

Subject: **Confirmatory application** for access to documents **Ref GestDem No 2021/5420**

Dear Secretary General,

I am referring to the negative reply of 20/10/2021 signed by Director-General Ms. Kerstin Jorna, with Ref. Ares(2021)6426387, regarding request for access to documents registered on 10/09/2021. Considering the decision to refuse access to requested documents, this confirmatory application is made pursuant to Article 7(2) of Regulation 1049/2001, with the intent to receive the following:

1. Ares(2021)1295662, 16-02-2021, NEXT: San Finx operations - report
2. Ares(2021)3979485, 17-06-2021, NEXT: San Finx - further clarifications
3. Ares(2021)4581553, 12-07-2021, NEXT: Explanations - San Finx documentation

The confirmatory application is based on the following:

### **1. Background**

On 01/08/2021 a request for access to documents was made (and clarified on 03/08/2021) regarding "list of documents (for example, list of documents to be generated through an ARES search) referring to VALORIZA MINERIA. The temporal scope can be from 2015 to the present." This request was handled as GESTDEM 2021/4810.

On 23/08/2021, DG GROW/B1 – Planning and Briefings, the following documents were identified "matching the scope of your request":

1. Ares(2019)2497020 - Infinity Lithium - flash report - 09-04-2019 - Meeting Report
2. Ares(2020)7731163 - Re] Open Letter about the projects MIREU, NEXT & iTARG3T - 18-12-2020
3. Ares(2017)2815643 - H2020-SC5-2017-OneStageB DoubleFundingConsultationReport-4
4. Ares(2017)3547456 - Annexes 1-8\_H2020-SC5-2017-OneStageB Report
5. Ares(2017)3547456 - 776804-NEXT – Proposal evaluation form 2016-1017
6. Ares(2018)5807447 - H2020 - CER - H2020-SC5-2018-2-SecondStage
7. Ares(2021)1843294 - RE: explanation needed Valoriza Minería report in the Ethics deliverable 8.3

The same response stated: *"Please note that in addition, a document registered on ARES (Ares(2021)5237147) summarises all documents referring to VALORIZA MINERIA (including registered elsewhere than ARES and held by other services)."*

On 24/08/2021, a follow up request for access to documents was made in relation to the document registered on ARES (Ares(2021)5237147) that summarises all documents referring to VALORIZA MINERIA (including registered elsewhere than ARES and held by other services); and document Ares(2021)1843294 "RE: explanation needed Valoriza Minería report in the Ethics deliverable 8.3", on the basis of its public interest in relation to the protection of the EU budget and the environment.

On 10/09/2021, a decision from Mr. Peter Handley, Head of Unit I1. Energy Intensive Industries - Raw Materials, with Ref. Ares(2021)5568405 was received granting redacted access to the two documents that had been requested on 24/08/2021. The first document (a list summarising all documents referring to VALORIZA MINERIA) identified the 3 documents that were subject to the request for access to documents registered on 10/09/2021 that was subsequently refused by the decision against which the present confirmatory application is being filed.

## 2. Law

The decision argues that access must be prevented pursuant to Article 4(2) of Regulation 1049/2001, based on “commercial interests of a natural or legal person, including intellectual property”. The decision also argues that partial access is not possible either as “after expunging the confidential information, the remaining parts of the documents would be meaningless”. Finally, the decision considers that it was “examined whether there could be an overriding public interest in disclosure, but that we have not been able to identify such an interest.”

Our 24/08/2021 request explicitly stated that access was being sought on the basis of its public interest in relation to the protection of the EU budget and the environment. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, established in Article 6:

*“1. As regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001, with the exception of investigations, in particular those concerning possible infringements of Community law, **an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment.** As regards the other exceptions set out in Article 4 of Regulation (EC) No 1049/2001, the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.”*

It is considered that the three documents that were requested are subject to overriding public interest in disclosure as the information contained in such documents related to emissions into the environment.

## 3. Facts

The request subject of this confirmatory application was made as a follow up to previous requests in which partial access to documents was granted. On 10/09/2021 Mr. Peter Handley provided partial access to document Ares(2021)1843294 "RE: explanation needed Valoriza Minería report in the Ethics deliverable 8.3". This document (**attachment 1**) is directly connected to the three documents subject of this confirmatory application.

The document is a series of emails between the EC and the Geological Survey of Finland (GTK), as coordinating entity of H2020 project “NEXT” under Grant agreement ID: 776804, dated in March 11 and 12, 2020. In the first email, the EC states:

*“Please explain more clearly if the “Sampling in collaboration of the CSIC, of the 5 and 4 level of Buenaventura zone” as stated in the Deliverable 8.3 required prior pumping-out of the water from the mine levels 4 and 5 as this is not obvious from the report.*

*Also, please list any potential emissions to the environment that may have happened during NEXT implementation to date.”*

In an initial response from GTK dated on 11/03/2021, it is stated that **“it is certain that the pumping is done within their normal maintenance operation and it has not been conducted only for the NEXT.”** The undisclosed EC official responds to GTK on the same date stating **“I must say**

***I am surprised by your statement that you are certain that pumping is done as something regular as this is first news to us about this issue”.***

GTK responds again on 11/03/2021 indicating that “Actually in my email 4th November 2020 to you, I referred to the pumping issue (see also attachment): **“As any mine, San Finx has pumped out water. Obviously not with the funds of NEXT but with their normal operation. Any mine that operates below water level needs to pump water in order to maintain the operation.”** The European Commission officer clarifies in another email dated on the same day that **“I was referring to discharge from levels 4 and 5 for which ones they do not have permit, and where the sampling took place”.**

In the final response from GTK in the series of email contained in document Ares(2021)1843294, GTK indicates that **“Systematic mapping and sampling of the ore and the host rocks were done in collaboration with the CSIC, in dry, unflooded parts of the 5<sup>th</sup> and 4<sup>th</sup> level of Buenaventura zone”.** However, as earlier emails reveal, **the only way level 5 of the mine, which is under the water table, could be maintained dry and unflooded, was through pumping.** Mine drainage pumped from level 5 was discharged into a nearby river without a discharge permit or applying any prior water treatment to remove heavy metals. This has led to significant heavy metal pollution in the river and the “Esteiro do Tambre” Natura 2000 site, 7 km downstream. This was also done in the absence of an environmental impact assessment, with all these facts being well known to the EC.

Surreptitiously, GTK indicated in its email that **“I have only changed one column headline ‘Potential environmental impacts’ to ‘Potential environmental impacts caused by the NEXT activities’”**, seeking to distance GTK from any responsibility from environmental impacts related to emissions from the San Finx mine test site. However, it remains a known fact that the pumping from level 5 of the Buenaventura zona ceased in early 2020 once project NEXT activities ended, and that there had been no other reason to keep level 5 dry and unflooded from 2018 to 2020 other than project NEXT activities.

It is clear that the three requested documents (Ares(2021)1295662, 16-02-2021, **NEXT: San Finx operations – report**; Ares(2021)3979485, 17-06-2021, **NEXT: San Finx - further clarifications**; Ares(2021)4581553, 12-07-2021, **NEXT: Explanations - San Finx documentation**) have as their main subject the emissions into the environment from the San Finx mine and how a EU funded project had been, at least partially, responsible for their continuation in absence of discharge and environmental permits as well as adequate treatment measures, causing significant environmental damage. Therefore, the application of exceptions concerning requests for access to environmental information pursuant Article 6.1 of Regulation (EC) No 1367/2006 should not have been ignored in the decision of 20/10/2021 with Ref. Ares(2021)6426387.

Finally, it should be stated that not only are all these facts known to the European Commission, but are subject to intense public scrutiny again underscoring the overriding public interest. For example, on 6/07/2021 MEP Sira Rego directed a Question for written answer E-003447/2021<sup>1</sup> to the European Commission:

*Some EUR 6.9 million has been allocated to the Horizon 2020 NEXT project, with the San Finx mine serving as a testing site and Valoriza Minería listed as a beneficiary. The mine in question does not have any environmental or discharge permits(1), as a result of which criminal proceedings for pollution affecting the Natura 2000 network are ongoing.*

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<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/E-9-2021-003447\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2021-003447_EN.html)

1. Does the Commission know that the project data was collected at level five of the mine, which was kept drained until the fieldwork was completed in 2020?
2. Can the Commission explain how water contaminated with heavy metals pumped from level five was discharged into the river when the San Finx mine was not granted discharge authorisation and no environmental impact assessment was carried out?
3. Did the EU funding for the San Finx project also cover the salary of the mine's director, who ordered and was responsible for the illegal drainage, and will there be an investigation into this matter with a view to suspend the project and impose administrative sanctions on the beneficiaries?

In an answer provided on 13/09/2021 by Commissioner Breton stated:

*The Commission has checked all currently available project documents and consulted the Horizon 2020 NEXT project coordinator. **The Commission has not identified any relevant information regarding NEXT beneficiaries/activities that could be associated with pumping out/discharge of the underground water in any of the project related locations.***

*Sampling of the ore was carried out from 21 January to 1 February 2019 and from 6 to 8 August 2019 **in dry, unflooded parts of the fourth and fifth levels of the Buenaventura zone.** Therefore, **pumping of water was not necessary for the rock sampling.***

*According to the available information, none of the environmental concerns raised are the result of, or associated with the implementation of NEXT. All mandatory ethics requirements, including environmental ones, have been fulfilled by the project.*

However, the response by Commissioner Breton includes false statements which are contradicted by the emails from March 2021 contained in document Ares(2021)1843294. It is false that “*pumping of water was not necessary for the rock sampling.*” When Mr. Breton issued this response, the EC was well aware of the Report on the legal status of the San Finx mine issued in 04/03/2020 by the civil servant mining engineer responsible for the supervision of the San Finx mine for the Galician Regional Ministry of the Economy, Employment and Industry Ms. María José Mijares Coto; and the Mine Work Plan for 2020 signed by Mr. Iván Losada García, where it was announced that pumping from level 5 would be ended in 2020.

At the Spanish level, a written question by MP Néstor Rego Candamil to the Spanish Government was made on 22/09/2021 regarding the participation of CSIC in the NEXT project activities at the San Finx mine.<sup>2</sup> The fact that level 5 of the mine has been illegally pumped out and that heavily polluted mine drainage was discharged into a nearby river as part of project NEXT activities is described in detail in the said parliamentary question.

Based on the above exposed arguments under this Confirmatory Application, I reiterate the request for information, excluding personal data that may be redacted.

With kind regards,

Xoan Evans Pin

Director, Fundação Montescola

November 7, 2021

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<sup>2</sup> [https://www.congreso.es/l14p/e15/e\\_0155581\\_n\\_000.pdf](https://www.congreso.es/l14p/e15/e_0155581_n_000.pdf)