Report for Romania

ABBREVIATIONS USED

Insert any abbreviations used e.g.:

Art Article
CA Competent Authority
EC European Commission
ECJ European Court of Justice
EIA Environmental Impact Assessment
EU European Union
MS Member State(s)
pSCI proposed Sites of Community Interest
SAC Special Area of Conservation
SCI Sites of Community Importance
SCO Site’s Conservation Objectives
SDF Standard Data Form(s)
SPA Special Protection Area
PART ONE: OVERVIEW

1 GENERAL INFORMATION


Before accession, Romania enacted the *Emergency Government Ordinance no. 236/2000* on the regime of natural protected areas and natural habitats, wild flora and fauna conservation. Under this first attempt to transpose the EU nature protection requirements, several Community provisions were not transposed or were only partially transposed, making impossible the proper application of Community provisions. According to the EC’s Regular Reports on Romania’s progress towards accession, much of the new legislation (including environmental legislation) appears to have been adopted without due consideration for the administrative and financial resources necessary for its implementation.

After accession, the Romanian legislator passed another enactment, namely the *Emergency Government Ordinance no. 57/2007* regarding protected areas, conservation of natural habitats and wild flora and fauna (“EGO no. 57/2007”) that repealed the previous Emergency Government Ordinance no. 236/2000 as amended. Following the initiation of the proceedings by EC (see below point 1.5. – Failure to implement Art 6), the Romanian legislator has approved a new Emergency Government Ordinance no. 154/2008 amending and supplementing EGO no. 57/2007.

The derogatory procedures (as provided by Art 6, par. 4 of Habitats Directive) represent one of the major improvements of the EGO no. 57/2007. The derogatory procedures has been further laid down by Ministerial Order (Minister of Environment and Sustainable Development) no. 1369/2007 regarding the procedure for establishing the derogations from the measures of protection of wild flora and fauna, order passed in September 2007.


1.1 Designated SPAs and SACs

*SPAs*

Pursuant to EGO no. 57/2007, for SPAs, the establishment of the protected natural area regime is performed by Government Decision. With respect of SPAs, these have been officially designated based on the Government Decision no 1284/2007 regarding the declaring of SPAs as integrated parts of Natura 2000 network in Romania (“GD no. 1284/2007”), enactment passed in compliance with the EGO no. 57/2007.

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1 As amended by the Law no. 426/2001 and Law no. 345/2006.
Pursuant to GD no. 1284/2007, for the sites listed in the Annex 1 (i) the regime of protected natural area is established and (ii) it is approved the placement of these sites in a management category as SPAs. Apart from the sites listed in Annex 1, the Annex 3 lists the SPAs which have been previously declared.

According to Art 2 of Government Decision no. 1284/2007, for all plans, programmes and projects which follow to be developed within the SPAs or within the neighbourhood of these SPAs, the legal provisions referring to the environmental assessment procedure (evaluarea de mediu pentru planuri si programe) and the environmental impact assessment framework procedure (procedura-cadru de evaluare a impactului asupra mediului) should be applied. The Environment Report and EIA Report, respectively, shall to highlight all bird species of Community interest in the site and to propose (i) measures for impact reduction of the plan, programme and/or project, (ii) conservation measures and/or (iii) compensatory measures, if need be.

The central authority for the environment protection shall send the filled SDFs for SPAs to EC. According to the available information such transmission has been realized.

According to this Government Decision, the selection of sites to be included in this enactment has been a public process. This public process is mentioned also in the Ministerial Order no. 207/2006 approving the content of SDF Natura 2000 and of the filling up manual.

As regards Management Plans, as results from the filled SDFs, the large majority of SPAs are without Management Plans or the drafting/approval of Management Plans is ongoing.

SACs

Pursuant to EGO no. 57/2007, for SACs, the establishment of the protected natural aria regime is performed by Government Decision.

Under the Framework Law on Protection of the Environment and the EGO no. 57/2007, SAC (“arie specială de conservare”) is defined as being the site/area of Community interest designated by a statutory, administrative and/or contractual act in order to apply the necessary conservation measures for maintain or restore the natural habitats and/or the population of species at a favourable conservation status.

According to EGO no. 57/2007, SCI – site/area which, in the biogeographical region or regions where it is located, contributes significantly to the preservation or filling/topping up of (i) the natural habitats as listed in the Annex 2 (including also the priority natural habitats) or (ii) the species (including plants and animals) of Community interest listed in Annex 3 (including priority species) at a favourable conservation status and which contributes significantly (i) to the coherence of “Natura 2000” network and/or (ii) to the preservation of the biological diversity in the relevant region/regions. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

Mention should be made that, currently, there are no SACs designated by Romania. Before such designation, the EC should approve the list of pSCIs for Romania. Within six years after their designation as SCIs, MSs will designate these sites as SACs and adopt conservation measures involving, if need be, appropriate Management Plans and other measures which correspond to the ecological requirements of the natural habitat types and the species of Community interest.

According to Art 8, paragraph 1, letter c) of EGO no. 57/2007, the proposal for sites of Community interest shall be performed by order of the chief of central authority for the environment protection with the approval of others relevant authorities. By the Ministerial Order no. 1964/2007 regarding the
establishment of the protected natural area regime for the sites of Community interest, as integral part of European ecological network Natura 2000 in Romania (“Order no. 1964/2007”) it has been approved the national list of pSCIs and the relevant filled SDFs.

The list of pSCIs has been sent to EC during the year 2007. The EC should approve this list until 2010.

For each biogeographical region of EU 27, the EC should adopt the pSCIs list. For Romania there are 5 (five) relevant biogeographical regions: Alpine, Continental, Pannonian, Steppic and Black Sea (Pontic). For Alpine, Continental and Pannonian biogeographical regions, EC has adopted a first updated list of SCIs, namely:


(ii) EC Decision 2008/25/EC of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of SCIs for the Continental biogeographical region; a second updated Community list for the Continental biogeographical region is in progress of being adopted by the EC (including the territory of Romania);

(iii) EC Decision 2008/26/EC of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, the list of SCIs for the Pannonian biogeographical region; a first updated Community list for the Pannonian biogeographical region is in progress of being adopted by the EC (including the territory of Romania).

None of these three EC Decisions cover the territory of Romania since Romania initiated the transmission of its site proposals to the EC after its accession.

As regards the Steppic biogeographical region (comprising parts of the territory of Romania), EC has adopted an initial list of SCIs by EC DECISION 2008/966/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, an initial list of sites of Community importance for the Steppic biogeographical region.

For the Black Sea (Pontic) biogeographical region, according to the information provided by the EC – Directorate General (DG) Environment, the adoption of a first Community list for this biogeographical region has been foreseen for 2008. Currently, the initial list of SCIs for the Black Sea biogeographical region is in progress of being adopted by the EC in accordance with Art 4(2) of Habitats Directive.

After such approval, the Romanian authorities shall establish the Management Plans for each site including measures and restrictions for conservation of species. Until then, pursuant to the official declaration of representatives of central authority for environment protection, there are several minimal conservation measures, included in the National Rural Development Programme 2007-2013. The proposed measures make distinction between (i) necessary measures to maintain the favourable condition of a Natura 2000 site and (ii) restoration measures. Mention should be made that the first step in selecting appropriate management measures should be the development of conservation objectives for the site (“SCOs”).

1.2 Biogeographical regions

The selection of Natura 2000 sites is done according to biogeographic regions. According to the EGO no. 57/2007, there are 5 (five) specifically biogeographical regions in Romania: Alpine, Continental, Pannonian, Steppic and Pontic (Black Sea).
Biogeographic seminars are meetings in which the list of pSCIs, proposed by national governments, are discussed and agreed by the participants of these meetings: the EC, representatives of national governments, NGOs, land users’ organisations and independent experts.

1.3 Institutional context

Coordination, regulation and implementation in the environmental field

Under the Framework Law on Protection of the Environment, the coordination, regulation and implementation in the environmental field are performed by the central authority for the environmental protection, the National Agency for Environmental Protection, the Regional and County Agencies for Environmental Protection and the “Danube Delta” Biosphere Reservation Administration.

The most important environmental bodies are as follows:

- The Ministry of Environment and Sustainable Development (Ministerul Mediului și Dezvoltării Durabile), which is the central authority for environmental protection, subordinated to the Romanian Government; this authority ensure the coordination and regulation of the environmental policy;

- The National Agency for Environmental Protection, a public institution subordinated to the central authority for environmental protection, responsible for environmental protection and coordinating the territorial authorities for environmental protection at regional and local levels; this authority has the competence for implementation of environmental policy and legislation;

- The Regional Environmental Protection Agencies (“REPAs”) and County Agencies for Environmental Protection – Local Environmental Protection Agencies (“LEPAs”), subordinated to the National Agency for Environmental Protection;

- The “Danube Delta” Biosphere Reservation Administration-Tulcea, the territorial public authority under the subordination of the central authority for the environment protection, holding competence in environmental protection in the area of the “Danube Delta” Biosphere Reservation.

Mention should be made that the responsibilities for forestry were shifted to the Ministry of Agriculture and Rural Development – Department of Forests. The National Forest Administration (Romsilva) has the task to identify and create the framework for designation of SACs (including species and habitats of Community interest) to be included in the European network for protected areas Natura 2000.

According to EGO no. 57/2007, a new National Agency for Protected Areas shall be established. The National Agency for Protected Areas has been established by the Government Decision no. 1320/2008. Based on Government Decision no. 1320/2008, the management of SCIs, SACs and SPAs shall be performed by the regional services pertaining to the own structure of the National Agency for Protected Areas, the activity of such services starting with the year 2009 (for SCIs, SACs and SPAs which are not in custody). This agency will oversee the management of the country’s protected areas and will prevent the possible overlaps.
**The inspection and control bodies**

As regards the inspection and control of the environmental policy, we mention the National Environmental Guard ("Garde Națională de Mediu"), a specialised inspection and control body subordinated to Ministry of Environment and Sustainable Development, holding competence in preventing, determining and imposing penalties for infringement of the laws of environmental protection, having under its authority regional and county units (including the special unit for the “Danube Delta” Biosphere Reservation).

With respect of the natural habitats, biodiversity and protected areas, the National Environmental Guard controls (i) the environment legislation regarding the protected natural areas, (ii) the works having an impact over the natural habitats, (iii) the fulfillment of conservation measures, (iv) the fulfillment by the administrators or custodians of the Management Plans established for protected areas.

Mention should be made, according to Government Decision no. 1320/2008, the National Agency for Protected Areas also has the power (i) to control the activities performed in the protected natural areas and (ii) to yearly assess the fulfilment by the administrators or custodians of the provisions of management contracts or custody conventions.

It seems that the Romanian legislator shall clarify such overlaps between the competencies of the National Environment Guard and of the National Agency for Protected Areas.

**1.4 The implementation of Article 6**

As a preliminary information, according to the information provided on the EC web-site, presently 25 MSs are represented in the "Habitats" and "Ornis" Committees. Romania will shortly designate its delegates. The Habitats Committee assists the EC in the implementation of the Habitats Directive. The Ornis Committee assists the EC in the implementation of the Birds Directive.

According to Art 28 of EGO no. 57/2007, as amended and supplemented by the new Emergency Government Ordinance no. 154/2008:

(1) There are forbidden the activities within the protected natural areas of Community interest which are likely to generate the pollution or deterioration of habitats, as well as disturbances of the species for which such areas have been designated, when these activities have a significant effect, taking into consideration the objectives of protection and conservation of species and habitats. For protection and conservation of wild birds, including the migratory birds, there are forbidden the activities outside the protected natural areas which are likely to generate the pollution or deterioration of habitats.

(2) Any plan or project not directly connected with or necessary to the management of the protected natural area of Community interest, and which, either individually or in combination with other plans or projects, are likely to have a significant effect over the area, is submitted to an appropriate assessment of the potential effects over the protected natural area of Community interest, taking into consideration the conservation objectives of such area.

(3) The Methodological guide on the appropriate assessment of the potential effects of the plans or projects over the protected natural area of Community interest, as well as the competencies for issuance of the approval Natura 2000 is approved by order of the chief of the central authority for the environmental protection (our note: such order has already been approved, namely the Ministerial Order no. 1338/2008 regarding the procedure for granting the approval Natura 2000).
(4) In case of plans or projects submitted to the environmental assessment or the environmental impact assessment, the appropriate assessment of the potential effects over the protected natural area of Community interest is integral part of these (our note: integral part of the procedures of the environmental assessment/the environmental impact assessment – see below, Case Study no. 1, point 5 – Appropriate Impact Assessment).

(5) After the appropriate assessment, the competent authority for the environment protection grants the approval Natura 2000 or the decision of rejection of project or plan. In cases listed at paragraph 4, the competent authority for the environment protection grants the environmental approval (avizul de mediu)/the decision of rejection of such act or, if case, the environmental agreement (acordul de mediu)/the decision of rejection of such act, all these documents including the conclusions of the appropriate assessment.

(6) For the projects and/or plans mentioned at paragraph (2), the environmental agreement, the environmental approval or the approval Natura 2000, if case, is granted only if the project or the plan does not adversely impact over the integrity of the relevant protected natural area and after the inquiry of the public, in compliance with relevant legislation.

(7) By exception to the provisions of paragraph (6), in case when the appropriate assessment rises the significant negative effects over the protected natural area and, in the absence of alternative solutions, the project or plan must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the competent authority for the environment protection issues the environmental approval/the environmental agreement/the approval Natura 2000 only after the establishment of the compensatory measures necessary to protect the coherence of the „Natura 2000” global network.

(8) In cases mentioned at paragraph (7), the central authority for the environment protection informs the EC on the adopted compensatory measures.

(9) Where the sites included in the Natura 2000 network, identified according to current legislation, host a priority natural habitat type and/or a priority species, the only considerations which may be raised for granting the environmental agreement, the environmental approval or the approval Natura 2000, if case, are those relating to:
   a) human health or public safety;
   b) to certain beneficial consequences of primary importance for the environment;
   c) or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

(10) For the grating procedures of the specific regulation acts for plans, projects and/or activities which may adversely affect the protected natural areas of Community interest, the relevant authorities for the environment protection shall request and observe the approval (aviz) of the administrators or custodians of protected areas.

According to Art III of the new Emergency Government Ordinance no. 154/2008, the provisions of Art 28, paragraph (2) – (10), as amended and supplemented by this ordinance, shall come into force at the date of entering into force of the methodology of application of the environmental impact assessment for certain private and public projects.
1.5 Failure to implement Article 6

In October 2007, the EC initiated proceedings against Romania for infringing provisions of Nature Directives. In particular, Romania had failed to designate any SPAs for migratory and vulnerable wild birds, violating the Birds Directive. The first written warning (“Letter of Formal Notice”) to Romania is a consequence of the country's failure to designate areas both for conservation of wild birds and for breeding and wintering on migration routes.

Although Romania has subsequently designated 108 SPAs, 21 areas identified as Important Bird Areas (IBAs) have not been designated. In addition, a number of SPAs are smaller than the corresponding IBAs, with over one million hectares identified as IBAs currently excluded.

In September 2008, the Commission sent a final written warning (“Reasoned Opinion”) to Romania about its failure to designate a sufficient number of protected areas for wild birds.

Following such proceedings, the Romanian legislator has approved a new Emergency Government Ordinance no. 154/2008 amending and supplementing EGO no. 57/2007 (see above – The implementation of Art 6).

To date, there are no condemnations of Romania by the ECJ with respect to these Directives.

However, mention should be made that a leading case (Case C-117/03 of 13 January 2005 under Art 234 EC - Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti, Regione Autonoma del Friuli Venezia Giulia ) establishes that in the case of sites eligible for identification as SCIs which are included in the national lists transmitted to the Commission and, in particular, sites hosting priority natural habitat types or priority species, the MSs are, by virtue of the Habitats Directive, required to take protective measures that are appropriate, from the point of view of the Habitats Directive’s conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level.

2 SPECIAL PROTECTION AREAS (SPA)

2.1 SPA designation procedure

Based on the Art 6 of EGO no. 57/2007, the establishment of protected natural area regime takes priority over any other objectives, with exception of:

a) national security;
b) security and health of humans and animals;
c) prevention of natural disasters.

The SPAs have been designated by GD no 1284/2007. For additional information, see above 1.1.

2.2 SPA data overview table

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<table>
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<tr>
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<tbody>
<tr>
<td>2</td>
<td>What percentage of land area is covered by SPAs?</td>
<td>About 11.89% of the Romanian territory is covered by SPAs.</td>
</tr>
<tr>
<td>3</td>
<td>What percentage of territorial sea is covered by SPA?</td>
<td>The territorial sea of Romania includes the zone of the sea adjacent to the coast or, where applicable, the internal waters, having a width of 12 nautical miles (22,224 m) measured from the baselines.</td>
</tr>
</tbody>
</table>
4. How many SPAs have been formally designated?
   According to GD no. 1284/2007, it has been formally designated 108 sites SPA.

5. What is the average size of SPAs? (ha)
   The average size of SPAs is 27,673.26 ha.

6. What size is the smallest SPA? And the largest? (ha)
   The smallest SPA has 256.7 ha (ROSPA0052 – Lacul Beibugeac).
   The largest SPA has 512,380.6 ha (ROSPA0031 – Delta Dunării and Complexul Razim-Sinoe).

3 SPECIAL AREAS OF CONSERVATION (SAC)

3.1 SAC designation procedure

Within six years after their designation as sites of Community importance, Romania will designate these sites as SACs and adopt conservation measures involving, if need be, appropriate management plans and other measures which correspond to the ecological requirements of the natural habitat types and the species of Community interest.

The SCIs have been proposed by the Order no. 1964/2007.

Based on the Art 6 of EGO no. 57/2007, the establishment of protected natural area regime takes priority over any other objectives, with exception of:
   a) national security;
   b) security and health of humans and animals;
   c) prevention of natural disasters.

For SACs the establishment of protected natural area regime shall be performed using the Government Decision.

According to EGO no. 57/2007, for pSCIs it shall be filled the SDF as established by EC Decision no. 97/266/EC. Ministerial Order no. 207/2006 transposes the EC Decision 97/266/EC concerning a site information format for proposed Natura 2000 sites. Mention should be made that, pursuant to second subparagraph of Art 4 (1) of Habitats Directive, MSs are to transmit to the EC the list of proposed Natura 2000 sites referred to in the first subparagraph of that Art 4 (1), together with information on each site, in a format established by the EC in accordance with the procedure laid down in Art 21 of Habitats Directive.

3.2 SAC data overview table

<table>
<thead>
<tr>
<th></th>
<th>How many SACs are there?</th>
<th>According to the Order no. 1964/2007 there are 273 pSCIs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>What percentage of land area is covered by SACs?</td>
<td>273 sites pSCI (Sites of Community Importance), representing about 13.21% of the Romanian territory.</td>
</tr>
<tr>
<td>3</td>
<td>What percentage of territorial sea is covered by SACs?</td>
<td>The territorial sea of Romania includes the zone of the sea adjacent to the coast or, where applicable, the internal waters, having a width of 12 nautical miles (22,224 m) measured from the baselines. There are 6 (six) SCIs/SACs with marine component (Habitats Directive) having an area of 1,353 km².</td>
</tr>
<tr>
<td>4</td>
<td>How many SACs have been formally designated?</td>
<td>No SACs has been formally designated until now.</td>
</tr>
<tr>
<td>5</td>
<td>What is the average size of SACs? (ha)</td>
<td>The average size of pSCIs is 11,962.71 ha.</td>
</tr>
<tr>
<td>6</td>
<td>What size is the smallest SAC? And the largest? (ha)</td>
<td>The smallest pSCIs has 1 ha (ROSCI0234 – Stâanca Ștefănești). The largest pSCIs has 450,542 ha (ROSCI0065 – Delta Dunării).</td>
</tr>
</tbody>
</table>
4  **NATURA 2000 SITES**

According to the Romanian authorities’ point of view, the Natura 2000 sites shall be included in the Natura 2000 Romanian network which constitutes a part of the existing Romanian network of protected areas.

**Romanian network of protected areas**

Pursuant to EGO no. 57/2007, *the national network of protected natural areas* is the wholeness of protected natural areas of national interest. *The ecological network of protected natural areas* is the wholeness of protected natural areas together with the ecological corridors.

Art 16 of EGO no. 57/2007 lists the categories of protected natural areas which represent *the national network of protected areas*. For each category of protected natural area, EGO no. 57/2007 establishes (i) the protection objectives and (ii) the management regime (*management category*).

As regards the level of designation, the *Ministerial Order no. 1710/2007* on the approval of the necessary documentation for the establishment of the protected natural area of national interest regime classifies the protected natural areas in: (i) protected natural areas designated at *local level*; (ii) protected natural areas designated at *national level* (scientific nature reservations - category I IUCN, national parks - category II IUCN, nature monuments - category III IUCN, nature reservations - category IV IUCN, natural parks - category V IUCN) and (iii) protected natural areas designated at *international level* (reservations of the biosphere, wetlands of international importance – Ramsar sites, natural sites of the universal natural patrimony, geoparks and Natura 2000 sites).

According to the same order, in order to designate new protected areas of national interest, one of the selection criteria is the site’s situation, the areas designated as Natura 2000 sites being preferred.

Based on EGO no. 57/2007, the Natura 2000 sites are:

a) SACs (conservation, maintenance or, if need be, the restauration of favourable conservation status); The management of SACs requires (i) adequate Management Plans specifically established or integrated in others Management Plans and (ii) legal, administrative or contractual measures. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives;

b) SPAs (conservation, maintenance or, if need be, the restauration of favourable conservation status); the management of SPAs shall be performed as in case of SACs;

c) SCIs (see above the definition of SCIs).

In order to have an efficient and coordinated management of protected natural areas, the EGO no. 57/2007 mentions that the National Agency for Natural Protected Areas should be established as legal entity and in subordination of Central Authority for environment protection (*see also above, point 1.3. – Institutional context*). Such authority (which has been established by Government Decision no. 1320/2008) establishes the framework of the Management Plans and of the regulations of protected natural areas.

**Natura 2000 network**

According to EGO no. 57/2007, one category of protected natural area is that of Community interest or Natura 2000 network comprising: SCIs, SACs and SPAs.
The protection regimes for the Community interest sites were imposed at national level, according to the EGO no. 57/2007, through (i) Order no. 1964/2007 (for pSCIs) and (ii) GD no. 1284/2007 for SPAs.

The Natura 2000 European Database consists of individual national databases. Only MS’ national authorities “feed” the national database. There is one national database for both SPAs and pSCIs. Mention should be made that, according to the representatives of the central authority for the environment protection, the Romanian Natura 2000 network is considered as a real model for sustainable development and not as a system of strictly protected natural areas. The designation of Natura 2000 sites does not represent strict protection and there are tolerated the activities of sustainable development which allow the conservation.

As regards timing of Natura 2000 establishment in Romania, we notice 3 (three) mandatory deadlines:

(i) from the day of accession there are 3 years in which to hold the biogeographic seminars (until 2010);
(ii) Romania should report to the EC about the implementation of the measures - every six years, joining the original timeline for old MSs (until 2013);
(iii) Romania have to designate SACs within 6 years after the adoption of SCIs list and appropriate measures should apply to SACs (e.g. management plans) (until 2016).

**National System Planning for Protected Areas**

The National Spatial Plan (“NSP”) (Planul de Amenajare a Teritoriului Național – PATN) is the support of complex and sustainable development, including the regional spatial development. The NSP is structured on specialized sections, which are approved by law by the Parliament of Romania.

Pursuant to the Law no. 5/2000 on the approval of the Spatial Planning of the National Territory – Section III – Protected Areas, the protected areas are natural or built-up zones, geographically and/or topographically defined, including values of the natural and/or cultural heritage and shall be declared as such with a view to attaining specific objectives concerning the conservation of the heritage values.

According to Law no. 5/2000, Romania has 844 protected areas divided in 5 (five) categories of the 6 (six) management categories of protected areas as established by the World Conservation Union (“IUCN”). Based on these categories, any protected area, irrespective of its title, should be included in one or more of these categories. Pursuant to IUCN, while protected areas in the past have tended to be considered as separate entities, good practice now recommends that they be planned and managed as a system (such as Natura 2000 network), and indeed this is specifically required under Art 8 of the Convention on Biological Diversity (“CBD”).

The Natura 2000 network contributes to the "Emerald network" of Areas of Special Conservation Interest (ASCI) set up under the Bern Convention on the conservation of European wildlife and natural habitats. The EU, as such, is also a Contracting Party to the Bern Convention. In order to fulfill its obligations arising from the Convention, particularly in respect of habitat protection, it produced the Habitats Directive in 1992, and subsequently set up the Natura 2000 network. The Emerald Network is based on the same principles as Natura 2000, and represents its de facto extension to non-EU countries.

**4.1 Transposition of Natura 2000 management regimes**

See above our comments with respect of implementation of Nature Directives. According to EGO no. 57/2007, the management of SPAs shall be performed as in case of SACs.
Mention should be made that by **Ministerial Order no. 494/2005** it has been approved the procedure for granting the management and the custody of the protected natural areas. Currently, the central authority for the environment protection has replaced this order with the Ministerial Order no. 1533/2008 on the approval of (i) the Methodology for granting the management (administrare) of the protected natural areas which require the establishment of management structures and of (ii) the Methodology for granting the custody (custodie) of the protected natural areas which does not require the establishment of management structures. Pursuant to Ministerial Order no. 1533/2008, within 90 days as of the coming into force of this, the management contracts and custody conventions shall be amended or terminated, if case. Pursuant to the Government Decision no. 1320/2008, the granting of the management of protected natural areas is performed by the National Agency for Natural Protected Areas, based on the management contracts or custody conventions, if case.

Mention should be made that, according to Art 26 of EGO no. 57/2007, for the plots of land situated in the protected natural area (including also plots of land situated in the Natura 2000 network), the owners or concessionaires shall receive *compensations* for fulfilment of restrictive provisions of the Management Plan of protected natural area. Until the approval of the Management Plans, the administrators of protected natural areas have the obligation to establish a set of *conservations measures* and to send this information to the National Agency for Protected Natural Areas. Moreover, the owners of the plots of land situated outside of built-up areas (*extra muros*) but situated in the protected natural areas are exonerated from the property tax.

### 4.2 Transposition of Natura 2000 general protection regime

As described above, based on EGO no. 57/2007, the Natura 2000 general protection regime is the general regime of protected natural areas (*regim de arie naturală protejată*). According to Art 28, paragraph (4) of EGO no. 57/2007, as amended and supplemented by the new Emergency Government Ordinance no. 154/2008, *the appropriate assessment* of the potential effects over the protected natural area of Community interest is the integral part of the procedures of the environmental assessment/the environmental impact assessment – *see below, Case Study no. 1, point 5 – Appropriate Impact Assessment*).

The main purpose of Natura 2000 is to maintain the biodiversity of habitats taking into consideration the economical, social, cultural and regional requests.

Mention should be made that Habitats Directive outlines **three stages** in the establishment of Natura 2000:

- Proposals for sites for inclusion in the Natura 2000 network;
- Selection of a list of SCIs from proposals made by MSs; and,
- Establishment of management regimes for the sites.

### 4.3 Transposition of Natura 2000 protection regime

Firstly, we mention that the Romanian law does not provide for a specific protection regime for Natura 2000 sites. EGO no. 57/2007, as amended and supplemented by the new Emergency Government Ordinance no. 154/2008, uses the notion of the appropriate assessment which is comprised in the procedures of the environmental assessment or the environmental impact assessment.

### 4.4 Natura 2000 data overview table

<table>
<thead>
<tr>
<th></th>
<th>How many Natura 2000 sites are there?</th>
<th>The future Natura 2000 network shall have 381 sites.</th>
</tr>
</thead>
</table>

Until now, the following were identified as Natura 2000 sites:
(i) 108 sites SPA, representing about 11.89% of the Romanian territory;
(ii) 273 sites pSCI, representing about 13.21% of the Romanian territory.

5. **BIBLIOGRAPHY & TABLE OF CASES**

The main books and articles (law and political sciences) have been published in Romania. These books/articles do not directly refer to the implementation of Art 6. They include:

- **Mircea Duțu** – Dreptul mediului, tratat, 2 vol., editia a III-a, Editura AllBeck, București, 2007;

Romanian national courts have not yet referred specifically to Art 6 of the Habitats Directive.

The judgments mentioned below are of interest because they deal with projects impacting Natura 2000 sites:

- The court judgement of Alba-Iulia Court of Appeal no. 2092/2005 (Case Study no. 1);
- The court judgement of Alba-Iulia Court of Appeal no. 1391/CA/2006 (Case Study no. 1);
- The court judgement of Tribunalul Alba no 205/CA/2005 (Case Study no. 1);
- The court judgement of Tribunalul Sibiu no. 221/15.11.2007 (Case Study no. 2).
PART TWO: CASE STUDIES

Both case examples described in this part involve habitats and important species of fauna and flora which are fully protected according to Romanian legislation and the Habitats Directive.

Mention should be made that, pursuant to EIA Decision - developer – is defined as being (i) the applicant for the environmental agreement (“acord de mediu”) for a private project or (ii) the public authority which initiates a project.

CASE STUDY NO. 1 - Rosia Montana Mining Project

1. BASIC DESCRIPTION OF THE SPA or SAC

Romania has not yet formally designated SACs.

The project is going to be developed on a large scale. For the purpose of this project, we selected only one site, namely ROSC10110 Măgurile Băiței (situated in Hunedoara county). This site is listed as pSCI by Ministerial Order no. 1964/2007.

The site has a surface of 257 ha.

The site is located within the Continental biogeographical region.

Natural habitat types
Natura 2000 code 9180 - * Tilio-Acerion forests of slopes, screes and ravines (priority habitat);
Natura 2000 code 6520 - Mountain hay meadows;
Natura 2000 code 8210 - Calcareous rocky slopes with chasmophytic vegetation;
Natura 2000 code 91Y0 - Dacian oak & hornbeam forests

Species - animals
1303 Rhinolophus hipposideros;
1060 Lycaena dispar
1065 Euphydryas aurinia

Species – plants
4097 Iris aphylla ssp. Hungarica

• Protection status
Pursuant to the Law no. 5/2000 on the approval of the Spatial Planning of the National Territory – Section III – Protected Areas, the site is established as protected natural area of national interest. Such area is included in the national network of protected areas. For each category of protected natural area, EGO no. 57/2007 establishes (i) the protection objectives and (ii) the management regime (management category).

• Level of/Main threats
Vulnerability section of SDF for ROSCI0110 is not filled. On the other hand, in the SDF, there are
lists antropic activities and their effects on site and in its proximity.

Activities and their effects on site: hunting, mountain climbing, electrical lines, erosion, meadow etc.

Activities and their effects in the proximity of the site: meadow, quarry, roads, air pollution, soil
pollution, etc.

As regards the level of threats, the scale of the Project (the purpose is to develop one of the largest
gold mining exploitations in Europe) impacts over existing habitats/species of fauna and flora.
Please note: this information is provided in the ‘site standard data form’ (97/266/EC) that was
communicated by each national authority to the European Commission.

If the site has not been formally designated either as a SPA or a SAC:

- Indicate whether the site was selected for inclusion into the SCI’s list; OR

Pursuant to Order no. 1964/2007, the site has been selected for inclusion into national pSCIs.

Roşia Montană Project – mining project

The developer is committed to building a new state of the art mining facility that will reinvigorate the
local economy and honor cultural patrimony, while setting world-class standards for environmental
and social responsibility. One of the major commitments of the developer is to solve past
environmental problems of the site.

(i) Strategically Environment Assessment (“SEA”) procedure in case of Roşia Montană Project

In 2002, the Local Council Roşia Montană approved the General Urbanism Plan and Zonal Urbanism
Plan (Roşia Montană Industrial Area). The Local Urbanism Regulation is an urbanism documentation
of regulatory character which includes provisions referring to the way of land use, development and
use of the buildings and arrangements afferent to the study area named Roşia Montană Industrial Area,
placed south to the locality.

In this respect it should be mentioned that, at that time, the Emergency Government Ordinance no.
236/2000 on the regime of protected natural areas and natural habitats, wild flora and fauna
conservation² was already in force. On the other hand, SEA Decision has been passed later. Therefore,
the developer has finalized and sent a new environmental report drafted in compliance with SEA
Decision (Roşia Montană Industrial Area).

In July 2007, in order to obtain an environmental agreement (“acord de mediu”) using Environmental
Impact Assessment (“EIA”) procedure, the developer has obtained an Urbanism Certificate from the
County Council Alba Iulia. Mention should be made that the Urbanism Certificate is a basic
prerequisite for the adaptation of the EIA and for environmental permitting. According to the
applicable legal provisions, the Urbanism Certificate is an evidencing document necessary throughout
the entire procedure of environment impact assessment and of issuance of the environment agreement.
In January 2008, the Romanian court (Curtea de Apel Alba Iulia) handed down a judgement,
considering that the decisions of Local Council Roşia Montană with respect of Roşia Montană
Industrial Area are illegal.

(ii) EIA procedure in case of Roşia Montană Project

In December 2004, the developer of the project launched the procedure to obtain an environmental
agreement in submitting the Project Presentation Report for the Roşia Montană Project to the

² As further amended and supplemented by the Law no. 426/2001 and Law no. 345/2006.
Environmental Protection Agency Alba. According to the EIA Order, the project (the main activities) has been classified as having significant environmental impact.

In January 2005, a member of the directly affected public and as consulted party requested the suspension of the procedure to obtain an environmental agreement launched in December 2004 by the developer.

In April/May 2005, the Technical Analysis Committee (including representatives of central authorities and institutions) has assessed the EIA Report submitted by the developer of the project. Further to the positive assessment performed by the Technical Analysis Committee, in May 2005, the Environmental Protection Agency Alba issued the environmental agreement for the 39 drilling points which are parts of the project.

In November 2005, the Romanian court (Curtea de Apel Alba Iulia) suspended the environmental agreement for the 39 drilling points. In February 2007, the Romanian court (Curtea de Apel Alba Iulia) annulled the environmental agreements for others 192 drilling points placed at Roşia Montană and 59 drilling points at Bucium.

Currently, the central authority for the environmental protection (Ministry of the Environment and Sustainable Development) cannot proceed with the procedure for environmental impact assessment and for the issuance of the environmental agreement, due to the fact that one of the documents submitted with this aim (the Urbanism Certificate) has been suspended. We emphasize the fact that the Ministry of Environment and Sustainable Development cannot assess the validity of the Urbanism Certificate, such assessment being only the attribute of the courts of law. The Ministry of Environment and Sustainable Development has only taken act of the suspension de jure of this Certificate, in accordance with the applicable law.

However, pursuant to Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment, the requests for granting of such regulation act submitted before the date of entering into force of this enactment are solved according to legal provisions in force at the relevant date of submission.

2. MANAGEMENT OF NATURA 2000 SITES

Specifically:
- ‘special conservation measures’ (SPA, Art 4(1) Birds) or
- ‘necessary conservation measures’ (SAC, Art 6(1) Habitats)
relating to the habitats of a SPA/SAC

The site ROSCI0110 Măgurile Băiței (situated in Hunedoara county) corresponds to category IV IUCN (nature reservation). Therefore, the management category shall correspond to this classification. Mention should be made that the site constitutes public domain (public property).

On this site ROSCI0110, it is placed another protected area of national interest “The limestones of the Măgura hill” - category IV IUCN (nature reservation) having a surface of 120 ha, the last area being declared as protected area based on Law no. 5/2000 on the approval of the Spatial Planning of the National Territory – Section III – Protected Areas and Decision of the Local County of Hunedoara no. 13/1997.

As regards the Management Plan of the ROSCI0110 site, the custodian of nature reservation “The limestones of the Măgura hill” - Commune of Băița, has been submitted to the Romanian Academy, the Regulation and Management Plan of the protected natural area (having a surface of 257 ha). The submission to the Romanian Academy is a step for approval of a Management Plan.
For the forestry surfaces existing in this site (ROSCI0110), as results from SDF and in compliance with Romanian Forests Code, the management shall be performed in compliance with the Regulation established the Silvic District Deva – amenajament silvic - (which constitutes unit of the National Forest Administration – Romsilva). It is worth to mention that such regulations (amenajamente silvice) shall comply with the provisions of the Spatial Planning of the National Territory.

Apparently, in Romania, the network Natura 2000 is non-functional.

Pursuant to EGO no. 57/2007, conservation represents a set of measures to be applied in order to maintain or restore the natural habitats and species of wild fauna and flora, in a favourable state.

The conservation status of the site is favourable when the following conditions are cumulatively fulfilled:
(i) the natural area is stable or in extension;
(ii) the structure and specific functions necessary for long-term maintenance;
(iii) the specific species are in favourable conservation status.

The conservation status of a species is favourable when the following conditions are cumulatively fulfilled:
(i) the population is stable;
(ii) the natural area is maintained;
(iii) the habitat is enough for the maintenance of the population.

**Site’s conservation objectives (SCO)**

Given that a site’s conservation objectives (SCOs) are essential to assess whether or not the project/plan has a ‘significant’ impact upon the site’s integrity, please address this issue carefully.

- SCOs formally identified?
- Or is info from ‘site standard data form’ available on web?
- Describe how SCOs are assessed.

Based on Art 16, paragraph 4 of EGO no. 57/2007, the management methods (modalitatile de administrare) of protected natural areas shall be established by taking into consideration the possibilities to attain the site’s conservation objectives (SCO).

Pursuant to Art 21, paragraph 3 of EGO no. 57/2007, the conservation measures provided in the Management Plans of protected natural areas are established so that the economic, social and cultural requirements, as well as the regional and local particularities of the area are taken into consideration, except for the site’s conservation objectives which have priority.

According to Art 24, paragraph 2 of EGO no. 57/2007, the development plans for the sites included in the protected natural area shall be modified by the competent authority in compliance with (i) the Management Plans or (ii) the conservation objectives of the protected natural areas which does not have the Management Plan respectively.

**Conservation Measures**

(i) Ratione materiae: Are the ‘conservation measures’ required under Article 6(1)

(1) positive (e.g., plans for spreading, grazing incentives, subsidies, delayed pruning, hedgerow maintenance); or

(2) negative (e.g., prohibitions of soil contour modifications, deforestation, picking or harvesting wild species)?
It must be underscored that the Management Plan for the “Natura 2000” sites (in the countries where this network is functional) that preserve secondary grasslands, include intervention measures (e.g. grazing and mowing).

Besides the provisions of Management Plans or of the regulations of the protected natural areas, the Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment establishes certain interdictions such as the activities of harvest, store, process or commercialize the Geneticacally Modified Organisms (GMOs).

For others protected natural areas which have a Management Plan (for example Portile de Fier National Parc comprising two SPAs - ROSPA0026 Cursul Dunării-Baziaş-Portile de Fier and ROSPA0080 Muntii Almajului-Locvei and one SCI - ROSCI0206 Portile de Fier) it has been established a mix of positive conservation measures (forestation, soil rehabilitation) and negative conservation measures (prohibition of grazing, picking or harvesting wild species).

(ii) Ratione loci: Are these conservation measures only applicable inside the SPA/SAC? Do the conservation measures only apply only to SPAs/SACs?

Pursuant to Art 26, paragraph 2 of EGO no. 57/2007 until the approval of the Management Plans, the administrators of the relevant protected natural areas (including SACs and SPAs) have the obligation to (i) establish a set of conservation measures, for which shall be established compensations, and (ii) send this information to the National Agency for Protected Natural Areas with 6 (six) months from the date of taking into administration of protected natural area (as regards the establishment of such agency, see above our comments, point 1.3. – Institutional context).

According to Art 56 of EGO no. 57/2007, until the setting up of the Agency, the competencies listed in the ordinance shall be performed by the central authority for the environment protection.

(iii) Ratione temporis: Did the conservation measures apply only pursuant to a formal classification of the site by the Member State?

Until the establishment and approval of the Management Plans according to EGO no. 57/2007, the existing Management Plans shall be applied. In case when there are no Management Plans, several minimal conservation measures shall be applied (necessary measures to maintain the favourable condition of a Natura 2000 site and restoration measures).

Management Plan

Is the management plan:
(i) specifically designed for the site at issue?
(ii) integrated into other development plans?

According to Romanian legislation, the Management Plan may be specifically designed for the site at issue or integrated into other development plans.

According to Art 21, paragraph 7 of EGO no. 57/2007, in case of superposition of protected natural areas of Community interest with the protected natural areas of national interest (which is our case for ROSCI0110), the management of SCI shall be included in the Management Plan of protected area of national interest, being applicable the most restrictive protection function.

We mention that, based on EGO no. 57/2007, the management of SACs requires Management Plans (i) specifically adjusted for the designated sites or (ii) integrated in other Management Plans.

(iii) deemed to be ‘appropriate’?
Within six years after their designation as sites of Community importance, Member States will adopt conservation measures involving, if need be, appropriate management plans and other measures which correspond to the ecological requirements of the natural habitat types and the species of Community interest.”

Pursuant to EGO no. 57/2007, in case of SCIs, SACs and SPAs the Management Plans and Regulations shall be (i) drafted by the administrators, (ii) sealed of approval by the National Agency for Protected Natural Areas and (iii) approved by order of the central authority for the environment protection.

The town and county planning, land use, local and national development plans, as well as any other exploitation/utilization of natural resources in the protected natural area shall be harmonized with the provisions of the Management Plan. According to EGO no. 57/2007, the protected natural areas and ecological corridors shall be highlighted by the National Agency for Cadastre and Land Registration (“Agenția Națională de Cadastru și Publicitate Imobiliară”) in the national plans, the town and county planning, land use and Land Registers.

Statutory, administrative or contractual measures

(i) Please explain whether the conservation measures are set out through:

(1) statutory measures;
(2) administrative measures;
(3) contractual measures; or
(4) a mix of several measures.

The conservation measures are set through a mix of statutory measures (Regulation), administrative measures (inclusion in the most restrictive protection function) and contractual measures (with respect of forestry surfaces – Silvic Districts).

According to EGO no. 57/2007, the Management of SACs requires (i) Management Plans specifically adjusted for the designated sites or integrated in other Management Plans and (ii) statutory, administrative or contractual measures in order to avoid the deterioration of natural and species habitats as well as the disturbance of species for which the sites has been designated.

(ii) Please explain the manner in which the ‘appropriate statutory, administrative or contractual measures’ (Article 6(1)) have been enacted by the authorities with the aim of achieving the SCOs? In so doing, one should take into account the qualitative as well as the quantitative approach that should have been endorsed by the national authority.

Ministerial Order no. 1533/2008 approves (i) the Methodology for granting the management of the protected natural areas which require the establishment of management structures and (ii) the Methodology for granting the custody of the protected natural areas which does not require the establishment of management structures. Pursuant to the Government Decision no. 1320/2008, the granting of the management of protected natural areas is performed by the National Agency for Natural Protected Areas, based on the management contracts or custody conventions, if case

For more details, see above.

(iii) How are the SCOs being assessed? Is there a set of indicators that could be used with the aim of assessing the SCOs?

Pursuant to EGO no. 57/2007, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to a study for impact evaluation (appropriate assessment in Romania’s case), in view of the site's conservation objectives. As regards site’s conservation objectives, the environmental agreement (acordul de mediu) or the environmental
approval (avizul de mediu) for plans and/or programmes should be issued only if the project/plan does not adversely affect the integrity of the relevant protected natural area. The EGO no.57/2007 refers to the site’s conservation objectives: still the enactment does not clarify how these conservation objectives are assessed.

(iv) Please assess briefly whether these measures are tailored to the ‘ecological requirements’ of the species and habitats concerned and contributing to the SCOs.

These measures should be tailored to the ‘ecological requirements’ during all phases of the Roşia Montană Project, namely: (i) Existing Conditions of the site, (ii) Construction Phase, (iii) Operations Phase and (iv) Closure phase. The construction activities for the project will give rise to widespread movement of soil and rock, for construction of water retention and treatment facilities, access roads, construction of the processing plant and preparatory works for mining. Also, negative impacts could be caused by chemicals and chemical conditions associated with the Project.

**Funding**

*Are there some EC funds (Life, rural development (Reg EC1698/2005), FEDER, etc) used with the aim of implementing the conservation measures?*

For this site there are no EC funds used with the aim of implementing the conservation measures. Mention should be made that the Sectorial Operational Programme for Environment 2007 - 2013 (“POS Environment 2007 – 2013”) – as approved by EC Decision no. 3467 on 11.07.2007 - establishes the strategy for European funds allocation for the period 2007 – 2013. The programme has been developed in connection with the strategically national objectives as provided in the National Development Plan. One of the priorities of the POS Environment 2007 – 2013 is nature protection, namely an appropriate management of protected areas, with a focus on the management of Natura 2000 sites.

Moreover, according to Art 30 of EGO no. 57/2007, the administrators of protected natural areas shall evaluate the necessary costs for the implementation of Management Plans and to send these data to the central authority for the environment protection. Financial resources for good administration are provided by the budget of the National Authority for Protected Natural Areas, being purposed for the implementation of Management Plans and/or conservation measures. In order to supplement the financial resources and in compliance with the provisions of Management Plans and Regulations, the administrators may establish a tariffs system, with the prior approval of the National Agency for Protected Areas. For Natura 2000 sites, the central authority for the environment protection shall send to EC the estimated costs for implementation of conservation measures of species and habitats of Community interest, with the purpose of co-financing.

### 3. PREVENTIVE REGIME FOR BOTH SPA AND SCA (ARTICLE 6(2))

“Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.”

**Type of prevention regime provided by legislation**

(i) Is the site protected by:

(1) a specific and/or general preventive regime applicable to Natura 2000 sites only;

There is no specific preventive regime applicable to Natura 2000 sites only. EGO no. 57/2007, as amended and supplemented by the new Emergency Government Ordinance no. 154/2008, provides that in order to evaluate the potential effects over Natura 2000 sites, the plans or projects are submitted to an appropriate assessment which is integral part of the procedures of the environmental assessment/the environmental impact assessment – see below, Case Study no. 1, point 5 – Appropriate Impact Assessment).

According to Art III of the new Emergency Government Ordinance no. 154/2008, the provisions of Art 28, paragraph (2) – (10), as amended and supplemented by this ordinance (implementing Art 6 of Habitats Directive), shall come into force at the date of entering into force of the methodology of application of the environmental impact assessment for certain private and public projects.

According to EGO no. 57/2007, one category of protected natural area is that of Community interest or „Natura 2000” sites comprising SCIs, SACs and SPAs. For more details, see above.

(2) existing nature protection regimes (existing protected areas status, existing species protection rules, etc):

The site ROSCI0110 Măgurile Băiței (situated in Hunedoara county) corresponds to category IV IUCN (nature reservation), being protected area of national interest.

(3) a combination of these protection measures?

See above.

**Scope of the preventive measures**

*Does the obligation in paragraph 2 cover the deterioration of any natural or species habitat inside the SAC rather than just the habitats for which the site has been classified? Or is the obligation restricted to the habitats prompting the classification?*

Mention should be made that SDF mentions, besides habitats and species of Community interests, others important species of flora and fauna, which are not listed in the Annexes of Habitats Directive. On the other hand, the Order no. 1964/2007 mentions that the Environment Report and EIA Report shall highlight all types of species and/or habitats of Community interest for whose conservation the site has been designated and to propose (i) measures for reduction if impact, (ii) conservation measures and/or (iii) compensatory measures, if need be.

**Spatial range of preventive measures**

*Does the regime apply exclusively within the site or does the regime also apply to activities outside the site (for example the spreading of manure in agricultural fields is not encompassed within the site)? Please keep in mind the results-based obligation contained in Article 6(2) of the Habitats directive.*

Pursuant to EGO no. 57/2007, in the absence of the specific regulation acts (such as the environmental approval or the environmental agreement), there are forbidden the activities within the protected natural areas or within the neighborhood of these which are likely to generate a significant negative impact over the wild species or over the natural habitats for which these have been designated.

For the granting procedures of the specific regulation acts for plans, projects and/or activities which may adversely affect the protected natural areas of Community interest, the relevant authorities for the environment protection shall request and observe the approval (aviz) of the administrators or

The activities with significative negative impact in the vicinity of protected natural areas are the activities outside the limits of protected natural area which may generate a significant negative impact over the natural habitats or wild species for which the site has been designated.

The provisions of Management Plans and Regulations are mandatory also for the individuals and legal entities which own or administrate lands or others assets and/or perform activities in the perimeter or in the vicinity of the site.

**Nature of the activities covered by the general prevention regime**

(i) Please describe the binding regulatory framework intended to prevent deterioration and specific-significant disturbances resulting from human activities performed outside the site.

   See above.

(ii) Does the preventive regime cover all types of activities that could have impacts? (e.g., building, circulation, pollution (physical, chemical), agricultural and forestry activities etc).

**The internal zoning** of protected areas of national interest (which is the most restrictive protection function in our case) shall be performed by the Management Plan through the establishment and delimitation, if need be of (i) the strictly protected areas, (ii) the areas with integral protection, (iii) the buffer areas and (iv) the areas of sustainable development of human activities.

It’s worth to mention that in the areas of sustainable development of human activities, in compliance with the provisions of the Management Plans, there are allowed the exploitation activities of non-renewable resources, provided that this possibility is provided in the Management Plan and represents a traditional activity.

(iii) Does the general prevention regime cover existing activities (including legally permitted infrastructures and installations) or only future activities?

For each area established for the internal zoning of protected areas there are established categories of activities which are banned or allowed. The Romanian legislator does not make distinction between existing activities and future activities.

**Effectiveness of the general prevention regime**

(i) In case studies where the impact is disturbance of a species, how does the authority assess the significance of the impact? Are there any indicators to assess it?

The authority assesses the significance of impact by taking into consideration the nature, scale and/or location of the project.

As an example, Law no. 407/2006 on hunting and protection of cynegetic fond, use the notion of optimum population (populație optimă) as the total number of individuals of the fauna of cynegetic interest which ensure the conservation of biodiversity.

According to the Romanian Forests Code as approved by Law no. 46/2008, the technical norms for planning are issued by the central authority for forests taking into consideration the principle of the ensurance of the biodiversity conservation and amelioration (principiul asigurării conservării și ameliorării biodiversității).
(ii) Is the regime ‘appropriate’ to effectively prevent deterioration of natural habitat types and significant disturbances of species on the site, and so to fulfil the favourable conservation status of the habitat/species concerned?

Direct Effect

Have the national courts of your MS ruled that paragraph 2 has direct effect? No.

4. APPROPRIATE IMPACT ASSESSMENT (AIA) (ARTICLE 6(3) FIRST PHRASE)

Art 6(3) and (4) of the Habitats Directive define a step-wise procedure for considering plans and projects:

(i) the first part of this procedure consists of an assessment stage and is governed by Art 6(3), first sentence;

As results from the Summary Report on the implementation of Art 6(4), first subparagraph, of Habitats directive during the period 2004-2006 issued by EC, DG Environment on 30 June 2008, EC recognizes that MSs are struggling with the development of appropriate assessments as required under Art 6(3). Considering the information submitted by MSs, the assessments of the effects of projects are frequently vague and too general. Given that the evaluation of impacts determines what needs to be compensated, both in quantity and in quality, this issue becomes crucial.

From the assessment developed, it can be concluded that the information transmitted does not reflect the impacts properly. There is scarce information on specific habitats and quantitative data such as number of hectares of the habitat affected, percentage of the habitat affected or the percentage of the site. Information regarding the quality and conservation status of the affected habitats is generally missing. With respect to species, there is a general lack of information in relation to the population size, degree of isolation or conservation status.

(ii) the second part of the procedure, governed by Art 6(3), second sentence, relates to the decision of the competent national authorities;

(iii) the third part of the procedure (governed by Art 6(4)) comes into play if, despite a negative assessment, it is proposed not to reject a plan or project but to give it further consideration.

The applicability of the procedure and the extent to which it applies depend on several factors, and in the sequence of steps, each step is influenced by the previous step.

As regards geographical scope, the provisions of Art 6(3) are not restricted to plans and projects which exclusively occur in or cover a protected site; they also target developments situated outside the site but likely to have a significant effect on it.

1. The impact assessment procedure applies to either plans or projects that:
   a) have no relationship with the management of the site;
   b) but do have a significant effect on the site.

According to Art 28, paragraph 2 of EGO no. 57/2007, as amended and supplemented by the new Emergency Government Ordinance no. 154/2008, any plan or project not directly connected with or necessary to the management of the protected natural area of Community interest, and which, either individually or in combination with other plans or projects, are likely to have a significant effect over
the area, is submitted to an appropriate assessment of the potential effects over the protected natural area of Community interest, taking into consideration the conservation objectives of such area.

2. In addition, the assessment must be ‘appropriate’ as regards to the SCOs. Consequently, questions arise as to the independence of the experts as well as to the quality of the assessment. Please keep this in mind and systematically examine the scope of these different conditions.

The Romanian legislator shall further clarify the notion of appropriate assessment which is considered as being integral part of EIA and/or SEA procedure.

**Scope of the plans/projects requiring an appropriate assessment**

(i) Is there any legal definition of the concepts: ‘project’ and ‘plan’?

The **Government Decision no. 1074/2004** establishing the procedure for environmental assessment for plans and programmes (“SEA Decision”) defines the concepts of ‘plans’ or ‘programmes’ as being the plans and the programmes, including those co-financed by European Community, as well as any amendment to these which (i) are drafted and/or approved by a national, regional or local authority or prepared by these for approval through a legislative procedure by the National Parliament or the Government and (ii) requested by legislative, regulatory or administrative provisions. **Ministerial Order no. 995/2006** on the approval of the list of plans and programmes for which the SEA Decision is applicable, establishes a list which is not exhaustive and it can be amended and/or supplemented by Order issued by central authority for the environment protection.

The **Government Decision no. 1213/2006** on the environmental impact assessment framework procedure for the public and private projects (formerly Government Decision no. 918/2002) (“EIA Decision”) defines the concept of ‘project’ as being the execution of construction works or of others installations or facilities, others interventions over the natural scenery and landscape, including those referring to the extraction of mineral resources (mining, our note).

**Environmental assessment procedures according to Romanian legislation, relevant for Habitats Directive**


Both directives (SEA Directive and EIA Directive) have been transposed in the national legal system by Government Decisions. These Romanian enactments establish two distinctive procedures (the environmental assessment – *evaluarea de mediu* and the environmental impact assessment - *evaluarea impactului asupra mediului*) and two distinctive acts (the environmental approval for plans and programmes - *avizul de mediu pentru planuri și programe* and the environmental agreement – *acordul de mediu*). Mention should be made that these procedures and acts are also defined by the **Framework Law on Protection of the Environment**.

(i) **SEA Directive**

Firstly, pursuant to SEA Directive, where the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, such as Habitats Directive or Birds Directive, in order to avoid duplication of the assessment, MSs may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community
According to the same directive, an environmental assessment shall be carried out for all plans and programmes, which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Art 6 or 7 of Habitats Directive.

The SEA Directive has been transposed by **SEA Decision**. SEA Decision sets up environmental assessment procedure, applied in order to issue the environmental approval necessary for adopting plans and programmes which are likely to have significant effects on environment, defining the role of the competent authority for environmental protection, the consultation requirements of interested stakeholders and of the public participation.

According to SEA Decision, the environmental assessment is carried out for all the plans and programmes that, due to the likely effects on sites, have an impact on the SPAs and SACs established by Emergency Government Ordinance no. 236/2000 on protected natural areas regime, natural habitats, wild fauna and flora preservation, approved with amendments by Law no. 462/2001 (currently Emergency Government Ordinance no. 57/2007).

As an example, such plans and programmes are those for town and country planning (such as General Urbanism Plan or Zonal Urbanism Plan), land use and other development policies. Such plans/programmes establish the framework for the issuance of the future environmental agreements (acorduri de mediu).

According to SEA Decision and Emergency Government Ordinance no. 164/2008 (which implicitly amends SEA Decision), the environmental approval for plans and programmes (aviz de mediu pentru planuri si programe) is the administrative act, issued, in written form, by the competent authority for environmental protection, which confirms the integration of the aspects regarding the environmental protection into the plan or programme submitted to adoption (the environmental approval is definitely qualified as being administrative act by Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment).

The issuing competence of such administrative act belongs to Regional Environmental Protection Agencies for local and county plans and programmes, and to central public authority for environmental protection for national and regional plans and programmes. Pursuant to Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment, the requests for granting of such approval submitted before the date of entering into force of this enactment are solved according to legal provisions in force at the relevant date of submission (this is the case for Case Study no. 1 and Case Study no. 2).

According to Art 39 of SEA Decision, the environmental assessment (evaluarea de mediu) carried out for plans and projects according to the provisions set in this Governmental Decision does not exclude the implementation of environmental impact assessment procedure stipulated for projects, according to the legislation in force (according to EIA Decision).

**(ii) EIA Directive**

The EIA Directive has been transposed by **EIA Decision**. EIA Decision establishes the environmental impact assessment framework procedure for the public and private projects which are likely to have significant effects on the environment.

The competent authorities responsible for applying EIA Decision are, judging by case, the central public authority for environmental protection, the National Environmental Protection Agency, the regional and local environmental protection agencies. Currently, the National Environmental Protection Agency is a specialised authority of the public central administration, subordinated to the Ministry of Environment and Sustainable Development, having competencies in implementing environmental policies and legislation. Its functions and attributes were redefined in order to provide the legal framework needed to fulfil the obligations assumed by Romania through the Position Paper – Chapter 22 (Environment) for accession.
According to EIA Decision and Emergency Government Ordinance no. 164/2008 (which implicitly amends EIA Decision), the environmental agreement (acordul de mediu) is the administrative act establishing the conditions for developing the project, from the environmental impact point of view; the environmental agreement represents the decision of the competent authority for environmental protection to grant the developer the right to develop his project from the point of view of environmental protection (the environmental agreement is definitely qualified as being administrative act by Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment). The framework for the issuance of the future environmental agreements is established by (i) the plans/programmes or (ii) amendments to these plans or programmes (plans and programmes for town and country planning, land use and other development policies).

Pursuant to EIA Decision, the environmental impact assessment (evaluarea impactului asupra mediului) is the process of identifying, describing and establishing, judging by each case and in accordance with the legislation in force, the direct and indirect, synergic, cumulative, principal and secondary effects of a project on human health and environment, finalized through the report on the environmental impact assessment.

The EIA procedure has been further detailed by Ministerial Order no. 860/2002 on the procedure for environmental impact assessment and for the issuance of the environmental agreement (“EIA Order”), order issued by the central authority for the environment protection. We mention that, pursuant to current EIA Decision, the enactments passed under the formerly EIA Decision, namely the Government Decision no. 918/2002, are valid until the date of repealing, provided that these enactments does not infringe current EIA Decision. Such is the case of EIA Order.

The object of this procedure is to regulate the conditions for application and issuance of the environmental agreement for projects with a significant environmental impact. Pursuant to EIA Order, the environmental conditions and permitting procedure must ensure an effectively integrated approach by information and participation of all involved authorities. For this purpose, the involved authorities shall be informed and consulted within a Technical Analysis Committee (including representatives of the various authorities and institutions), according to the provisions of the present procedure. This Technical Analysis Committee assesses the EIA Report submitted by the developer of the project.

The EIA Order laid down a classification of new investment projects or modification of the existing ones taking into consideration of the environmental impact: (i) insignificant impact, (ii) low environmental impact and (iii) significant environmental impact. Activities of significant environmental impact shall be those that, following the screening stage (etapa de încadrare), shall be made subject to the environmental impact assessment procedure. For new investment projects or substantial changes to existing ones, including for decommissioning projects, relevant to such activities, an environmental agreement shall be issued.

(ii) Are the concepts of ‘plan’ and ‘project’ interpreted broadly by the administration and the courts? Both concepts ‘plan’ and ‘project’ respectively are broadly defined by Romanian legislator. Therefore, such concepts shall be and are interpreted broadly by the administration and the courts.

Plans/Programmes

Ministerial Order no. 995/2006 on the approval of the list of plans and programmes for which the SEA Decision is applicable, establishes a list which is not exhaustive and it can be amended and/or supplemented by Order issued by central authority for the environment protection.

Pursuant to the same enactment, in order to ensure a high level of the environment protection, the holders of the plans or programmes has the obligation to notify the competent authority for the environment protection all plans and programmes, including those co-financed by European
Community, as well as any amendment to these which (i) are drafted and/or approved by a national, reginal or local authority or prepared by these for approval through a legislative procedure by the National Parliament or the Government and (ii) requested by legislative, regulatory or administrative provisions.

Projects

According to EIA Decision, the projects is defined as being the execution of construction works or of others installations or facilities, others interventions over the natural scenery and landscape, including those referring to the extraction of mineral resources (mining, our note). Therefore, this concept is interpreted broadly by the Romanian legislator.

(iii) Are all the plans/projects likely to be assessed because of their significant impact authorised by an express act, which determines the rights and obligations of the parties involved?

The Framework Law on Protection of the Environment (as recently amended and supplemented by Emergency Government Ordinance no. 164/2008) establishes several regulation acts (acte de reglementare) namely: (i) the environmental approval for plans and programmes (aviz de mediu pentru planuri si programe), (ii) the approval Natura 2000 (avizul Natura 2000), (iii) the environmental agreement (acordul de mediu) and (iv) the environmental permit (autorizația de mediu).

The environmental agreement is the administrative act issued by the competent authority for environmental protection establishing the conditions and, if case, measures for the protection of the environment which shall be fulfilled for developing the project. The framework for the issuance of the future environmental agreements is established by the plans/programmes or amendments to these plans or programmes (plans and programmes for town and country planning, land use and other development policies).

The environmental approval for plans and programmes is the administrative act, issued, in written form, by the competent authority for environmental protection, which confirms the integration of the aspects regarding the environmental protection into the plan or programme submitted to adoption.

The approval Natura 2000 is the administrative act issued by the competent authority for the environment protection, which contains the conclusions of the appropriate assessment and which establishes the conditions of carrying out of the plan or project as regards the impact over the protected natural areas of Community interest, included or to be included in Natura 2000 ecological network. Regarding the competence for granting such administrative act, it has been approved the Ministerial Order no. 1338/2008 regarding the procedure for granting the approval Natura 2000 (avizul Natura 2000). According to this recent enactment, the approval Natura 2000 is issued by (i) the National Agency for Environmental Protection (for the projects located in two or more regions), (ii) REPAs (for the projects located in two or more counties) and (iii) LEPAs (for the projects located in the area of a county). Pursuant to the same order, the documentation for granting the approval Natura 2000 submitted to central authority for environmental protection (ie the Ministry of Environment and Sustainable Development) shall be solved by such authority.

The environmental permit is the administrative act issued by the competent authority for the environmental protection, which establishes the functioning conditions and/or parameters of an existing activity or a new activity likely to have a possible significant negative impact on the environment, necessary for starting the activity (including rights and obligations of the parties involved).

(iv) Is it likely that plans/projects located outside the site (which are likely to have a significant effect on the conservation status of the classified site) are assessed?
Pursuant to EGO no. 57/2007, in the absence of the specific regulation acts (such as the environmental approval or the environmental agreement), there are forbidden the activities within the protected natural areas or within the neighborhood of these which are likely to generate a significant negative impact over the wild species or over the natural habitats for which these have been designated.

**Screening for the appropriate assessment: no relationship with the management of the site**

How has the authority reached the conclusion that the plan/project was not directly related to or necessary for the management of the site? Was the concept of ‘management’ interpreted in reference to activities necessary to realise SCOs?

The Romanian legislator does not provide further guidance with respect of how the authority reached the conclusion that the plan/project was not directly related to or necessary for the management of the site.

On the other hand, pursuant to the Law no. 5/2000 on the approval of the Spatial Planning of the National Territory – Section III – Protected Areas, the works of saving, protection and promotion of natural patrimony in the protected areas are of public utility, of national interest. The works of saving, research, restore, protection, conservation and promotion of natural patrimony in the protected areas shall be performed only with the approvals of administrative authorities and scientific institutions.

Moreover, the internal zoning of protected areas of national interest (including the strictly protected areas, the areas with integral protection, the buffer areas and the areas of sustainable development of human activities) establishes confining list of activities/types of activities that are allowed in each of these categories of areas.

**Screening for the appropriate assessment: significant effect**

‘Significance’ operates as a threshold for determining whether an appropriate assessment of the implications of the project should be conducted.

Firstly, we mention that, as expressly provided by the recent amendment of EGO no. 57/2007, the appropriate assessment of the potential effects over the protected natural area of Community interest is integral part of the EIA procedure.

According to EIA Decision, the EIA procedure shall be performed in stages, as follows:

(i) the screening stage (etapa de încadrare) of the project;
(ii) the scoping stage (etapa de definire a domeniului evaluării) and EIA Report;
(iii) the analyse stage of quality of EIA Report.

EIA procedure starts with the submission of demand for the environment agreement (acord de mediu). Pursuant to EIA Order, as of the date for application for projects projects relevant to activities of low or significant environmental impact, the environmental authority shall cover the following procedural stages:

(i) check that the project is listed in the Annexes of the order and its location in relation to areas included in the Natura 2000 network; for the projects located in one of the areas of Natura 2000 network, which are mandatorily subjected to an EIA process, decide on the scoping stage; being that, the screening stage is skiped for the Natura 2000 sites;

We mention that, pursuant to Art 9 of EIA Decision, the projects located in one of the areas of Natura 2000 network shall be submitted to the screening stage (etapa de încadrare) of EIA procedure. Being that EIA Order has been implicitly modified.
(ii) evaluate the application and review the site; the results of project evaluation (rezultatul evaluării) and site review shall be recorded. The record shall also mention possible request for submittal of further documentation or information;

(iii) draft the public announcement, for all the projects that make the object of an EIA;

(iv) communicate to the applicant, in writing, the decision to continue the procedure by one of the alternatives described under indent (i); the need to provide further information, as applicable, as well as the public announcement drafted for publication in the massmedia.

The EIA Decision establishes that EIA is a part of procedure for acceptance/refusal of the environment agreement (acordul de mediu). The EIA is the process purposed to identify, describe and establish, case by case, direct and indirect effects, synergetic effects, cumulative effects, principal and secondary effects of a project on the environment, finalized by EIA Report.

(i) How is the plan/project deemed to be ‘likely to have significant effects’? Or, in other words, how is the project falling below a threshold of ‘risk of significance’?

According to EIA Decision, the competent authority for the environment protection decide on the necessity of EIA by examination, case by case, of any such project, using (i) the criteria listed in the Annex 3 of EIA Decision and (ii), if need be, certain threshold values (valori de prag). The decision on the screening stage shall be public knowledge.

(ii) Is it achieved by:

(1) a case-by-case approach with a formal decision for each case;

(2) laying down thresholds or criteria without a formal decision for each case; or

(3) combining both approaches?

See above.

(iii) In assessing the significance, does the authority take into account the following elements:

- The intensity of the impacts according to the nature, the location and the size of the project;

According to EIA Decision, the projects which have significant effects on the environment due to the nature, the location and the size shall be subjected to EIA procedure before the issuance of the environment agreement. This is the case of Roșia Montană Project.

For example, such projects are those which are set up within the protected natural area, not directly connected with or necessary to the management of the protected natural area, and which, either individually or in combination with other plans/projects, are likely to have a significant negative effect over the protected natural area, taking into consideration the conservation objectives, as provided by the legislation regarding the regime of protected natural areas, natural habitats and wild fauna and flora conservation.

According to Art 9 of EIA Decision, such mentioned projects shall be submitted to the screening stage (etapa de încadrare) of EIA procedure. Such stage shall be performed with the consultation of the Technical Analysis Committee (see above).

The competent authority for the environment protection decide on the necessity of EIA by examination, case by case, of any such project, using (i) the criteria listed in the Annex 3 of EIA
Decision and (ii), if need be, certain threshold values (*valori de prag*). The decision on the screening stage shall be public knowledge.

The selection criteria, as provided by Annex 3 of EIA Decision, refer to:

(i) the *peculiarities* of the projects (such as size, combinations with other projects, utilization of natural resources, waste, pollution emissions, risk of accidents);

(ii) the *location* of the projects (including current utilization of the land, relative abundance of the natural resource in the area, quality and regenerative capacity of these);

(iii) the *absorption capacity* of the environment with a particular care for wetlands, coast areas, moutain and forests areas, special protection areas as defined by EGO no. 57/2007, etc.;

(iv) the *characteristics of the potential impact* (such as geographical area, transboundary effects, scale and complexity of the impact, probability of the impact, duration, frequency and reversal of impact).

- The vulnerability of the habitats/species under protection;
- The level of existing threats;
- The cumulative effects of other plans or projects?

(v) When the authority assessed the significant impact of the plan/project on the site:

1. Did it properly and explicitly consider the SOCs in its decision? (see in particular the Waddenzee case, paras. 46 and 54)
2. Did it seek the advice of a nature conservation expert or competent agency before making its decision?
   The future National Agency for Protected Areas will oversee the management of the country’s protected areas and will prevent the possible overlaps, including by offering an advice in this respect.
3. Did it seek public or NGO advice before making its decision?

Pursuant to Art 11 of EIA Decision, after the confirmation of the necessity to follow EIA procedure (subsequent to the screening stage), it shall be proceed with the scoping stage (*etapa de definire a domeniului evaluării*). With this respect, the competent authority for the environment protection shall send to the developer a guide (*îndrumar*) containing the environmental aspects that shall be addressed. In order to draft such guide, the competent authority (i) analyse the Project Presentation (*Memoriul de Prezentare a Proiectului*), (ii) inquires the developer, interested public and other relevant authorities. The guide shall be available for the interested public.

The interested public is defined as being the concerned public and NGOs advocating the environment protection. According to the available information, such consultation it has been performed for the Roșia Montană Project.

**Quality of the assessors**

(i) Were the assessors appointed and paid by:

1. an independent authority; or
2. the operator or the author of the plan?

(ii) Were the assessors:

1. general experts;
2. experts specialised in habitat conservation; or
3. otherwise?

According to Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment, the EIA Report shall be performed by the entitled individuals or legal entities. Equally, the conditions for performing the EIA Report shall be established by order of Ministry of the Environment and Sustainable Development.
It is worth to mention that according to above-mentioned Emergency Government Ordinance, the responsibility for fairness of the information made available to the competent authorities for the environment protection and to the public is devolved upon the developer. The responsibility for correctness of EIA Report is devolved upon the author of such report.

After the approval of the order on the conditions for performing EIA Report, the former Order of the central authority for the environment protection no. 978/2003 on the Regulation for attestation of the individual and legal entities performing EIA studies and Environmental Assessment will be repealed.

According to the Order of the central authority for the environment protection no. 978/2003 on the Regulation for attestation of the individual and legal entities performing EIA studies and Environmental Assessment, as further amended by Order no. 97/2004, the assessors shall be legally independent of the developer.

As regards payment of such individuals or legal entities, such payment is performed by the developer of the project (holder of the project). Such rule has also been confirmed by Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment.

(iii) Were the assessors seeking advice from nature protection NGOs and specialised agencies? Yes.

(iv) Were the assessors deemed to be independent from the vested interests?
See above.

Form and content of the appropriate assessment

(i) Do you consider the assessment superficial or appropriate? In particular, was the assessment procedure deemed to be ‘appropriate’ having regard to the conservation objectives of the particular site?

According to Art 28 of EGO no. 57/2007 (as amended and supplemented by the new Emergency Government Ordinance no. 154/2008), the appropriate assessment of the potential effects over the protected natural area of Community interest is integral part of the procedures of the environmental assessment/environmental impact assessment.

The appropriate assessment has been recently defined by the Romanian legislator (Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment) as being “the process of identifying, describing and establishing, taking into consideration the conservation objectives and in compliance with the legislation in force, the direct and indirect, synergic, cumulative, principal and secondary effects of any plan or project not directly connected with or necessary to the management of the protected natural area of Community interest but likely to have a significant effect thereon, either individually or in combination with other plans or projects”.

The competent authority for the environment protection, together with the Technical Analysis Committee, assesses the quality of the EIA Report and decides either the approval or the necessity to modify EIA Report.

(ii) Did the assessors assess:

(1) all the environmental impacts of the project (including the effects on cultural heritage or human health) or exclusively the impacts on the Natura 2000 site?

The environmental impact assessment identify, describe and evaluate, case by case, the direct and indirect effects of the project on (i) human beings, fauna and flora, (ii)
soil, water, climate and landscape, (iii) goods and cultural patrimony and (iv) the combination of these factors.

(2) the specific, and not abstract, effects of the plan or project on every habitat and species for which the site was designated?
See above.

(3) the cumulative, the indirect, the interrelated and the long-term effects?
The assessors assess the direct and indirect, synergic, cumulative, principal and secondary effects.

(4) (if relevant) the ‘imperative reasons of overriding public interest’ that justified the plan or project?

(5) the impacts of already completed plans/projects already deemed to be significant pursuant to paragraph 3?

(6) the nature, location and size of compensatory measures?

(7) the possibility of alternative solutions to the plan or project?

(iii) Did the conductor of the impact assessment try to identify, according to the precautionary principle (Article 175 EC), those damages which are still uncertain?

The Framework Law on Protection of the Environment mentions the precautionary principle when a decision is taken (principiul precauției în luarea deciziei) without any other guideline with this respect.

The selection criteria, as provided by Annex 3 of EIA Decision, refer also to the characteristics of the potential impact, including the probability of the impact.

5. SUBSTANTIVE DECISION CRITERION (ARTICLE 6(3) SECOND PHRASE)

“In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

The scope of the authorisation

(i) Please succinctly describe the authorisation or plan adoption procedure.
See above.

(ii) Was the authorisation of the project or the decision to adopt the plan express and motivated?
See above.

Also we mention that, according to Romanian legislation, any decision of a public authority (including an authority for the environment protection) shall be express and motivated.

Substantive decision criterion guiding the authority

(i) As a matter of law, in cases where the authority is deciding to authorise a plan/project (despite the negative conclusions of the assessors), must the authority be aware that it can do so only on the condition that it is convinced that the project/plan will not adversely affect the ‘integrity’ of the site concerned?

According to Art 28 of EGO no. 57/2007, as further amended and supplemented by the new Emergency Government Ordinance no. 154/2008, for any plan or project that are likely to have a significant effect over the area, the environmental agreement, the environmental approval or the
approval Natura 2000, if case, is granted only if the project or the plan does not adversely impact over the integrity of the relevant protected natural area and after the inquiry of the public, in compliance with relevant legislation.

(ii) Did the competent national authority agree to the plan/project only after having ascertained that it will not adversely affect the integrity of the site concerned?

- How did they reach that conclusion?
- How is the concept ‘integrity of the site concerned’ being defined (by the lawmaker, agency, administration, etc) or interpreted? Was it interpreted by reference to formally identified SCOs? Was it interpreted as a synonym of ‘significant effect’?

(iii) Was the authorisation passed where the assessment demonstrated the absence of risks for the integrity of the site?

See above.

Precautionary decision-making

(i) Was the authority aware that pursuant to ECJ case law that in case of any (scientific) reasonable doubt over the absence of any effects, they were obliged to refrain from issuing the authorisation?

(ii) Were there any additional investigations in order to remove the uncertainty being ordered by the authority?

(iii) Does the use of the precautionary principle entail a reversal of the burden of proof from the project opponent to the authority authorising the project/plan?

The Framework Law on Protection of the Environment mentions the precautionary principle when a decision is taken (principiul precauţiei în luarea deciziei) without any other guideline with this respect.

Participatory decision-making

Were the concerned public able to raise objections? Was the competent nature conservation agency consulted? Was there any public enquiry or other forms of participation?

By Law no. 86/2000 Romania has ratified the Convention on access to information, public participation in decision-making and access to justice in environmental matters, done at Aarhus, Denmark, on 25 June 1998. Pursuant to this law, Romania shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention.

Further to this ratification, the Government of Romania adopted the following Government Decisions:

(i) Government Decision no. 878/2005 on the access of the public to the environmental information;

(ii) Government Decision no. 564/2006 on the framework for public participation in respect of the drawing up, modification or review of plans and programmes referred to in the legal enactments provided for in Annex that is an integrant part

(iii) EIA Decision.

Direct effect

Have the national courts ruled that Article 6(3) has direct effect?

No.
6. DEROGATORY REGIME (ARTICLE 6(4))

The provisions of Art 6(4) apply when the results of the preliminary assessment under Art 6(3) are negative or uncertain. The sequential order of its steps has to be followed.

In order to harmonize the Romanian legislation with the environmental acquis, in particular Habitats Directive, after Accession, the Romanian legislator has passed another enactment, namely the EGO no. 57/2007 that repeals the previous Emergency Government Ordinance no. 236/2000 as amended. The derogatory procedures (as provided by Art 6, par. 4 of Habitats Directive) represent one of the major improvements of the new enactment. The derogatory procedures have been further laid down by Ministerial Order (Minister of Environment and Sustainable Development) no. 1369/2007 regarding the procedure for establishing the derogations from the measures of protection of wild flora and fauna, order passed in September 2007.

Relevance of the Roşia Montană project with respect of the derogatory procedure

With respect of the applicability of the derogatory procedure as provided by Art 6, par. 4 of Habitats Directive, three conditions should be fulfilled, namely (i) a negative assessment of the implications for the site and (ii) the absence of alternative solutions and (iii) the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature.

Besides these conditions, taking into consideration the overall operation plan for the gold mining, it should be clarified if the area includes priority habitats or priority species, in this case an opinion from EC being mandatory (and not a mere information).

For Roşia Montană Project these conditions seem fulfilled and, therefore, the Ministerial Order (Minister of Environment and Sustainable Development) no. 1369/2007 regarding the procedure for establishing the derogations from the measures of protection of wild flora and fauna should be applicable. The project should be carefully and objectively analyzed, by competent authorities, from the view point of the risk-benefit ratio. Mention should be that the reasons of social and economic nature (such as jobs in a job-deficient zone, poverty and environmental degradation) have been claimed by the developer of the project.

Were the conclusions of the assessors negative or positive?

See EIA Report.

Absence of alternative solutions

(i) Did the authority abide by the obligation to seek out the least damaging alternative for the conservation of the site?
(ii) Was the authority able to demonstrate that the impact study has found there to be no viable alternative?
(iii) How were the costs of alternative projects being assessed?
(iv) Did the authority consider a zero-risk option?

Balance of interests

(i) Does the site host ‘priority habitats and species’ or ‘non-priority habitats and species’? Which are the priority habitats and species?
The site hosts a priority habitat, namely Natura 2000 code 9180 - * Tilio-Acerion forests of slopes, screes and ravines (priority habitat).

(ii) Were the advantages of the plan/project and alternative solutions carefully balanced against its damaging effects for the conservation of natural habitats?

Pursuant to EGO no. 57/2007, for (i) the animal and plant species of Community interest in need of strict protection (as provided by Annex 4A of EGO no. 57/2007) and (ii) the animal and plant species of Community interest, excepting the bird species, whose taking in the wild and exploitation shall be subject to management measures (as provided by Annex 5A of EGO no. 57/2007), the central authority for the environment protection may establish derogations, passed by the Ministerial Order and with the approval of Romanian Academy, provided that there is no satisfactory alternative, the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range and only in the following situations:

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;
(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
(d) for the purpose of research and education, of repopulating and reintroducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;
(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annexes 4A and 4B in limited numbers.

(iii) How did the authority interpret:

(1) the ‘imperative reasons of overriding public interest of a social or economic nature’ (non-priority habitats and species); or
(2) the ‘considerations … relating to human health or public safety, to beneficial consequences of primary importance for the environment’ (priority habitats and species)?

(iv) Did the proportionality principle play a key role in this balancing of interests?

The proportionality principle is not mentioned by the Romanian legislator.

Procedural requirements

In case studies where the site was hosting priority habitats and species did the authority seek an opinion from the Commission? Please describe the Commission’s opinion.

Firstly, we would like to make distinction between (i) Art 6(4), first subparagraph which obliges MSs to inform EC of the compensatory measures and (ii) Art 6(4), second subparagraph, that is when priority habitats and species are affected and the EC opinion is required.

As far as we know, Romania neither informs EC on this project, nor requested the EC opinion.

Compensatory measures

(i) Were ‘all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected’ enacted by the authority? Please describe these measures.
Firstly, the compensatory measures shall be distinguished by compensations received by the owners of plots of land included in Natura 2000 network.

Secondly, it can be acknowledged a misunderstanding of what a compensation measure means. Mitigation and compensation measures are not well distinguished and frequently mixed up under the heading of compensatory measure.

Moreover, in order to ensure the overall coherence of Natura 2000, the plans for land planning shall take into consideration and integrate the relevant Management Plans for these areas, especially by the establishment of the corridors allowing (i) migration or (ii) genetic exchanges between populations. Foreseen compensatory measures were specified by the developer of the project. The developer is committed to building a new state of the art mining facility that will reinvigorate the local economy and honor cultural patrimony, while setting world-class standards for environmental and social responsibility. One of the major commitments of the developer is to solve past environmental problems of the site.

(ii) Was the Commission properly informed of these measures?

Habitats Directive obliges MSs to inform the Commission of the compensatory measures adopted in the framework of Art 6(4), first subparagraph. Pursuant to the available information, Romania has not notified any compensatory measure adopted with respect of derogatory procedure.

(iii) Were these measures already in force before the project was carried out?

7. LITIGATION

(a) Please describe the manner in which your MS’s national courts have been adjudicating the cases brought before them on the consistency of the assessment and the derogatory procedures.

(b) Please explain whether the courts were inclined to take into account the doctrine of direct effect and consistent interpretation.

No case law in this case.

8. BIBLIOGRAPHY & TABLE OF CASES

(a) Please list:

(1) the main books and articles (law and political sciences) published in your country with respect to the implementation of Article 6;

(2) the relevant judgments from your Member State’s national courts.
CASE STUDY NO. 2 - Waste Management Project in Podisul Hartibaciului

1. BASIC DESCRIPTION OF THE SPA or SAC

- Formal designation as a SPA or as a SAC (or just SCI inclusion?)

ROSPA0099 – Podișul Hârtibaciului, designated by the Government Decision no 1284/2007 regarding the declaring of SPAs as integrated parts of NATURA 2000 in Romania.

- Size

The size of SPA is **246,357.1 ha**.

The site is located in Continental Biogeographical Region.

- Species and habitats under protection (identify priority ones)

Bird species listed in Annex I of Birds Directive:

- A122 Crex crex;
- A089 Aquila pomarina;
- A072 Pernis apivorus;
- A224 Caprimulgus europaeus;
- A238 Dendrocopos medius;
- A234 Picus canus;
- A031 Ciconia ciconia;
- A030 Ciconia nigra;
- A080 Circaetus gallicus;
- A246 Lullula arborea;
- A081 Circus aeruginosus;
- A082 Circus cyaneus;
- A239 Dendrocopos leucotos;
- A429 Dendrocopos syriacus;
- A255 Anthus campestris;
- A339 Lanius minor;
- A338 Lanius collurio;
- A060 Aythya nyroca;
- A215 Bubo bubo;
- A060 Aythya nyroca;
- A151 Philomachus pugnax;
- A166 Tringa glareola;
- A196 Chlidonias hybridus;
- A131 Himantopus himantopus;
- A023 Nycticorax nycticorax;
- A027 Egretta alba;
- A193 Sterna hirundo;
- A097 Falco vespertinus.

The site include important population of threatened species at EU level, namely:

- A122 Crex crex;
- A089 Aquila pomarina;
- A072 Pernis apivorus;
- A089 Aquila pomarina;
- A429 Dendrocopos syriacus;
- A238 Dendrocopos medius;
- A234 Picus canus;
- A246 Lullula arborea;
- A338 Lanius collurio;
- A224 Caprimulgus europaeus.

- Protection status

The protection status is established by Government Decision no 1284/2007 regarding the declaring of SPAs as integrated parts of NATURA 2000 in Romania.

According to Art 2 of Government Decision no. 1284/2007, for all plans, programmes and projects which follow to be developed within the SPAs or within the neighbourhood of these SPAs, the legal provisions referring to the environmental assessment procedure (evaluarea de mediu pentru planuri si programe) and the environmental impact assessment framework procedure (procedura-cadru de evaluare a impactului asupra mediului) should be applied.

- Level of/Main threats

As regards vulnerability, we mention: deforestation, non-controlled tourism, sylvic facilities, hunting, poaching, extreme sports, non-indigen species, invasive species, industrialization, electrical lines.

Please note: this information is provided in the ‘site standard data form’ (97/266/EC) that was communicated by each national authority to the European Commission.

If the site has not been formally designated either as a SPA or a SAC:
• Indicate whether the site was selected for inclusion into the SCI’s list; OR

• If not included (or if a bird site) describe the manner in which the authorities ensure, pursuant to Article 10 EC, that the site will not be jeopardised.

Mention should be made that, according to the information provided on the web-site of the regional environmental protection agency (“Agenția Regională pentru Protecția Mediului Sibiu”) under PHARE 2004 programme a Twinning project on Environment with focus on Nature Protection has been implemented between November 16, 2005 and November 15, 2007.

As expected results of this Twinning project we exemplify:

(i) prepared inventories of species and habitats, documentations to establish new protected areas, including “NATURA 2000 sites”;
(ii) monitoring system of the status of the existing network of protected areas in Sibiu region set up and operational;
(iii) existing data on the occurrence of species and habitats of Community Importance in Sibiu region gathered;
(iv) documentation in standard format (Decision 97/266/EC) for new NATURA 2000 sites in the Sibiu region drafted.

Waste Management Project – hazardous waste materials placed in Altana village, Sibiu county

The developer intends to build an incinerator in order to dispose of certain hazardous waste materials (deseuri periculoase). Incineration is a controversial method of waste disposal, which may have serious environmental consequences in the area immediately around the incinerator.

In January 2006, the developer of the project launched the EIA procedure to obtain an environmental agreement (“acord de mediu”) in the care of the regional environmental protection agency (“Agenția Regională pentru Protecția Mediului Sibiu”). Within the period January – February 2006 it has been launched the EIA procedure.

In February 2006, the Technical Analysis Committee assessed the EIA Report submitted by the developer of the project, together with other competent authorities. Further to this assessment, the Technical Analysis Committee requested (i) technical supplements and (ii) the necessity to extend the EIA taking into consideration the neighbourhoods of the site. According to the committee, the extension of EIA should be performed by conception of a Zonal Urbanism Plan for the affected area and by following the procedure of the environmental assessment for plans and programmes (as established by SEA Decision). Consequently, the regional environmental protection agency returned the documentation to the developer in order to proceed accordingly.

Further to this, the developer challenged the decision of the regional environmental protection agency and requested to the Romanian court to oblige the agency to issue the environmental agreement. By court judgement, the Romanian court (Tribunalul Sibiu) admitted the claim of the developer and obliged the environmental protection agency to issue the environmental agreement (“acord de mediu”).

The court judgement apparently infringes:

(i) the Government Decision no 1284/2007 regarding the declaring of SPAs as integrated parts of NATURA 2000 in Romania;
(ii) EIA Order; according to which the developer should follow the whole EIA procedure; mention should be made that, pursuant to EIA Decision the environmental impact assessment procedure (“procedura de evaluare a impactului asupra mediului”) require going through the phases with the aim to establish the necessity to submit a project to
environmental impact assessment, to assess the environmental impact, to consult the public and the public authorities with responsibilities in the environmental protection field, taking into account the report on the environmental impact assessment and the results of these consultations in the decisional process and insuring the information on the decision taken.

2. MANAGEMENT OF NATURA 2000 SITES

The SDF for **ROSPA0099**, Podișul Hârtibaciului, mentions neither the administrator/custodian of the site, nor any Management Plan.

In order to establish a Management Plan, the interested parties aim to submit a demand for financing using POS Environment 2007 – 2013 (see above, Case Study no. 1, point 7 – Management of Natura 2000 sites – Funding).

**Site’s conservation objectives (SCO)**

Given that a site’s conservation objectives (SCOs) are essential to assess whether or not the project/plan has a ‘significant’ impact upon the site’s integrity, please address this issue carefully.

- SCOs formally identified?
- Or is info from ‘site standard data form’ available on web?
- Describe how SCOs are assessed.

See above.

**Conservation Measures**

(i) Ratione materiae: Are the ‘conservation measures’ required under Article 6(1)
   (1) positive (e.g., plans for spreading, grazing incentives, subsidies, delayed pruning, hedgerow maintenance); or
   (2) negative (e.g., prohibitions of soil contour modifications, deforestation, picking or harvesting wild species)?

Besides the provisions of Management Plans or of the regulations of the protected natural areas, the Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment establishes certain interdictions such as the activities of harvest, store, process or commercialize the Genetically Modified Organisms (GMOs).

For more details, see above, Case Study no. 1.

(ii) Ratione loci: Are these conservation measures only applicable inside the SPA/SAC? Do the conservation measures only apply only to SPAs/SACs?

(iii) Ratione temporis: Did the conservation measures apply only pursuant to a formal classification of the site by the Member State?

**Management Plan**

Is the management plan:
(i) specifically designed for the site at issue?
(ii) integrated into other development plans?
(iii) deemed to be ‘appropriate’?

According to Romanian legislation, the Management Plan may be specifically designed for the site at issue or integrated into other development plans.
The Management Plan is not established for this site. According to the regional environmental protection agency, the future Management Plan shall include conservation measures for all species and habitats for which the site has been designated.

For more information, see above Case Study 1.

**Statutory, administrative or contractual measures**

(i) Please explain whether the conservation measures are set out through:

1. statutory measures;
2. administrative measures;
3. contractual measures; or
4. a mix of several measures.

The conservation measures are set through a mix of statutory measures (Regulation), administrative measures (inclusion in the most restrictive protection function) and contractual measures (with respect of forestry surfaces – Silvic Districts).

See also Case Study no. 1.

(ii) Please explain the manner in which the ‘appropriate statutory, administrative or contractual measures’ (Article 6(1)) have been enacted by the authorities with the aim of achieving the SCOs? In so doing, one should take into account the qualitative as well as the quantitative approach that should have been endorsed by the national authority.

(iii) How are the SCOs being assessed? Is there a set of indicators that could be used with the aim of assessing the SCOs?

(iv) Please assess briefly whether these measures are tailored to the ‘ecological requirements’ of the species and habitats concerned and contributing to the SCOs.

**Funding**

Are there some EC funds (Life, rural development (Reg EC1698/2005), FEDER, etc) used with the aim of implementing the conservation measures?

SDF for this site does not mention any EC funds used with the aim of implementing the conservation measures.

### 3. PREVENTIVE REGIME FOR BOTH SPA AND SCA (ARTICLE 6(2))

**Type of prevention regime provided by legislation**

(i) Is the site protected by:

1. a specific and/or general preventive regime applicable to Natura 2000 sites only; There is no specific preventive regime applicable to Natura 2000 sites only. For more details, see above Case Study no. 1.
2. existing nature protection regimes (existing protected areas status, existing species protection rules, etc);
3. a combination of these protection measures?

See above Case Study no. 1.
**Scope of the preventive measures**

*Does the obligation in paragraph 2 cover the deterioration of any natural or species habitat inside the SCA rather than just the habitats for which the site has been classified? Or is the obligation restricted to the habitats prompting the classification?*

According to the regional environmental protection agency, the designation of site shall ensure (i) the favourable conservation status and (ii) the integrity of Natura 2000 sites.

**Spatial range of preventive measures**

*Does the regime apply exclusively within the site or does the regime also apply to activities outside the site (for example the spreading of manure in agricultural fields is not encompassed within the site)? Please keep in mind the results-based obligation contained in Article 6(2) of the Habitats directive.*

The regime also applies to activities outside the site. Further the assessment of EIA Report performed by the Technical Analysis Committee, it has been requested the extension of such report taking into consideration the neighbourhoods of the site (by conception of a Zonal Urbanism Plan for the affected area and by following the procedure of the environmental assessment for plans and programmes – see SEA Decision). Such requirement takes into consideration the result-based obligation contained in Article 6(2) of the Habitats directive: “Member States shall take appropriate steps to avoid, in the SACs, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.”

**Nature of the activities covered by the general prevention regime**

(i) *Please describe the binding regulatory framework intended to prevent deterioration and specific-significant disturbances resulting from human activities performed outside the site.*

(ii) *Does the preventive regime cover all types of activities that could have impacts? (e.g., building, circulation, pollution (physical, chemical), agricultural and forestry activities etc).*

The preventive regime covers all types of activities that could have impacts over the designated site.

(iii) *Does the general prevention regime cover existing activities (including legally permitted infrastructures and installations) or only future activities?*

The general prevention regime covers existing activities and the future activities.

**Effectiveness of the general prevention regime**

(i) *In case studies where the impact is disturbance of a species, how does the authority assess the significance of the impact? Are there any indicators to assess it?*

The authority assesses the significance of impact by taking into consideration the nature, scale and/or location of the project.

(ii) *Is the regime ‘appropriate’ to effectively prevent deterioration of natural habitat types and significant disturbances of species on the site, and so to fulfil the favourable conservation status of the habitat/species concerned?*

**Direct Effect**

*Have the national courts of your MS ruled that paragraph 2 has direct effect? No.*
4. APPROPRIATE IMPACT ASSESSMENT (AIA) (ARTICLE 6(3) FIRST PHRASE)

1. The impact assessment procedure applies to either plans or projects that:
   a) have no relationship with the management of the site;
   b) but do have a significant effect on the site.

2. In addition, the assessment must be ‘appropriate’ as regards to the SCOs. Consequently, questions arise as to the independence of the experts as well as to the quality of the assessment. Please keep this in mind and systematically examine the scope of these different conditions.

In January 2006, the developer of the project launched the EIA procedure to obtain an environmental agreement (“acord de mediu”) in the care of the regional environmental protection agency (“Agenția Regională pentru Protecția Mediului Sibiu”). Within the period January – February 2006 it has been launched the EIA procedure.

In February 2006, the Technical Analysis Committee assessed the EIA Report submitted by the developer of the project, together with other competent authorities. Further to this assessment, the Technical Analysis Committee requested (i) technical supplements and (ii) the necessity to extend the EIA taking into consideration the neighbourhoods of the site. According to the committee, the extension of EIA should be performed by conception of a Zonal Urbanism Plan for the affected area and by following the procedure of the environmental assessment (“evaluarea de mediu”) for plans and projects (as established by SEA Decision).

However, the Romanian legislator shall further clarify the notion of appropriate assessment which is considered as being integral part of EIA and/or SEA procedure. Also, see Case Study no. 1.

Scope of the plans/projects requiring an appropriate assessment

(i) Is there any legal definition of the concepts: ‘project’ and ‘plan’?

Project

EIA Decision establishes the environmental impact assessment framework procedure for the public and private projects which are likely to have significant effects on the environment. The EIA Order laid down a classification of new investment projects or modification of the existing ones taking into consideration of the environmental impact: (i) insignificant impact, (ii) low environmental impact and (iii) significant environmental impact. Activities of significant environmental impact shall be those that, following the screening stage (etapa de încadrare), shall be made subject to the environmental impact assessment procedure. For new investment projects or substantial changes to existing ones, including for decommissioning projects, relevant to such activities, an environmental agreement shall be issued.

Plan

According to SEA Decision, the environmental assessment is carried out for all the plans and programmes that, due to the likely effects on sites, have an impact on the SPAs and SACs. As an example, such plans and programmes are those for town and country planning (such as General Urbanism Plan or Zonal Urbanism Plan), land use and other development policies. Such plans/programmes establish the framework for the issuance of the future environmental agreements (acorduri de mediu).

Also, for other explanations, please see Case Study no. 1.
Ministerial Order no. 995/2006 on the approval of the list of plans and programmes for which the SEA Decision (Government Decision no. 1074/2004 establishing the procedure for environmental assessment for plans and programmes) is applicable, establishes a list which is not exhaustive and it can be amended and/or supplemented by Order issued by central authority for the environment protection.

(ii) Are the concepts of ‘plan’ and ‘project’ interpreted broadly by the administration and the courts?

See above.

(iii) Are all the plans/projects likely to be assessed because of their significant impact authorised by an express act, which determines the rights and obligations of the parties involved?

(iv) Is it likely that plans/projects located outside the site (which are likely to have a significant effect on the conservation status of the classified site) are assessed?

**Screening for the appropriate assessment: no relationship with the management of the site**

How has the authority reached the conclusion that the plan/project was not directly related to or necessary for the management of the site? Was the concept of ‘management’ interpreted in reference to activities necessary to realise SCOs?

**Screening for the appropriate assessment: significant effect**

‘Significance’ operates as a threshold for determining whether an appropriate assessment of the implications of the project should be conducted.

See EIA Order, screening stage (etapa de încadrare) of the project.

(i) How is the plan/project deemed to be ‘likely to have significant effects’? Or, in other words, how is the project falling below a threshold of ‘risk of significance’?

The EIA Order laid down a classification of new investment projects or modification of the existing ones taking into consideration of the environmental impact: (i) insignificant impact, (ii) low environmental impact and (iii) significant environmental impact. Activities of significant environmental impact shall be those that, following the screening stage (etapa de încadrare), shall be made subject to the environmental impact assessment procedure. For new investment projects or substantial changes to existing ones, including for decommissioning projects, relevant to such activities, an environmental agreement shall be issued.

The project is listed in the Annex I.1 of EIA Order including the list of activities and/or installations of significant environmental impact subject to EIA procedure. For additional information regarding EIA procedure, see Case Study no. 1.

According to Annex I.1 of EIA Order, the competence for issuance of the environment agreement (acord de mediu) for incinerator with a capacity over 10,000 tones/year pertains to the central authority for the environment protection (National Agency for the environment Protection).

(ii) Is it achieved by:

1. a case-by-case approach with a formal decision for each case;
2. laying down thresholds or criteria without a formal decision for each case; or
3. combining both approaches?
In order to issue the environment agreement, the regional environmental protection agency (“Agenția Regională pentru Protecția Mediului Sibiu”) intended to connect the town and county planning with the environmental planning, in compliance with implementation methods of principles and strategic elements as provided by the Framework Law on Protection of the Environment.

According to Art 4 of the Framework Law on Protection of the Environment, the implementation methods of principles and strategic elements are:

(i) the approval of development plans in compliance with the environment policy;
(ii) the correlation of the town and county planning and land use with the environmental planning;
(iii) the performance of EIA procedure before the approval of plans/programmes which may have a significant effect on the environment;
(iv) the assessment of the environmental impact in the strategic phase of the projects with significant effects on the environment;
(v) the setting up and control of Conformity Programmes (programele de conformare);
(vi) public participation in case of the issuance and application of the environmental decisions;
(vii) the development of the national network of protected natural areas in order to maintain at a favourable conservation status of natural habitats and wild fauna and flora species, as part of European ecological network Natura 2000 (including the ecological corridors).

(iii) In assessing the significance, does the authority take into account the following elements:
- The intensity of the impacts according to the nature, the location and the size of the project;
- The vulnerability of the habitats/species under protection;
- The level of existing threats;
- The cumulative effects of other plans or projects?

(iv) When the authority assessed the significant impact of the plan/project on the site:
(1) Did it properly and explicitly consider the SOCs in its decision? (see in particular the Waddenzee case, paras. 46 and 54)
(2) Did it seek the advice of a nature conservation expert or competent agency before making its decision?
(3) Did it seek public or NGO advice before making its decision?

See above Case Study no. 1.

Quality of the assessors

(i) Were the assessors appointed and paid by:
(1) an independent authority; or
(2) the operator or the author of the plan?

(ii) Were the assessors:
(1) general experts;
(2) experts specialised in habitat conservation; or
(3) otherwise?

According to Emergency Government Ordinance no. 164/2008 amending and supplementing the Framework Law on Protection of the Environment, the EIA Report shall be performed by the entitled individuals or legal entities. Equally, the conditions for performing the EIA Report shall be established by order of Ministry of the Environment and Sustainable Development.

It is worth to mention that according to above-mentioned Emergency Government Ordinance, the responsibility for fairness of the information made available to the competent authorities for the environment protection and to the public is devolved upon the developer. The responsibility for correctness of EIA Report is devolved upon the author of such report.
After the approval of the order on the conditions for performing EIA Report, the former Order of the central authority for the environment protection no. 978/2003 on the Regulation for attestation of the individual and legal entities performing EIA studies and Environmental Assessment will be repealed. Also, see Case Study no. 1.

(iii) Were the assessors seeking advice from nature protection NGOs and specialised agencies?
Yes.

(iv) Were the assessors deemed to be independent from the vested interests?
See above Case Study no. 1.

**Form and content of the appropriate assessment**

(i) Do you consider the assessment superficial or appropriate? In particular, was the assessment procedure deemed to be ‘appropriate’ having regard to the conservation objectives of the particular site?

The Romanian legislator shall further clarify the notion of *appropriate assessment* which is considered as being integral part of EIA and/or SEA procedure. Also, see Case Study no. 1.

(ii) Did the assessors assess:

1. all the environmental impacts of the project (including the effects on cultural heritage or human health) or exclusively the impacts on the Natura 2000 site?
2. the specific, and not abstract, effects of the plan or project on every habitat and species for which the site was designated?
3. the cumulative, the indirect, the interrelated and the long-term effects?
   The assessors assess the direct and indirect, synergic, cumulative, principal and secondary effects.
4. (if relevant) the ‘imperative reasons of overriding public interest’ that justified the plan or project?
5. the impacts of already completed plans/projects already deemed to be significant pursuant to paragraph 3?
6. the nature, location and size of compensatory measures?
7. the possibility of alternative solutions to the plan or project?

(iii) Did the conductor of the impact assessment try to identify, according to the precautionary principle (Article 175 EC), those damages which are still uncertain?
See Case Study no. 1.

5. **SUBSTANTIVE DECISION CRITERION (ARTICLE 6(3) SECOND PHRASE)**

“In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

**The scope of the authorisation**

(i) Please succinctly describe the authorisation or plan adoption procedure.
In January 2006, the developer of the project launched the EIA procedure to obtain an environmental agreement in the care of the regional environmental protection agency. Within the period January – February 2006 it has been launched the EIA procedure.

In February 2006, the Technical Analysis Committee assessed the EIA Report submitted by the developer of the project, together with other competent authorities. Further to this assessment, the Technical Analysis Committee requested (i) technical supplements and (ii) the necessity to extend the EIA taking into consideration the neighbourhoods of the site. According to the committee, the extension of EIA should be performed by conception of a Zonal Urbanism Plan for the affected area and by following the procedure of the environmental assessment (“evaluarea de mediu”) for plans and projects (as established by SEA Decision).

Consequently, the regional environmental protection agency returned the documentation to the developer in order to proceed accordingly.

Further to this, the developer challenged the decision of the regional environmental protection agency and requested to the Romanian court to oblige the agency to issue the environmental agreement.

By court judgement, the Romanian court (Tribunalul Sibiu) admitted the claim of the developer and obliged the environmental protection agency to issue the environmental agreement.

(ii) Was the authorisation of the project or the decision to adopt the plan express and motivated?

According to EIA procedure, (i) the acceptance/reiteration/refusal of EIA Report and (ii) the decision of granting or refusal of the environment agreement shall be motivated.

Substantive decision criterion guiding the authority

(i) As a matter of law, in cases where the authority is deciding to authorise a plan/project (despite the negative conclusions of the assessors), must the authority be aware that it can do so only on the condition that it is convinced that the project/plan will not adversely affect the ‘integrity’ of the site concerned?

According to Art 28 of EGO no. 57/2007, as further amended and supplemented by the new Emergency Government Ordinance no. 154/2008, for any plan or project that are likely to have a significant effect over the area, the environmental agreement, the environmental approval or the approval Natura 2000, if case, is granted only if the project or the plan does not adversely impact over the integrity of the relevant protected natural area and after the inquiry of the public, in compliance with relevant legislation.

(ii) Did the competent national authority agree to the plan/project only after having ascertained that it will not adversely affect the integrity of the site concerned?

• How did they reach that conclusion?
• How is the concept ‘integrity of the site concerned’ being defined (by the lawmaker, agency, administration, etc) or interpreted? Was it interpreted by reference to formally identified SCOs? Was it interpreted as a synonym of ‘significant effect’?

(iii) Was the authorisation passed where the assessment demonstrated the absence of risks for the integrity of the site?

See Case Study no. 1
Precautionary decision-making

(i) Was the authority aware that pursuant to ECJ case law that in case of any (scientific) reasonable doubt over the absence of any effects, they were obliged to refrain from issuing the authorisation?
(ii) Were there any additional investigations in order to remove the uncertainty being ordered by the authority?
(iii) Does the use of the precautionary principle entail a reversal of the burden of proof from the project opponent to the authority authorising the project/plan?

See Case Study no. 1.

Participatory decision-making

Were the concerned public able to raise objections? Was the competent nature conservation agency consulted? Was there any public enquiry or other forms of participation?
The concerned public is able to raise objections. The inquiry of the public is performed in compliance with the relevant Romanian legislation.
See Case Study no. 1.

Direct effect

Have the national courts ruled that Article 6(3) has direct effect?
No.

6. DEROGATORY REGIME (ARTICLE 6(4))

The derogatory procedures has been further laid down by Ministerial Order (Minister of Environment and Sustainable Development) no. 1369/2007 regarding the procedure for establishing the derogations from the measures of protection of wild flora and fauna, order passed in September 2007.
We cannot ascertain if the derogatory procedure has been used in this Case Study.
Also, see Case Study no. 1.

Were the conclusions of the assessors negative or positive?

Absence of alternative solutions

(i) Did the authority abide by the obligation to seek out the least damaging alternative for the conservation of the site?

According to EIA procedure, after the screening stage, it shall be proceed with the scoping stage. The scoping stage is performed taking into consideration the potential effects on the environment, the amplitude and importance of such effects and the alternatives (variantele de relizare) of the project.

(ii) Was the authority able to demonstrate that the impact study has found there to be no viable alternative?

(iii) How were the costs of alternative projects being assessed?

(iv) Did the authority consider a zero-risk option?
Balance of interests

(i) Does the site host ‘priority habitats and species’ or ‘non-priority habitats and species’? Which are the priority habitats and species?

(ii) Were the advantages of the plan/project and alternative solutions carefully balanced against its damaging effects for the conservation of natural habitats?

(iii) How did the authority interpret:
   (1) the ‘imperative reasons of overriding public interest of a social or economic nature’ (non-priority habitats and species); or
   (2) the ‘considerations ... relating to human health or public safety, to beneficial consequences of primary importance for the environment’ (priority habitats and species)?

The Romanian legislator does not clarify how these reasons are interpreted. However, we mention that, pursuant to the new enactments, the appropriate assessment will be further detailed.

(iv) Did the proportionality principle play a key role in this balancing of interests?

The proportionality principle is not mentioned by the Romanian legislator.

Procedural requirements

In case studies where the site was hosting priority habitats and species did the authority seek an opinion from the Commission? Please describe the Commission’s opinion.

Firstly, we would like to make distinction between (i) Art 6(4), first subparagraph which obliges MSs to inform EC of the compensatory measures and (ii) Art 6(4), second subparagraph, that is when priority habitats and species are affected and the EC opinion is required.

As far as we know, Romania neither informed the EC on this project, nor requested the EC opinion.

Compensatory measures

(i) Were ‘all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected’ enacted by the authority? Please describe these measures.

(ii) Was the Commission properly informed of these measures? No.

(iii) Were these measures already in force before the project was carried out?

7. Litigation

(a) Please describe the manner in which your MS’s national courts have been adjudicating the cases brought before them on the consistency of the assessment and the derogatory procedures.

The court judgement of Tribunalul Sibiu no. 221/15.11.2007 admitted the claim of the developer and obliged the environmental protection agency to issue the environmental agreement.

(b) Please explain whether the courts were inclined to take into account the doctrine of direct effect and consistent interpretation.

According to the available information, there are no cases on (i) the consistency of the assessment and (ii) the derogatory procedures.
Policies Department
Citizens’ Rights and Constitutional Affairs

Role
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