



PERMANENT MISSION OF PORTUGAL
GENEVA

DH 230/2023

The Permanent Mission of Portugal to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to its request dated 3rd of April, has the honour to enclose herewith the reply of the Portuguese authorities to the questions of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, concerning the revised environmental impact assessment submitted by Savannah Resources PLC regarding their proposed Barroso mining project, and related human rights concerns.

The Permanent Mission of Portugal avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 23 May 2023

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MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS
Direção-Geral de Política Externa

ANSWER FROM THE PORTUGUESE GOVERNMENT
TO THE COMMUNICATION SENT BY
THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE ISSUE OF
HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENJOYMENT OF
A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT,
MR. DAVID BOYD

The Portuguese Ministry of Foreign Affairs acknowledges the receipt of the letter sent by Mr. David Boyd to H.E. Mr. João Gomes Cravinho, Minister of Foreign Affairs, on 3 April 2023.

We reiterate our support to this mandate as well as our openness to cooperate with Mr. David Boyd, as indeed with all Human Rights Council Special Procedures mandate-holders, whose independence and impartiality we value.

We thank Mr. Boyd again for his visit to Portugal in September 2022, for his constructive approach and for his report, whose recommendations we are carefully studying.

With regard to Mr. Boyd's communication from last April, please find below the Portuguese Government's answer, prepared by the Ministry for the Environment and Climate Action, with elements which we hope can clarify the situation at hand.



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1. Project

In May 2020, Savannah Lithium, Ltd., complying with the provisions of paragraph 1 of Article 14 of the Legal Framework for Environmental Impact Assessment (RJAIA), submitted the Preliminary Study and the Environmental Impact Study of the “Expansion of Barroso Mine” project.

The C-100 concession currently has an area of 542.12 ha (addendum to the 2016 contract), intended for the exploration of mineral deposits of quartz, feldspar and lithium.

The Mining Plan that is currently in force covers 88.35 ha and provides for the exploration of 7 spots for the use of lithium.

Exploration of the Barroso Mine began in 2010 and currently only Spot I (Alto da Misarela) is in operation.

Through the project which is now presented, the mineral deposits of quartz, feldspar and lithium will continue to be explored but for the production of spodumene concentrate (i.e. for lithium production). It will result in secondary raw materials, quartz and feldspar, to be used in the ceramics industry. This implies the expansion of the concession area by around 51 ha, from 542.12 to 593 ha.

2. The Legal Framework for Environmental Impact Assessment

The Legal Framework for Environmental Impact Assessment (RJAIA) in force in Portugal is enshrined in Decree-Law no. 151-B/2013, of 31 October, which transposed Directive 2011/92/EC, amended by Directive 2014/52/EU.

The “Expansion of Barroso Mine” project is subject to an EIA procedure under:

- Article 1, no. 4, item *a*) - any alteration or expansion of projects included in annex I if such alteration or expansion, in itself, corresponds to the thresholds established in said annex;



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- Article 1, no. 4, item *b) i)* - any alteration or expansion of projects classified in the typologies of annex I or annex II, already authorized, executed or in execution and that had not previously been subject to an EIA, when such alteration or extension, in itself, corresponds to the threshold established for the typology in question.

3. The Environmental Impact Assessment procedure

After the submission by Savannah Lithium, Lda., of the Preliminary Study and the Environmental Impact Study (EIS) of the “Expansion of the Barroso Mine” project, the Portuguese Environment Agency (APA) proceeded with the Environmental Impact Assessment (EIA) process and appointment of the Assessment Committee (CA) on 13 July 2020.

APA, as the National EIA Authority, appointed the CA to be composed of representatives of APA itself, the licensing entity, the Directorate-General for Energy and Geology (DGEG), the Institute for Nature Conservation and Forests (ICNF), the Directorate-General for Cultural Heritage (DGPC), the National Laboratory of Energy and Geology (LNEG), the Regional Coordination and Development Commission of the North (CCDR-N), the Regional Health Administration of the North (ARS Norte), the Faculty of Engineering of the University of Porto (FEUP) and the Instituto Superior de Agronomia – School of Agriculture / Center for Applied Ecology *Professor Baeta Neves* (ISA/CEABN), complying with Article 9 of the above-mentioned legal diploma.

In accordance with the national EIA legal framework, the assessment procedure includes an initial phase of analysis of compliance with the EIS submitted by the project proponent, pursuant to Article 14, paragraphs 7 to 10 of Decree-Law No. 151-B/2013.

This phase aims to assess whether the study contains the correct and necessary information for the project environmental assessment, including for the purposes of a duly informed public consultation. The EIS compliance analysis does not include any type of project evaluation, corresponding exclusively to an analysis of the completeness and adequacy of the information presented by the proponent.



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Within the scope of the EIS compliance analysis, and based on the assessment made by the CA, the EIA Authority may conclude:

- a) that the EIS is compliant and there is no the need to request additional information;*
- b) that the EIS is in a situation of non-conformity, if there is missing information which 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 EIS or which determines significant changes to the content of the EIS or of the project itself, being incompatible with a consistent evaluation;*
- c) that there is a need to request additional elements, suspending the EIA procedure until these same elements are presented by the project proponent. Once the elements are presented, they are analyzed by the CA and, depending on this analysis, the following may be declared:*
 - the compliance of the EIS, if the elements are sufficient to fill the previously identified gaps;*
 - the non-compliance of the EIS, if the elements do not respond adequately to the request made, and the gaps in essential information for the evaluation of the project remain.*

The situation identified in *c)* is the most common. The way in which these additional elements are to be submitted is defined by the EIA Authority, depending on the type of information in question. The submission of an amendment to the EIS may be requested or instead a revised/consolidated EIS, integrating it into a single document as responses to the requested additional elements.

The non-conformity of the EIS determines the closure of the EIA procedure but does not contain any conclusion as to the environmental feasibility of the project in question. In these situations, the proponent may prepare a new EIS and submit it to initiate a new EIA procedure on the same project.



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As such, the EIS submitted by the proponent to initiate the EIA procedure is not a closed document, but a document that may undergo to a greater or lesser extent changes to its content, depending on the compliance analysis described above. For the purposes of the subsequent phase of the project's EIA itself, and for the public consultation, it will only make sense to consider the most current version of the EIS, which receives the declaration of compliance. The previous versions of this document may contain incorrect and/or incomplete information or be outdated/obsolete, are thus not useful to be disclosed and may even make participation difficult, leading to errors.

In the specific case of the EIA process of the "Expansion of the Barroso Mine" project, the EIA Authority, upon a proposal from the CA, requested a set of additional elements for the purposes of EIS compliance, through the presentation of a consolidated EIS.

Having analysed the documentation presented by the proponent in response to the request (including the consolidated EIS), it was concluded that the necessary information was gathered to proceed to the environmental assessment phase of the project. Thus, on 15 April 2021, the EIS was declared to be in conformity and the EIA procedure continued, with a public consultation period running from 22 April to 16 July 2021.

Spain was also notified for the purposes of a transboundary consultation under the terms set out in the Espoo Convention, in the EU Directive and in the Bilateral Protocol.

4. The EIA public consultation

APA proceeded to publicize the public consultation as per the usual procedurely, namely by sending an announcement and communication to the CCDR-N, to the Municipal Councils of Boticas and Ribeira de Pena and also to the Parish Councils of the project implementation area.

Within the scope of publicity, information regarding the public consultation was also sent to all environmental non-governmental organizations (ENGOS) registered in the National Register of ENGOS and Similar Organizations (RNOE).



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Several other entities were also informed in the context of the public consultation.

The public consultation was also publicized on the APA website and on the PARTICIPA.PT website, where it is possible to access the documentation of the EIA procedure for consultation and download.

It should be clarified that the RJAIA establishes which documentation must be disclosed, namely the EIS and the Non-Technical Summary.

As mentioned above, the procedures common to all public consultations carried out within the legal framework of the EIA were adopted, bearing in mind the existing guidelines in the EU and international context on matters of public participation.

The public consultation period is established in the RJAIA and in accordance with the EU Directives on this matter. As such, the public consultation was opened for a period of 30 working days, from 22 April to 2 June 2021.

In the context of the public consultation, APA held a public explanation session to provide information and to clarify any doubts about the project under assessment. This public clarification session was held on 12 May, at 5.30pm, online. Information about the holding of this session was communicated to all ENGOs in the national register (about one hundred) and to various other entities, as well as publicized on the PARTICIPA.PT website.

A face-to-face clarification meeting was also held, exclusively for invited entities (given the pandemic context and the rules imposed at the time), which took place on 19 May, at 2.30 pm, in the Municipal Auditorium Dr. José S. Fernandes, in Boticas. Around 30 organizations were invited to this meeting.

In response to the request from Boticas Municipal Council, APA decided that the public consultation period, previously set from 22 April to 2 June 2021, would be extended by more 30 working days, ending on 16 July 2021. As such, this public consultation lasted a total of 60 working days.



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5. Change to the project (Article 16 of the EIA Legal Framework)

The CA, considering the technical opinions it received, the technical assessment of the EIA, the public consultation report and other elements of relevant interest contained in the process, prepared the technical opinion of the EIA procedure and sent it to the EIA Authority.

In view of the CA's opinion, the EIA Authority considered, in articulation with the proponent, the need to modify the project to avoid or reduce significant effects on the environment, as well as the need to provide for additional environmental minimization or compensation measures. This stage of the EIA procedure is provided for in Article 16 of the EIA Legal Framework.

After delivering the elements provided for in the aforementioned article, the EIA Authority decided to open a new public consultation on the proposed changes, which, as established in the RJAIA, has a period of 10 working days (from 22 March to 4 April 2023).

It is important to clarify that this new public consultation, concerning only the proposed changes, is included in the same EIA procedure that was preceded by another public consultation lasting 60 working days.

Notwithstanding, the Executive Board President of APA decided to determine the extension of the public consultation for an additional period of 10 days, given (i) the special complexity and extension of information in the project subject to reformulation, (ii) the manifest interest on the part of the public and interested parties, namely the Municipality of Boticas, in making their voices heard, and (iii) the spirit of the Aarhus Convention.

The period of public consultation regarding changes to the project was thus set from 22 March to 19 April 2023.



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6. The timeframe allocated for the public participation period

In total, this project will have the longest public consultation period than any other project subject to EIA, with 60 plus 20 working days, totalizing 114 calendar days of public consultation in the same procedure.

7. Timeline of this EIA procedure

