that RMGC challenged the 2010 LHM “only in December 2014” and “was unsuccessful.”¹⁰ This assertion is misleading. The 2010 LHM newly listed all the mining galleries in Cârnic as historical monuments; as those listings lacked any legal justification, RMGC reasonably understood that the listings were due to drafting error or oversight.¹¹ In July 2011, when the second ADC for Cârnic was about to be issued, the National Archaeology Commission and the Minister of Culture both confirmed that the Cârnic galleries would be removed from the LHM consistent with that new ADC.¹² The Alba County and national culture authorities, including the Ministry of Culture, repeatedly acknowledged that the 2010 LHM listings were made in error and had to be corrected.¹³ Starting in August 2011 and

⁶ Schiau-I ¶¶ 91(4), 216; National Archaeology Commission Meeting Minutes dated Dec. 19, 2003 (C-1314) at 3; Archaeological Discharge Certificate No. 4/2004 dated Jan. 15, 2004 (C-672).

⁷ Reply ¶¶ 248-250; Schiau-I §V.B ¶¶ 202-247; Schiau-II IV.C ¶¶ 165-175.

⁸ Memorial ¶¶ 158(c), 161; Reply ¶ 251; C-Opening (2019) vol. 2:40-62; Schiau-I ¶¶ 206-216; Schiau-II ¶ 173.

⁹ Schiau-I ¶¶ 91(4), 215-216.

¹⁰ Amicus Brief at 1.

¹¹ Reply ¶¶ 253-261 & n.576; Schiau-II ¶¶ 184-185, 206 & n.315; Gligor-I ¶¶ 97-99; C-Opening (2019) vol. 7:6-8; Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 16(b)-(c).

¹² Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 -¶ 16(c); C-Opening (2019) vol. 7:10; National Archaeology Commission Meeting Minutes dated July 12, 2011 (C-1377) at 4 (National Archaeology Commission unanimously approving “the declassification of the area which will be archaeological[ly] discharged, and the undertaking of the legal proceedings”); News Article dated July 14, 2011 (C-1345) at 1 (Minister of Culture Kelemen Hunor stating that if a new ADC was issued for Cârnic, “This is followed, if that is the case, by the removal from the List of Historic Monuments of a part of Cârnic Massif”). This is what the law required the Ministry of Culture to do. Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 17, 22; Schiau-I ¶¶ 31-32, 79, 84, 116, 356; Memorial ¶¶ 158(d), 332; Reply ¶ 613.

¹³ Reply ¶¶ 260-261 & n.572; C-Opening (2019) vol. 7:15. In addition to multiple letters from the Ministry of Culture’s National Institute of Heritage (C-1336, C-1325, C-1324, C-1331, C-1333, C-1330, C-2359) and the

through 2013, however, the Government blocked at the political level all approvals relating to the Roșia Montană Project, which included blocking the required updates to remove the Cărnic galleries and correct the admitted errors in the 2010 LHM, and after repudiating the Project Rights in September 2013, the Government failed to give effect to any of the ADCs it had issued in the Project area and acted to block the Project with legal effect.¹⁴ Thus, in January 2015, in response to RMGC’s request for a judicial order to correct the 2010 LHM, the Ministry of Culture and its National Institute of Heritage pleaded to the court that the 2010 LHM was not an error, that the 2004 LHM was “abusive,” and that the 2015 LHM soon would “reinstate” Roșia Montană as an historical monument.¹⁵ Later that year, the Government issued the 2015 LHM designating the entirety of Roșia Montană as an historical monument, which was done expressly to prohibit any mining in the area and to prepare the Government’s application to UNESCO.¹⁶ In these circumstances, the court never ruled on the merits of RMGC’s request to correct the 2010 LHM, but instead, upon the issuance of the 2015 LHM, dismissed the case as moot.¹⁷

7. Third, the Amici assert that “RMGC was legally required to carry out archaeological research ... to be able to request” ADCs.¹⁸ That assertion also is mistaken because RMGC did not carry out or direct the archaeological research. The State’s culture authorities established the archaeological research program and assembled, supervised, and provided scientific coordination to the expert team of archaeological research specialists led by Dr. Béatrice Cauuet, the world’s leading authority on mining archaeology.¹⁹ RMGC’s sole role as the Project developer was to finance and provide logistical support for research undertaken.²⁰

Alba County Culture Directorate (C-1327, C-1332, C-1335, C-1376), the Government notified RMGC (C-1001 at 2) that the Ministry of Culture agreed it was “necessary to declassify the Cărnic Massif from the List of Historical Monuments and correct the clerical error referring to the 2 km radius applicable to Orlea.”

¹⁴ C-Opening (2019) vol. 7:4-11; Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 16-23; Reply ¶¶ 260-261.

¹⁵ Reply ¶¶ 259, 262-267; Podaru ¶¶ 256, 260; Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 24-25; C-Opening (2019) vol. 7:12-15.

¹⁶ Claimants’ Observations on New Evidence dated Oct. 29, 2021 ¶¶ 23-40; Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 63-73.

¹⁷ Reply ¶¶ 268-269.

¹⁸ Amicus Brief at 1.

¹⁹ C-Opening (2019) vol. 2:39-48.

²⁰ C-Opening (2019) vol. 2:45; Memorial ¶ 143.

It was the State alone, however, that decided what archaeological research the expert specialists would conduct and when, and the National History Museum of Romania proposed, coordinated, and supervised the research programs necessary to support archaeological discharge decisions.²¹

8. Fourth, the Amici assert that, “the archaeologist in charge didn’t recommend an archaeological discharge” for Cârnic, but RMGC nonetheless “requested it” and the Ministry of Culture “duly granted it with ADC No. 4/2004.”²² That assertion is false. Dr. Cauuet recommended archaeologically discharging Cârnic except for an area at Piatra Corbului that she proposed to preserve *in situ*, and the National Archaeology Commission voted unanimously to accept her recommendation.²³ ADC No. 4/2004 thus reflects Dr. Cauuet’s recommendation.²⁴

9. Fifth, the Amici contend that after the annulment of ADC No. 4/2004 (the first Cârnic ADC), the Ministry of Culture issued a second ADC for Cârnic simply because RMGC “slightly altered the initial perimeter.”²⁵ RMGC did modify the Project design to increase protection areas and reduce potential impacts.²⁶ But Dr. Cauuet’s expert team also did further research and digital mapping of Cârnic from 2004-2006, after issuance of the first ADC, which she described in her 2009 final preventive archaeological research report.²⁷ Based on the results

²¹ Memorial ¶¶ 144-147, 159, 162-163, 168; Claimants’ First Post-Hearing Brief dated Feb. 18, 2021 ¶¶ 74-75.

²² Amicus Brief at 1 (evidently referring to Dr. Cauuet, whom the Amici acknowledge supervised all of the mining archaeology research done by the expert team of specialists).

²³ National Archaeology Commission Meeting Minutes dated Dec. 19, 2003 (C-1314) at 3.

²⁴ Archaeological Discharge Certificate No. 4/2004 dated Jan. 15, 2004 (C-672) (discharging the Cârnic underground area except for “Cârnic Est - Piatra Corbului proposed for conservation *in situ*”).

²⁵ Amicus Brief at 2.

²⁶ Reply ¶ 116 (explaining that RMGC made these Project design changes based on community consultations even though it reduced available reserves by 500,000 ounces of gold); Avram-II ¶ 134; Szentesy-II ¶ 22, n.41.

²⁷ Dr. Cauuet, Preventive Archaeological Research Report for Cârnic dated 2009 (C-1898) at PDF 23 (“The geological and metallogenetical study of the mining workings from the Big Network was completed. In addition, between 2004 - 2006, Cârnic 4, Cârnic 9 and Cârnic 10 sectors were mapped and digitized. Incidentally, both exploration and topographical study of eastern Piatra Corbului sector could be completed and finalized in the same period. Between 2004 - 2006 the research and surveys were supplemented, which was possible with the help of the team of Romanian workers who prepared the site for the French team. The topographical study of the major ancient mining networks at Cârnic is now completed as well as their 3D presentation, which allows now a 3D, virtual, animated exploration of the massif. This action involved a long and difficult work, initiated by Antoine Constans in 2004 with the Cârnic 1 network, continued in 2005 and was completed at the end of 2006, so that we have a complete 3D animated presentation (attached to the report) of the Cârnic 2 and Cârnic 3 connected networks.”). See also Gligor-II ¶ 74 (explaining that Dr. Cauuet’s report addressed the issues raised in the earlier litigation about the first Cârnic ADC).

of all that research, Dr. Cauuet recommended archaeologically discharging Cârnic except for Piatra Corbului and a protection area around it; the National Archaeological Commission unanimously approved that recommendation; and that recommendation and the National Archaeological Commission's approval are reflected in ADC No. 9/2011.²⁸

10. Finally, the Amici assert that "RMGC was an intervening respondent" in the appellate court proceedings that are the subject of their submission.²⁹ That assertion also is not true. While RMGC intervened when NGOs initiated the legal challenge against the second Cârnic ADC in 2011,³⁰ RMGC requested to withdraw from those court proceedings in 2015 when Gabriel started this arbitration and thus has not been a litigant for many years.³¹

B. The Legal Arguments in the Amicus Brief about the Implications of the Ploiești Court of Appeal Decision and the UNESCO Inscription Are Unsupported and Wrong

11. The Amici argue that the decision of the Ploiești court of appeal to annul the second Cârnic ADC "should play a crucial role in the Tribunal's assessment,"³² and that the inscription of the Roșia Montană mining landscape as a UNESCO World Heritage site "does not add any protection status other than what the site already enjoys under Romanian law" and "is unrelated to the ability to obtain ADCs."³³ These arguments overstep the limits of any potential assistance the Amici could provide to the Tribunal.³⁴ They also are wrong.

12. First, contrary to the Amici's argument, the UNESCO inscription introduced a legal obstacle prohibiting mining in the Project area that is in addition to the obstacles that the Government already had put in place through the 2010 and 2015 lists of historical monuments.

²⁸ Claimants' Response to the Tribunal's Questions Regarding Post-2013 dated June 14, 2022 ¶¶ 18(b); Gligor-II ¶ 77.

²⁹ Amicus Brief at 2.

³⁰ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at 15-18 (PDF 16-19).

³¹ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at 37 (PDF 38). *See also, e.g.*, Tanase-III n.577.

³² Amicus Brief at 2.

³³ Amicus Brief at 3.

³⁴ *See* Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 66, 75(1)(b)-(c) (rejecting as inadmissible the Amici's "Arguments on the law" and "Legal implications of the Amici's perspective for the present arbitration").

Romanian law mandates protections for UNESCO World Heritage sites that are distinct from those provided in the law for historical monuments.³⁵ Thus, even if the State were to remove the archaeological sites in Roșia Montană from the list of historical monuments, the entire mining landscape would remain a UNESCO site subject to legal protections that would prohibit industrial activity that would impact the landscape. The UNESCO inscription thus would remain and would render it legally impossible to issue any construction permit for the Project.³⁶

13. Second, the Ploiești court of appeal’s decision is not “crucial” or even relevant to the Tribunal’s assessment because, as discussed further below, the decision does not provide a basis for the Tribunal to assess the fair market value of the Project Rights at any relevant time taking into account the foreseeable risks and excluding the impacts of Romania’s unlawful conduct.

14. In assessing the measure of loss incurred by Gabriel in this case, the Tribunal must consider whether the evidence presented of the fair market value of the Project Rights reasonably took into account the foreseeable risks associated with the pending legal challenge to the second Cârnic ADC. Claimants have demonstrated that Gabriel’s stock market capitalization as of July 29, 2011 and for dates no later than January 31, 2012,³⁷ reasonably reflected such risks.³⁸

15. The Ploiești court of appeal’s decision to annul the second Cârnic ADC does not alter that conclusion. The decision did not address the quality or scope of the preventive archaeological research that the Ministry of Culture did at Cârnic or the substantive merits of its decision to discharge the area, but rather focused solely on the administrative procedure purportedly followed. Thus, the appellate court’s decision did not create or confirm any underlying legal obstacle. The only legal obstacle to development of the Roșia Montană Project

³⁵ Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 32, 67; Claimants’ Observations on New Evidence dated Oct. 29, 2021 ¶¶ 12-14, 30-31.

³⁶ Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 33, 69-73; Claimants’ Observations on New Evidence dated Oct. 29, 2021 ¶¶ 32-33.

³⁷ See Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 n.7 & ¶ 48 (discussing the “last clean date”). See also *id.* ¶¶ 82-83.

³⁸ See, e.g., Reply ¶¶ 649-650; Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 ¶ 21 & n.55.

was the Government's repudiation of it and RMGC in September 2013, as ultimately manifested in the UNESCO inscription.

16. Beyond its limited scope, the appellate court's decision is manifestly flawed. It thus does not reflect the reasonably foreseeable risks that would have been taken into account in assessing the fair market value of the Project Rights in the absence of Romania's unlawful conduct.

1. The Foreseeable Risks Associated with the NGO Challenge to the Second Cârnic ADC Already Were Reflected in Gabriel's Stock Price

17. Shortly after the Ministry of Culture issued the second Cârnic ADC in July 2011, NGOs brought an action challenging it.³⁹ Gabriel repeatedly disclosed that earlier NGO legal actions had ended in the annulment of the first Cârnic ADC, so that fact was known as of July 31, 2011.⁴⁰ After NGOs started the annulment action against the second Cârnic ADC in September 2011, Gabriel again disclosed that fact and stated that "a negative ruling may have an adverse material impact on the timing and/or outcome of the permitting process for the Project."⁴¹ Thus, the market value of the Project Rights reflected the reasonably foreseeable risks of potential delays and lack of required approvals associated with the NGO challenge to the second Cârnic ADC.

18. Notably, Gabriel's stock market capitalization after it disclosed the new pending annulment action was not materially different than its stock market capitalization as of July 29, 2011.⁴² That is likely because any reasonable assessment of the foreseeable risks at the time of

³⁹ See Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at 1 (PDF 2) (noting the claim was filed on Sept. 23, 2011). See also Gligor-II ¶ 75.

⁴⁰ Claimants' First Post-Hearing Brief dated Feb. 18, 2021 n.855; Claimants' Second Post-Hearing Brief dated Apr. 23, 2021 n.662; Gabriel Press Release dated Dec. 10, 2008 (R-198); Gabriel MD&A dated Mar. 3, 2009 (CRA-21) at 4; Gabriel Press Release dated Mar. 5, 2009 (R-199) at 4; Gabriel Annual Information Form dated Mar. 9, 2011 (C-1808) at 21, 24, and 33. See also Henry-II n. 198 (describing Gabriel's disclosures in March 2011 regarding the risk of ADC litigation).

⁴¹ Gabriel MD&A dated Nov. 2, 2011 (R-314) at 5. See also Claimants' Second Post-Hearing Brief dated Apr. 23, 2021 ¶ 244 (noting the NGOs' own press and related media added to the total mix of information available to the market).

⁴² Claimants' Response to the Tribunal's Questions Regarding Post-2013 Events dated June 14, 2022 ¶¶ 82-83 (comparing Gabriel's stock market capitalization as of November 23, 2011, the date the Canada BIT entered into force, and for the full year of 2011 to Gabriel's stock market capitalization as of July 29, 2011. See also

these events in 2011 would have taken into consideration the fact that the competent State authorities had issued an ADC for Cârnic not once, but twice.

2. The Ploiești Court of Appeal Decision Does Not Alter that Assessment

19. After nine years of litigation, in December 2020, the Buzău Tribunal hearing the NGO legal challenge against the second Cârnic ADC rejected that challenge and upheld the merits of the ADC and the process through which it was issued.⁴³

20. While the Amici note that a further appeal against that decision was filed more than seven months later in July 2021,⁴⁴ the Amici fail to mention that the law provides that appeals must be made within 15 days of service,⁴⁵ and that in May 2021 the Buzau court clerk had certified the court's decision as "final and irrevocable lacking appeal."⁴⁶ In its decision, the Ploiești court of appeal did not explain why the July 2021 appeal was not time-barred.⁴⁷ It thus remains unclear why it admitted the manifestly late appeal. The Amici also fail to make clear the unusually hurried nature of the procedure leading up to the annulment decision, which included only one pleading from each side and a one-hour oral hearing held on January 26, 2022.⁴⁸

21. On the merits, the appellate court's decision to annul the ADC rests on two asserted grounds. The first is a purported lack of proof that the National Archaeology Commission approved issuing the ADC,⁴⁹ and the second is that RMGC did not obtain an

Claimants' First Post-Hearing Brief dated Feb. 18, 2021 ¶ 416 (noting that annulment in late 2008 of earlier ADC No. 4/20004 had no effect on Gabriel's stock price); Claimants' Response to the Tribunal's Questions Regarding Post-2013 Events dated June 14, 2022 n.7 & ¶ 48 (discussing the "last clean date").

⁴³ Claimants' Observations on New Evidence dated Oct. 29, 2021 ¶ 49 (describing the court's detailed findings); Buzau Court Decision No. 770 dated Dec. 10, 2020 (C-2990).

⁴⁴ Amicus Brief at 2.

⁴⁵ Buzau Court Decision No. 770 dated Dec. 10, 2020 (C-2990) at PDF 59. *See also* Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 90.

⁴⁶ Buzau Court Decision No. 770 dated Dec. 10, 2020 (C-2990) at PDF 1, 60.

⁴⁷ *See* Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 98.

⁴⁸ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 2, 60-98.

⁴⁹ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 102-110. *See also* Amicus Brief at 2-3.

urbanism certificate reflecting that the 2010 LHM included “the entire Cârnic Massif” as an historical monument.⁵⁰ Neither of these asserted grounds is supported.

22. The court of appeal’s conclusion that there was a lack of proof that the National Archaeology Commission approved issuance of the ADC is blatantly erroneous. The contemporaneous record evidence shows:

- a. On July 1, 2011, the Ministry of Culture sent notice that the National Archaeology Commission would analyze the preventive archaeological research report for Cârnic at a meeting on July 12, 2011, and invited Dr. Cauuet “to participate in the meeting of the National Archaeology Commission and to present your opinion on the research conducted.”⁵¹
- b. Dr. Cauuet, Dr. Paul Damian of the National History Museum of Romania, and Dr. Calin Tamaş submitted a closing statement dated July 12, 2011 to the National Archaeology Commission. They recommended preserving Piatra Corbului *in situ*, establishing a protected area around it, and issuing an archaeological discharge certificate at the coordinates indicated in the preventive archaeological research report.⁵²
- c. The National Archaeology Commission’s minutes of its July 12, 2011 meeting record that Dr. Cauuet presented her research findings for approximately 50 minutes and resolved each question; that Dr. Cauuet, Dr. Damian, and Dr. Tamaş submitted a concluding statement with their recommendations; and that after instructing Dr. Cauuet, Dr. Damian, and Dr. Tamaş to leave the room, the National Archaeology Commission voted unanimously 13-0 (i) to approve the preventive archaeological research report and issue the archaeological discharge certificate based on the coordinates indicated in the report, and (ii) to approve

⁵⁰ Ploieşti Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 110-115. *See also* Amicus Brief at 2-3.

⁵¹ Letter from Ministry of Culture to Dr. Cauuet dated June 27, 2011 (C-2631.2) sent by email from Ministry of Culture to RMGC dated July 1, 2011 (C-2631.1).

⁵² Dr. Cauuet, Dr. Damian, Dr. Tamas, Closing Statement to the National Archaeology Commission on Archaeological Research in Carnic dated July 12, 2011 (C-1902) at 4.

“declassification of the area” that will be archaeologically “discharged, and the undertaking of legal proceedings.”⁵³ The final page of the minutes is signed by all 13 voting members of the National Archaeology Commission and by Dr. Damian who participated in the meeting but did not vote.⁵⁴

- d. The Ministry of Culture enclosed the National Archaeology Commission meeting minutes in a letter to the Alba County Culture Directorate that is dated and stamped as received on July 13, 2011. The Ministry’s letter states that the National Archaeology Commission examined the preventive archaeological research report for Cârnic at a meeting on July 12, 2011 and “approved the issuance of the archaeological discharge certificate for the area indicated in the Report ... as well as the other proposals concerning the protection of areas of archaeological interest.”⁵⁵
- e. The Alba County Culture Directorate issued the archaeological discharge certificate, ADC No. 9/2011, the next day on July 14, 2011. The ADC states that the archaeological research report “was analyzed and approved in the meeting of the National Commission of Archaeology dated July 12, 2011, the National Commission of Archaeology proposing the granting of an archaeological discharge certificate for the areas identified by STEREO 70 coordinates, as provided below.”⁵⁶
- f. On July 15, 2011, the Ministry of Culture announced the issuance of the archaeological discharge certificate “based on a Decision dated 12 July of the National Commission for Archaeology” to approve the preventive archaeological research report.⁵⁷ Minister of Culture Kelemen Hunor also stated that “the

⁵³ National Archaeology Commission Meeting Minutes dated July 12, 2011 (C-1377) at PDF 2-4.

⁵⁴ National Archaeology Commission Meeting Minutes dated July 12, 2011 (C-1377) at PDF 5.

⁵⁵ Letter from Ministry of Culture to Alba County Culture Directorate dated July 13, 2011 (C-1377) at PDF 1.

⁵⁶ Archaeological Discharge Certificate No. 9/2011 dated July 14, 2011 (C-680) at 1-2.

⁵⁷ Media article dated July 15, 2011 (C-892) at 2 (referring to “a communique of the Ministry of Culture”).

National Archaeology Commission voted unanimously for the archaeological discharge, ‘under very strict conditions’.”⁵⁸

- g. Later in July 2011, the Minister of Culture confirmed again that, “With respect to granting the Archaeological Discharge Certificate, this was issued by Alba County Directorate of Culture based on a Decision of National Committee of Archaeology. Therefore, it was an objective decision based on expertise.”⁵⁹

23. The appellate court’s decision does not refer to most of this contemporaneous evidence. The court purported to review the July 12, 2011 meeting minutes sent from the Ministry of Culture to the Alba County Culture Directorate. However, the court referred only to the final page of signatures of the 14 members of the National Archaeology Commission present at the meeting, and thus, in manifest error, found that it was not clear how many of those 14 members “agreed with the approval of the archaeological discharge decision and how many did not agree,” and whether it was “approved unanimously or by majority” or not at all.⁶⁰ The body of the minutes clearly answer all of the court’s questions stating, as noted above, that the votes were both unanimous by a 13-0 margin and that the other signatory, Dr. Damian, “left the room” before the vote to avoid any conflict of interest.⁶¹

24. Indeed, Respondent in this arbitration repeatedly has confirmed with reference to the very same minutes that the National Archaeology Commission approved both the issuance of the ADC and the start of declassification procedures for Cârnic.⁶²

25. The court of appeal’s other stated ground for annulling the ADC is equally unsupported and surprising. The court concluded that the ADC was null because RMGC did not obtain an urbanism certificate reflecting the Cârnic massif as an historical monument as reflected

⁵⁸ Media article dated July 15, 2011 (C-892) at 1.

⁵⁹ Media article dated July 28, 2011 (C-893) at 3.

⁶⁰ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 106-107.

⁶¹ National Archaeology Commission Meeting Minutes dated July 12, 2011 (C-1377) at 3-4.

⁶² See, e.g., Counter-Memorial ¶¶ 205, 216.

on the 2010 LHM.⁶³ The court of appeal does not reference a single legal authority in support of such a requirement. On the contrary, the Alba County Culture Directorate responsible for issuing the ADCs confirmed authoritatively that an urbanism certificate “is not among the legally required documents for the issuance of the archaeological discharge certificate.”⁶⁴

26. In short, the court of appeal did not address the merits of the State’s preventive archaeological research or its decision to issue an archaeological discharge certificate for Cârnic. Rather, the court annulled the second Cârnic ADC based on two asserted procedural deficiencies that reflect a manifestly erroneous appreciation of the record evidence and a purported legal ground lacking any support or precedent. That result could not be considered reasonably foreseeable as of any last clean date.⁶⁵ The court of appeal’s decision therefore does not alter the conclusion that Gabriel’s stock market capitalization fairly reflected the foreseeable risks associated with development of the Project Rights considered without the impacts of Romania’s wrongful conduct. For all these reasons, the Amici are wrong to argue that the court’s decision has any relevance to the Tribunal’s analysis.

⁶³ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 110-115. *See also* Amicus Brief at 2-3.

⁶⁴ Ploiești Court of Appeal Decision No. 187 dated Feb. 16, 2022 (R-694) at PDF 91.

⁶⁵ *See* Claimants’ Response to the Tribunal’s Questions Regarding Post-2013 Events dated June 14, 2022 n.7 & ¶ 48 (discussing the “last clean date”).

Respectfully submitted,

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