ROMANIA
CLUJ COURT OF APPEAL
ENTRY NO. 114 / 33 / 2023
DATE: 3 MARCH 2023

The Minister's Office **No. R/3616/02.03.2023**

CLUJ COURT OF APPEAL
Third Administrative and Fiscal Division
Case file no. 114 / 33 / 2023
Subject-matter of the case: duty to act

To the presiding judge of the Court

The undersigned, Ministry of the Environment, Waters and Forests (hereinafter referred to as Ministry / The Ministry), with its headquarters located in Bucharest, Bd. Libertății nr. 12, sector 5, Tax ID Number 16335444, duly represented by Mr. **BARNA TÁNZOS** - Minister, as defendant in opposition to:

1. ASOCIAȚIA DECLIC, with its headquarters located in the city of Cluj-Napoca, str. Traian nr. 69-71, Cluj County, as claimant;

All having the address for service at "Revnic, Cristian and Associates" Law Firm, having its headquarters located in the city of Cluj-Napoca, str. Pavel Roșca nr. 1, ap. 7, Cluj County,

7. THE GOVERNMENT OF ROMANIA, with its headquarters located in Piața Victoriei nr. 1, Sector 1, Bucharest, as **defendant;**

8. THE PRIME MINISTER OF ROMANIA, Mr. Nicolae-Ionel CIUCĂ, with the address for service in Piața Victoriei nr. 1, Sector 1, Bucharest, as **defendant;**

9. THE MINISTRY OF ENVIRONMENT, WATERS AND FORESTS, with its address for service in to proceed with located in Bulevardul Libertății nr. 12, Sector 5, Bucharest, as **defendant;**

10. THE MINISTRY OF ENERGY, with its headquarters located in Strada Academiei nr. 39-41, Sector 1, Bucharest, as **defendant;**

11. THE MINISTER OF ENERGY, Mr. Virgil POPESCU, with the address for service in Strada Academiei nr. 39-41, Sector 1, Bucharest, as **defendant.**

Pursuant to provisions of 201 *et seq.* of the New Code of Civil Procedure, hereby submit the following

STATEMENT OF DEFENCE

to the statement of claim, requesting the Court:

1. ***To grant the exception of lack of standing and interest of the claimants;***

2. ***To grant the exception of the lack of capacity to stand trial for the natural persons sued (the heads of the defendant institutions);***

3. ***To grant the exception of the prematurity of the fine imposed on the heads of the defendant institutions, namely the Prime Minister of Romania, Mr. Nicolae Ionel CIUCĂ, Mr. Virgil POPESCU and Mr. BARNA TÁNCZOS;***

4. ***To grant the exception of the ineligibility of the first claim;***

5. ***To grant the exception of the lack of capacity to stand trial of the undersigned in respect of the second claim of the statement of claim;***

6. ***and, on the merits, dismiss the application as brought against the Ministry of Environment, Waters and Forests, in view of the following***

RATIONALE:

In their statement of claim, the claimants are requesting that the court, in its judgment, should:

1. Order the defendants to take all necessary measures with a view to reducing greenhouse gases (hereinafter referred to as GHG) by 55% ***until 2030*** and achieving climate neutrality ***until 2050,*** respectively;

2. Order the defendants to take all necessary measures to increase the share of renewables in the final energy consumption ***to 45%*** and to increase energy efficiency ***by 13% until 2030;***

3. Order the defendants ***to implement concrete and coherent climate change mitigation and adaptation plans, including annual carbon budgets,*** within 30 days from the date the judgment becomes final, with a view to achieving the objectives under claims 1 and 2, as well as annual reporting and monitoring mechanisms on progress towards achieving such objectives;

4. Order the defendants, natural persons - heads of public authorities - to pay a fine of ***20% of the gross minimum wage per day of delay, to be paid to the State budget***, from the expiry of the time-limit laid down in claim 3 ***until the effective implementation of the measures required to achieve the objectives referred to in claims 1 and 2;***

5. Order the defendants jointly and severally to pay the costs of the present proceedings, pursuant to Article 453 of the Code of Civil Procedure.

From the outset, we would like to point out that the claimants' application is manifestly unsubstantiated and aims to obtain a ruling "compelling" the central public authorities to respect / achieve a common objective that has been agreed upon at European level.

1. <u>Considerations on the exception of lack of interest of the applicants in bringing this application.</u>

According to the provisions of Article 8(1^1) and (1^2) of Law no. 554/2004, legal persons governed by the private law may claim a legitimate public interest only where it follows logically from the infringement of the subjective right or legitimate interest.

We hereby request the Court to find that the applicants have neither proved nor claimed any right or legitimate private interest infringed by the administrative act whose suspension they are seeking, for the purposes of Article 1 of Law no. 554/2004.

The claimants have not challenged an actual administrative act, but merely intended to bring the present action in order to plead an alleged failure to comply with the environmental conditions and achieve the objectives set out in the application.

In other words, the application does not specify which administrative act is being challenged or which specific failure to act is being challenged in order to be fully consistent with the purpose for which the Declic Association was established, which is why we request the court to grant the exception raised.

At the same time, actions by natural or legal persons governed by private law may be based, as a rule, on the violation of subjective rights or legitimate interests linked to such rights.

Exceptionally, the law allows for the admissibility of claims brought by a natural person or a legal person governed by private law on the basis of an infringement of a legitimate public right, **<u>provided that the assertion of the infringement is subsidiary to the claim of a subjective right or a legitimate private interest.</u>**

Such a restriction on the exercise of the right of action in administrative disputes is justified by the elimination of the so-called "popular actions" brought by various persons governed by private law who are unable to justify, by reference to their own person, an infringement of a legitimate private right or interest and, as such, base their action solely on the generic argument of infringement of the public interest.

We bring to the Court's attention the Decision no. 8 of 2 March 2020 of the High Court of Cassation and Justice - Panel for Appeal in the interest of the law, which provides that *"in order to exercise the control of legality on administrative acts at the request of associations, as interested social bodies, the invocation of the public legitimate interest must be subsidiary to the invocation of a private legitimate interest, the latter arising from the direct link between the administrative act subject to control of legality and the direct purpose and objectives of the association, according to the statute", and therefore the court must* ***perform a verification of the existence of a direct link between the administrative act and the direct purpose and objectives of the applicant association.***

To conclude, in view of the matters of fact and of law outlined above, we deem that the claimants have failed to prove their interest, either public or private, in the statement of claim, which is why we are requesting that the exception of lack of interest be granted.

2. Considerations on the lack of capacity to stand trial of the natural persons sued.

We bring to the Court's attention that none of the natural persons sued have the capacity to stand trial in this dispute, since the attainment of such objectives cannot be attributed to them but requires cooperation between the Romanian and European institutions.

Moreover, European policy in this regard may be subject to change / adaptation and forcing individuals to a certain attitude may be contrary to changes established at European level.

Last but not least, it is not individuals who adopt measures / plans / budgets, but public institutions following strong inter-institutional cooperation, both at national and European level.

At the same time, we believe that the defendants do not have the capacity to stand trial, since the mere fact of being the head of an authority is not per se sufficient to attract liability for any deficiency of the authority.

In other words, the claimants did not prove the existence of any causal link between the allegedly harmful act and the damage caused, but merely brought proceedings against the persons in charge of public institutions.

According to Article 1(5) of the Romanian Constitution, it is specified that *"in Romania, observance (...) of the laws is mandatory"*. **Standing is the legal right entitling a person to be a party to the proceedings, while the capacity to stand trial regulates the existence of an identity between the person who is the defendant and the person who is bound by the same legal relationship.**

According to the provisions of the Code of Civil Procedure, the capacity to stand trial requires **the existence of an identity** between the person sued and the passive subject of the legal relationship at issue.

Thus, the standing represents **the link between the claimant and the holder of the subjective right that is the object of the proceedings, as well as between the defendant and the person who is bound by the legal relationship of substantive law**, thus underlining the need to identify such categories of persons in the proceedings.

The exception of lack of capacity to stand trial is a **substantive, absolute and peremptory exception**, representing precisely the procedural means by which the parties to the proceedings point out to the court the lack of standing of one of the parties, i.e. **either the non-existence of a legal relationship** of substantive law, or

the non-existence of a connecting link with such a relationship, which would entitle that person to be sued.

To conclude, in view of the matters of fact and law outlined above, we deem that the natural persons, in their capacity as heads of the aforementioned public authorities, cannot have the capacity to stand trial, which is why you are requested to grant the exception and to remove Mr. Nicolae Ionel CIUCĂ, Mr. Virgil POPESCU and Mr. BARNA TÁNCZOS from the case.

3. Considerations on the admissibility of the exception of prematurity of the fine imposed on the heads of the defendant public authorities.

With a view to enforcing any favourable judgment, the claimants are requesting the Court to impose a fine of 20% of the gross minimum wage per day of delay on the heads of the defendant public authorities.

The time limit from when the penalty begins to run is 30 days from the date the Decision becomes final until the date of enforcement.

First of all, we would like to point out that such a decision cannot be implemented by a mere natural person, be it the head of the public authority.

Secondly, the applicants are proceeding on the basis of an absolute presumption of non-enforcement of an enforceable title.

Thus, In accordance with the provisions of Article 24(3) of Law no. 554/2004 on Administrative Litigation, as amended and further supplemented, the fine may be imposed after the judgment has become final, and the fine may only be imposed in a separate trial.

According to the above-mentioned provisions:

“At the request of the creditor, within the limitation period of the right to obtain enforcement, which runs from the expiry of the time limits provided for in paragraph (1) and which have not been culpably complied with, the enforcement court shall, by a judgment handed down after summoning the parties, impose on the head of the public authority or, as the case may be, on the person bound, a fine of 20% of the gross minimum wage per day of delay, which shall be paid to the State budget, and shall award penalties to the claimant, in accordance with Article 906 of the Code of Civil Procedure.”

To conclude, in view of the matters outlined above, we believe that the judgment imposing the fine on the head of the public authority can only be delivered after the present dispute has become final, in a separate judgment and on a separate case file.

Otherwise, it could be inferred that the court agrees with the applicants' contentions and could proceed on the presumption of wrongful non-performance of the obligations laid down in the enforceable title by the heads of public authorities.

4. Considerations on the rejection of the claim against the Ministry of the Environment, Waters and Forests.

=> Preamble

According to the National Greenhouse Gas Emissions Inventory (NGGEI) carried out in 2022 in Romania, total CO2 equivalent emissions, excluding the LULUCF (Land-Use Change and Forestry) sector, were 109,934.33 kt CO2 equivalent in 2020.

According to NGGEI 2022 and Romania's Fifth Biennial Report, from 1989 to 2020, Romania's total greenhouse gas emissions (excluding the LULUCF sector) decreased by 64.09% and net GHG emissions (including LULUCF) decreased by 72.90%[1].

Romania has one of the lowest per capita emission rates in the European Union. Between 1990 and 2020, Romania also reduced its CO2 emissions intensity per unit of GDP by 77%, more than double the global average. In 2020, the shares of total greenhouse gas emissions (excluding LULUCF) were as follows: 67% for CO2, 21% for CH4, 10% for N2O and 2% for aggregated fluorinated gases[2].

National climate change policy and legislative framework

The claimants provide an incomplete presentation in the application (*Section 6. Applicable law. Details of legal arguments*) of national strategic or legislative documents that specifically or indirectly address the mitigation of greenhouse gas emissions ("GHG emissions"), as well as mechanisms for reporting and monitoring progress in this area.

The environmental policy of the European Union (hereinafter "EU") pursues a high level of protection, including through objectives and actions to limit the impact of climate change as resulting from the first sentence of Article 191(2) of the Treaty on the Functioning of the European Union (ex Article 174 TEC) in conjunction with Article 191(1) TFEU (ex Article 174 TEC). As a party to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, the following "pillars of climate policy" pieces of EU and Member States (MS) legislation have been adopted at EU level:

- **Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community, as amended and supplemented (the "EU-ETS Directive").**

The Directive establishes a scheme for greenhouse gas emission allowance trading to promote the reduction of greenhouse gas emissions in a cost-effective and efficient manner. The EU Emissions Trading Scheme covers all major emitters of greenhouse gases from industry, energy and aviation. In total, the EU-ETS Directive

[1] *Fifth Biennial Report of Romania under the UNFCCC,* https://unfccc.int/documents/624778, 31 December 2022, page 7.

[2] *Fifth Biennial Report of Romania under the UNFCCC December 2022, page 9.*

regulates emissions from 8,757 power and thermal plants and production facilities as well as 371 aircraft operators flying between airports in the European Economic Area (EEA) and from the EEA to Switzerland and the UK.[3] These represent about 36% of total EU emissions.

The EU-ETS Directive stipulates that Member States should use at least 50% of revenues from the auctioning of allowances and all aviation revenues for climate and energy purposes. Member States report annually on how they spend their auction revenue.

At national level, the EU-ETS Directive was implemented by Government Decision no. 780/2006 on the establishment of the greenhouse gas emission allowance trading scheme, with subsequent amendments and additions.

In July 2021, the European Commission also presented several legislative proposals to revise the existing EU-ETS system in the framework of *"Fit for 55"*. The Commission has proposed that the sectors covered by the scheme achieve emission reductions of 61% compared to 2005. To this end, it proposed tightening the emissions cap and reducing it annually.

It also reforms the rules for free allowances for industry and phases out the free allocation for aviation. At the same time, the Commission has proposed to extend the EU ETS Directive to include emissions from shipping and to set up a new scheme to reduce emissions from road transport and buildings. Overall, the proposal aims to direct more resources towards the green transition - by committing Member States to invest all revenues from auctioning emission allowances in climate and energy projects and by increasing resources for innovation and modernisation funds.

- Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (hereinafter referred to as the "RGEU"), amending Regulations (EC) no. 663/2009 and (EC) no. 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) no. 525/2013 of the European Parliament and of the Council.

The RGEU lays the necessary legislative foundation for reliable, inclusive, cost-effective, transparent and predictable governance of the energy union and climate action (the governance mechanism) to ensure the achievement of the 2030 and long-term energy union goals in line with the 2015 Paris Agreement. The governance mechanism is based on long-term strategies, integrated national energy and climate plans covering ten-year periods starting from 2021-2030, corresponding integrated national interim energy and climate reports submitted by Member States and integrated monitoring measures of the Commission.

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[3] *COM (2022) 516 final, Report from the Commission to the European Parliament and the Council on the functioning of the European carbon market in 2021 pursuant to Articles 10(5) and 21(2) of Directive 2003/87/EC* (as amended by Directive 2009/29/EC and Directive (EU) 2018/410), 14 December 2022.

- **Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) no. 525/2013 (referred to as the "ESR Regulation").**

The ESR Regulation sets out the obligations of Member States in terms of their minimum contributions for the period 2021-2030 to the Union's objective of reducing in 2030 its greenhouse gas emissions to 30% below 2005 levels in sectors covered by Article 2 of the Regulation[4] and contributing to the achievement of the Paris Agreement targets. Pending the adoption of the legislative proposal to revise the ESR Regulation, under Article 4(1) and Annex I of the current ESR Regulation, Romania has an obligation to reduce its greenhouse gas emissions by 2% compared to its 2005 greenhouse gas emissions set under Article 4(3). The Regulation also lays down rules for setting annual emission allocations and for assessing Member States' progress towards meeting their minimum contributions.

- **Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) no. 525/2013 and Decision no. 529/2013/EU (referred to as the "LULUCF Regulation").**

The LULUCF Regulation sets out Member States' commitments for the land use, land use change and forestry sector that contribute to meeting the objectives of the Paris Agreement and the Union's greenhouse gas emission reduction target for 2021-2030. The Regulation also lays down rules for accounting for emissions and removals[5] in the LULUCF sector and for verifying Member States' compliance with such commitments.

Apart from these four regulatory acts, sectoral legislation[6] and mitigation measures at EU and Member State level contribute to the reductions needed to reach the

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[4] The ESR Regulation shall apply to greenhouse gas emissions from the IPCC source categories energy, industrial processes and product use, agriculture and waste as determined pursuant to Regulation (EU) no. 525/2013, except for greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC.

[5] According to Article 3(1)(1) of the LULUCF Regulation, 'sink' means any process, activity or mechanism that removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.

[6] Legislation that contributes to reducing greenhouse gas emissions at EU and Member States level: Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (RED II Directive), Directive 2012/27/EU on energy efficiency as amended by Directive (EU) 2018/2002 (EED Directive), Directive 2010/31/EU on the energy performance of buildings as amended by Directive (EU) 2018/844 (EBP Directive), Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) no. 443/2009 and (EU) no. 510/2011 (recast), Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO2 emission performance standards for new heavy-duty vehicles, Directives (EU) 2018/850, 2018/851 and 2018/852 on improving waste management and the circular economy, Regulation (EU) no. 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) no. 842/2006.

mandatory targets set out in Articles 1, 2(1) and 4(1) of Regulation (EU) 2021/119 establishing the framework for achieving climate neutrality ("European Climate Law"), which in turn provides the legal basis for the ambitions of the European Green Pact.

Thus, the European Climate Law has set a binding target of achieving climate neutrality in the Union until 2050 in order to meet the long-term temperature objective of Article 2(1)(a) of the Paris Agreement. Specifically, by 2050 at the latest, a balance must be ensured at Union level between emissions and removals of greenhouse gases that are regulated in EU law so as to reach zero net emissions by such date, and the European Union aims to achieve a negative emissions balance thereafter. In order to meet the climate neutrality objective set out in Article 2(1), the EU's binding climate target for 2030 is a domestic reduction of net greenhouse gas emissions (emissions after removals) ***of at least 55% until 2030 compared to 1990 levels.***

In relation to the binding European Union climate target for 2040, in accordance with recital 30 and Article 4 of the European Climate Law, ***the Commission should propose an interim Union climate target for 2040, where appropriate, no later than six months after the first global assessment under the Paris Agreement.***

With regard to national strategic documents with implications for reducing greenhouse gas emissions, we would like to point out the following:

- **Government Decision no. 1.076/2021 on the adoption of the National Integrated Energy and Climate Change Plan (NIECCP) for 2021-2030.**

The NIECCP represents Romania's commitment to contribute to the European 2030 energy and climate objectives by setting national targets for reducing domestic greenhouse gas emissions, increasing the share of renewable energy in final energy consumption, improving energy efficiency in all economic sectors and increasing the degree of interconnection of the domestic electricity market to the European energy market, as well as policies and measures to achieve such targets.

Currently, the DG Reform project *"Implementing the National Energy and Climate Plan and Developing the Long-Term Strategy of Romania"* is aiming to establish an effective governance structure for the implementation of the NIECCP, on an appropriate analytical basis, including a working mechanism for the Romanian authorities to use for monitoring, reporting progress, implementing and updating the NIECCP.

- **Romania's National Resilience and Recovery Plan (NRRP).**

Romania's Resilience and Recovery Plan sets out the investment priorities and reforms needed for recovery and sustainable growth, linked to the green and digital transition envisaged by the European Commission. The NRRP consists of 15 components targeting different areas of activity with an impact including on national policies to combat climate change and environmental protection.

In the field of **water management (Component 1)**, the main objective is the sustainable provision of water for a secure future for people, the environment and

the economy. The component aims at strengthening the regulatory framework for the sustainable management of the water and wastewater sector and for accelerating the population's access to quality services, as well as reconfiguring the current economic mechanism of the National Administration of Romanian Waters (NARW).

In the area of **forests and biodiversity (component 2)**, the objective is to harmonise forest management practices with biodiversity conservation and environmental protection practices in the context of the European Green Deal and to ensure the transition to a climate neutral Europe by creating new forest cover and restoring degraded habitats. The component aims to develop a new National Forest Strategy (adopted by Government Decision no. 1.227/2022 on the approval of the National Forest Strategy 2030) and subsequent legislation and to implement the European biodiversity strategy.

In the area of waste management (Component 3), the objective is to accelerate the process of expanding and modernising waste management systems in Romania, with a focus on separate waste collection, prevention, reduction, reuse and recovery measures in order to comply with the applicable directives and transition to the circular economy. This objective is to be achieved through reform aimed at improving waste management governance to accelerate the transition to the circular economy and thus reduce the greenhouse gas emissions from waste.

In the field of **sustainable transport (component 4)**, the objective is to increase the sustainability of the transport sector in Romania by supporting the green and digital transition of the sector, i.e. to develop a sustainable and environmentally friendly transport infrastructure with adequate safety standards, contributing to the completion of the Trans-European Transport Networks (TEN-T) and the decongestion of urban nodes, while stimulating the transition towards sustainable transport at national level, targeting actions aimed at developing environmentally friendly measures and aiming at reducing the GHG emissions on the new high-speed transport sectors, ensuring environmental protection elements as well as intelligent transport systems (ITS) and road safety measures.

In the area of **buildings (component 5)**, the objective is to improve the building stock through an integrated approach to energy efficiency, seismic retrofitting, fire risk reduction and the transition to green and smart buildings, reducing greenhouse gas emissions, giving due respect to its aesthetics and architectural quality, developing appropriate mechanisms to monitor the performance of the building stock and ensuring technical capacity to implement investments.

In the field of **energy (component 6)**, the objective is to address the main challenges of the energy sector in Romania in terms of decarbonisation and air pollution, i.e. ensuring the green transition and digitisation of the energy sector by promoting renewable electricity generation, energy efficiency and future technologies (in particular hydrogen and storage solutions), increasing competitiveness and decarbonisation of the heating and cooling sector. According to the document, in order to reach the renewable energy target of over 30.7% in 2030, Romania will develop additional renewable energy capacity of around 6.9 GW compared to 215. A cumulative installed coal and lignite power generation capacity of 3,780 MW will be decommissioned until 31 December 2025.

- **Government Decision no. 877/2018 on the approval of the National Strategy for Sustainable Development of Romania 2030.**

Romania's National Strategy for Sustainable Development 2030 (RNSSD) is Romania's response to the 2030 Agenda for Sustainable Development and provides the national framework for the implementation of the 17 Sustainable Development Goals (SDGs), including SDG13 - Climate Action.

- **Government Decision no. 1.172/2022 approving the National Strategy on Circular Economy (NSCE).**

The National Forest Strategy - NFS30 is a strategic document with the following general objectives: a) to ensure the balanced integration of social, ecological and economic functions in forest management and the continuous provision of ecosystem services; b) to achieve social agreement on the harmonisation of the rights, interests and obligations of stakeholders and those affected by forest management; c) to enable the adaptation of regulatory and control instruments, financial support and best practices in relation to the proposed goal.

Among the Strategic Directions for Action (SDAs) under the NFS30 on reducing GHG emissions, increasing GHG sinks and monitoring are:

- SDA1. Promoting sustainable circular forest bioeconomy through long-life wood products (Target: The forest sector contributes to Romania's climate-neutral economy objectives by improving the use of wood and wood products to stimulate an increase in CO2 removals and reduce emissions);

- SDA5. Forest management integrates biodiversity conservation (Target: Stable, resilient, climate-adapted and multifunctional forest ecosystems with high value of biological diversity (including in actively managed forests), in which the economic, social and environmental functions of the forest are balanced);

- SDA6. Appropriate management for the stability of forest ecosystems (Target: Increase the stability of forest ecosystems to the action of disturbance factors by promoting adaptive and science-based forest management);

- SDA7. Increasing the area covered by forest through afforestation of non-forested land (Target: Increase the area of forest cover and create stable forests in the context of climate change with rich biodiversity and increased carbon storage capacity);

- SDA9. Strategic monitoring, collection, processing and use of forest sector information (Target: The collection, processing and use of information relevant to national or individual level monitoring of forest governance and management is carried out in an efficient, coordinated and predictable manner).

- **Decision no. 10/2023 on amending and supplementing the National Long-Term Renovation Strategy to support the renovation of the national stock of residential and non-residential buildings, both public and private, and its gradual transformation into a highly energy-efficient**

and decarbonised building stock by 2050, approved by Government Decision no. 1034/2020.

The main objectives of the National Long-Term Renovation Strategy are the following: 1. Improving the energy performance of the existing stock of buildings by reducing energy consumption, carbon emissions and expanding the use of renewable energy sources in buildings; 2. Improving the quality of life for all users by improving thermal comfort, hygiene, safety and air quality; 3. Reducing energy poverty and ensuring affordable heating for low-income families; 4. Making financing mechanisms for the renovation of the built environment more effective; 5. Developing professional skills in energy efficiency in buildings and supporting innovation; 6. Increasing the quality of the building stock by improving the safety of buildings and ensuring the architectural quality and urban integration of renovation works.

- **Decision no. 59/2023 on the approval of the National Strategy for Environmental Education and Climate Change 2023-2030.**

The main objective of the Strategy is to develop competences, knowledge, skills and attitudes, which will enable pupils to contribute to: 1. relevant actions to fight climate change and reduce its impact; 2. actions to adapt to climate change and ensure climate resilience models; 3. protect, restore and promote the sustainable use of terrestrial ecosystems, running waters, lakes, seas and marine resources and halt the loss of biodiversity; 4. ensure sustainable consumption and production patterns.

- **National Strategic Plan 2023-2027 (Ministry of Agriculture and Rural Development).**

The Strategic Plan for Agriculture includes specific objectives and measures relating to climate change contribution, mitigation and adjustment as well as sustainable energy.

- **The status of Romania's long-term strategy to reduce greenhouse gas emissions (LTS)** (in relation to the claimants' arguments in paragraph 4, Section 5.5 - page 31).

As regards **the elaboration of Romania's long-term strategy for the reduction of greenhouse gas emissions (LTS)**, it should be noted that the LTS is currently being elaborated, in accordance with the provisions of Regulation (EU) 2018/1999, being a complex, technical process, which requires cross-sectoral and inter-institutional involvement and collaboration in order to establish optimal and feasible policies in relation to climate and energy, social and cost-effective needs. The LTS will reflect the vision for a modern economy and an efficient energy system that contributes to meeting Romania's commitments under the Paris Agreement and the European Green Deal, as well as the opportunities and challenges in reducing anthropogenic greenhouse gas emissions.

Hence, in 2021 the project *"Implementing the National Energy and Climate Plan and Developing the Long-Term Strategy of Romania"* was endorsed by the Directorate-General for Structural Reform Support (DG REFORM) of the European Commission, related to the implementation of the National Integrated Energy and Climate Change Plan (NIECCP) and the development of the National Long-Term Strategy for the

reduction of greenhouse gas emissions (LTS). The beneficiaries of the project are the Ministry of Energy and the Ministry of Environment, Waters and Forests.

With regard to the case C-2022/2090, it should be pointed out that a letter of formal notice has been submitted for failure to comply with the obligation under Article 15(1) of Regulation (EU) 2018/1999 to notify the Long-term Strategy under the RGEU. Information was provided to the Commission on the current status of the development of the LTS as well as the timetable of activities to complete the LTS deliverable.

=> *The exception of the lack of capacity to stand trial of the Ministry of the Environment, Waters and Forests in respect of claim 2 ("Order the defendants to take all necessary measures to increase the share of renewable energy in the final energy consumption to 45% and to increase energy efficiency by 13% until 2030").*

Government Decision no. 43/2020 on the organisation and functioning of the Ministry of the Environment, Waters and Forests (hereinafter referred to as MEWF), as subsequently amended and supplemented, sets out the areas in which MEWF is active and implements policies at national level.

Accordingly, Article 1(2) and (3) of Government Decision no. 43/2020 provides as follows:

(2) The Ministry of the Environment, Waters and Forests is conducting its activities in the following areas: (2) The Ministry of the Environment, Waters and Forests is conducting its activities in the following areas: strategic planning, sustainable development, green economy, environmental infrastructure, environmental resilience, meteorology, climate change, protection, conservation and enhancement of natural capital, protected natural areas, biodiversity, biosecurity, protection of citizens from environmental risks, circular economy and waste management, management of potentially contaminated and contaminated sites, management of hazardous substances and preparations, assessment and management of air quality and ambient noise, industrial pollution control and risk management, atmospheric protection, forestry and hunting management, water management, construction and water engineering safety, hydrology, hydrogeology, protection, conservation and restoration of natural capital in the field of water and forests, environmental management and audit scheme - EMAS, EU Ecolabel and national infrastructure for spatial information in the field of competence, as provided for in Government Decision no. 579/2015 on the establishment of specific responsibilities of public authorities as well as technical structures for the implementation of spatial data themes and the endorsement of the necessary measures for their pooling.

(3) The Ministry of Environment, Water and Forests implements the national policy in the fields of environmental protection, green economy, biodiversity, protected natural areas, climate change, circular economy and waste management, water management, construction safety and hydro-technical, forestry and hunting management, with regard to all the sectors and sub-sectors that it administers, draws up the strategy and specific regulations for the development and

harmonisation of such activities within the framework of the Government's general policy, ensures and coordinates the implementation of the Government's strategy in its areas of competence, fulfilling the role of state authority, synthesis, coordination, regulation, monitoring, inspection and control in these fields.

On the other hand, Article 1(1) of Government Decision no. 316/2021 on the organisation and functioning of the Ministry of Energy, as amended, provides that:

The Ministry of Energy is organized and functions as a specialized body of the central public administration, subordinated to the Government, which implements the strategy and the Government Programme ***in the field of energy and energy resources, in the fields of production, transport, distribution and supply of electricity and heat, including energy from renewable / green sources, hydrogen or other alternative / unconventional energy sources****, in the field of exploitation, processing, transport, distribution and exploitation of mineral energy resources / hydrocarbons, on-shore or off-shore, coal, uranium, oil and natural gas and their derivatives, in the civil nuclear field of radioactive waste management and heavy water management, in the field of maintenance and periodic technical checks of energy equipment, in the field of energy efficiency and the Green Deal environmental pact, in accordance with the requirements of the market economy and to stimulate the initiative of economic entities.*

At the same time, according to Article 4 of Government Decision no. 316/2021, the following is specified:

In carrying out its duties, the Ministry of Energy mainly performs the following specific tasks:

„(...) 19. applies the State aid scheme on ***partial exemption of the energy-intensive industry from the contribution to the promotion of electricity from renewable energy sources;***

(...) 52. ***develops energy efficiency policy in the electricity generation sector****, with a view to increasing efficiency in the use of fuels and energy, in accordance with Article 4(2)(f) of Law No 123/2012, as subsequently amended and supplemented;*

(...) 57. ***ensures the promotion of renewable energy resources****, in accordance with Article 13 of Law no. 220/2008 on the implementation of the system for the promotion of energy production from renewable energy sources, as republished, and subsequently amended and supplemented, and of the Modernisation Fund, in accordance with Article 6(6)(a) of Government Emergency Ordinance no. 60/2022, as subsequently amended;*

(...) 61. ***performs*** *through the Energy Efficiency Directorate* ***the duties and responsibilities set out in Article 3(2) of Law no. 121/2014 on energy efficiency****, as amended and supplemented;"*

However, the second claim contains two separate heads of claim, as follows:

•The first head of claim aims at ordering the defendants to take all necessary measures to increase the share of renewables in final energy consumption to 45% until

2030; the common EU framework for the promotion of energy from renewable sources is Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (RED II Directive), as implemented by Law no. 220/2008 on the implementation of the system for the promotion of energy production from renewable energy sources, as subsequently amended and supplemented;

- The second head of claim aims at ordering the defendants to take all necessary measures to increase energy efficiency by 13% until 2030; the common EU framework for increasing energy efficiency is Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (the EED Directive), as implemented by Law no. 121/2004 on energy efficiency, as subsequently amended and supplemented.

The obligation to determine the procedural framework and to justify standing lies with the applicants. According to the provisions of Article 36 of the Code of Civil Procedure, standing results from the identity between the parties and the subjects of the legal relationship in dispute, as it is the subject of the proceedings. The existence or non-existence of the rights and obligations claimed is a question of substance. Therefore, standing implies the existence of an identity between the claimant and the person who is the holder of the right claimed (active standing), as well as between the person being sued and the person who is the passive subject in the legal relationship at issue (capacity to stand trial).

The definition of public authority can be found in Article 2(1)(b) of Law no. 554/2004: *"public authority - any body of the State or of territorial and administrative divisions acting under public authority for the fulfilment of a legitimate public interest; legal persons governed by private law which, according to the law, have obtained the statute of public utility or are authorised to provide a general public service under public authority" are assimilated to public authorities for the purposes of this law.*

The determination of public authority is closely linked to the concept of administrative capacity, which is defined in terms of the powers granted to such authority by the law in a broad sense. Administrative capacity is an autonomous notion specific to administrative litigation and which designates the public authority that may be party to the dispute. As an autonomous concept, it is not confused with the definition given by the Administrative Code, according to Article 5(o), *"administrative capacity - the totality of material, financial, institutional and human resources available to an administrative and territorial division, the legal framework governing its field of activity, and the way in which they are used in its own activity according to the competence established by law."* The concept of administrative capacity is rather similar to the definition given by the Administrative Code to competence, according to Article 5(r), *"competence - the set of powers established by law, which confers on public administration authorities and institutions rights and obligations to carry out, under public authority and under their own responsibility, an activity of an administrative nature".*

In the light of the substantive law provisions referred to above, the content of the second claim referred to the Court and the arguments put forward in Section 5.5

"Romania's undertakings. Insufficiency of our country's undertakings" paragraphs (2), (5) - (15) (pages 31-33 of the application), Section 6.1.2.2, paragraph (4), item 1 (page 46), it follows that the capacity to stand trial ***lies solely with the public authority to which the competence belongs***, namely the prerogatives of setting policies in the field of the promotion of energy from renewable sources, i.e. energy efficiency.

Therefore, you are requested to grant the exception of lack of capacity to stand trial of the Ministry of the Environment, Forests and Waters in respect of the 2nd claim and, consequently, to reject the 2nd claim also brought against the Ministry of the Environment, Forests and Waters as being brought against a person lacking the capacity to stand trial. Accordingly, you are also requested to reject, by way of exception, the forth claim in respect of the Minister for the Environment, Waters and Forests, Mr. Barna TÁNCZOS, given that its subject-matter is the levying of a fine from the expiry of the time-limit laid down in the third claim until the effective adoption of the measures required to achieve the objectives set out in the second claim.

> **=>** ***The exception of lack of interest and, respectively, lack of standing in contentious administrative proceedings of the claimants PENCEA-BRĂDĂȚAN Elena-Roxana, BRĂDĂȚAN Tudor-Iulian, NĂSTACHE-HOPÂRTEANU Cătălina, MIREA Silvia, DEJEU Daniela-Luminița***

According to the application lodged by the Declic Association, namely the natural persons PENCEA-BRĂDĂȚAN Elena-Roxana, BRĂDĂȚAN Tudor-Iulian, NĂSTACHE-HOPÂRTEANU Cătălina, MIREA Silvia, DEJEU Daniela-Luminița, the applicants request that the application be granted following the alleged unjustified failure, including by the Ministry of the Environment, Waters and Forests, to act on their requests and to adopt the measures necessary to achieve the climate objectives undertaken by Romania.

At the same time, the claimants argue that *"the defendants' conduct infringes the individual fundamental rights of the 2nd-6th line claimants, as well as the collective rights detailed in sub-chapter 6.3, the Declic Association, acting both in the interests of present and future generations and in its own interests."*

The natural person claimants provide arguments on their standing in paragraphs 1-3, page 13 of the application and on legitimate interest in paragraphs 1-5, pages 14-15 of the application.

The provisions of Law no. 554/2004 comprehensively regulate the special conditions that must be met in order to trigger judicial review of unjustified refusal to settle a claim.

The legislator has provided in Article 1(1) and (2) and Article 8 of Law no. 554/2004, respectively, that the person bringing the contentious administrative proceedings must be an injured party. Thus, any person, whether natural or legal, has standing in administrative proceedings, within the meaning of Article 1(1) and (2) of Law no. 554/2004, providing that he/she considers him/herself injured in a right or in a

legitimate interest by a typical or similar administrative act aimed at him/herself or at another subject of law.

The above-mentioned provisions of Law no. 554/2004 enshrine the rule of subjective litigation, meaning that an administrative document may be cancelled only where it can be proved that it has caused the complainant impairment to a legitimate right or interest.

The condition of impairment within the meaning of Article 2(a) of Law no. 554/2004 is made in relation to the concept of legitimate interest, which according to Article 1(1) of the same law may be either public or private.

The impairment of the interest is assessed in relation to the concept of private legitimate interest in the context of subjective litigation, because, according to Article 2(1)(p) of Law no. 554/2004, private legitimate interest means the possibility of claiming a certain conduct, in consideration of the achievement of a future and foreseeable, anticipated subjective right.

As a rule, therefore, actions by individuals may be based on the infringement of subjective rights or legitimate interests linked to such rights. Exceptionally, the law also leaves the possibility of rejecting as inadmissible the claims of a natural person based on the infringement of a legitimate public interest, provided that the claim of infringement is subsidiary to the claim of a subjective right or a legitimate private interest, under the conditions laid down in Article 8(1^1) and (1^2) of Law no. 554/2004.

According to Article 2(1)(r) of Law no. 554/2004, the legitimate public interest is an interest in the rule of law and constitutional democracy, in guaranteeing the fundamental rights, freedoms and duties of citizens, in satisfying the needs of the community and in exercising the powers of public authorities.

However, such a restriction on bringing a contentious administrative proceeding is justified by the legislature's intention to put an end to the so-called popular actions brought by various individuals or legal persons governed by private law who were unable to justify, in relation to their own person, an infringement of a legitimate private right or interest and, as such, based their action solely on the argument that the public interest had been infringed[7]. In this regard, the classic accepted legal principles and case law of contentious administrative proceedings have stressed the

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[7] Antonie Iorgovan, Liliana Vișan, Alexandru Sorin Ciobanu, Diana Iuliana Pasăre, *Contentious Administrative Litigation Law - Commentary and Case Law*, Universul Juridic Publishing House, Bucharest, 2008, page 64.

At the same time, the following example has been given in the accepted legal principles: *"In connection with claims in the collective interest, so-called 'popular' actions or appeals have been discussed, such as the request of some citizens, as taxpayers, to overturn decisions causing expenses to be borne by the state, because taxes will increase to cover them. The application was dismissed on the grounds that it is a popular action, which cannot be brought by some taxpayers alone, but by all taxpayers, i.e. by almost the entire population of the country; measures of this kind are numerous and diverse, affecting all areas of social life and all having the same effect, and it is therefore irrelevant to overturn one or other of them."* (Dacian-Cosmin Dragoș, *Implications of the revision of the constitution on contentious administrative proceedings: Discussions on the meaning of the phrase "legitimate interest"*, Transylvanian Journal of Administrative Sciences, 2(11), 2004, pages 17-36).

following: *" Judicial review is triggered by the injured private party. This is because the contentious administrative proceedings, however much they may concern the social order, do not have the nature of a popular action. The individual only becomes an agent for reviewing the legality of administrative acts in so far as they concern him*[8]*."*

It should be noted that the legitimate interest defined by the Contentious Administrative Proceedings Act is not the same as the procedural interest defined by the Code of Civil Procedure, and the above analysis concerns the legitimate interest within the meaning of the Contentious Administrative Proceedings Act.

However, in the assessment in concrete sense of the interest underlying the bringing of the action, it cannot be held that the applicants, natural persons, have the status of persons injured by the contested administrative act within the meaning of Article 2(1)(a) of Law no. 554/2004.

The five claimants make general statements such as *“the 2nd-6th line claimants are Romanian citizens who are deeply concerned about the defendants' deliberate indifference to our fundamental rights to a stable climate”* (paragraph 2, page 6), *"the defendants' attitude impairs the individual fundamental rights of the 2nd-6th line claimants"* (paragraph 13, page 9), *"we are directly affected by the defendants' deficient policy on climate change issues"* (paragraph 1, page 14), *"our action seeks to prevent substantial impairment of our rights"* (paragraph 5, page 15), i.e. lists a set of potentially affected rights: *"the defendants' inactions, which amplify the climate challenges, disregard not only this right of the undersigned, but also the right to a decent living, the right to property, the right to liberty and the right to life itself"* (paragraph 3, page 15), *"the authorities' inaction endangers both the legitimate interest of the Declic Association and the fundamental rights of the 2nd-6th line claimants: The right to life and the right to privacy, the right to property, the right to a decent living, the right to a healthy and sustainable environment, the right to a dignified future for future generations, etc"* (paragraph 3, page 5). Therefore, on the basis of mere allegations, it cannot be concluded that the claimants' rights and legitimate interests have been impaired.

The impairment referred to in Article 2(1)(a) of Law no. 554/2004 must be effective and concern a legitimate private right or interest of the person. However, the five claimants no longer justify in the application the manner in which their rights listed above are affected. All the arguments contained on pages 55 to 75 of the application are put forward by the claimant Declic Association and concern collective, not individual, interests: „6.3. *The defendants' failure to act significantly affects the collective and individual fundamental rights* ***of present and future generations. 6.3.1. Declic - the voice of civil society -*** *the defendants' failure to act significantly jeopardises* ***the collective*** ***rights and freedoms*** *of citizens to health protection, a healthy environment, and a future in accordance with human dignity".*

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[8] C. Hamangiu, R. Hutschneker, G. Iuliu, C. Hamangiu, R. Hutschneker, G. Iuliu, *Appeals to the High Court of Cassation and Justice and the contentious administrative proceedings. Commentary on the laws of the Court of Cassation and contentious administrative proceedings, according to the accepted legal principles and case law*, National Publishing House, S. Ciornei, Bucharest, 1930, page 467.

In fact, the five natural person claimants are acting in defence of a legitimate public interest, which is also apparent from wording such as *"the undersigned deemed that bringing this action is part of **a genuine civic duty"*** (paragraph 4, page 15), *"because of climate chaos, **an entire generation - our generation*** (our note: the natural person claimants are aged between 32 and 51, so they do not represent), *is being asked not what it wants to become, but what it should become. We can't put all the responsibility on the shoulders of the next generation, **which is why we have brought this forward.*** (paragraph 6, page 81)". However, by defending mainly a legitimate public interest (since there is no justification for a legitimate private interest), the five claimants are establishing themselves as parties to the referral to the courts in objective contentious litigation, which is contrary to the exception provisions of Article 1^1(8) of Law no. 554/2004.

Moreover, there is no real dissociation between the Declic Association and the five individual claimants, representing the same general, collective interests. Thus, the claimant PENCEA-BRĂDĂȚAN Elena-Roxana and the claimant BRĂDĂȚAN Tudor-Iulian are listed in Annex 2, "Table of founding and non-founding members of the association on 15 March 2022" to the Statutes of the Declic Association (Annex no. 1 submitted by the claimants).

The claimant PENCEA-BRĂDĂȚAN Elena-Roxana is the president of the Declic Association, as it appears from the Association's statute, while the claimants BRĂDĂȚAN Tudor, MIREA Silvia, NĂSTĂSACHE-HOPÂRTEANU Cătălina and DEJEU Luminița are part of the Declic team, as it appears from the Declic Association's website (https://www.declic.ro/fa-cunostiinta-cu-echipa-declic/).

This is also apparent from the contents of the identical letters submitted by the Declic Association on 1 September 2022 and 23 September 2022 and the letter submitted by the natural persons 2nd-6th line claimants. Moreover, the natural person claimants themselves acknowledge this in paragraph 4 on page 7 of the application (“the 2nd-6th line claimants made **the same** requests to the relevant public authorities on 20 December 2022").

With regard to the reference to the provisions of Article 5(d) of Government Emergency Ordinance no. 195/2005 (paragraph 3, page 13), there is no doubt that ensuring environmental protection represents not only a general interest of the community, but it also has an individual dimension, which is embodied in the right of each individual to a healthy environment. However, the provisions of Article 5(d) of Government Emergency Ordinance no. 195/2005 do not remove the conditions for bringing an action in contentious litigation as regulated by Law no. 554/2004. On the contrary, such legal provisions must be construed in conjunction with each other, so that, upon bringing the case before the court, the claimant can also justify a private interest to be analysed in the light of the specific circumstances of the case, the extent of the climate change phenomenon, and the position and arguments of the claimants in relation to it.

In view of all these reasons, you are requested to grant the exception of lack of interest and the exception of lack of standing of the natural person claimants and to reject the claim brought by the 2nd-6th line claimants as lacking interest and being brought by persons lacking standing.

=> *Considerations on the objection of inadmissibility of claim no. 1*

The claimants have brought an action before the administrative court seeking an order requiring the defendants to take all necessary measures to reduce greenhouse gases by 55% until 2030 and become climate neutral until 2050.

The claimants ***have individually set the 55%*** GHG emission reduction target to be reached by 2030 and the climate neutrality target to be reached by 2050. The 55% greenhouse gas emission reduction target to be reached by 2030 and the climate neutrality target to be reached by 2050 are set at EU level, and are to be collectively reached by the EU Member States, as resulting from Articles 1, 2(1) and 4(1) of the European Climate Law.

Each Member State has the right to set its own level of greenhouse gas emission reductions until 2030 and 2050 respectively, in the light of its social, economic and environmental circumstances.

The fact that the administrative court was seised of a head of claim seeking, in reality, to impose, ***with the court's assistance***, percentages for the reduction of greenhouse gas emissions until 2030 and 2050 respectively, leaving only the defendants the possibility of determining their own measures, constitutes a circumvention of the principle of the separation of powers in the State, enshrined in Article 1(4) of the Romanian Constitution, and an exceeding of the powers of the judiciary in that regard.

The Romanian Government, upon proposal and analysis of the relevant ministries, is the only one in a position to assess the opportunity, the necessity, the concrete possibility of reaching a percentage reduction of greenhouse gas emissions until 2030, respectively until 2050, taking into account all the budgetary aspects and the economic impact of establishing such a commitment and the measures related to the achievement of such commitment.

In the same sense, the adoption of an act declaring a climate emergency entails discussions in relation to the authority with the competence to issue such an act and the legal basis for issuing such an act. In any event, such an act, regardless of its name (declaration, resolution, etc.) ***is non-binding, in the traditional sense of the word, without judicial review.***

In addition, the court ***cannot impose on the defendants the obligation to declare a climatic emergency*** (with reference to the allegations in paragraph 8, page 37) without breaching the principle mentioned above. Similarly, the same reasoning should be taken into account in respect of the references to the lack of a national climate law (paragraph 8, page 37; paragraph 2, page 45). Accordingly, you are requested to reject the first claim as inadmissible in view of the arguments set out above.

Therefore, you are also requested to reject, by way of exception, the fourth claim in respect of the defendant Minister for the Environment, Waters and Forests, Mr Barna TÁNCZOS, given that its subject-matter concerns the levying of a fine from the

expiry of the time-limit set out in the third claim until the effective adoption of the measures required to achieve the objectives set out in the first claim.

The objection of inadmissibility of the third claim in relation to the claimants' request to adopt concrete and coherent plans in relation to the 'adaptation' component to climate change, in order to reach the objectives undertaken under the first and second claims, due to the lack of a request from the claimants in that regard and, implicitly, the absence of an unjustified refusal to settle a claim.

In Section 3.2, In Section 3.2, "The unjustified refusal to comply with the claimants' requests" (pages 7-8), the claimants stated in paragraphs 2-4 that they had submitted two requests (Declic Association) and one request (individual claimants) to the defendants, including the Ministry of Environment, Waters and Forests, with the following requests:

Address and applicant	Registration number Ministry of Environment, Waters and Forests	Contents
The official letter of the Declic Association submitted via the e-mail registratura@mmediu.ro on 1 September 2022.	The official letter no. 2 /R/ 9408 of 2 September 2022, in connection with the official letter no. 2/R/ 10200 of 9 September 2022.	1. Increasing the share of renewable energy in the final energy consumption to 45% and an associated target to increase energy efficiency by 13% until 2030. 2. Publishing, within 6 months of receipt of the application, coherent and consistent plans to meet this energy target.

The official letter of the Declic Association submitted via the e-mail registratura@mmediu.ro on 23 September 2022.	The official letter no. 2/R/ 16572 of 3 November 2022.	1. Taking all necessary measures to achieve a 55% reduction of greenhouse gases (hereinafter referred to as GHG) until 2030 and to become climate neutral until 2050, to be embodied in a written commitment within 30 days of receipt of this letter; 2. Communicating Romania's annual carbon budgets since the signing of the Paris Agreement (2015) and to date, and where there are no annual carbon budgets, disclosing such fact; 3. Communicating both Romania's initial plan and the revised 5-year plan, obligations under Article 2 of the Paris Agreement, quantifying the effect of each policy adopted and proposals made on GHGs, and where no such plans exist, disclosing such fact; 4. Adopting concrete and coherent climate change mitigation plans within 30 days of receipt of the request to meet the targets under item 1.

The official letter of on the 5 natural person complainants submitted via the e-mail registratura@mmediu.ro on 20 December 2022.	The official letter no. 2/R/ 21860 of 21 December 2022.	1. Taking all necessary measures to achieve a 55% reduction of greenhouse gases (hereinafter referred to as GHG) until 2030 and to become climate neutral until 2050, to be embodied in a written commitment within 30 days of receipt of this letter; 2. Communicating Romania's annual carbon budgets since the signing of the Paris Agreement (2015) and to date, and where there are no annual carbon budgets, disclosing such fact; 3. Communicating both Romania's initial plan and the revised 5-year plan, obligations under Article 2 of the Paris Agreement, quantifying the effect of each policy adopted and proposals made on GHGs, and where no such plans exist, disclosing such fact; 4. Adopting concrete and coherent climate change mitigation plans within 30 days of receipt of the request to meet the targets under item 1; 5. Increasing the share of renewable energy in the final energy consumption to 45% and an associated target to increase energy efficiency by 13% until 2030; 6. Publishing, within 6 months of receipt of the

An analysis of all these requests shows that the claimants have not submitted to the defendant Ministry of the Environment, Waters and Forests a request for the adoption of concrete and coherent climate change **adaptation** plans within 30 days of receipt of such request. The claimants merely requested *"the adoption of concrete and coherent climate change **mitigation** plans within a maximum of 30 days of receipt of the request".*

However, in the specialised language, ***mitigation is different from adaptation.*** According to the Intergovernmental Panel on Climate Change (IPCC), the United Nations body responsible for assessing the science of climate change, **mitigation** is defined as *"an anthropogenic intervention to reduce sources of greenhouse gases or enhance sinks of greenhouse gases"*, while **adaptation** is defined as *"the adjustment of natural or human systems in response to actual or expected climatic stimuli or their effects in order to mitigate adverse impacts or exploit the benefits of opportunities"*[9]. There is no definition of mitigation or adaptation in either the UNFCCC or the Paris Agreement.

Article 4(1)(b) of the UNFCCC, as ratified by Romania through Law no. 24/1994, provides as follows:

*"All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: (...) b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing **measures to mitigate climate change** by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and **measures to facilitate adequate adaptation to climate change.**"*

The Paris Agreement, as ratified by Romania through Law no. 57/2017, includes a section dedicated to adaptation and the global goal of adaptation. Thus, a key objective of the Paris Agreement is *"increasing the ability **to adapt** to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production"* [Article 2(1)(b)]. Article 7 of the Paris Agreement is entirely devoted to adaptation to the adverse effects of climate change, recognising in paragraph 2 that *"**adaptation** is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change."*

Please note that the Ministry of Environment, Waters and Forests is currently reviewing policies and measures in the field of adaptation in the *"National Strategy on Adaptation to Climate Change for the period 2022-2030 with a view to*

[9] IPPC, *Climate Change 2001: Synthesis Report. A contribution of Working Groups I, II, III to the Third Assessment Report of the Intergovernmental Panel on Climate Change,* R. T. Watson and the Core Teams, Eds., Cambridge University Press, Cambridge and New York, page 398.

2050" (NSACC) and the *"National Action Plan for the Implementation of NSACC"* (NAPINS) within the RO-ADAPT project.

Both the NSACC and the NAPINS are strategic public policy documents covering the following areas: (1) Water resources, (2) Forests, (3) Biodiversity and ecosystem services, (4) Population, public health and air quality, (5) Education and awareness, (6) Cultural heritage, (7) Urban systems, (8) Agriculture and rural development, (9) Energy, (10) Transport, (11) Tourism and recreation, (12) Industry and (13) Insurance.

The overall objective of the NSACC is to improve the national adaptive capacity and resilience of socio-economic and natural systems to the impacts of climate change over different areas and timeframes. The NSACC and NAPINS The SCASC and PNASC aim at sectoral development in line with the principles of the EU Climate Change Adaptation Strategy and integrate the overall adaptation objective of Article 7 of the Paris Agreement and Article 8 on loss and damage and the target of Sustainable Development Goal 13 - Climate Action.

Both the NSACC and NAPINS are intended to ensure continuity and coherence of the adaptation component previously developed under the *"National Strategy on Climate Change and Low Carbon Growth 2016-2020"*.

The documents have undergone strategic environmental assessment in accordance with Government Decision no. 1076/2004 on establishing the procedure for carrying out environmental assessment for plans and programmes. Based on the Decision of the Scoping Phase no. 6 of 15 September 2022 for NSACC and NAPINS, it was decided that the Strategy and its associated Plan do not require an environmental assessment and are to be subject to the adoption procedure without an environmental permit. Please note that all information regarding the strategic environmental assessment procedure is available on the website of the Ministry of Environment, Waters and Forests: Http://mmediu.ro/articol/decizie-etapa-de-incadrare/5580 and http:/./mmediu.ro/categorie/strategia-nationala-privind-adaptarea-la-schimbarile-climatice-pentru-perioada-2022-2030/419.

The NSACC and NAPINS will go through the decision-making transparency procedure later this year, which is an integral part of the procedure for adopting the regulatory act of approval.

Given that there is no identity between the notion of adaptation and mitigation, please note that the defendants have not requested us to adopt concrete and coherent climate change adaptation plans within 30 days of receipt of their application. In order to have an unjustified refusal, an express application must be submitted to the public authority, i.e. a written and legally substantiated notification.

However, in the absence of an application, there is no unjustified refusal on the part of the Ministry of the Environment, Waters and Forests to settle such an application. Accordingly, you are requested to reject the third claim as inadmissible in this regard.

=> *Considerations on the dismissal of the application as unfounded*

Countering the applicants' arguments concerning the defendants' *"breach of their legal obligations under Article 4 of the Paris Agreement"* (paragraph 6, page 36). Aspects relating to the expected contribution established at national level in 2015. Nationally Determined Contribution for 2020. Aspects on national carbon budgets.

In accordance with decisions agreed at the 20th session of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), the European Union and its Member States submitted their **Intended Nationally Determined Contributions**[10] (INDCs) on 6 March 2015, together with an annex containing quantifiable information on the achievement of the INDCs.

Even before the Paris Agreement was signed and ratified, the EU and its Member States committed themselves to jointly achieve a binding domestic economy-wide greenhouse gas emission reduction target of at least 40% below 1990 levels by 2030, as set out in the European Council Conclusions of October 2014. The INDC of the EU and its Member States became the nationally determined contribution (NDC) under Article 4 of the Paris Agreement when the EU ratified the Paris Agreement in October 2016.

Nationally Determined Contributions (NDCs) serve as an engagement instrument under the Paris Agreement and are a key component of its ambition cycle and accountability framework. Under Article 4 of the Paris Agreement, each country sets its own NDC targets (which is why they are called *nationally determined*) and then has to track progress towards implementation and achievement, but they have no legal obligation to reach them.

Specifically, the Paris Agreement established a number of mandatory legal obligations of a procedural nature for the Parties (see in this respect Articles 4.2, first sentence, 4.8, 4.9, 4.13 and 13.7). Thus, also in relation to the UNFCCC, Parties are required to report certain types of information at certain times or at regular intervals, or to report or submit various information in accordance with agreed provisions.

At the same time, ***not all provisions of the Paris Agreement set legally binding rules for the States Parties.*** For instance, a number of the mitigation provisions are formulated as recommendations rather than mandatory rules[11]. By way of example, the central obligation of the Paris Agreement in Article 4.2, first sentence, states that *"Each Party shall prepare, communicate and maintain successive nationally determined contributions (NDCs) that it intends to achieve."*

This is the only legally effective obligation in respect of mitigation and is strictly procedural in nature. In other words, the provision does not require States Parties to implement their NDC, but only to prepare it, to communicate it.

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[10] Submission by Latvia and the European Commission on behalf of the European Union and its Member States, *Intended Nationally Determined Contribution of the EU and its Member States*, 6 March 2014.

[11] D. Bodansky, *The Legal Character of the Paris Agreement*, Review of European, Comparative & International Environmental Law, Volume 25, Issue 2, available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/fddl.12154.

By contrast, the second sentence of Article 4.2 is addressed to the Parties collectively and not to each Party individually, as the first sentence begins: *"Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions".* According to interpretations in the literature, this provision only establishes a standard of conduct, not an obligation of result[12]. States Parties shall engage in legislative and policy processes with a view to establishing measures which shall represent, according to Article 4.3, *"the highest possible ambition"* and reflect *"common but differentiated responsibilities and respective capabilities, in the light of different national circumstances"*.

In other words, each successive NDC must embody the highest level of ambition of one of the Parties - it must do its utmost to progressively achieve the Paris Agreement temperature goal [Article 2.1(c)]. It is important to stress that the **above-mentioned target is a general one that does not impose quantitative restrictions on greenhouse gas emissions or a global or national carbon budget.**

Moreover, the concept of a ***"national carbon budget"*** referred to by the claimants, both in the third claim of the statement of claim and in the body of the application (paragraphs 2 and 4, page 5; page 17; paragraph 8, page 37; paragraph 2, page 46) ***is not one enshrined in the Paris Agreement***, and the obligations assumed are those determined at the national level (through the NDC and the measures and policies to implement it - see the national policy and legislative framework set out at the beginning of the Annex).

It is important to note that, during the negotiations for the adoption of the Paris Agreement, Parties considered the possibility of "endowing" the Agreement with a binding mechanism for the individual monitoring of States' commitments. In the end, however, the Parties decided not to create such a mechanism, **but opted instead for the establishment of a facilitation-oriented monitoring mechanism for the implementation of the Paris Agreement**, which operates in a transparent, non-confrontational and non-punitive manner.

Otherwise, the Parties would not have reached any agreement to adopt the Paris Agreement. In accordance with Article 14 of the Agreement, the Parties have in fact mandated the Conference of the Parties serving as the Meeting of the Parties to this Agreement (CMA) to periodically review the status of implementation of the Paris Agreement in order to *"assess the collective progress towards achieving the purpose of this Agreement and its long-term goals".*

Such global stocktake takes into account *"mitigation, adaptation and the means of implementation and support"* and has regard to *"equity and the best available science".* The first global stocktake will be carried out in 2023 at COP28 / WFS5 and every five years thereafter, unless Parties decide otherwise.

On 17 December 2020, **the European Union and Member States (MS) submitted to the UNFCCC Secretariat a much more ambitious contribution to reduce**

[12] J. HÄNNI, *Human Rights Protection as a result of Climate Change – Prerequisites and Challenges I Presented by the example of the ECHR*, in EuGRZ 2019, issue 1-6, available at: https://www.eugrz.info/index.php/archiv/13-archivinfos/413-infos-2019-1-6.

greenhouse gas emissions by 55% until 2030 compared to 1990 emission levels and a target to become climate neutral until 2050[13], as set out in the European Council Conclusions of 12 December 2019. The EU and Member States' NDC is accompanied by an annex containing Information to facilitate Clarity, Transparency and Understanding (ICTU), prepared on the basis of Decision 4/ CMA.1.

Full implementation of the Fit for 55 proposals and the REPowerEU plan would put the European Union and its Member States on track to meet the annual NDC target[14].

The performance of States Parties in achieving NDCs under the Paris Agreement is measured on the basis of IPCC reports and Decisions taken by the Conferences of the Parties to the two agreements, and not on the basis of Litmus or other tests referred to by the claimants in the application.

The choice of means (policies and measures) to tackle climate change is within the discretion of the state. Given the complexity of the task, such a choice is difficult and involves different interests that need to be balanced. In fact, in environmental matters, the European Court of Human Rights has often stressed ***that it cannot substitute for the view of local authorities on the best policy adopted, so it has always recognised a "wide" margin of appreciation for states, especially in difficult social and technical areas*** (Hatton et al., supra, paragraphs 100-101; Tătar, supra, paragraph 108).

Given this wide margin of appreciation, the Court has, in certain cases, limited itself to verifying that the national authorities have not committed a *"manifest error of judgment"* in choosing the means of striking a fair balance between competing interests (Hardy and Maile v. the United Kingdom, no. 31965/07, 14 February 2012, paragraphs 222 and 1; Fadeïeva, supra, paragraphs 102 and 105).

Accordingly, you are requested to dismiss as unfounded the claimants' arguments relating to the infringement of Article 4 of the Paris Agreement and the non-existence of national carbon budgets, given that:

(i) Romania, together with the other Member States, communicated its NDC;

(ii) the communicated NDC reflects the highest level of ambition possible at this time;

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[13] Submission by Germany and the European Commission on behalf of the European Union and its member States, *Update of the nationally determined contribution of the European Union and its Member States, 17 December 2020,* https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf

[14] New Climate Institute, PBL Netherlands Environmental Assessment Agency and International Institute for Applied System Analysis, *Greenhouse gas mitigation scenarios for major emitting countries. Analysis of current climate policies and mitigation commitments: 2022 update,* October 2022, available at https://newclimate.org/sites/default/files/2022-10/EC-PBL2022_CurrentPolicies_Oct22.pdf

(iii) the measures to meet the NDC, as reflected in its Annex, are established in accordance with available scientific advice and in relation to national capabilities and circumstances;

(iv) the concept of a national carbon budget is not enshrined in the Paris Agreement and the establishment of such a budget at national level is a political decision.

=> *Allegations related to the Global Methane Pledge (paragraph 3, page 31 + paragraph 26, page 46) and fugitive methane emissions (paragraphs 23-29, page 42)*

According to the Global Methane Pledge, 60% of methane reductions could be achieved by reducing future use of fossil fuels, especially in the energy sector. Methane emissions can also be reduced in waste use, industry and agriculture.

First of all, it can be said that Romania has supported the EU initiative, in partnership with the United States of America, on the Global Methane Pledge, being indirectly part of this initiative as an EU Member State. However, as the complainants themselves acknowledge, ***the Global Methane Pledge is a soft law instrument***[15]. The Glasgow Leaders' Declaration on Forests and Land Use 2021, signed at COP26, is of the same nature.

As regards Romania's joining the Global Methane Pledge at country level, updated data from Romania's Fifth Biennial Report[16], published at the end of 2022, will allow for the development of an analysis to guide, on the basis of current evidence, Romania's decision to join this initiative.

Commitments must be made taking into account the ability to ensure the welfare of citizens and companies who have to bear the technological costs of reducing methane emissions, especially in the energy sector, at the pace that the economy and society allow. It is the energy sector that can undergo technological transformation so that methane emissions can be significantly and efficiently reduced. Reducing methane emissions in the other sectors is much more difficult and costly to achieve so as to contribute significantly to reducing greenhouse gas emissions.

Secondly, on 15 December 2021, the Commission presented the draft Regulation on the reduction of methane emissions in the energy sector as a second part of the "Fit for 55" package of legislative proposals. After numerous negotiations at Member State level, the Council reached an agreement (general approach) on the proposal in

[15] The Council of State of France has defined soft law as a set of instruments that meet the following three criteria: 1) they must have the object of modifying or guiding the behaviour of the addressees so as to lead to compliance by them; 2) they do not create in themselves rights or obligations for the addressees; 3) they represent, through their content and the way they are structured, a degree of formalisation and a structure that brings them closer to appearing as rules of law (Conseil d'État, Étude annuelle 2013 - le droit souple, La Documentation française, 2013, pages 61-63).

[16] Fifth Biennial Report of Romania under the UNFCCC.

December 2022. The Council has now started negotiations with the Parliament to reach agreement on a final text.

The draft proposal introduces new requirements imposing on the oil, gas and coal sectors to measure, report and verify methane emissions (MRV) to the highest standard. Operators will be required to carefully document all wells and mines, monitor their emissions and take appropriate mitigation measures to prevent and minimize methane emissions from their operations.

Member States will establish and publish an inventory of inactive wells, temporarily closed wells and permanently closed and abandoned wells that are registered. In the coal sector, Member States will have to continuously measure and report methane emissions from underground mines and surface mines in operation. They will have to make a public inventory of closed and abandoned mines over the last 50 years and measure their emissions.

=> *Allegations relating to greenhouse gas emission allowances and green certificates (paragraph 1, page 33; paragraph 8, page 37; paragraphs 2 and 4, page 46; paragraph 2, page 79).*

It should be pointed out that the claimants make a confusion between green certificates and greenhouse gas emission allowances.

The green certificate is the title that certifies the production of ***a quantity of electricity from renewable energy sources*** and is regulated by Article 2(h) of Law no. 2020/2008.

The greenhouse gas emission allowance is the title that confers the right to emit one tonne of carbon dioxide equivalent over a defined period, valid only for the purpose of the Government Decision no. 780/2006, as subsequently amended and supplemented, and which is transferable under the conditions set out in the same decision. Greenhouse gas emission allowances are allocated free of charge to operators running an installation in which one or more of the activities listed in Annex no. 1 to Government Decision no. 780/2006, as subsequently amended and supplemented.

The claimants also make a great confusion between the green certificate and the greenhouse gas emission reduction credit (hereinafter referred to as “CER”).

CER is equal to one tonne of carbon dioxide equivalent from a project activity carried out in accordance with Article 12 of the Kyoto Protocol and Article 12 decisions adopted by the Conferences of the Parties to the United Nations Framework Convention on Climate Change or the Kyoto Protocol. These units could be used, between 2013-2020, by operators managing ETS installations to meet their compliance obligation and only 11% of the related emissions for compliance.

These CERs resulted from a project activity and only where the implementation of the project was sanctioned by one or more Parties included in Annex I to the UNFCCC in accordance with Article 6 or 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted on 11 December 1997,

as ratified by Law no. 3/2001, and the decisions of the Conferences of the Parties (COPs) to the UNFCCC or the Kyoto Protocol (CMP).

Accordingly, you are requested to dismiss as unfounded all arguments relating to the green certificates and the greenhouse gas emission allowances.

=> *<u>Conclusions</u>*

You are requested to dismiss the action as unfounded, since in the light of all the above, the conditions for an unjustified refusal to deal with a request under Article 2(1)(i) of Law no. 554/2004 are not met. The refusal to deal with the claimants' request was not made in excess of powers, that is to say, in breach of the limits of competence laid down by law or in breach of citizens' rights and freedoms, as defined in Article 2(1)(n) of Law no. 554/2004. Within the limits of its competence, the Ministry of the Environment, Waters and Forests has explained in its responses to the claimants what the national climate change commitments are and which policies and measures have been taken. Moreover, in the present case, the Ministry of the Environment, Waters and Forests cannot be held to have infringed the rights allegedly defended by the Declic Association, given the limits of its functional competence. In fact, all the arguments on pages 55-75 are general issues (some copied from other human rights cases) about the potential harm that any individual could suffer from climate change, and the approach is in the nature of a *"popular action"*.

To conclude, it should be pointed out that there is a need for concerted action by all States Parties to the UNFCCC and the Paris Agreement (in its threefold dimension - (i) mitigation of emissions and low greenhouse gas emissions (GHG emissions) economic development; (ii) enhancing resilience and capacity to adapt to the adverse effects of climate change; (iii) aligning financial flows in a way that is consistent with a shift towards low greenhouse gas emission development and climate resilience), private actors (e.g. multilateral development banks, companies, especially those in energy-intensive or fossil fuel-intensive industries) and citizens in taking effective measures and actions to combat climate change.

<u>In respect of the evidence</u>

Please find enclosed in electronic format:

1. **The National Greenhouse Gas Emission Inventories (NGGEIs) for the period 2016-2022, as uploaded to the UNFCCC portal.**

The claimants' assertion in paragraph 3, page 46 is correlated with this request for evidence . Upon request to the National Environmental Protection Agency, the latter provided in due time the links on the UNFCCC Secretariat's webpage where all NGGEI variants of Romania were transparently uploaded.

The UNFCCC Secretariat's website contains all the information on the preparation, compilation and submission of the inventory in detail. The methodological elements

used in estimating emissions/removals by sequestration of greenhouse gases are described in detail in the NGGEI Report.

Each year, the National Greenhouse Gas Emission Inventories are also legally submitted to the European Commission and the European Environment Agency.

2. **The expected nationally determined contribution in 2015 for the European Union and Memeber States as uploaded to the UNFCCC portal, INDC Registry** (https://www4.unfccc.int/sites/submissions/indc/Submission%20Pages/submissions.aspx);

3. **2020 Nationally Determined Contribution for the European Union and Member States as uploaded to the UNFCCC portal, NDC Registry** (http://unfccc.int/NDCREG);

4. **Romania's 5th Biennial Report under the UNFCCC, as uploaded to the UNFCCC portal** (https://unfccc.int/documents/624778).

5. **The framing phase decision no. 6 of 15 September 2022 on the "National Strategy on Adaptation to Climate Change for the period 2022-2030 with a view to 2050" (NSACC) and the "National Action Plan for the Implementation of NSACC" (NAPINS) within the RO-ADAPT project;**

6. **Declic team presentation (downloaded from the Declic website).**

In respect of all requests for evidence on page 77, they cannot be submitted by the Ministry of Environment, Waters and Forests as they do not fall within its competence, as follows from Article 1 of Government Decision no. 43/2020 on the organisation and functioning of the Ministry of Environment, Waters and Forests and Article 1(1) of Government Decision no. 316/2021 on the organisation and functioning of the Ministry of Energy.

In respect of the requests for evidence on page 78, these were addressed to the defendant Government of Romania, the Romanian Court of Audit (not a party to the case) and the Ministry of European Investment and Projects (not a party to the case).

=> *Considerations on tracking timber (pages 39 - 42 of the application).*

SUMAL 2.0 - DEFINITION

SUMAL 2.0 is an integrated information system for tracking of timber developed by the central public authority responsible for forestry and made available to the professionals referred to in Article 4 of Government Decision no. 497/2020 on the sanctioning of the Rules on the origin, movement and marketing of timber, the rules governing the storage facilities for timber and roundwood processing facilities, as

well as the rules on the origin and movement of timber intended for the owner's personal use, and certain measures implementing the provisions of Regulation (EU) no. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, as amended.

SUMAL 2.0 - LEGALITY OF OPERATION

From a legal point of view, the need for the new IT system is provided by:

● The Government Decision no. 497/2020 on the sanctioning of the Rules on the origin, movement and marketing of timber, the rules governing the storage facilities for timber and roundwood processing facilities, as well as the rules on the origin and movement of timber intended for the owner's personal use, and certain measures implementing the provisions of Regulation (EU) no. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, as amended.

● The Decision no. 512/2022 amending and supplementing Rules on the origin, movement and marketing of timber, the rules governing the storage facilities for timber and roundwood processing facilities, as well as the rules on the origin and movement of timber intended for the owner's personal use, and certain measures implementing the provisions of Regulation (EU) no. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, as amended, sanctioned by Government Decision no. 497/2020;

● The Ministerial Order (M.O.) no. 118/2021 on the organisation and functioning of SUMAL 2.0 applications, the obligations of SUMAL 2.0 users, the structure and method of transmission of standardised information and the costs of services for issuing waybills for the situations referred to in Article 11 of the Rules on the origin, movement and marketing of timber, the rules governing the storage facilities for timber and roundwood processing facilities, as well as the rules on the origin and movement of timber intended for the owner's personal use, and certain measures implementing the provisions of Regulation (EU) no. 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, as amended, sanctioned by Government Decision no. 497/2020;

● The Decision of the Supreme Council of National Defence (SCND) on illegal logging in the national forestry fund, which ordered the measures to be taken, as follows:

Article 1(d): Development of the SUMAL integrated timber tracking information system

SUMAL 2.0 - DEVELOPMENT / IMPLEMENTATION

The Ministry of the Environment, Waters and Forests, as the main system administrator of the SUMAL integrated information system for the tracking of timber has developed, together with the Special Telecommunications Service (STS), a new information and communication system SUMAL 2.0, as provided for in the Protocol concluded between the two authorities.

The inherent complexity of the SUMAL 2.0 IT system has created a number of challenges, both for the design activity (definition of functional and design requirements) and for the software development activity.

In order to implement the protocol concluded between the Ministry of Environment, Forests and Waters (as the beneficiary of the SUMAL 2.0 information system development) and STS (as the developer of the SUMAL 2.0 information system), working groups appointed by Ministerial Order were set up and more than 9,500 technical specifications on how to implement the SUMAL 2.0 development were submitted. Working meetings were held at the Ministry of the Environment, Water and Forests and recorded:

√ 68 minutes of working meetings in 2018;

√ 82 minutes of working meetings in 2019;

√ 34 minutes of working meetings in 2020.

As of 12 May 2020, testing began at the Ministry of Environment, Waters and Forests as follows:

√ as of 13 May 2020, the credentials for testing have been sent to the representatives of the forest rangers

√ access credentials have been created to state forest ranges, private and public forest ranges and economic operators for testing SUMAL 2.0 modules;

√ the database for the test environment has been populated with forest management data in order to test with real data;

√ working groups with representatives of:

- the National Forestry Authority - NFA;
- State forest ranges;
- Public and private forest ranges;
- Economic agents.

√ A test logbook was created in which all malfunctions encountered during the testing were reported;

√ all application errors were transmitted in real time to the developer for correction.

The Ministry of the Environment, Waters and Forests, through its working groups and forest rangers, has come to the support of SUMAL 2.0 users by providing a call-centre. Manuals and video tutorials with instructions on how to use the new applications have also been made available on the Ministry of the Environment, Waters and Forests website (http://www.mmediu.ro/categorie/sumal-2-0/321).

On 31 January 2021, SUMAL 2.0, the most important tool in the fight against illegal logging, came into force.

SUMAL 2.0 - DEVELOPED APPLICATIONS - MAIN ATTRIBUTES - STATISTICS

DEVELOPED APPLICATIONS:

1. SUMAL 2.0 Planning application;

2. SUMAL 2.0 Forest range application;

3. SUMAL 2.0 Economic agent application - Electronic register;

4. SUMAL 2.0 Permits application;

5. SUMAL 2.0 Control application;

6. SUMAL 2.0 Superadministrator application;

7. SUMAL 2.0 Forest Inspector application;

8. SUMAL 2.0 Contraventions application - SNEICS.

1. The SUMAL 2.0 Planning application is intended for the GIS-based recording of the national forestry fund and is mandatory for specialized entities certified for forest planning works, in order to record the forestry planning, to register the information and to create the specific database. The SUMAL 2.0 Planning application is also used for:

- entering the minutes of the 1st and 2nd forest planning conferences, the minutes of acceptance, the opinion of the technical committee for forestry and the approval order, for areas of forestry fund for which the law requires the preparation of forest planning;

- introduction of the final database for the areas of the forestry fund for which forestry plans are to be drawn up and the related maps in GIS format;

- introduction of the final database for the forestry funds for which forestry plans have been developed prior to the launch of SUMAL 2.0.

2. The SUMAL 2.0 Forest range application is intended for forest managers, state forest ranges, pubic and private forest ranges and is used, among other things, for:

● registration of the data of natural/legal persons, owners of areas of national forestry funds that they manage or for which forestry services are provided on a contractual basis;

● entering data on land outside the national forestry fund, covered by forest vegetation, for which forestry service contracts are concluded;

● generation of inventories and height measurement records using SUMAL 2.0 Marking application;

● issuing / extending / suspending / modifying and withdrawing logging permits;

● generation of the minutes of control of the exploitation of the batch;

● generation of reports at Forest Range / Forest Administrator level or higher structures.

For the calculation of the volume to be logged and for the generation of the value assessment documents, five calculation methods have been developed simultaneously for estimating the volume of wood mass - in accordance with the provisions of Ministerial Order no. 1323/2015. In addition, for the establishment of the regression equation coefficients used in the calculation of the volume, the support of the National Institute for Research and Development in Forestry "Marin Dracea", the Academy of Agricultural and Forestry Sciences, the Faculty of Forestry and Logging and other experts in the field was requested - the validation of the proposed solutions was done after several meetings and debates.

Since the date of implementation of the information system, the SUMAL 2.0 Forest range Application has recorded the following statistical data, among others:

State forest ranges	Public and private forest ranges	State forest range users	Public and private forest range users	Number of owners entered (individuals, legal entities)	Appraisals generated	Volume of wood mass calculated (m3)	Volume of wood mass calculated using the manual method (m3)
317	**146**	**10,720**	**4,029**	**120004**	**391586**	**55741941**	**17965000**

3. The SUMAL 2.0 Economic agent application - Electronic register is intended for economic operators, in warehouses / workshops / temporary warehouses, sorting and processing centres for timber, centres that sell timber, roundwood processing plants, in markets, fairs, markets and commodity exchanges where timber is sold, and for economic operators using a quantity greater than 20 m3/year or the equivalent of 20 m3/year in the case of sawdust and chippings, except for their own use. It is used, among other things, for:

● recording of data relating to storage sites for timber, with the mandatory determination of its geographical coordinates and with the provision of a permanent Internet connection;

● recording the removal of timber from storage;

● recording of sorting, cutting, processing, chopping, feeding and retailing reports at the end of each month or within a maximum of 24 hours from the date and time requested by the inspecting officer.

Since the date of implementation of the information system, the SUMAL 2.0 The SUMAL 2.0 Economic agent application - Electronic register has recorded, inter alia, the following statistical data:

Registered warehouses	No. of means of transport	Total volume of timber registered with goods received note (GRN) (m3)	Total volume of timber processed (m3)	Total volume of timber transported - Extra-Community export (m3)	Total volume of wood transported - Extra-Community import (m3)	Total volume of wood transported - Intra-Community export (m3)	Total volume of timber transported - Intra-Community Import (m³)
388,592	**68039**	**56348872**	**65574864**	**3415207**	**1225310**	**986107**	**4327184**

4. The SUMAL 2.0 Permits application (Android mobile app) is intended for economic operators who are users of the SUMAL 2.0 IT system and is mandatory for, among other things:

● recording and confirming the origin of the transported timber;

● recording the identification data of the means of transport;

● recording the identification data of the issuer of the waybill of the transported timber;

● record the identification data of the person transporting the timber;

● GPS recording of the route taken by the means of transport from the place where the transport of the timber began to the place of unloading;

● GPS recording of the place of loading of the timber;

● generation of the waybill for the timber materials subject to transportation;

● taking photographs of the means of transport.

The SUMAL 2.0 Permits Android mobile application automatically calculates and generates the volume in cubic metres with at least two decimal places for each registered species and assortment, according to the requirements of Article 15 of the Rules on the Movement of Timber.

Since the date of implementation of the IT system, the following statistical data, inter alia, have been recorded in the SUMAL 2.0 Permits application:

No. of companies issuing permits	Total no. of permits issued	No. of permits issued at the place of harvesting	No. of permits issued where the mode of transport was road	No. of permits issued where the mode of transport was rail	No. of permits issued where the mode of transport was water	No. of permits issued where the category of transport was “internal transport”	No. of permits issued where the category of transport was "intra-Community transport"	No. of permits issued where the category of transport was "extra-Community transport"
11,946	**10474939**	**5109249**	**9403515**	**45842**	**15461**	**10365104**	**52610**	**57414**

5. The SUMAL 2.0 Control application (Android mobile app) is used by: Forestry control personnel of the Ministry of Environment, Waters and Forests, within the specialized territorial structures, i.e. forest rangers, officers, agents and specially authorized non-commissioned officers of the Romanian Police, Romanian Gendarmerie and Border Police, criminal investigation bodies of the judicial police specialized in forestry, as well as prosecutors from public prosecutor's offices, forestry personnel employed in state forest ranges and public and private forest ranges and in experimental forestry centres, as well as employees of the state authorities responsible for national security.

With the SUMAL 2.0 Control application the following can be done:

- checks of the appraisals;
- verification of transports of timber/wood products;
- verification of entries, receipts, activities specific to warehouses or processing facilities, as well as outputs of timber from temporary storage / warehouses;
- verification of the entry of data in the customs import form (CIF) relating to the species, volume and consignee of the imported timber / wood products;
- verification of the data in the intra-Community documents relating to the species, volume and consignee of the timber / wood products coming from the intra-Community area;
- verification of the data in the customs export form, relating to the species, volume and consignee and country of destination of the imported timber / wood products.

Since the date of implementation of the IT system, 134 control structures have been registered through SUMAL 2.0 Control Application and the number of registered users is 12,296.

6. The SUMAL 2.0 Superadministrator application is used by personnel within the central public authority responsible for forestry who are in charge of the operation and administration of SUMAL 2.0. The use of SUMAL 2.0 Superadministrator is mandatory for, among other things:

- registration of legal entities entitled to use the SUMAL 2.0 system;

● creating user accounts, granting differentiated access rights and roles to SUMAL 2.0 users;

● modification of data entered erroneously by users in SUMAL 2.0 applications;● registration of legal entities entitled to use the SUMAL 2.0 system;

● verification of actions performed by SUMAL 2.0 users.

7. The SUMAL 2.0 Forest Ranger application is used by Forest Rangers to create users / user groups in the counties assigned to each Forest Guard, grant differentiated access rights and roles to users in the counties assigned to each Forest Guard, and modify access data in the counties assigned to each Forest Guard. At national level there are 9 forest guards, and in the implementation, monitoring and control of the forestry and hunting regime, they play the role of state authority, synthesis, coordination, inspection and control in such areas. There are currently 383 registered users with the right to use the SUMAL 2.0 Forest Ranger information system.

8. The SUMAL 2.0 Forest Inspector application is used to provide the public with publicly available SUMAL 2.0 information and data on logging and timber/wood products transports, in compliance with personal data protection and trade secrecy legislation, and for forest owners to access SUMAL 2.0 information related to their property. The public information that can be viewed in SUMAL 2.0 Forest Inspector is:

● the information in the waybill with regard to the code of the waybill, date and time of issue, issuer, type of transport, document of origin, point of loading, volume, species / species group, assortment, name of the economic operator carrying out the transport and registration number of the means of transport;

● the route covered during the transport publicly available after completion of the transport;

● pictures of the means of transport from the front, back and side, which are recorded in the SUMAL 2.0;

● the layout maps recorded in the SUMAL 2.0;

● the information related to the appraisal document and the inventory recorded in the SUMAL 2.0;

● the logging permit with the name of the economic operator carrying out the works, recorded in the SUMAL 2.0.

The Timber Tracking Information System (SUMAL 2.0) makes it easier to inform and involve the public about possible transports of illegally harvested timber.

The verification of timber transports can be done both through the web portal*www.inspectorulpadurii.ro*nd with the help of the mobile application ***"Forest Inspector"***, which is still available free of charge to the public and can be downloaded from the Ministry of Environment, Waters and Forests website,

GooglePlay (for devices using the Android operating system) and AppStore (for devices using the IOS operating system).

This makes it possible to view and consult the waybills, the place of loading of the timber and the appraisal document of the timber. Should it be found that the transport is not registered in the timber tracking system, users are advised to call the emergency number 112 to report the illegal transport.

Even without this application installed, any individual can call the emergency number 112 to request verification of the legality of a timber transport.

The number of calls registered to the emergency number 112 since the SUMAL 2.0 information system was put into operation until now is of 7,133 calls, out of which 4,903 legal transports, 2,024 illegal transports and 206 where the caller could not provide the truck registration number.

Back in 2016, the Ministry of Environment, Waters and Forests launched the *www.inspectorulpădurii.ro* web platform as a trial version. As an intermediate, incomplete product, the platform did not provide the general public with real information about tree harvesting in Romania, as it was not developed in such a way as to differentiate between legal and illegal logging, resulting in many system errors.

The *www.inspectorulpadurii.ro* portal aimed to use satellite imagery for detecting illegal logging. Although not completed and therefore not functioning properly, this portal was made publicly available in its testing phase, creating confusion among the general public, as to whether all the alerts it issues represent illegal logging. In fact, out of a total of 5,932 alerts checked by the Forest Rangers, only 17 turned out to be illegal logging.

Along with the development of the SUMAL 2.0 information system, namely:

√ uploading forestry planning in GIS format to the system;

√ generating inventory books using the SUMAL Marking mobile application, which is used to collect data from the field when assessing the volume of timber for sale with automatic retrieval of tree attributes such as: serial number, GPS position, species, height, diameter;

√ GPS localisation of the primary ramps (loading site for the dispatch of timber from the harvesting site), etc., the Ministry of the Environment, Waters and Forests has continued to identify the best solutions so that the implementation of satellite imagery becomes a main tool for the automatic identification of changes in the forest canopy and the automatic generation of alerts.

The SUMAL 2.0 Timber Traceability Information System (unique at international level) is a complex tool, currently used by around 26 thousand companies and for 90 thousand users.

In order to integrate the system with other new IT systems (e.g. a satellite imagery monitoring system) a very careful analysis of the whole IT system is needed so that the optimal solution for interconnection with other external data can be identified

without jeopardising the current smooth functioning of the system. The Ministry of Environment, Waters and Forests has asked for expert support.

Thus, during the development and implementation of the SUMAL 2.0 information system, several working meetings were held with the European Space Agency and the Romanian Space Agency, with which the Ministry concluded a cooperation protocol.

According to Component C7 - Digital Transformation - Digitisation in the field of environment - non-reimbursable financial support, of the National Recovery and Resilience Programme, the Ministry of Environment, Waters and Forests is required to implement integrated IT services for forest monitoring, control, monitoring of the forest fund, use of digital solutions for forests and monitoring of timber transports, a project called Enhanced forest supervision, control and monitoring capacity through an integrated IT system. All these new developments will be integrated with the SUMAL 2.0 information system (SUMAL 2 integrated timber tracking information system), developed together with the Special Telecommunications Service.

The requirements set out under Component C7 - Digital Transformation, digitisation in the field of environment, are presented below:

"Implementation of an integrated information system to support sustainable development, improve infrastructure and environmental quality, nature protection and biodiversity conservation.

The objective of the integrated information system for monitoring, control and ensuring the integrity of the forest fund will use modern monitoring and control systems and equipment.

The local IT component provides the ability to receive large amounts of data from a variety of sources:

√ *drone systems - unmanned aerial vehicles (UAVs);*

√ *satellite systems;*

√ *video forest monitoring systems.*

Satellite imagery will be included as a separate layer in the SUMAL 2.0 system, together with forest management maps, Natura 2000 maps and also relevant GIS datasets. The system will be used to monitor legal obligations related to timber harvesting, timely forest regeneration, forest health, as well as the state of forest habitat conservation, climate change impacts and climate change adaptation of different forest ecosystems."

According to the indicators and the monitoring and implementation schedule, (Annex no. 2, Sequence no. 167), the first deadline set for reaching the milestones / targets, i.e. 30 September 2022 - approval of the technical specifications, has been met, the next target deadlines being:

- 30 March 2023 - signature of contract with the service provider (milestone 2);

- 31 December 2023 - partial completion of system operationalisation (milestone 3);

- 31 December 2024 - completion of system operationalisation (milestone 4).

Some of the approved technical specifications include:

=> purchase of a software package to automatically identify changes in the forest canopy and automatically generate alerts;

=> purchase of services related to the development of a WebGis Portal that automatically receives satellite alerts from the IT application and allows automatic overlapping with the location of the submitted inventories / appraisal documents in SUMAL 2.0 or other GIS layers held by the Ministry of Environment, Waters and Forests.

9. The SUMAL 2.0 Contraventions application - SNEICS is used by the central and territorial authorities with control attributions in the field of forestry, according to the competences established in Law no. 171/2010 and it is used for:

● recording of reports of forestry contraventions;

● registration of the minutes of timber's physical / value seizure;

● processing of reports of forestry offences;

● generation of reports on forest contraventions recorded in the system;

● generating reports on penalty points related to forest contraventions that have become final through court decisions.

It should be noted that the application came into force on 31 December 2022.

To conclude, having regard to the matters of fact and of law, you are requested to dismiss the application as submitted.

By right, our submission is based on the provisions of the Code of Civil Procedure, the Contentious Administrative Proceedings Act no. 554/2004 and any other relevant legislation.

In evidence, on the basis of Article 254 of the Code of Civil Procedure, you are requested to allow us to adduce documentary evidence. Enclosed herewith are 3 CDs with the documents necessary for the resolution of the case.

We request that the case be tried in the absence of the Ministry's representative, in accordance with the provisions of Article 223(3) in conjunction with Article 411(1)(2), final sentence of the Code of Civil Procedure.

We are submitting this statement of defence in three (3) copies, one for the court and the rest for notification.

for Minister for the Environment, Waters and Forests

signs

THE DEPUTY SECRETARY-GENERAL,
Mr. Teodor DULCEAȚĂ
[Illegible signature and stamp]