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Legal and administrative environmental issues in Romanian mining industry

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Abstract:

The paper presents the main legal and administrative provisions environmentally mining related in Romania. A specific legal and administrative framework starts to be developed in the last 6 years in accordance to European legislation. This framework has not been totally completed. The accidents happened in Baia Mare mining area and not only there have shown that the legal and institutional framework has weaknesses not only in Romania but at the international scale. In order to avoid accidental pollution and to specifically regulate mining activities, some more improvements and completions are needed. The paper underlines the general legal provisions that are touching mining and environmental activities in Romania and suggests some new ideas for the development of mining activities in a safer and environmentally friendly way.

I. Introduction

After 1989, Romania's option for a market-based economy meant a serious reconsideration of the whole legal, institutional and administrative framework.

The new Constitution adopted in 1991 sets up basic rules governing the economy and public finance, underlines the human rights, freedom and duties, defines private and public property and specifies the main public authorities dealing with legal and administrative aspects.

It was an important step in shifting the political centralized system into a democratic one.

The Constitution states that the subsoil riches and waters are public goods and are inalienable but those may be given in administration, leased or granted in concession in accordance to the law. At the same time, the Romanian State is assuming to recover and protect the environment and preserve the ecological values.

Based on these general provisions, a specific legal and institutional framework has been developed. Institutional arrangements have been made immediately after 1990 and modernized during the time. With foreign assistance and, mainly, following the European experience and directives, the legislation has been adjusted permanently.

The start up in this field began from the ground. Excepting a formal National Council for Environmental Protection and a general Environmental Protection Law issued in 1973, a

real activity of environmental protection has not ever been carried out before 1990. This approach may be understood considering that the state has been the owner and administrator of all economical and social activities and its interest has been almost exclusively targeted to economic performance and social protection.

The investments in mining industry for instance have been made for operational reasons and maybe for water protection considerations.

After 1990, the Ministry of Waters and Environmental Protection has nominated 14 pollution "hot spots" in Romania mainly based on the impact of economic activities on environment and less on the pollution or/and technological risk criterion.

Baia Mare area has been included in that list especially due to the existing metallurgical activity and its massive air pollution.

Both pollution events that had happened in the mining industry in Maramures County have been assessed by national and international bodies in order to identify the determinant causes of those accidents. Several reports have been issued. A special attention to the legal and institutional weaknesses has been given by Baia Mare Task Force. The legal and institutional environmentally mining related issues and follow up actions to the accidents will be discussed further on.

II. Legal issues

The main legal framework in environmental protection and mining industry has been developed after 1995. The Environmental Protection Law 137/1995, republished in 2000 has been followed up by Waters' Law 107/1996 and Mining Law 61/1998 accompanied by several Governmental Decisions and Ministerial Orders that complete and detail the permitting procedures, environmental liabilities and set up the competent authorities.

By principle, the environmental legislation is in accordance to the European Union one and contains important provisions similar to IPPC Council Directive and to Council Directive 85/337/EEC, amended by Council Directive 97/11/EC but is still rather fragmented and incomplete.

The Environmental Protection Law states that the environmental central authority will develop permitting procedures for exploration and extractive mining activities and will propose to the Government fiscal facilities for environment preservation and rehabilitation activities but those provisions were not totally completed yet.

The environmental permit for both construction and operational phase was thought to synthesize and integrate the provisions of other required permits but the responsibility for the final decision gets diffuse.

Operational permitting procedures for the existing activities at the moment when the Environmental Protection Law has been issued are requiring to the companies only to submit a formal request for environmental permit within 1 year. So long the company starts and continues the permitting procedure it can legally operate without environmental permit for an undetermined period of time. It is the case of Baia Borsa Mine and of a quite large percent of the mining industry that is operating without environmental permits. There is a lack of interest from the existing mining companies for obtaining operational environmental permit justified by the high costs of a complete application and the future liabilities rising from the Compliance Schedule that usually accompanies the permit. The Compliance Schedule includes measures that are mandatory to be fulfilled within a period not longer than 5 years.

After the Aurul accident, the Ministry of Waters and Environmental Protection and the Ministry of Public Works have decided in 2000, as a pollution risk prevention measure, to classify tailing ponds within a highest category of safety and to assimilate those type of construction to dams for artificial lakes. That means special monitoring systems and a special permit for operation in safe conditions. The guidelines for permitting procedure have not been completely developed.

The legal framework regarding the management of waste excepts the mining waste that will be regulated by special provisions. There is a serious need for adequate legal provisions concerning the management of solid, toxic and hazardous waste generated by the

mining industry with accent on transportation and storage phases setting up the admissible maximum concentration.

Environmental liabilities have been included in mining legislation as well in the privatization process. These are referring to environmental rehabilitation plans in the case of concession and administration licenses for accessibility to mineral resources and to the transfer of environmental liabilities to the new owner in the privatization procedure. The Ministry of Industry and Resources and the National Agency for Mineral Resources have developed Technical Guidelines for Mine Closure but there is a lack of technical guidelines for other rehabilitation works.

Even if the need for implementation of the best available technologies and for the promotion of environmental management systems has been mentioned, there is not a clear legal support in this field.

III. Institutional and enforcement issues

The Romanian Government has set up the competent authorities dealing with environmentally mining related issues.

The Ministry of Waters and Environmental Protection is the central authority responsible for the enforcement of environmental legislation, the strategical management of waters and natural resources and the permitting procedure for the activities having impact on environment. The Inspectorates for Environmental Protection (IEP) are the ministry representatives at local level within 41 counties and in Bucharest. In the last period of time the personnel of IEPs has been reduced by 30% but maintaining or even increasing its responsibilities. The administrative activity of Romanian waters has been given to the National Company "Romanian Waters" that is under the coordination of the ministry. A special remark has to be made to the highest consultative scientific and technical body that is National Commission for Safety of Dams "CONSIB" designated and coordinated by the Ministry of Waters and Environmental Protection.

The administrative body of Romanian mineral resources is the National Agency for Mineral Resources that is under the coordination of the Ministry of Industry and Resources. It deals with the management of mineral resources, issues compulsory regulations for activities in this field and conducts the procedure for administration and concession licenses. At the local level NAMR has its own representative, usually a small office.

The mining activities are carried out in a large extent by state owned national companies that are under authority of Ministry of Industry and Resources. The ministry is developing the strategy in the state mining sector, initiates and approves the environmental rehabilitation programs and monitors the proper measures for environmental protection. The state mining activity benefits of subsidies and the significant investment works are to be approved by the Ministry of Industry and Resources. It is to be discussed the capacity of mining sector to comply with the existing environmental requirements.

The enforcement capacity and future improvements should be seen from different point of view as allocated human resources, financial resources and legal framework.

The legal framework should be completed and detailed by technical guidelines in order to avoid ambiguities and mixtures of responsibilities in applying permitting procedure and performing inspection activities. It would be preferable to have a specific environmental regulatory framework for the mining activities.

It would be an important step to assess existing human resources in environmental activities and their tasks in both environmental authorities and mining sector and to take proper measures for completion of the staff if needed. In order to increase the capacity of enforcing, by a recent Governmental Decision, the inspection department from environmental authorities has been re-organized as Ecological Guard.

The professional qualification and training has to be seriously considered for this special field. It would be useful that environmental authorities to attend dedicated training courses in environmentally mining related activities.

The allocation of financial and material resources has to be adjusted in accordance to the responsibilities and legal requirements. If the mine closure works are supported rather satisfactory by state budget and international donors, the active mining sector is experiencing a serious lack of resources for the operational activities. It should be mentioned the costs for monitoring systems, stability of tailing pond works, renewal of tailing transportation system and wastewater treatment plants and running costs for wastewater treatment plants. Some improvements are expected if the Environmental Fund will become operational and the mining sector will access funds for environmental investments.

The self-financing mechanism for environmental authorities shows to be helpful for strengthening the institutional capacity but additional support regarding transportation means and monitoring systems is needed.

IV. Final considerations

An overview of the legal and institutional framework and its development during the time shows a clear interest and effort of national regulatory bodies in fulfilling the international requirements regarding environmental protection and mining activities in the specific situation existing in Romania.

Generally speaking, the environmental issues mining related in Romania might be addressed within the existing legal framework but it will be desirable to have specific regulations for mining activities.

Serious benefits will arise for both environmental protection and mining activities if a specific environmental permitting procedure and detailed technical guidelines for carrying out environmental impact assessment for mining will be developed.

An important facility for mining activity should be a simplified permitting procedure conducted in a well-defined legal and institutional framework in order to ensure a shorter way from design to implementation of mining initiatives.

A high priority should be given to the development of procedures needed for the safe operation permit of dams and tailing ponds.

Considering the importance of technical design in preventing potential pollution events, it is expected that the procedure for environmental experts and consultants accreditation to be applied very carefully by the central authorities and professional responsibility of designers and environmental consultants to be required.

The decision making process in permitting procedures as well in inspection and monitoring activities has to be very clear and possible overlapping of responsibilities removed.

The use of environmental economical instruments should be extended.

The capacity of the mining sector to comply with the environmental legislation needs a strategical approach and the first step would be the development of Environmental Action Plan for the mining sector.

By principle, the institutional arrangements, that are quite similar to the Europeans ones, should ensure the enforcement of the existing legislation but the institutional capacity should still be improved.

It would be useful to have a high-qualified staff in both environmental and mining sides dealing with the specific environmentally mining related problems. Professional training has to be a priority in institutional capacity building in Romania and the activity of environmental professional associations to be encouraged.

At the same time it is necessary to ensure the minimum number of personnel and technical endowment of environmental and mineral resources authorities acting at central and local level.

In order to free some enforcement capacities of local environmental authorities it is to be discussed the opportunity of sharing with the local public administration certain inspection and authorization responsibilities.

Romania has taken a very serious option for accession to European Union and harmonization of environmental legislation is considered to be essential. The Romanian authorities have announced important changes in the existing legislation and the modification of Mining Law and Environmental Protection Law has been envisaged. At the end of 2001, the Romanian Government has submitted to the EU the National Program for Legislative Harmonization for 2001 and it is envisaged that, in the near future, the secondary environmentally mining related legislation to be improved and in accordance with the European provisions.

References:

1. Official Journal of Romania, Part I, 2000-2001, collection of legal documents
2. Environmental Protection Law 137/1995, republished in 2000
3. Waters' Law 107/1996
4. Ministerial Order 125/1996 regarding the permitting procedure for the social and economic activities with impact on environment
5. Mining Law 61/1998
6. Environmental Sectorial Assessment of Mining Sector, National Agency for Mineral Resources, 2001
7. Baia Mare Task Force Report, 2000
8. UNEP/OCHA Report on Baia Mare Cyanide Spill, 2000
9. The National Program for Accession of Romania to the European Union, 2001
10. The legislative approximation program for the period 2001- 2004