



MININGWATCH Portugal, Rua da Capela 64, 6290-071 Figueiró da Serra, Portugal

Aarhus Convention Secretariat  
United Nations Economic Commission for Europe  
Palais des Nations  
8-14 avenue de la Paix  
CH - 1211 Geneva 10, Switzerland  
*via email - [aarhus.compliance@un.org](mailto:aarhus.compliance@un.org)*

October 18th of 2021

**Subject: Additional information for PRE/ACCC/C/2021/186**

Dear Mr. Jonas Ebbeson and colleagues,

Considering PRE/ACCC/C/2021/186 and the latest replies of both the the Party concerned (15.10.2021) and the communicant (16.10.2021) to the Committee's questions to the parties, submitted on 22.09.2021, I would like to contribute the attached additional information for the consideration of the Committee.

Annexes with original language version in Portuguese are supplied in a double format, having the source on the left and an edition translated to English on the right.

In case any further indications on the referenced documents are needed or if any additional information may be supplied, please let me know.

Best regards,



Nik Völker

## The Committee's question n.º 7: availability of documents

In their 15.10.2021 reply to the Committee's question n.º 7 on the availability of specific documents during the public consultation, the Party concerned states: "All the documentation was made available on the APA website and on the participa.pt, and was therefore available on April 22nd 2021." In the same communication, the Party concerned also states that "some documents were difficult to download and were put back on the said websites on 11 May 2021."

In terms of the affirmation on availability both on the participa.pt platform and on the APA website it should be noted that only summarizing information was directly made available on participa.pt, including three maps (see supporting document: annex I). The most part of the EIA documentation was therein referenced in a section "Documents of the consultation", providing a hyperlink to APA's website and its Environmental Impact Assessment Information System (EIAIS) with associated process AIA n.º 3353. It was only on APA's EIAIS web page that most parts of the EIA and its annexes could be consulted through a series of 103 hyperlinks (see supporting document: annex II).

The Party concerned's affirmation on "some documents were difficult to download and were put back on the said websites" is self-contradicting. Either the listed 103 documents were available to the public concerned or not, turning any need for correction ("to put back") unnecessary. As supporting documents for the de facto unavailability of the hyperlinks supplied under EIAIS n.º 3353 we would like to supply the respective error messages, repeatedly consulted from 22.04.2021 11h CEST until 11.05.2021 09h CEST:

- annex III: "(a)", EIA Annexes - Annex I Climate and Climate Alterations<sup>1</sup>
- annex IV: "(c)", EIA Annexes - Annex III - Water Resources<sup>2</sup>
- annex V: "(d)", Project - Annex II - 24 – Flocculating agents<sup>3</sup>
- annex VI: "(e)", Project Design - Appendix III - 1 - Barroso Mine - Parameters – Waste dumps<sup>4</sup>

For one hyperlink, only an empty login page to the documents server was made available:

- annex VII: "(b)", EIA Annexes - Annex VI - Soils<sup>5</sup>

On 12th of May 2021 the documents in question were made available in the EIAIS n.º 3353.

It must be highlighted that this substitution of the supplied hyperlinks by APA was performed without informing the public concerned on the changes to the material made available during the public consultation or at least highlighting such changes within the EIAIS web page. The quantity of posted hyperlinks and the their re-ordering during the correction further hindered the identification of added information. Also, by the date of the rectification of the hyperlinks in question, the on going public

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<sup>1</sup> Invalid hyperlink on APA EIAIS n.º 3353:

<https://siaia.apambiente.pt/%20https://siliamb.apambiente.pt/anexo/?extern=true&code=40a9cf2b71449c3b02912a3136930fee>

<sup>2</sup> Invalid hyperlink on APA EIAIS n.º 3353:

<https://siaia.apambiente.pt/%20https://siliamb.apambiente.pt/anexo/?extern=true&code=9f533f8d5edd68864f5072e8c6143f6>

<sup>3</sup> Invalid hyperlink on APA EIAIS n.º 3353:

<https://siaia.apambiente.pt/%20https://siliamb.apambiente.pt/anexo/?extern=true&code=1e76a4f5f98c75fd32385a5a131da2c9>

<sup>4</sup> Invalid hyperlink on APA EIAIS n.º 3353:

<https://siaia.apambiente.pt/%20https://siliamb.apambiente.pt/anexo/?extern=true&code=774606f69d63df32ad68140f8f6ce249>

<sup>5</sup> Non-functional hyperlink on APA EIAIS n.º 3353:

<https://siliamb.apambiente.pt/anexo/?extern=true&code=c295d74c3da89d6d43dc0ab3bda8b915>

consultation of AIA n.º 3353 had already more than 40 contributions by participants that were, due to the unfixed situation of the broken hyperlinks at the time of submission, deprived of their right to consult the complete EIA documentation. Also, due to the complexity of the material presented, incomplete materials posted to AIA n.º 3353's public consultation may have affected submissions even after the hyperlinks correction. For example, this observer holds testimony from a local CSO that has contracted external expertise for the participation in the public consultation, based on the information initially made available by APA in April 2021.

Considering the above evidence, the Party concerned's statement that "all the documentation was made available on the APA website [...] and was therefore available on April 22nd 2021" is not correct. These circumstances were known to the Party concerned herself, as a statement on May 12th 2021 during an EIA information session held by APA confirms. In response to a question raised by the local association *In Defense of Covas do Barroso* on the lack of availability of certain documents, APA's representative engineer Augusto Serrano responded the following: "Regarding the issue of documents with broken links, what happened is that the documents were actually posted on the platform and due to some computer bug **the links did not allow access to the information.**"<sup>6</sup>

It seems thus unquestionable that the public concerned was unable to access the information in question between the initiation of the public consultation on 22.04.2021 and the materials correction on 12.05.2021.

#### **The Committee's question n.º 16: general/systemic non-compliance**

Considering the possibility of a general or systemic non-compliance in terms of access to administrative and environmental information, this observer has already contributed information on 14.06.2021, including references to the Party concerned and other government bodies in possession of the same information, both on "Mina do Barroso" and the EIA information on similar projects.

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<sup>6</sup> Highlight is ours. This observer holds a recording of the public information session in question which will not be annexed to this public communication due to the lack of data privacy authorizations.