



Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
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28.03.2023

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

Subject: Update on the situation regarding the Mina do Barroso project and ACCC/C/2021/186

Dear Secretariat,

We wish to briefly update the ACCC regarding the Mina do Barroso case.

1. On 6 July 2022 Savannah Resources plc informed the market that based on reports issued by the Administration, it had been given “*six months to work collaboratively with APA to further optimise certain physical aspects of the Project’s design and associated environment, ecology and socio-economic considerations and resubmit them for consideration.*” (**Document 1**).
2. On the same day, Montescola sent an environmental information request to APA regarding the following documents:
 - a. documents sent by APA to the proponent of EIA 3353 in the period between 04-08-2020 and 06-07-2022; this includes but is not limited to the following documents (inter alia: *oficios* or other documents) mentioned in the proponent's press release dated 6 July 2022 [attached]: “*APA has proposed that the EIA evaluation process should now continue under Article 16 of Decree-Law No. 151-B/2013*”, and “*Savannah has up to six months to work collaboratively with APA to further optimise certain physical aspects of the Project's design and associated environmental, ecology and socio-economic considerations and resubmit them*”;
 - b. documents received by APA from the proponent of EIA 3353 in the period between 04-08-2020 and 06-07-2022; this includes but is not limited to the following documents mentioned in the proponent's press release dated 6 July 2022 [attached]: “*we have accepted its proposal to move the EIA review process into the Article 16 phase*”;

- c. evaluation opinions or other documents issued by the members of the EIA 3353 Evaluation Committee and minutes or reports of meetings of the EIA 3353 Evaluation Committee in the period between 04-08-2020 and 06-07-2022;
 - d. any documents or assessments that were prepared in the period between 04-08-2020 and 06-07-2022 or are in the possession of the requested entity (including documents issued by the AIA 3353 Assessment Committee or prepared internally by the requested entity) that led to the letter referred to in point 1 of this application, in moving AIA 3353 to a legal regime under Article 16 of Decree-Law No. 151-B/2013, as amended and republished by Decree-Law 152-B/2017 of 11 December ("Article 16").
3. APA failed to issue any response to Montescola's request, other than an automatic response email received on 6 July 2022.
 4. On 16 March 2023 Savannah Resources plc informed the market that "*it has submitted the revised Environmental Report (the 'Report') and Mine Plan ('MP') for the Barroso Lithium Project (the 'Project') to Portugal's environmental regulator, Agência Portuguesa do Ambiente ('APA').*" (**Document 2**).
 5. On 22 March 2023 received an email at 14:22 hours from APA stating that the revised Environmental Report, Mine Plan and another would be subject to a **10 day public consultation** starting that same day and ending on 4 April 2023. 1776 documents (files) with thousands of pages of complex technical information was posted that day.
 6. On 24 March 2023 Montescola made a request to APA, reiterating its environmental information request made on 6 July 2022, warning that the request had been ignored, and stating that the 10 public consultation period was in breach of Article 6.3 of the Aarhus Convention, which states that "*The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*" It is considered unreasonable that the public is given only 10 days to analyse thousands of documents that the mining company has had over six months to assemble and that constitutes a completely different project from the one previously submitted to public consultation, given that the main mine waste facilities structure and placement is completely altered, and would require the commission of new independent technical assessments that cannot be produced with less than 10-day notice. Montescola explicitly requested that "***Given the volume and complexity of the documentation, we hereby request that the deadline be extended to no less than 60 days and that all documentation requested by the Foundation on 6 July 2022 be made available.***"
 7. On 27 March 2023 APA responded to Montescola stating:

As you are aware, a public consultation on the Barroso Mine Expansion project has already taken place, which was held for a period of 30 working days, from 22 April to 2 June 2021. In view of the request by Boticas Municipal Council, APA decided that the Public Consultation period, previously set from 22 April to 2 June 2021, would be extended by 30 working days, thus ending on 16 July 2021, thus totalling a period of 60 working days.

In the context of the Public Consultation, the Portuguese Environment Agency held a Public Clarification Session to provide information and clarify doubts about the project under evaluation. This public clarification session was held on

12 May, at 17h30 online. Information on this session was communicated to Fundacion Montescola, which was present.

A clarification meeting was also held, exclusive for invited entities which took place on May 19, at 14:30 in the Municipal auditorium Dr. José S. Fernandes, in Boticas. Some 30 entities were invited to this meeting, among which the Fundacion Montescola. It should be noted that the Fundacion Montescola was not represented at this meeting.

In the context of the environmental impact assessment, the Assessment Committee, taking into account the technical opinions received, the technical appraisal of the Environmental Impact Study, the report of the public consultation and other elements of relevant interest contained in the process, prepared a prior opinion that in view of this opinion, the Environmental Impact Assessment authority decided, in conjunction with the proponent, the need for modification of the project to avoid or reduce significant effects on the environment, as well as the need to provide for additional measures of minimization or environmental compensation, a situation provided for in Decree-Law no. No. 151 -B/2013, of 31 October in its current wording.

The aforementioned article establishes that the nature or content of the elements may give rise to a new collection of opinions, a new pronouncement from the Evaluation Committee, as well as the repetition of essential formalities, namely public consultation, reducing the time limit for the latter to 10 days.

In view of the time limits established, and the application of the stipulations of Decree-Law no. 11/2023, of 10 February, which proceeds with the reform and simplification of environmental licensing, **it is not at all possible to comply with the request for extension of the time limit for this new public consultation, under penalty of tacit approval of the decision.**

8. It should be noted that APA has again failed to provide information requested on 6 July 2022, as stated in our reiteration request 24 March 2023.
9. On a different note, during the Fifty-second session of the Human Rights Council (27 February–31 March 2023) a Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, was issued regarding his Visit to Portugal (**Document 3**).¹ We wish to call on the Committee's attention to paragraphs 75-80, and particularly paragraph 92 of the report's conclusions:

92. The Government should take steps to improve access to environmental information, strengthen public participation and facilitate access to justice, including by:

- (a) Establishing a national strategy to protect environmental human rights defenders;
- (b) Considering the establishment of specialized environmental courts.

Finally, we wish to inform the ACCC that while on November 29, 2022 the Administrative Court of Lisbon issued a ruling in process 58/22.1BELSB regarding a request for environmental information to the Portuguese Mining Administration (DGEG) made on 28.03.2021 after consultations to provide a mining licence for the "Borralha", the Administration has so far ignored the court ruling, while we have not received notice of any appeal. We recall that the ruling ordered the DGEG to disclose documents on the basis that the response given by DGEG was "**devoid of**

¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F33%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>

meaning, in addition to revealing a misunderstanding of the content of the legal principles that govern all its activity". The decision further stated that the "*generic affirmation on the presence of commercial secrets is not sufficiently sustained by a clear and contextual justification that would allow to negate the basic right of the public's access to administrative and environmental information, as fixed in national legislation and international law*".

Yours sincerely,

Xoán Evans Pin, Director
Fundação Montescola