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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{30/08/2022}30.8.2022</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0228/2022 by L.L. (French), on behalf of Movimentos contra Mineraçao Beira Serra e Massueime, on the environmental consequences of mining in Portugal</TITRE>

1. Summary of petition

The petitioner states that mining prospections for the extraction, in particular of lithium, and various minerals, some of which are highly toxic, have started in Portugal, which, in her view, compromise human and animal health and welfare, as well as biodiversity and the protection of the environment as a whole. She points out that, although they are at an early stage, they are a threat in themselves, as the vegetation cover is melting down, the land is being degraded with ditches and access is being banned. She challenges the argument that the development of mining projects entails regional development and points out that the energy transition is not eco-friendly in itself since green energies also produce many polluting waste.

2. Admissibility

Declared admissible on 16 June 2022. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 30 August 2022

The developments referred to by the petitioner fall under the scope of the Environmental Impact Assessment (EIA) Directive[[1]](#footnote-1). The EIA Directive provides that Member States must ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to an assessment of the environmental effects. These projects are defined in Article 4 which refers to Annex I and II of the Directive. Certain mining projects are listed in Annex I of the Directive and therefore are automatically subject to an EIA. Other mining projects are listed in Annex II. For the latter projects, Member States have to determine, either through a case by case examination or according to thresholds or criteria, whether the project is to be made subject to an assessment because of its likely significant effects on the environment taking into account the relevant selection criteria set out in Annex III of the Directive. Amongst the selection criteria to be used by the respective competent authorities to determine if an Annex II project should be subject to an EIA are the cumulation with other existing and/or approved projects, the use of natural resources, as well as the environmental sensitivity of geographical areas likely to be affected by the project. If the Member State decides that the project will have significant effects on the environment, an EIA has to be carried out.

For projects subject to an EIA, consultations with the public concerned, local and regional authorities and other authorities likely to be concerned by reason of their specific environmental responsibilities have to be carried out and the decision for development consent should duly take into account the outcomes of the above consultations and information provided in this context.

In line with the Aarhus Convention[[2]](#footnote-2), the EIA Directive also includes specific provisions on public participation in decision-making and access to justice in environmental matters, allowing citizens and non-governmental organisations to challenge decisions breaching the Directive before the national courts or independent administrative bodies.

Directive 2003/4/EC on public access to environmental information[[3]](#footnote-3) guarantees the right of access to environmental information held by or for public authorities. The Directive is also in line with the Aarhus Convention by providing that applicants should be able to seek an administrative or judicial review of the acts or omissions of a public authority in relation to a request for information.

Conclusion

Compliance with EU law falls primarily with the national authorities, including judicial ones, who are better placed to assess individual situations such as the one referred to by the petitioner, and intervene if necessary. Moreover, the EIA Directive and Directive 2003/4/EC on public access to environmental information, as transposed in Portuguese law, contain specific provisions related to access to justice. Given that this petition does not refer to any potential breach of EU law and given that the Commission focuses its enforcement action on issues of wider principle, general practices, and systematic failures to comply with EU law[[4]](#footnote-4), the Commission cannot provide further follow-up to this petition.

1. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance, OJ L 26, 28.1.2012, p. 1–21. [↑](#footnote-ref-1)
2. UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. [↑](#footnote-ref-2)
3. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC,OJ L 41, 14.2.2003, p. 26–32. [↑](#footnote-ref-3)
4. Communication “EU law: Better results through better application”, C(2016)8600. [↑](#footnote-ref-4)