

Report no. 145/2021

Procedure no. 69/2021

Complainant: Nik Völker (A.)

Defendant: Agência Portuguesa do Ambiente (APA)

I - Facts and request

1. A. requested from the Agência Portuguesa do Ambiente (APA): «-*Environmental Impact Assessment (EIA) for the concession C-100 "Mina do Barroso" in the Municipality of Boticas, Vila Real, submitted by the applicant Savannah Resources ("Savannah Lithium, Lda. ", or "Savannah Resources PLC");/- Documents associated with the process detailed above: For example reports, requests, annexes, addenda, amendments, corrections, etc. issued by APA, by the applicant, or by other entities involved (e.g. CA [Monitoring Commission] entities, European Union Member States, European Commission, etc.); should this request not be practicable for reasons of quantity or confidentiality, a list of identified documents, including size, authorship, date, and accessibility classification;/- Documents, guidelines, or similar information in APA's possession that refer to the extension of the public consultation period or equivalent mechanisms , to ensure adequate implementation of the public consultation in terms of paragraph Article 29(3) of Law no. 151-B/2013 in cases of extraordinary complexity of a proposed project, or in other extraordinary situations of force majeure that could influence an adequate realization (States of Emergency or National Calamity, etc.)/ (...)/ In accordance with Article 13(4) of Law 26/2016 I request a response via email. (...)*»

2. For not having obtained a response to his request the applicant filed a complaint with CADA.

3. Invited by CADA to comment, the respondent did not say anything.

II - Legal assessment

1. The general rule regarding access to administrative documents is set out in Article 5(1) of Law 26/2016, of 22 August, a diploma that regulates access to administrative and environmental information and the reuse of administrative documents (hereinafter, LADA): "*Everyone, without the need to declare any interest, has the right of access to administrative documents, which includes the rights of consultation, reproduction and information on their existence and content*", the same applying to environmental information - Article 17.

2. However, there are situations where access is restricted, which are contemplated, namely, in Articles 6 and 18 of the LADA.

3. In the present case, the following are requested: the Environmental Impact Assessment (EIA) for the concession C-100 "Mina do Barroso" in the municipality of Boticas, Vila Real, the documents associated with the EIA process (AIA) and



documentation relating to the "extension of the public consultation period or equivalent mechanisms".

4. The APA failed to comply with the duty to reply to the requested information, in accordance with the provisions of Article 15(1) of the LADA, and did not comment when invited to do so by the CADA. No restrictions on access were invoked by the requested entity, nor can these be presumed.

5. The CADA has already ruled on a request for access to the documentation that is part of the EIA procedure for concession C-100 "Mina do Barroso", in Opinion 102/2021 (accessible at www.cada.pt), which concluded that access should be granted - notwithstanding APA's claim that the EIA procedure was still in the analysis phase as regards the conformity of the EIA and that access to the documentation should occur at a later stage, within the scope of the public consultation phase - in the following terms: *"12. In the present situation, the request for documentation refers to an environmental impact assessment procedure, for which we must also consider Decree-Law no. 151-B/2013, of 31 October, which approves the legal regime for environmental impact assessment (RJAIA) of public and private projects likely to have significant effects on the environment, transposing into national law Directive no. 2011/92/EU, of the European Parliament and of the Council, of 13 December 2011, amended and republished by Decree-Law no. 152-B/2017, of 11 December./13. The general principle governing access to information of the EIA, verification of environmental conformity of the implementation project and post-evaluation procedures is regulated in Article 28: «The EIA, verification of environmental conformity of the implementation project and post-evaluation procedures are public, and all their elements and procedural documents are available at the EIA authority, with the exception of those covered by industrial or commercial secrecy, including intellectual property, or which is relevant for the protection of national security or the conservation of natural and cultural heritage.»/ 15. Article 29 relates to the public consultation procedure and Article 30 to the active dissemination of information./ 16. Articles 32 and 33 regulate the procedures to provide environmental information, respectively, to a State or Member State of the European Union, whose territory may be affected by a project with transboundary environmental impact./17. In the assessment of the present complaint it is, therefore, necessary to consider the legal framework described above./ 18. Returning to the case./In the response to the request the respondent entity does not question the right of the applicant to know the documentation requested or invokes any restriction of access, under the terms foreseen in article 18 of the LADA./ 19. Neither does it invoke the inexistence of any of the documents./ 20. The question that underlies the complaint lies in the understanding of the respondent entity that access should take place within the public consultation phase and within the timeframe foreseen for this purpose. According to the defendant, the Kingdom of Spain - a state potentially affected by the environmental impact of the mining concession in question - will be consulted on a transboundary basis during the EIA procedure./ 21. It follows from the above legal framework that:/- The EIA, verification of the environmental conformity of the implementation project and post-evaluation procedures are public;/ - All the elements and procedural documents of those procedures are available at the EIA authority, except those concerning the following reserved matters industrial or commercial secrecy, including intellectual property, with relevance to the protection of national security or the conservation of natural and cultural heritage;/- As the requested entity*



has not invoked the existence of reserved matter and this is not to be presumed, the documents in question are public and freely accessible;- The phases of public consultation or transboundary consultation do not constitute restrictions to the right of access to environmental information nor do they consume the exercise of the right of access to the requested / 22. In view of the above, since the respondent holds the requested documentation, it must make it available to the applicant within the framework of the right of access.”

6. Since the issue at stake is access to documentation that is part of a public procedure, it should be made available within the framework of that doctrine, which is reiterated here.

7. Thus, if the documentation is freely accessible, it should be made available to the applicant. If it does not exist, it should be remembered that the right of access includes information on the existence of the requested documentation.

8. Once this opinion has been received, the requested authority shall issue a final reasoned decision, under the terms of article 16(5) of the LADA.

III – Conclusion

- a) The receiving agency failed to comply with the duty to reply pursuant to Article 15(1) of the LADA;
- b) The requested documentation that exists should be provided and the applicant should be informed of that which does not exist.

Let it be known.

Lisbon, June 9th 2021.

Pedro Gonsalves Mourão (Reporter) - Does not sign as he attended the sitting via *Skype*

Tiago Fidalgo de Freitas - Does not sign as he attended the meeting via *Skype*

Sónia Ramos - Does not sign as she attended the meeting via *Skype*

João Miranda - Does not sign as he attended the meeting via *Skype*

Fernanda Maçãs - Does not sign as she attended the session via *Skype*

Alexandre Sousa Pinheiro - Does not sign as she attended the session via *Skype*

Francisco Lima - Does not sign as she attended the session via *Skype*

Renato Gonçalves - Does not sign as she attended the session via *Skype*

João Perry da Câmara - Does not sign as she attended the session via *Skype*

Alberto Oliveira (Chairman) - [SIGNATURE]