

In the legal framework for Environmental Impact Assessment defined at national level by the Law number 151-B/2013, of October 31st, the assessment procedure includes an initial phase of analysis of the compliance of the Environmental Impact Study submitted by the project proponent.

This phase aims to assess whether or not the study contains the correct and necessary information for the project's environmental assessment, including, for the purposes of a duly informed public consultation.

The Environmental Impact Study compliance analysis does not therefore include any type of project evaluation, corresponding exclusively to an analysis of the completeness and adequacy of the information presented by the proponent.

Within the scope of the Environmental Impact Study compliance analysis, and based on the assessment carried out by the Evaluation Committee, the Environmental Impact Assessment authority can conclude:

- a) For the Environmental Impact Study compliance without the need to request additional information;
- b) the non-conformity of the Environmental Impact Study, if the missing information corresponds to a substantial set of elements to be clarified, developed or corrected, which does not allow for an adequate systematization and organization of the documents that make up the Environmental Impact Study;
- c) the need to request additional elements, suspending the Environmental Impact Assessment procedure until such elements are presented by the project proponent. Once the elements are presented, they are analyzed by the Evaluation Committee and, based on this analysis, it can be declared:
 - Environmental Impact Study compliance, if the elements are sufficient to fill previously identified gaps;
 - the non-conformity of the Environmental Impact Study, if the elements do not respond adequately to the request made, thus remaining essential information gaps for the evaluation of the project.

The situation identified in c) is the most usual. The form of submission of these additional elements is defined by the Environmental Impact Assessment Authority, depending on the type of information in question, and the submission of an amendment to the Environmental Impact Study or the submission of a

revised/consolidated Environmental Impact Study may be requested, integrating in a single document the responses to the additional elements requested.

The non-conformity of the Environmental Impact Study determines the end of the Environmental Impact Assessment procedure but does not in itself contain any conclusion as to the environmental viability of the project in question. In these situations, the proponent can prepare a new Environmental Impact Study and submit it to start a new Environmental Impact Assessment procedure on the same project.

The Environmental Impact Study submitted by the proponent to initiate the Environmental Impact Assessment procedure is not a “closed” document, but a document that may undergo, to a greater or lesser extent, content changes depending on the compliance analysis described above. In this sense, for the purposes of the subsequent phase of the environmental assessment of the project itself and of the public consultation, it will only make sense to consider the most current version of the Environmental Impact Study, which have a declaration of conformity. Previous versions of this document may contain incorrect and/or incomplete information and are already outdated/obsolete, therefore its disclosure is not useful and may even make participation difficult, leading to error as to the correct information to be considered.

In the specific case of the Environmental Impact Assessment process for the Barroso Mine expansion project, the Environmental Impact Assessment authority, on the proposal of the Evaluation Committee, requested a set of additional elements for the purposes of Environmental Impact Study compliance, which should be answered through the presentation of a consolidated Environmental Impact Study.

After analyzing the documentation submitted by the proponent in response to this request (including the consolidated Environmental Impact Study), it was concluded that the necessary information was gathered to proceed to the environmental assessment phase of the project itself. Thus, on April 15th of 2021, the Environmental Impact Study was declared to be in conformity and the Environmental Impact Assessment procedure continued, and a period of public consultation was then promoted, which runs from April 22nd to July 16th of 2021.

Spain was also notified for the purposes of cross-border consultation, pursuant to the Espoo Convention and the Environmental Impact Assessment Directive.

Both for the purposes of public consultation, for the purposes of cross-border notification and for the assessment of the project's environmental viability by the Evaluation Committee, only the consolidated Environmental Impact Study is being considered and not the Environmental Impact Study in the version originally submitted by the proponent.

In the context of the Public Consultation, the Portuguese Environment Agency held a Public Session to provide information and clarify doubts about the project being evaluated. This public debriefing session was held on the 12th of May at 5:30 pm on online support. Information about this session was communicated to Fundacion Montescola, which was present.

Another Meeting was also held, exclusively for invited entities, which took place on May 19, at 2:30 pm in the Municipal Auditorium, in Boticas. About 30 entities were invited to this meeting, including Fundacion Montescola. It should be noted that Fundacion Montescola decided not to be represented at this meeting.

As requested by the Municipality of Boticas, the Portuguese Environment Agency decided that the period of Public Consultation, previously set from April 22nd to June 2nd of 2021, as established in the Environmental Impact Assessment legal regime, be extended for 30 days, thus ending in July 16th, 2021.

With regard to the specific request made by the Applicant here, we present the following clarifications:

In Portugal, Law n. 26/2016, of August 22nd, approves the regime for access to administrative and environmental information and for the reuse of administrative documents.

Access to administrative information (a corollary of the principle of open administration, established in article 17 of the Code of Administrative Procedure), as well as its reuse, are ensured in accordance with the other principles of administrative activity, namely the principles of equality, proportionality, justice, impartiality and collaboration with individuals.

Nevertheless, it is important to say that access to documents preparatory to a decision or contained in unfinished cases may be deferred until a decision has been taken, the case filed or a year after its preparation.

The diploma clarifies, in article 6, paragraph 3, that the occurrence of the first of these events will determine the final term of this deferral.

Based on the aforementioned Law n. 26/2016, and precisely on the aforementioned article, that, in the present situation, access to the preparatory information was deferred until the decision of compliance with the Environmental Impact Study was taken, for the reasons mentioned above, as per the notification made to the Montescola Foundation.

It is further emphasized that the aforementioned precept (Article 6(3)), in our view, is perfectly aligned with Article 4(3)(c) of the Aarhus Convention, which states: a request for information may be refused if (...) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.”

Despite the above, the first communication sent by the Portuguese Environment Agency to the Montescola Foundation, perhaps, was not explicit in the invocation of access restrictions based on Law No. 26/2016, of August 22nd. This fact, we believe, led to the interpretation of the general rule contained in Law No. 26/2016, by CADA, embodied in the non-binding opinion, issued in the present case, with which we generally agree, but which it does not take the deferral under consideration.

In summary, the performance of the Portuguese Environment Agency fulfilled the established in the Aarhus Convention.

With regard to the present case, without dispensing with the alleged, it is still important to make the following clarifications.

First, the Montescola Foundation has not exhausted internal judicial means. In fact, it has not filed any subpoena to provide information against the Portuguese Environment Agency.

It is clarified that this entity is a public institute, with its own personality and judicial capacity, not to be confused with the legal entity State, nor represented by it, in this type of action.

In fact, we note that it has not exhausted the procedural means in the grace period. As the Portuguese Environment Agency is a public institute, it is not subject to the power of ministerial direction - which includes hierarchical power - but only of tutelage and government oversight. As such, the acts performed by its Board of Directors cannot be hierarchical appeal to the Minister.

Secondly, we emphasize that NGOs are exempt from preparations, costs and stamp duty due for their intervention in the proceedings (including subpoenas for the

provision of information), pursuant to the provisions of paragraph 2 of article 11 .º of Law No. 35/98, of July 18th, which defines the statute of non-governmental environmental organizations. In fact, as raised by the Foundation in the action it (unduly) filed with the Ministry of Environment and Climate Action, the allegation that it incurred costs in excess of 1000 euros is not understood as such.

Finally, It should be noted that, in compliance with the provisions of Law n. 26/2016, of August 22nd, the Portuguese Environment Agency has already sent the requested information to Fundacion Montescola.”