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Aarhus Convention Secretariat
United Nations Economic Commission for Europe
Palais des Nations
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CH - 1211 Geneva 10, Switzerland
via email - aarhus.compliance@un.org

January 9th of 2024

Subject: Observer contribution to ACCC/C/2021/186

Dear Chair Mr. Áine Ryall and members of the Aarhus Convention Compliance Committee,

I am hereby supplying further evidence to case ACCC/C/2021/186, considering the possible systemic non-compliance of the Party concerned with the provisions of the Aarhus convention and respective national legislation.

Evidence annexed is supplied in its Portuguese source and an English translation on the second page of each document.

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

Best regards,

Nik Völker

1. First freedom of information request, 05-04-2023

In the aftermath of severe wildfires in Central Portugal during the summer of 2022, the responsible Portuguese public entities, including the Institute for Nature Conservation and Forests (ICNF) and the Party concerned, drafted a programme for “Stabilization and Emergency Measures” (hereinafter: Measures) to mitigate the impacts of the calamity. Dissemination sessions to present those Measures to the public concerned in affected Parishes were announced in the regional press in March 2023.¹ On April 5th 2023 a Freedom of Information request for access to plans and other documents related with the Measures were filed with the Party concerned under the Aarhus provisions, enshrined in national legal framework of Law 26/2016 for accessing administrative documents and environmental information (evidence A).² The request was electronically directed to the generic contact of the Party concerned, geral@apambiente.pt, as the Party concerned does not supply a dedicated contact or form. Also on April 5th 2023, an automated reply of the Party concerned was received, acknowledging receipt of the request (evidence B).³ In this matter, no further reply of the Party concern was received, neither before, nor after the time limit imposed by the national legislation of 10 working days, which, under special circumstances and with mandatory notification by the requested entity, may be extended for up to 2 months.

2. Meeting with representative of the Party concerned, 16-04-2023

During a public dissemination session, held in the wildfire affected parish of Figueiró da Serra in the municipality of Gouveia on the 16th of April 2023, the situation of the pending request was exposed to Mr. ██████████, representant of the Regional Hydrographic Administration of the Party concerned (ARHC-APA). In the presence of ICNF representant Mr. ██████████, Mr. ██████████ claimed that the Party concerned usually does not reply to inquiries made to the generic contact geral@apambiente.pt. This information is inconsistent with earlier requests filed with the Party concerned and that have received responses from the same contact, e.g. on February 17th 2020 (evidence C).⁴ Furthermore, Mr. ██████████ indicated the contact of the regional administration ARHC-APA, arhc.geral@apambiente.pt, to which inquiries, e.g. considering documents on the post-calamity Measures, should be directed.

3. Second, third and fourth freedom of information request, 05-05-2023

On May 5th 2023, the following three Freedom of Information requests were directed to the regional administration contact of the Party concerned, with copies sent to Mr. ██████████ and also the director of the regional administration of the Party concerned, Mr. ██████████ (evidence D, E, and F):

- Plan(s), reports, or any other document(s) related with the Measures⁵

¹ Portuguese source, 16-03-2023, <https://rcb-radiocovadabeira.pt/incendios-serra-da-estrela-assembleia-de-auscultacao-em-verdelhos/>

English translation, 16-03-2023, https://rcb--radiocovadabeira-pt.translate.google.com/translate?x_tr_sl=auto&x_tr_tl=en&x_tr_hl=de&x_tr_pto=wapp

² Evidence A, First Freedom of Information request, 05-04-2023.

³ Evidence B, Automated reply to Freedom of Information request, 05-04-2023.

⁴ Evidence C, Reply to a Freedom of Information request by the Party concerned, 17-02-2020.

⁵ Evidence D: Second Freedom of Information request, 05-05-2023.

- Plan(s), reports, or any other document(s) related with the project of rehabilitation and valorization of the *Ribeira de Linhares* stream, situated in the municipalities of Gouveia and Celorico da Beira⁶
- Framework contracts [for the realization of actions related with the Measures], signed on October 14th 2022 with the following entities: Municipality of Celorico da Beira; municipality of Guarda; municipality of Covilhã; municipality of Manteigas; municipality of Gouveia; municipality of Belmonte; Association Club for Hunting and Fishing of Folgoso (Gouveia); Association of the Common Lands of Folgoso (Gouveia); Association Club for Hunting and Fishing of Vila Cortez da Serra e Freixo (Gouveia); Association for Hunting and Fishing of Linhares (Celorico da Beira).⁷

Each request specifically mentioned not only the document itself but also “any possible cover letters, written notes, or attachments in relation with each identified document” (see evidence D, E, F). This is relevant, as at least the documents identified in the fourth request (evidence F) consist not only of the framework contracts (original: “contratos programa”) but also technical attachments (original: “anexos técnicos”) on the measures to be executed by the third parties. Although a confirmation of receipt was explicitly demanded with each request, no response by the Party concerned or their representants Mr. [REDACTED] or Mr. [REDACTED] was received.

4. Complaint with the national Commission for Access to Administrative Documents

As all requests filed on 05-05-2023 remained without reply after the legal time limit imposed by the national legislation, a complaint was filed with the national Commission for Access to Administrative Documents (CADA) on May 5th 2023. The same day, CADA acknowledged the admissibility of the complaints, filing processes n.º 549/2023, n.º 550/2023, and n.º 551/2023. On 24th of November 2023, CADA issued their judgement n.º 411 with date 22-11-2023 on the matter, joining all three processes in one opinion (evidence G).⁸ The judgement states that the Party concerned, after invitation by CADA, did not pronounce itself and concludes that “The duty to reply has not been fulfilled” and that “Access to the requested documentation should be provided.” The judgement, delivered to the Party concerned, also concludes “the requested entity must communicate its final, substantiated position to the applicant, also within 10 days ...”. In violation of CADA’s judgement, the Party concerned did so far not supply the requested documents and annexes, nor did it issue any statement on grounds that would restrict their disclosure.

6. Further evidence on non-compliance and incapacities of the Party concerned in relation with the disclosure and management of documents relating to environmental licenses and emissions into the environment.

On October 20th 2023, two further requests for information were filed with the generic contact of the Party concerned, considering the monitorization reports associated with the Environmental Licenses of two mining companies (evidence H and I).^{9 10} As the Party concerned did not give any reply in the time frame established with the national law, respective complaints were filed with CADA on November 8th

⁶ Evidence E: Third Freedom of Information request, 05-05-2023.

⁷ Evidence F: Fourth Freedom of Information request, 05-05-2023.

⁸ Evidence G: Judgement of CADA, 22-11-2023.

⁹ Evidence H: Fifth Freedom of Information request, 20-10-2023.

¹⁰ Evidence I: Sixth Freedom of Information request, 20-10-2023.

2023. On November 22nd 2023, the Party concerned issued two replies, disclosing parts of the requested documents (evidence J and K).^{11 12}

In their replies, the Party concerned states that “We regret in advance the delay in sending the response to the request, which effectively involved several departments of this Agency.”

Notwithstanding any possible noncompliance with the Aarhus provisions in terms of a nationwide system of pollution inventories or registers, or in terms of not making information effectively accessible (be it due to the lack of measures of maintaining an organized archive of relevant information), this may constitute a violation of the national legislation on environmental licensing, requiring, per Dispatch 7714/2013 of June 14th, from the Party concerned, inter alia, the creation and continuous maintenance of an organized archive of all information related with activities covered by environmental licensing, thus securing an “adequate management of information”.

Furthermore, the supplied documents, supplying start and end dates and final reports of emergency water discharges by the mining operator “Beralt Tin & Wolfram (Portugal) S.A.” in the years 2021 to 2023, indicate that the Party concerned may have only supplied parts of the requested documents: For the year 2020 the documents indicate an emergency discharge of mine waste water initiated at 13-12-2020 15:00h, with respective water samples taken and the discharge ongoing still on 21-12-2020. The supplied documents do, however, not indicate the end of the emergency discharge, nor do they supply the mandatory report for the incident that started on 13-12-2020. On 12-12-2023, this irregularity of the supplied documentation was communicated to the Party concerned, requesting a statement and the possibly absent documents both informally and in a formal information request (evidence L and M).^{13 14} Per this date, no further response in this matter was received by the party concerned.

¹¹ Evidence J: Communication by the Party concerned, 22-11-2023.

¹² Evidence K: Communication by the Party concerned, 22-11-2023.

¹³ Evidence L: Communication to the Party concerned, 12-12-2023.

¹⁴ Evidence M: Seventh Freedom of Information request, 12-12-2023.