



Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland

20.05.2021

Procedure: **PRE/ACCC/C/2021/186 (Portugal)**

Dear Chair,

In relation to our previous communication, we wish to note that on 19.05.2021 a communication was received from the Director of Environmental Assessment of the Portuguese Environmental Agency (APA) regarding the administrative documents referred to in Montescola's 07.01.2021 request c) [*"c) reports and requisitions issued by the Administration in regards to the documentation presented by Savannah Lithium Limitada"*]. The communication states that:

... in accordance with the provisions of paragraph 3 of article 6 of Law no. 26/2016, of 22 August, [included as ANNEX 1 in our communication] this Agency withholds access to the said administrative documents until the respective decision is taken, that is, until the issuance of the Environmental Impact Statement, under the terms provided for in the EIA legal regime.

Therefore, following the unfounded interpretation of the concept of "*material in the course of completion*" (Article 4, para. 3c) as an alleged basis to refuse timely access, APA now states that it will only grant access to the administrative documents that are part of the Environmental Impact Assessment procedure when the whole procedure is completed and no further options for public participation exist, noting that, under Portuguese Law, the Environmental Impact Statement which concludes the EIA procedure is not subject to administrative or judicial appeal. This is also stands against the Commission for Access to Administrative Documents' 24.03.2021 Report.

We also wish to note in relation to documents that had been withheld by error or deliberately from the list of documents made available for public consultation (paragraphs 15 and 18 of our communication), that such documents were only made available on 12.05.2021, twenty days after the initiation of the 30 day public consultations period on 22.04.2021. Many important documents have only been made available in English and are not intelligible to local population and groups.

Given the severe limitations that such interpretations of the Aarhus Convention pose to future public participation and access to environmental information in Portugal, we hope that adequate guidance from the ACCC may be eventually issued within the context of this procedure.

Yours sincerely,

Xoán Evans Pin, Director
Fundação Montescola

Attachments:

1. **08.03.2021 decision from the Director of Environmental Assessment of APA** refusing access to the requested environmental information on the grounds that access would only be provided in the context of public consultations [Portuguese original and English translation]
2. **24.03.2021 Report no. 102/2021 by the Commission for Access to Administrative Documents – CADA** determining that access to the requested information should be provided. [Portuguese original and English translation]
3. **19.05.2021 decision from the Director of Environmental Assessment of APA** refusing access to the requested environmental information that had not yet been disclosed on the grounds that access would only be provided after the Environmental Impact Assessment procedure had been concluded. [Portuguese original and English translation]