

REQUEST FOR INTERNAL REVIEW

UNDER TITLE IV OF THE AARHUS REGULATION

Of Article 1, together with point (5) of the annex to the Commission Decision of 25.3.2025 recognising certain critical raw material projects as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council, C(2025) 1904 final¹

SUBMITTED BY

Associação Unidos em Defesa de Covas do Barroso (UDCB), with its offices at Antiga Casa do Povo, Largo do Cruzeiro, 5460-381 Covas do Barroso, Portugal, represented by Mr Nelson Gomes, President

MiningWatch Portugal, with its offices at Association Observatório dos Recursos Naturais, Rua da Portela s/n, 6290-071 Figueiró da Serra (Gouveia), Portugal, represented by Mr Nik Völker

Fundación ClientEarth delegación en España, with its offices at C/Príncipe de Vergara 109, 1 izquierda, 28002, Madrid, Spain, represented by Ms Soledad Gallego Bernad, Representante-apoderada del Patronato

ClientEarth AISBL, with its offices at rue du Trône 60, box 11, 1050 Ixelles, Belgium, represented by Ms Anaïs Berthier, Associate Director EU

Hereafter “the Applicants”

To

European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW)

According to Article 10 of Regulation 1367/2006² and Commission Decision (EU) 2023/748³

In accordance with Article 1(1) Commission Decision (EU) 2023/748, the Applicants designate ClientEarth as a single contact point for the purpose of this request.

¹ OJ L, 2025/840, 30.4.2025

² 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 (OJ L 264, 25.9.2006, p. 13–19) as amended by Regulation (EU) 2021/1767 (OJ L 356, 8.10.2021, p. 1-7).

³ Commission Decision (EU) 2023/748 of 11 April 2023 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council as regards requests for the internal review of administrative acts or omissions (OJ L 99, 12.4.2023, p. 23–27).

1.1.	The Critical Raw Materials Act (CRMA)	5
1.2.	Other EU Environmental Laws	7
1.4	Portuguese national law	9
1.5.	History of the Project's development in Portugal	11
1.	SCOPE OF THE REQUEST	13
2.	ADMISSIBILITY	13
3.1.	The Applicants meet the criteria set out in Article 11 of Regulation 1367/2006	14
3.1.1.	Associação Unidos em Defesa de Covas do Barroso.....	14
3.1.2.	MiningWatch Portugal	15
3.1.3.	ClientEarth	15
3.2.	The designation of the Project as strategic is contained in an administrative act in accordance with Article 2(1)(g) Regulation 1367/2006	16
3.3.	The designation of the Project as strategic contravenes environmental law	17
4.	GROUND OF REVIEW	18
4.1.	Preliminary remarks	19
4.1.1.	Standard of proof in assessing whether the Project complies with the criteria of Article 6(1) CRMA	19
4.1.2.	The role of EU environmental legislation in demonstrating the sustainability of mining projects	21
4.2.	First plea: there are serious doubts that the Project fulfils the criteria for a strategic project under Article 6(1), point (c) CRMA	23
4.2.1.	In relation to the monitoring, prevention and minimisation of environmental impacts	23
4.2.1.1.	Non-compliance with Article 3, Article 5 and Annex IV of Directive 2011/92/EU, Article 4(1) and (7) of Directive 2000/60/EC and Article 6(3) of Directive 92/43/EEC: identified deficiencies in the Environmental Impact Assessment (EIA) Study	23
4.2.1.2.	Inadequate assessment of water resources	24
4.2.1.3.	Inadequate assessment of impact on biodiversity.....	32
4.2.1.4.	Failure to assess risks of major accidents	36
4.2.2.	In relation to the prevention and minimisation of socially adverse impacts through the use of socially responsible practices, including respect for human rights.....	39
4.2.2.1.	Socially adverse impacts	40
4.2.2.2.	These socially adverse impacts cannot be expected to be prevented or minimised	44
4.3.	Second plea: there are serious doubts that the Project fulfils the criteria for a strategic project under Article 6(1), point (b) CRMA	46
5.	CONCLUSION	47

BACKGROUND

1. On 25 March 2025, the European Commission ('**Commission**') published a decision recognising 47 critical raw material projects located in the EU as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials ('**the CRMA**').⁴ The Decision granted, among others, the Barroso Lithium Project ('**Project**') developed by Savannah Lithium Unipessoal, Lda ('**Project Promoter**'), the status of a strategic project in accordance with Article 7(9) of the Critical Raw Materials Act ('**the Decision**').⁵ The present request concerns the Project's compatibility with several criteria listed in Article 6(1) CRMA, in particular technical feasibility (Article 6(1)(b) and environmental and social sustainability (Article 6(1)(c)).
2. The Project is located between green mountains in Northern Portugal, surrounded by a Food and Agriculture Organisation ('**FAO**') agricultural heritage site⁶ due to the region's unique traditional livestock farming and agricultural practices built on a close, intelligent relationship with the natural environment and the sustainable use of resources.⁷ Due to its location and impact, the Project is highly contentious and has attracted significant public interest at the national level. Mining projects more broadly have been at the centre of the political crisis in Portugal in 2023,⁸ resulting in the resignation of several high-profile officials, including the Prime Minister of Portugal.⁹ At the local level, the Project has faced strong opposition from the local communities surrounding the Project area.
3. Meaningful dialogue with the local communities has been hampered by the lack of transparency and ongoing lawsuits against the leaders of the opposition to the mining project. For example, since 2021, a communication regarding access to information is pending before the Aarhus Convention Compliance Committee regarding a failure to disclose basic information – i.e. the environmental assessment, mining plan and several other assessments – in a timely manner to enable the public to participate meaningfully in the public consultation.¹⁰ Furthermore, the Project Promoter has pursued a criminal complaint before the Public Prosecutor's Office of the District of Vila Real against the president of the Associação Unidos em Defesa de Covas de Barroso, for declarations made in the context of his activism.¹¹

⁴ Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, OJ L, 2024/1252, 3.5.2024.

⁵ Commission Decision of 25.3.2025 recognising certain critical raw material projects as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council, C(2025) 1904 final, Annex, aisle 5, OJ L, 2025/840, 30.4.2025.

⁶ See: <https://www.fao.org/giahs/around-the-world/detail/portugal-barroso/en>

⁷ Food and Agriculture Organization of the United Nations, Development Association of the Alto Tâmega Region, Barroso Agro-Sylvo-Pastoral System, Potential GIAHS/FAO site - March/2018, p.6., available at: <https://openknowledge.fao.org/server/api/core/bitstreams/c53fb8b7-7a3a-4a45-b556-a050e2aa8cdb/content>.

⁸ See e.g., <https://expresso.pt/politica/governo/2025-02-13-secretaria-de-estado-da-energia-fez-despacho-sem-aviso-a-ministra-a668abca> and <https://www.publico.pt/2023/11/07/economia/noticia/quatro-negocios-centro-demissao-costa-2069380>.

⁹ See e.g., <https://www.reuters.com/world/europe/portuguese-prosecutors-search-government-buildings-lithium-investigation-2023-11-07/> and <https://www.politico.eu/article/portugal-antonio-costa-lithium-scandal-spells-trouble-for-brussels-critical-minerals-hunt/>

¹⁰ ACCC/C/2021/186 (Portugal), available at https://unece.org/env/pp/cc/accc.c.2021.186_portugal.

¹¹ Process Nr. 2282/23.0T9VRL, currently at Ministério Público - Procuradoria da República da Comarca de Vila Real attached as Annex 1.

4. The designation of Strategic Projects by the Commission has also been shrouded in secrecy. Even though decisions granting the status of a strategic project directly concern local communities across the European Union ('EU') and despite the obligation to conduct the proceedings before the CRMA Board in "a fair and transparent process",¹² local communities have been unable to obtain basic information regarding the project applications.¹³ Even requests for evidence on compliance with the environmental criteria and meaningful public engagement plans have been rejected¹⁴ or not replied to at all.¹⁵ Full, reasoned decisions concerning individual projects have not been published and remain inaccessible to the public, including the Applicants, despite the Commission's obligation to reason its decision (Article 7(9) CRMA). Recitals (7) and (8) to the Decision merely state that: "*The Commission assessed those applications in accordance with the criteria specified in Article 6(1) of Regulation (EU) 2024/1252, with the support of external experts with professional expertise in the technical, financial, environmental, social and governance (ESG) dimensions of a project, [...] and listed in the Annex to this Decision the projects that fulfil all the criteria provided for in Article 6(1) of Regulation (EU) 2024/1252, and which should therefore be recognised as Strategic Projects under that Regulation.*" By contrast, the European Environmental Investment Bank publishes more information on the environmental and social sustainability of the projects it directly finances. In particular, the EIB publishes initial project summaries, data sheets during and at the end of projects, an 'environmental and social data sheet', an 'Additionality and Impact Statement', links to environmental and social information and other information.¹⁶
5. Given that the public, including the Applicants, do not have access to the full individual reasoned decision of the Commission regarding the compatibility of the Project with the criteria listed in Article 6(1) CRMA, the Applicants have been unable to ascertain what evidence was used by the Commission in its assessment, as well as the reasons on which the Decision was based. Therefore, the Applicants will base this request on the information available to them, which is nonetheless sufficient to raise serious doubts¹⁷ as to compliance of the Decision with

¹² Article 7(6) CRMA.

¹³ See MiningWatch request entitled "FOI request under 1049/2001: CRMA application Savannah Resources", 10 September 2024, attached as Annex 2a; and the decision of DG GROW of 14 October 2024, case No. EASE 2024/4763, attached as Annex 2b.

See also, e.g., https://www.asktheeu.org/request/request_for_information_on_appli#incoming-55869; https://www.asktheeu.org/request/list_of_applicants_for_strategic#incoming-57689 and https://www.asktheeu.org/request/strategic_status_decisions#incoming-58515

¹⁴ See ClientEarth's request of 20 November 2024 to DG GROW, attached as Annex 3a; letter of 21 January 2024 from DG GROW to ClientEarth, attached as Annex 3b; and ClientEarth, Confirmatory Application in relation to Request for access to documents registered under number EASE 2024/6198, 7 February 2023, attached as Annex 3c. The extended deadline under Article 8(2) of Regulation 1049/2001 expired on 21 March 2025, however, no response has been received from the Commission as of the date of filing this request.

See also MiningWatch request to the Portuguese Ministry of Environment and Energy of 18 December 2024, attached in Annex 4a; and a reply of 07 January 2025 entitled "Pedido de Informação (Lei no. 26/2016), Projectos Estratégicos," attached as Annex 4b.

¹⁵ See Confirmatory Application of 7 February 2025 in relation to the Access to Documents Request No. EASE 2024/6198, attached as Annex 3c. See also MiningWatch's email entitled "FOI request under 1049/2001: CRMA-SP evaluation reports", 2 April 2024, attached as Annex 5a and DG GROW response of 11 June 2025 attached as Annex 5b. See also ClientEarth Access to documents request of 24 April 2025 registered with case No. 2025/2268, attached as Annex 6.

¹⁶ See the EIB group, Transparency policy, 2022, paragraphs 4.6.-4.14, available at: www.eib.org/files/publications/strategies/eib_group_transparency_policy_2021_en.pdf and European Ombudsman, Decision on how the European Investment Bank discloses environmental information in relation to projects that it finances directly, case 1065/2020/PB, 21 April 2020, para. 5 (incl. footnote No.3.).

¹⁷ In relation to internal review requests, the General Court has determined that "*a party requesting the internal review of an administrative act under environmental law is required to put forward any facts or legal arguments raising serious doubts about the assessment made in that act by the EU institution or body.*" (Judgment of 15 December 2016, *TestBioTech eV and Others v European Commission*, T-177/13, ECLI:EU:T:2016:736, paragraph 67).

environmental law, as demonstrated hereafter. This information consists mainly of publicly available data and assessments relating to the Project at the national level, in particular:

- the Original Environmental Impact Assessment of 2020 (**Original EIA**);¹⁸
- Opinion of the Evaluation Committee on the original EIA of 2022;¹⁹
- Independent Cumulative impact assessment by IDAD of July 2021, at the request of the Boticas City Council (**Independent CIA**);²⁰
- Modified EIA of 16 March 2023 (**Modified EIA**);²¹
- Annex IV to the Modified EIA – Water Resources;²²
- Declaration of Environmental Impact (Declaração de Impacte Ambiental – **DIA**) of 31 May 2023;²³
- Opinion of the APA Evaluation Committee of May 2023 (**Evaluation Committee Opinion**);²⁴
- The opinion of the Portuguese Public Prosecutor (Ministério Público) of February 2024 in the case No. Case 302/23.8BEMDL (**Prosecutor's Opinion**).²⁵
- “Evaluation of the Filtered Tailings Storage Facility in the Updated Proposal for the Savannah Lithium Barroso Mine” by Dr. Steven H. Emerman (**Steven H. Emerman Report**).²⁶

6. In light of this evidence and the analysis hereafter, the Applicants submit that the Project should not have been designated as strategic under Article 7(9), in conjunction with Article 6(1) CRMA, and that the Decision shall be reviewed accordingly.

1. LEGAL FRAMEWORK

1.1. The Critical Raw Materials Act (CRMA)

7. The general objective of the CRMA is, according to Article 1(1), “to improve the functioning of the internal market by establishing a framework to ensure the Union’s access to a secure, resilient and sustainable supply of critical raw materials, including by fostering efficiency and circularity throughout the value chain.” Article 1(2) provides that:

¹⁸ Original EIA, Volume I: Description of the Project / Mining Plan, available at:

<https://siliamb.apambiente.pt/anexo/?extern=true&code=a56eb6413cb8b285529d66eb8d396d18>; Volume II: Characterization of the Reference Situation, Impact Assessment, Minimization Measures and Monitoring Programs, available at: <https://siliamb.apambiente.pt/anexo/?extern=true&code=70c700488e5376a65b1b7eb0251b870e>.

¹⁹ Opinion of the Evaluation Committee on the original EIA of 2022, available at:

https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_parecerca_barroso2023531113430.pdf.

²⁰ Instituto do Ambiente e Desenvolvimento da Universidade de Aveiro (IDAD) is the technical-scientific organization that carried out the strategic impact assessment of the Lithium Exploration and Prospecting Programme for 8 potential areas for the launch of a tender procedure to award prospecting and exploration rights lithium research (PPP). It was carried out in compliance with Order no. 1522/2021 of 08 February. At the request of Boticas City Council, IDAD prepared a ‘Study on the Evaluation of Cumulative Effects of the Mina do Barroso’ on the Original EIA in July 2021, pp. 341-453, available at:

https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_parecerca_barroso2023531113430.pdf.

²¹ Modified EIA of 16 March 2023, available at: <https://siaia.apambiente.pt/AIADOC/AIA3353/ei2023321164258.7z>.

²² Available at: <https://siaia.apambiente.pt/AIADOC/AIA3353/anexo%20iv%20-%20recursos%20h%C3%ADrico2023321164741.7z>

²³ Available at: https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_dia-tua20235317544.pdf.

²⁴ Available at:

https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_parecerca_barroso_modificado_assinado202353111367.pdf

²⁵ The opinion in the original language (Portuguese) and an unofficial translation in English are attached as Annexes 7a and 7b.

²⁶ Attached as Annex 22.

“To achieve the general objective referred to in paragraph 1, this Regulation lays down measures aiming to:

- (a) lower the risk of supply disruptions related to critical raw materials likely to distort competition and fragment the internal market, in particular by identifying and supporting strategic projects that contribute to lowering dependencies and diversifying imports and by undertaking efforts to incentivise technological progress and resource efficiency in order to moderate the expected increase in the Union consumption of critical raw materials;*
- (b) improve the Union’s ability to monitor and mitigate the supply risk related to critical raw materials;*
- (c) ensure the free movement of critical raw materials and products containing critical raw materials placed on the Union market while ensuring a high level of environmental protection and sustainability, including by improving their circularity.”*

8. As stated under point (a) above, projects relating to the extraction, processing or recycling of critical raw materials may be deemed strategic for the supply of those materials to the EU, regardless of whether they are located within the EU or in third countries. As expressed under Article 10(1) CRMA: *“Strategic Projects shall be considered to contribute to the security of supply of strategic raw materials in the Union.”* Projects designated a strategic under the CRMA benefit from a ‘priority status’ according to which permitting processes, including environmental assessments and authorisations, as well as access to finance and administrative processes, are generally accelerated and facilitated (See Articles 10 to 13, as well as Articles 15 to 18 CRMA). Importantly for the purpose of this request, Article 10(2) CRMA provides that: *“With regard to the environmental impacts or obligations addressed in Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1), point (a), of Directive 2009/147/EC or in Union legislative provisions regarding the restoration of terrestrial, coastal and freshwater ecosystems, Strategic Projects in the Union shall be considered to be of public interest or serving public health and safety, and may be considered to have an overriding public interest provided that all the conditions set out in those Union legislative acts are fulfilled.”*
9. ‘Strategic projects’ shall be recognised by the Commission, based on criteria set out in Article 6 CRMA, which relates to the project’s capability to contribute to ensure security of supply of critical raw materials, its technical feasibility within a reasonable timeframe, its cross-border benefits including for downstream sectors, and its sustainability. In relation to the latter, Article 6(1), point (c) requires that:
“(c) the project would be implemented sustainably, in particular as regards the monitoring, prevention and minimisation of environmental impacts, the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect for human rights, indigenous peoples and labour rights, in particular in the case of involuntary resettlement, potential for quality job creation and meaningful engagement with local communities and relevant social partners, and the use of transparent business practices with adequate compliance policies to prevent and minimise risks of adverse impacts on the proper functioning of public administration, including corruption and bribery”.
10. In accordance with Article 6(2) *“The fulfilment of the criteria for the recognition set out in paragraph 1 of this Article shall be assessed by the Commission in accordance with the elements and evidence set out in Annex III.”* In relation to the assessment of the sustainability criteria set out under point (c) for projects located in the EU, Annex III, point 5 specifies that *“The assessment of whether projects located in the Union fulfil the criterion laid down in Article 6(1), point (c) shall take into account an overall assessment of a project’s compliance with relevant Union or national law as well as relevant supplementary evidence, taking into account the location of the project (...).”* Point 6 of Annex III allows project promoters to attest compliance

with the criterion laid down in Article 6(1), point (c) by providing evidence of, or committing to obtain certification by a scheme that has been recognised by the Commission under Article 30(2) CRMA. To date, the Commission has not yet recognised certification schemes pursuant to this provision.

11. Pursuant to Article 7(9) CRMA, *“The Commission shall, taking account of the opinion of the Board referred to in paragraph 6, adopt its decision on the recognition of the project as a Strategic Project within 90 days of acknowledging the completeness of the application in accordance with paragraph 4 and shall notify the applicant thereof. The Commission’s decision shall be reasoned (...).”*

12. Relevant for the purpose of this request, pursuant to Article 7(11) and (12):

“Where the Commission finds that a Strategic Project no longer fulfils the criteria laid down in Article 6(1) or, where its recognition was based on an application containing information that is incorrect to the extent that it affects its compliance with the criteria laid down in Article 6(1), it may, taking into account the opinion of the Board, withdraw the recognition of a project as a Strategic Project.

Before adopting a decision to withdraw recognition, the Commission shall provide the project promoter with reasons for its decision, the project promoter shall be given the opportunity to reply, and the Commission shall take into account the project promoter’s reply.

Projects which are no longer recognised as Strategic Projects shall lose all rights connected to that status under this Regulation.”

1.2. Other EU Environmental Laws

13. As developed further under section 4.1.2 of this request, the Applicants submit that an assessment of compliance of projects with the criteria set in Article 6(1) CRMA must necessarily rely on compliance of the projects with relevant international, EU and national law. Several EU legal frameworks are particularly relevant for the Project.

14. The environmental impact assessment as defined in Article 1(2)(g) of Directive 2011/92/EU (as amended) (**‘EIA Directive’**) is a process consisting of: (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2); (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7; (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7; (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and (v) the integration of the competent authority’s reasoned conclusion into any of the decisions referred to in Article 8(a).

15. Article 3 EIA Directive’, establishes the purpose of an environmental impact assessment, which is the identification, description and assessment of the direct and indirect significant effects of a project on a number of factors, namely population and human health, biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive

2009/147/EC, land, soil, water, air, climate, landscape, material assets, cultural heritage and the interaction between all those factors. The assessment of the above factors must also consider the anticipated effects arising from the project's vulnerability to relevant major accidents and/or disasters.²⁷ Member States are under the obligation to conduct environmental impact assessments in a manner that would sufficiently serve this purpose and to identify, describe and assess the direct and indirect impacts of projects.

16. The Court of Justice of the European Union has ruled that Article 3 is a fundamental provision and that in order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case. Furthermore, the Court of Justice has held that the environmental impact assessment involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in Article 3 and the interaction between those factors.
17. Article 5(1) EIA Directive', together with Annex IV²⁸, establish a list of information that must be provided by the developer to the competent authority as a minimum.
18. Notably, Article 5(1)(b) and Annex IV(5) oblige the developer to provide a description of the likely significant "*direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project*" resulting from a variety of factors.
19. Article 5(1) (c) and Annex IV(7) further require from the developer to provide a summary of measures to avoid, prevent, reduce, or offset significant environmental impacts, and any proposed monitoring (e.g., post-project analysis). This should detail how such effects are addressed during both construction and operation phases.
20. Article 5(3)(c) EIA Directive' further oblige the competent authority to "*seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.*"
21. In relation to Article 5 EIA Directive', the Court of Justice held that information gathered by the competent environmental authority must not be confused with the assessment obligation laid down in Article 3 of the Directive related to the direct and indirect effects of the project as well as its cumulative effects at the end of the decision-making process.²⁹ Rather, the obligations stipulated by Article 5 (related to the information to be provided by the developer) are separate ones, albeit being key to the implementation of Article 3 of the Directive. When carrying out the assessment under Article 3, the competent authority has to rely on, as a point of departure, the information provided by the developer in accordance with Article 5(1).

²⁷ Article 3(2), Directive 2011/92/EU.

²⁸ See in this respect judgment of 18 October 2011, *Boxus and Others*, joined cases C-128/09, C-131/09, C-134/09 and C-135/09, ECLI:EU:C:2011:667, paragraph 43; judgment 19 September 2000, *Luxembourg v Linster*, C-287/98, ECLI:EU:C:2000:468, paragraph 55.

²⁹ Judgment of 15 December 2011, *Commission v Spain*, C-560/08, ECLI:EU:C:2011:835, paragraph 98 and judgment of 3 March 2011, *Commission v Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraphs 35 to 41.

22. In relation to water protection, Article 4(1) of the Directive 2000/60/EC (as amended) (**'WFD'**) sets the fundamental environmental objectives, such as to prevent deterioration of the status of all surface and groundwater bodies and to achieve good status for these water bodies.
23. Under Article 4(7) WFD, Member States can derogate from environmental objectives for protection of water bodies prescribed in Article 4(1) of that directives in cases of new modifications and new sustainable human development activities. This can happen if:
- all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
 - the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan;
 - the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
 - the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.
24. In relation to the protected sites, under Article 6(3) of Directive 92/43/EEC (as amended) (**'Habitats Directive'**):
- "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."*
25. Article 12(1) Habitats Directive' requires Member States to take requisite measures to establish and implement an effective system of strict protection for certain animal species in their natural range, including prohibiting: (a) all forms of deliberate killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; and (d) deterioration or destruction of breeding sites or resting places.

1.4 Portuguese national law

26. The development of the Project is subject to Portuguese environmental and mining legislation. The following legal instruments are particularly relevant in assessing its compliance with applicable legal standards.
27. At the international level, Portugal is a partner of the Food and Agriculture Organisation (FAO) of the United Nations and has committed to the protection of the Barroso Agro-Silvo-Pastoral

System through its inclusion in the FAO's Globally Important Agricultural Heritage Systems ('GIAHS') since 2018.³⁰

28. The Portuguese Constitution³¹ establishes key principles relevant to the protection of the environment and the domestic application of international obligations. Article 8 provides that international law, including ratified international agreements, is binding in the internal legal order and takes precedence over ordinary legislation in case of conflict. Article 66 recognises the right of all citizens to a healthy and ecologically balanced human environment. It further imposes duties on the State to ensure this right through prevention and control of pollution, sustainable development, and protection of natural resources and biodiversity, in the interest of present and future generations.
29. In terms of ordinary legislation, Decree-Law No. 30/2021³² and Law No. 54/2015³³ both establish the legal framework for the prospecting, exploration, and exploitation of geological resources. Article 17 of Decree-Law No. 30/2021 prohibits mineral exploration and exploitation in areas classified under certain international instruments, including GIAHS sites.
30. The applicable legal framework also includes Article 3 of Law No. 19/2014³⁴ (Portuguese Environmental Framework Law), which establishes general principles for environmental protection.
31. Decree-Law No. 73/2009 governs the National Agricultural Reserve (**RAN**), and Decree-Law No. 166/2008 regulates the National Ecological Reserve (**REN**) sites. Under Articles 4 and 22 of Decree-Law No. 73/2009, RAN land can only be allocated to non-agricultural uses when a public interest justification is clearly established, and no viable alternative location exists. Similar limitations are established under Article 20 and 21 of Decree-Law No. 166/2008.
32. Moreover Decree-Laws No. 344/2007 and 21/2018 define the legal Regulations for Dam Safety, including for large dams whose embankments either exceed a height of 15 m or a volume of 1.000.000 m³ and a height of 10 m.
33. Portaria No. 54-A/2023³⁵ sets out the implementation rules for Portugal's Strategic Plan for Common Agricultural Policy (PEPAC) agri-environmental interventions. It identifies the municipalities of Boticas and Montalegre as critical areas for integrated environmental management and specifies objectives related to the preservation of the Agro-Silvo-Pastoral System of Barroso, classified as a GIAHS site, namely "Maintenance of the Barroso landscape mosaic" and "Grazing management in common lands (baldios) of the Barroso region."

³⁰ See: <https://www.fao.org/giahs/giahs-around-the-world/portugal-barroso-agro-sylvo-pastoral-system/mediterranean-diet-agricultural-heritage-as-smooth-as-oil/en>.

³¹ The official English translation available at:

<https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf>

³² Available at: <https://diariodarepublica.pt/dr/en/detail/decree-law/30-2021-162940682>

³³ Available at: <https://diariodarepublica.pt/dr/detalhe/lei/54-2015-67552498>

³⁴ Available at: <https://diariodarepublica.pt/dr/detalhe/lei/19-2014-25344037>

³⁵ Available at: <https://diariodarepublica.pt/dr/detalhe/portaria/54-a-2023-207942895>

1.5. History of the Project's development in Portugal

34. The Project has followed a complex and multi-phased regulatory path in accordance with Portuguese mining and environmental legislation, including licensing, contractual steps, and administrative review.
35. The process began in 2006, when the Portuguese State granted a mining concession for the exploration and exploitation of feldspar and quartz in Covas do Barroso, covering an area of 120 hectares.³⁶ The concession was awarded for a 30-year term, renewable for an additional 20 years. In 2016, an addendum to the contract expanded the concession area to 542 hectares and included lithium among the concessionable minerals.³⁷
36. The Mining Plan³⁸, which sets out the technical and operational aspects of the proposed activities, was approved in the context of this contractual framework. It was subsequently revised to accommodate the lithium component of the concession and forms a central element in the regulatory architecture required for transitioning from exploration to exploitation.
37. In 2017, Savannah Resources, through its wholly owned subsidiary Slipstream Resources Portugal Unipessoal, Lda (currently Savannah Lithium, Unipessoal Lda), acquired the mining rights and entered into a formal contract with the Directorate-General for Energy and Geology (DGEG)³⁹, thus gaining its legal title to lithium exploitation within the concession area. In 2019, Savannah submitted a new mining lease application to the DGEG for an adjacent area known as “Aldeia”, comprising approximately 2.94 km².⁴⁰
38. The process for the original Project Environmental Impact Assessment (‘**Original EIA**’) process began in 2020⁴¹, with the submission of the Original EIA by the Project Promoter to the Portuguese Environment Agency (Agência Portuguesa do Ambiente – ‘**APA**’). The Project Promoter included the entire proposed operational footprint, encompassing both the original concession and the Aldeia expansion area, in the EIA submitted to APA in May 2020.
39. On 15 April 2021, APA issued a formal declaration of conformity, enabling the project to proceed to public consultation, which took place between 22 April and 16 July 2021.⁴²
40. Following technical analysis and public input, the Evaluation Committee, which includes APA and other relevant public authorities, issued a non-favourable opinion in June 2022.⁴³ The opinion identified “very significant and irreversible negative impacts” on the landscape,

³⁶ Original contract available at: <https://www.dgeg.gov.pt/media/pwdf34f/contrato-mina-do-barroso.pdf> and map: https://www.dgeg.gov.pt/media/4krdfwq/mapa_mina-do-barroso.pdf

³⁷ Addendum to the Contract available at: <https://www.dgeg.gov.pt/media/krvj4upb/adenda-mina-do-barroso.pdf>

³⁸ Available at: https://www.savannahresources.com/media/uri54jx/the-mina-do-barroso-project-economic-development-impacts_universityofminho_english_final.pdf

³⁹ The public notice available at: <https://www.dgeg.gov.pt/media/dqdj3xg1/aviso-n-%C2%BA-2609-2017-dr-n-%C2%BA-52-2-%C2%AA-s-%C3%A9rie-de-14-de-mar%C3%A7o.pdf>

⁴⁰ Available at: <https://savannahresources-wwsavannahresourcescom.azurewebsites.net/investors/rns-feed/rns-announcements/?rid=4019336>

⁴¹ All submitted documents available here: <https://siaia.apambiente.pt/AIA.aspx?ID=3353>

⁴² First public consultation report available at: https://siaia.apambiente.pt/AIADOC/AIA3353/rcp_mina_%20barroso_%20aia3353202353111255.pdf

⁴³ Evaluation Committee opinion on the Original EIA available at: https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_parecerca_barroso2023531113430.pdf

hydrological systems, and biodiversity. While not constituting a formal rejection, the opinion effectively precluded project approval in its then-current form.

41. In response, APA and Project Promoter activated the mechanism provided under Article 16 of Decree-Law No. 151-B/2013, which enables the Project Promoter to modify the project and submit a modified EIA within a maximum period of 180 business days. On 16 March 2023, Savannah submitted a Modified EIA (**'Modified EIA'**) and Mine Plan, still covering the expanded area, including Aldeia. A second public consultation was conducted between 22 March and 19 April 2023.⁴⁴ The Evaluation Committee issued a conditionally favourable opinion in relation to the Modified EIA in May 2023 (**'Evaluation Committee Opinion'**).⁴⁵
42. On 31 May 2023, APA issued a conditionally favourable Declaration of Environmental Impact (Declaração de Impacte Ambiental – **'DIA'**), accompanied by the issuance of a Título Único Ambiental (**'TUA'**)⁴⁶. The DIA explicitly covers the entire expanded project area, including the Aldeia application zone and was subject to 169 mitigation and compensation measures and 42 compliance conditions, including a prohibition on water withdrawal from the Covas River and the obligation to obtain additional sector-specific permits and licences during the construction and operational phases - including for water use, electricity supply, and the use of explosives. The Evaluation Committee also recommended that future authorisations be made conditional upon the adoption of an integrated territorial and environmental management strategy. Such a strategy should include cumulative impact mapping, regional stakeholder consultation, and the definition of environmental thresholds beyond which no further extractive activity should be authorised.
43. In September 2023, the Covas do Barroso Parish Council filed an administrative lawsuit before the Administrative and Fiscal Court of Mirandela, seeking the annulment of the conditional DIA.⁴⁷ This lawsuit is currently pending. In February 2024, the Portuguese Public Prosecutor (Ministério Público) issued a formal opinion in support of annulment (**'Prosecutor's Opinion'**),⁴⁸ citing violations of national and international environmental law and the potential jeopardy to the area's GIAHS classification.
44. The Prosecutor's opinion identifies the following substantive procedural flaws in the EIA process:
 - Failure to conduct an adequate cumulative impact assessment in light of other regional mining projects;
 - Failure to incorporate findings of prior environmental planning instruments, including the Strategic Environmental Assessment for national lithium prospecting, contrary to Article 5(a) of the applicable legislation;
 - Insufficient integration of public input, despite strong community opposition, possibly breaching Articles 2(d) and 5(d);
 - Disregard for irreversible effects on traditional landscapes, biodiversity, and agro-ecological systems, in potential violation of Articles 5(a)–(c).

⁴⁴ Second public consultation report available at:

https://siaia.apambiente.pt/AIADOC/AIA3353/aia_3353_rcp_mina%20barroso_projeto_reformulado2023531112629.pdf

⁴⁵ Evaluation Committee Opinion available at:

https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_parecerca_barroso_modificado_assinado202353111367.pdf

⁴⁶ Available at: https://siaia.apambiente.pt/AIADOC/AIA3353/aia3353_dia-tua20235317544.pdf

⁴⁷ Tax and Administrative Court of Mirandela, process nr. 302/23.8BEMDL.

⁴⁸ Annexes 7a and 7b.

45. In parallel, according to a Reuters report published on 12 December 2024, Project Promoter has indicated that it requires approximately 840 hectares of land across the full project area, including Aldeia. As of September 2023, the company had secured only around 93 hectares. In December 2024, Project Promoter obtained from the Portuguese Government temporary access rights to more than 520 hectares for a period of one year, to conduct drilling and fieldwork.⁴⁹ The Project Promoter has also indicated it may resort to compulsory land acquisition procedures under Portuguese law if voluntary negotiations with landowners fail.⁵⁰
46. As of June 2025, the Environmental Licence required to initiate construction and exploitation activities remains pending, and is contingent upon demonstrable compliance with the conditions set out in the DIA. The Project Promoter anticipates the start of operations by 2027, but this timeline is subject to the outcome of ongoing litigation and the resolution of environmental compliance obligations.

1. SCOPE OF THE REQUEST

47. The Applicants are hereby requesting the Commission to review the designation of the Project as a strategic project under Article 1 of the Decision, together with point (5) of the Annex.
48. The Applicants submit that, since each applicant project is assessed and designated as strategic independently from the other applicant projects, the designation of the Barroso Lithium Mine project as strategic under point (5) of the Annex is severable from the designation of other projects as strategic under the other points of the Annex. Therefore, point (5) of the Annex can be reviewed without affecting the remainder of the Decision nor of its Annex.⁵¹

2. ADMISSIBILITY

49. Article 10 Regulation 1367/2006, as amended, entitles any non-governmental organisation that meets the criteria set out in Article 11 Regulation 1367/2006 to make a request for internal review to the Union institution or body that adopted an administrative act, as defined in Article 2(1)(g) Regulation 1367/2006, on the grounds that such an act or omission contravenes environmental law.
50. The present request fulfils the requirements of this provision because: (i) the Applicants meet the criteria set out in Article 11 Regulation 1367/2006 ; (ii) the Decision and its Annex constitute an administrative act in the sense of Article 2(1)(g) Regulation 1367/2006 as amended and (iii) the legal grounds raised in this request (which point (5) of the Annex contravenes) constitute environmental law.

⁴⁹ Available at: <https://www.mining.com/web/savannah-resources-gets-temporary-land-access-for-portuguese-lithium-project/>

⁵⁰ Available at: <https://dinheirovivo.dn.pt/savannah-requer-expropriacoes-com-carater-de-urgencia-em-boticas>

⁵¹ See Judgment of 18 March 2014, *European Commission v European Parliament and Council of the European Union*, C-427/12, ECLI:EU:C:2014:170, paragraph 16 and the case law cited; Judgment of 29 March 2012, *European Commission v Poland*, C-504/09 P, ECLI:EU:C:2012:178, paragraphs 99 and 108.

3.1. The Applicants meet the criteria set out in Article 11 of Regulation 1367/2006

3.1.1. Associação Unidos em Defesa de Covas do Barroso

51. Associação Unidos em Defesa de Covas do Barroso (UDCB) is a non-profit environmental association registered in Portugal with tax ID 515180513 created to represent the concerns of the local community of Covas do Barroso in relation to the development of the Barroso Lithium Mine project. UDCB was created in 2018, i.e. more than two years ago.
52. UDCB submits on the DECLARE platform the documents listed in points (a) to (c) of Article 2 Commission Decision 2023/748 (**Annexes 8, 8b and 8c**).
53. In relation to Article 11(1)(b) and Article 11(1)(d) Regulation 1367/2006, the primary purpose of UDCB is to follow the development of the Project and protect the local community from its potential harmful effects. It has actively pursued this objective ever since. For example, UDCB organised and published a petition asking for the project's suspension, signed by more than 4500 people. The petition was registered in the Portuguese parliament in 2020, was discussed and voted on in 2024.⁵² UDCB also organised different events to raise awareness to the project's risks, locally, nationally and internationally.⁵³ In particular, two public demonstrations were organized in Lisbon in 2021⁵⁴ and several others locally in the following years.⁵⁵ UDCB has also organised summer camps in defence of the Barroso region each year since 2021.⁵⁶
54. UDCB has also initiated several lawsuits under civil and administrative law, to counter environmental licensing, the usurpation of common lands and the States' easement procedure allowing the Project Promoter to carry on prospective activities.
55. Since December 2021, UDCB is an observer in communication ACCC/C/2021/186 (Portugal) pending before the Aarhus Convention Compliance Committee in relation to alleged violations of Articles 4 (1)–(3) (c), (7) and 6 (3) and (4) of the Aarhus Convention with respect to the development of the Barroso Mine project, and has submitted several statements as part of this communication.⁵⁷

⁵² See: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalhePeticao.aspx?BID=13421>

⁵³ E.g., visit to Serbia in 2024: https://www.instagram.com/p/C4D7cfQihUh/?img_index=1; Visit to Cáceres, Spain in 2023: https://www.instagram.com/p/CyZKQnro5FZ/?img_index=1, event in Boticas in 2019: https://www.instagram.com/p/Bxajg-3lxJV/?img_index=1

⁵⁴ See e.g.,

[https://www.facebook.com/udcovasdobarroso/posts/pfbid0y471aKayE2EQ1WjXEAwFSUNidt2wuLZaX4iqXDCaGVQ8V2mYvSbQDweMzV81Pcwwl?_cft_\[0\]=AZV612MRRPnvRALGeHDGK_rvJr4jE-lfpO3lGWtbE63WrlpA3YeOkImLh5QqzLNBTOZHPtnNbZKzS0LavbVUaRAcdLh0pYGSb9h1gWbw9bX9hdYX4BFtScwszBCrZfxCv353Zj06f-2zwArQKHUpxcwITD-12KgCtz2tpf7CS1ITCA&_tn_=%2CO%2CP-R](https://www.facebook.com/udcovasdobarroso/posts/pfbid0y471aKayE2EQ1WjXEAwFSUNidt2wuLZaX4iqXDCaGVQ8V2mYvSbQDweMzV81Pcwwl?_cft_[0]=AZV612MRRPnvRALGeHDGK_rvJr4jE-lfpO3lGWtbE63WrlpA3YeOkImLh5QqzLNBTOZHPtnNbZKzS0LavbVUaRAcdLh0pYGSb9h1gWbw9bX9hdYX4BFtScwszBCrZfxCv353Zj06f-2zwArQKHUpxcwITD-12KgCtz2tpf7CS1ITCA&_tn_=%2CO%2CP-R)

⁵⁵ Demonstration on January 18, 2025 in the village: https://www.instagram.com/p/DFSeeBM-HitUKL/?img_index=1; December 2023 in the Barroso region: <https://www.instagram.com/p/C0WXII2MoGT/>; Summer 2022 in Boticas: <https://www.instagram.com/p/C4LvyKnMhPe/>

⁵⁶ See: <https://barrososemininas.org/>

⁵⁷ See: https://unece.org/env/pp/cc/accc.c.2021.186_portugal

3.1.2. MiningWatch Portugal

56. MiningWatch Portugal is an independent and interdisciplinary monitoring network designed to support civil society and especially local communities confronted with environmental legacy and social impacts of the extractive industry in Portugal. In this respect, the network performs monitoring of environmental and social liabilities of past and ongoing activities and also analyses the possible risk of new projects. When needed, it helps with advocacy actions to influence decision makers in Portugal and Europe so that local communities can voice their concerns and claims, and thus shape their own future.⁵⁸ MiningWatch Portugal was founded in February 2019, i.e. more than two years ago.
57. MiningWatch Portugal submits on the DECLARE platform the documents listed in points (a) to (c) of Article 2 Commission Decision 2023/748 (**Annexes 9a and 9b**).
58. In relation to Article 11(1)(b) and Article 11(1)(d) Regulation 1367/2006, MiningWatch Portugal has actively pursued its objective ever since its foundation, with particular focus on the Project. It has mapped lithium projects and concessions in Portugal⁵⁹, regularly requested information to the Commission as well as Portuguese authorities in relation to the Project. For example, on 10 September 2024 MiningWatch Portugal requested access to the Project's application for a strategic project from DG GROW.⁶⁰ On 18 December 2024 MiningWatch Portugal submitted an access to documents request to the Portuguese Ministry of Environment and Energy. It requested the Ministry to grant access to documents submitted to support the fulfilment of the criterion of "sustainability" (e.g., summary EIAs, documents containing information on planned emissions into environment) for the nine projects located in Portugal that had applied for the status of a strategic project.⁶¹ On 2 April 2024 MiningWatch Portugal also requested access to the Project's evaluation reports referred to in Article 2 of the Decision.⁶²
59. Since June 2021, MiningWatch Portugal has been an observer in above-mentioned communication ACCC/C/2021/186 (Portugal) pending before the Aarhus Compliance Committee, and has submitted observations as part of this communication.

3.1.3. ClientEarth

60. Since Regulation 1367/2006 entered into force, ClientEarth AISBL has submitted a number of requests for internal review. The EU institutions and bodies have always accepted that ClientEarth AISBL fulfils the criteria under Article 11(1) Regulation 1367/2006.⁶³ Fundación ClientEarth delegación en España ('**ClientEarth España**') also fulfils the admissibility criteria.
61. ClientEarth AISBL and Fundación ClientEarth delegación en España submit on the DECLARE platform the documents listed in points (a) to (c) of Article 2 of Commission decision 2023/748 (**Annexes 10a to 10e, Annexes 11a and 11b**).

⁵⁸ See: <https://miningwatch.pt/index-en.html>

⁵⁹ See: <https://miningwatch.pt/index-en.html>

⁶⁰ See email entitled "FOI request under 1049/2001: CRMA application Savannah Resources", 10 September 2024, attached as Annex 2a.

⁶¹ See the Access to Documents Request of 18 December 2024 attached in Annex 4a.

⁶² See email entitled "FOI request under 1049/2001: CRMA-SP evaluation reports", 2 April 2024, attached as Annex 5a.

⁶³ See e.g. Commission's decisions with references Ares(2024)4618938-26/06/2024, Ares(2023)3182983-05/05/2023.

62. In particular, as to Article 11(1)(b) and Article 11(1)(d) Regulation 1367/2006, ClientEarth is actively pursuing its objectives to protect the environment in the context of environmental law. In relation to the Project, ClientEarth España participated in a public consultation on the environmental impact assessment of the Project in 2021, demonstrating that the Original EIA failed to address Articles 6 and 12 of the Habitats Directive in respect of wolf populations living and breeding in the area. ClientEarth's consultation response also pointed to contraventions to the Water Framework Directive, to Article 2 of Directive 2003/35/EC for lack of proper public consultations and to failure to address transboundary issues (**Annex 12**). Beyond Portugal, ClientEarth España's objectives to protect the environment within the scope of environmental law in Spain and in the Iberian region are directly affected by the Decision. Notably, Galicia in Spain and northern Portugal include a number of sites where lithium extraction is being explored.⁶⁴ In respect of the Critical Raw Materials Act, ClientEarth has engaged with civil society capacity building in respect of the Act's implementation, including through the publication in December 2024 of a guide to legal rights and processes.⁶⁵

3.2. The designation of the Project as strategic is contained in an administrative act in accordance with Article 2(1)(g) Regulation 1367/2006

63. Article 2(1)(g) Regulation 1367/2006 as amended defines "administrative act" as "*any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1).*"

64. In accordance with Article 289 TFEU, "[l]egal acts adopted by legislative procedure shall constitute legislative acts." The Decision and its Annex were not adopted by such a legislative procedure. Rather, they are a Commission decision adopted on the basis of Article 7(9) CRMA, according to which "*The Commission shall, taking account of the opinion of the Board referred to in paragraph 6, adopt its decision on the recognition of the project as a Strategic Project within 90 days of acknowledging the completeness of the application in accordance with paragraph 4 and shall notify the applicant thereof. (...)*". The Decision and its Annex are thus administrative acts.

65. Furthermore, the Decision and its Annex have legal and external effects, in that they designate projects as 'strategic' under Article 7 CRMA, that is pursuant to an application and assessment process. The designation of a project as 'strategic' under the CRMA leads to legal and external consequences for the project and its promoter, as well as for public authorities and third parties. Notably, strategic projects benefit from a priority status including that they "shall be considered to be of public interest or serving public health and safety, and may be considered to have an overriding public interest" under several EU nature protection laws. This status also entail the

⁶⁴ ClientEarthEspaña's other activities in Portugal include a court challenge to the project of expansion of Montijo airport near Lisbon, aiming at protecting the area, which is a stopover of international importance for migratory birds coming from other European countries: <https://www.clientearth.org/latest/news/portugal-s-proposed-new-airport-would-threaten-thousands-of-protected-birds/>

⁶⁵ Available at: <https://www.clientearth.org/latest/documents/understanding-strategic-projects-under-the-crma-a-guide-to-rights-and-processes/>

possibility to deal with legal challenges under urgent proceedings as per national law (Article 10 CRMA); as well as triggers accelerated permitting processes (Articles 11, 12, 15 CRMA) and favourable financing conditions (Article 16 CRMA) – a regime that is not accessible to non-designated projects.

3.3. The designation of the Project as strategic contravenes environmental law

66. Pursuant to the definition in Article 2(1)(f) Regulation 1367/2006, ‘environmental law’ means *“Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources,` and promoting measures at international level to deal with regional or worldwide environmental problems.”* The EU General Court has held that this concept *“must be interpreted, in principle, very broadly.”*⁶⁶
67. The Applicants argue that Article 1 of the Decision, together with point (5) of the Annex have the potential to contravene several provisions of the CRMA.
68. The CRMA pursues objectives of Union policy on the environment as well as affects permitting processes falling under Union environmental law. On the one hand, the purpose of the CRMA is to ensure security of supply of certain raw materials that are *“considered to be critical due to their high economic importance and their exposure to high supply risk”* (recital 1). The Act provides that certain raw materials *“are of high strategic importance for the functioning of the internal market, taking into account their use in strategic technologies underpinning the green and digital transitions”* (recitals 6, 24, 27), which makes clear that the CRMA is meant to contribute to Union environmental policy objectives to develop technologies perceived as necessary to the green transition. On the other hand, the CRMA contains provisions designed to mitigate negative impacts on the environment and human health from the prospecting, extracting, recycling or disposing of raw materials activities, and to ensure that raw materials projects are ‘sustainable’.
69. Article 6(1), point (b) CRMA requires that the project becomes technically feasible within a reasonable timeframe and that the expected production volume of the project can be estimated with a sufficient degree of confidence. This requirement addresses the objective to ensure security of supply of the EU in materials that are perceived as ‘essential’ for the green transition; therefore, it contributes to the pursuit of the Union’s environmental policy objectives. Article 6(1), point (c) requires that *“the project would be implemented sustainably, in particular as regards the monitoring, prevention and minimisation of environmental impacts (...)”*; this condition clearly pursues environmental protection objectives. Furthermore, Article 6(1), point (c) requires that socially adverse impacts of the project must be prevented and minimised, notably through the use of socially responsible practices, public engagement and respect to people’s rights, ‘in particular in the case of involuntary resettlement’. Compliance with these requirements is an essential feature of an environmentally sustainable strategic project. Articles 6 and 7 of the Aarhus Convention safeguard public participation rights in relation to the development of projects that may have an impact on the environment. Public participation requirements

⁶⁶ Judgment of 14 March 2018, *TestBioTech v Commission*, T-33/16, EU:T:2018:135, paragraphs 44-46.

stemming from these provisions and relevant national law undoubtedly apply to the development of strategic projects, in particular for the elaboration of EIAs, which purpose is ensuring that environmental impacts of projects are being prevented and minimised. The Parties to the Aarhus Convention considered that the right to participate in decision-making processes is one of the means to be able to assert the right to live in an environment adequate to one's health and well-being. Human rights, notably the right to life (Article 2 ECHR, Article 2 CFR) and the right to respect to private and family life (Article 8 ECHR, Article 7 CFR) can be directly affected by negative environmental impacts of projects such as pollution and contribution to climate change.⁶⁷ Labour rights protected by Article 31 CFR include the right to working conditions that respect workers' health, while protection of human health is one of the main objectives of the Union's environmental policy, as per Article 191(1) TFEU. The requirements in Article 6(1), point (c) CRMA that strategic projects are implemented sustainably, including in relation to their social and human rights impacts, thus pursues Union environmental policy objectives and falls within the notion of 'environmental law'. It follows that paragraphs (2) and (3) of Article 6, as well as Article 7 CRMA, which provide how strategic projects applications shall be assessed and on what bases strategic projects shall be designated, also qualify as environmental law provisions.

70. For the sake of completeness, the CRMA contains other provisions directly pursuing Union's environmental policy objectives. Chapter 5, section 1 contains provisions related to circularity, recovery and recycling of waste issued from the raw materials lifecycle. Chapter 5, section 2 contains provisions related to certification schemes and measurement of the environmental footprint of the projects. Furthermore, Articles 10 to 13 directly influence the conduct of environmental permitting processes under relevant EU laws, notably by specifying that strategic projects shall be considered in the public interest and may have an overriding public interest, as well as should see their permitting process being handled within a specific timeframe.
71. By analogy, the Commission accepted as admissible a request for internal review of the fifth list of projects of common interest designated under TEN-E Regulation⁶⁸, pursuant to which designated energy infrastructure projects benefit from a regime facilitating their development and financing.⁶⁹
72. Therefore, Article 1 of the Decision, together with point (5) of the Annex have the potential to contravene provisions which constitute environmental law for the purposes of Article 2(1), point (f) Regulation 1367/2006 as amended. Accordingly, the present request is admissible.

4. GROUNDS OF REVIEW

73. The Applicants contend that the Decision contravenes environmental law, in particular Article 6(1), point (c) of the CRMA read in conjunction with Articles 3 and 5 and Annex IV of the EIA

⁶⁷ ECHR (Grand Chamber), judgment of 9 April 2024, application 53600/20, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, ECLI:CE:ECHR:2024:0409JUD005360020; ECHR, judgment of 30 January 2025 (final on 30 April 2025), applications nos. 51567/14 and 3 others, *Cannavacciuolo and Others v Italy*, ECLI:CE:ECHR:2025:0130JUD005156714.

⁶⁸ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure (OJ L 115, 25.4.2013, p. 39-75).

⁶⁹ Commission decision of 7 November 2022, ARES(2022)s8301823.

Directive, Article 6(3) of the Habitats Directive, and Articles 4(1) and (7) of the WFD (section 4.2); as well as it contravenes Article 6(1), point (b) of the CRMA (section 4.3).

4.1. Preliminary remarks

4.1.1. Standard of proof in assessing whether the Project complies with the criteria of Article 6(1) CRMA

74. The Applicants submit that the Decision has a substantial legal and practical impact on permitting procedures, including the rights of local communities, and protection of the environment within those procedures at the national level. Therefore, the Commission should be bound by a high burden of proof to satisfy itself that the Project fulfils the criteria under Article 6(1) CRMA.
75. Neither the CRMA nor the individual assessment report template specify the burden of proof a project must meet to fulfil each of the criteria under Article 6(1) CRMA. Nevertheless, the need to satisfy a high burden of proof stems directly from provisions and the spirit of the CRMA. Article 6(1) CRMA sets out the criteria a project must fulfil to be granted the status of a strategic project. Pursuant to Article 6(2), Annex III of the CRMA further specifies the elements and evidence that must be taken into account to satisfy those criteria. In relation to the assessment of EU-based project with the criterion laid down in Article 6(1) point (c), Annex III requires the Commission to *“take into account an overall assessment of a project’s compliance with relevant Union or national law as well as relevant supplementary evidence, taking into account the location of the project.”*⁷⁰ Annex III also notes that project promoters may also attest compliance with the criterion laid down in Article 6(1), point (c) by either obtaining or committing to obtain certification for the project concerned by one or more schemes recognised pursuant to Article 30(2) that jointly cover the requirements listed in Annex IV, point (2). In the absence of recognition of a certification scheme by the Commission pursuant to Article 30(2) CRMA by the date of the Decision, such option was not available to the Project Promoter.
76. It follows that the only guidance provided by the CRMA as to the assessment of compliance with the criteria for a project located in the EU is *“the overall assessment of a project’s compliance with relevant Union and national law, as well as relevant supplementary evidence.”*⁷¹ The same reference is included in Section III of the Individual Assessment Report template adopted by the Commission.⁷² The Guide for Applicants recommends that applicants *“refer to received permits, ongoing permitting applications or the summary of an environmental impact assessment report, as asked for below, as well to certification schemes [they] are referring to.”*⁷³
77. The above requirements imply that to assess whether a project is sustainable under Article 6(1), point (c), it would first and foremost be required that all main operational aspects of the project are determined and their environmental and social impacts identified. In the Applicants’ view, it

⁷⁰ Point 5 of Annex III, CRMA.

⁷¹ Point 5 of Annex III, CRMA.

⁷² Strategic Projects under the Critical Raw Materials Act, Individual Assessment Report (IAR), Version 1.0, 08.10.2024, available at: <https://ec.europa.eu/docsroom/documents/64274>

⁷³ Guide for Applicants - Strategic projects under CRMA, p. 27, available at: <https://ec.europa.eu/docsroom/documents/59594>.

is simply not possible to determine with sufficient certainty whether a project will be implemented sustainably without proper assessments being carried out beforehand.

78. Secondly, as the authority deciding whether a project fulfils the legal requirements to be deemed 'strategic', the Commission should critically assess the evidence submitted by the project promoter and, where relevant, seek additional information to ascertain the veracity and completeness of the presented information.
79. As detailed under section 1.1 of this request, Article 10 CRMA lists several aspects of fast-track permitting that Strategic Projects enjoy in the national procedures, which bears legal consequences.
80. Thus, while the Commission's decision to grant the status of a strategic project is not an environmental permit, which remains an exclusive competence of the relevant Member State authorities, the Applicants submit that the Decision impacts the assessment of environmental obligations by the national authorities and courts. Specifically, with regard to the environmental impacts or obligations addressed in Article 6(4) and Article 16(1)(c), of Habitats Directive, Article 4(7) WFD and Article 9(1)(a) of Directive 2009/147/EC ('**Birds Directive**') or in Union law provisions regarding the restoration of terrestrial, coastal and freshwater ecosystems, projects that have been granted the status of a strategic project are seen as being in the "*public interest or serving public health and safety*", as a matter of law. They can also be considered as having an "*overriding public interest*", provided all the conditions in those Directives are met, although the meaning of these terms has not been defined by these Directives, nor by the CJEU, leaving it to Member States to decide if the project could meet such interests. Declaring certain projects as being in the "*public interest or serving public health and safety*", and suggesting they may have an "*overriding public interest*," raises two significant concerns that emphasise the importance of the Commission applying a high standard of proof.
81. Firstly, it undermines the project-specific assessments required by these pieces of EU environmental legislation, potentially weakening their effectiveness, as it limits decision-makers' ability to thoroughly evaluate whether these projects truly serve the public interest or public health and safety. Secondly, it introduces unnecessary ambiguity by suggesting that strategic projects may be in the overriding public interest if relevant nature protection tests are already met, while these tests would apply regardless. By suggesting that Strategic Projects may inherently satisfy these thresholds, the CRMA risks misapplication or dilution of these legal standards, particularly in Member States with limited administrative capacity. This could lead to the circumvention of critical environmental protections, thereby endangering vulnerable habitats, species and water resources even if not explicitly required by the CRMA.
82. Furthermore, in its assessment of environmental sustainability, the Commission is also bound by the precautionary principle, enshrined in Article 191(2) TFEU.⁷⁴ Therefore, the Commission must ensure that its decisions fully integrate and give effect to this principle, especially when authorising projects that may have significant environmental impacts, such as mining projects. Therefore, when adopting a favourable position or decision, especially where there is uncertainty

⁷⁴ Judgment of 5 May 1998, *National Farmers' Union (NFU)*, C-157/96, ECLI:EU:C:1998:191, paragraphs 63–64; judgment of 11 September 2002, *Pfizer Animal Health v Council*, T-13/99, ECLI:EU:T:2002:209, paragraphs 139–142; judgment of 22 December 2022, *Gowan Comércio Internacional e Serviços*, C-77/09, ECLI:EU:C:2010:803, paragraphs 72–79.

as to the potential impacts of projects on the environment, including impacts on biodiversity, water or accident risks, the Commission must be guided by the precautionary principle.

83. The Applicants recognise that the Commission enjoys a broad discretion in its assessment of applications for the status of a strategic project, and the evaluation of the technical feasibility and sustainability of a mining project involves highly technical and complex assessments, as evidenced by the Commission's use of external experts in technical, financial, environmental, social and governance.⁷⁵ The Applicants note that the CRMA does not envisage either a procedure or powers for the Commission, or the Critical Raw Material Board, to conduct on-site visits or make an independent verification of the environmental conditions at the intended project site. However, that does not relieve it from the duty to verify the evidence it holds and ensure that it is complete and accurate. When reviewing whether the Commission has exercised its discretion up to the legal standards, the CJEU requires that the *"EU authorities which have adopted the act in question must be able to show before the Courts of the European Union that in adopting the act they actually exercised their discretion, which presupposes that they took into consideration all the relevant factors and circumstances of the situation the act was intended to regulate."*⁷⁶ The CJEU also verifies whether *"the evidence relied on is factually accurate, reliable and consistent, whether that evidence contains all the information which must be taken into account in order to assess a complex situation, and whether it is capable of substantiating the conclusions drawn from it."*⁷⁷
84. Therefore, the Commission should carry out sufficient due diligence to verify whether the information submitted by the project promoter is complete, accurate and sufficient to prove the project's technical feasibility and sustainability under Article 6(1) CRMA.

4.1.2. The role of EU environmental legislation in demonstrating the sustainability of mining projects

85. As explained above, in order to ensure sustainable implementation of the projects, Article 6(1), point (c) of the CRMA requires projects to be implemented sustainably, *"in particular as regards the monitoring, prevention and minimisation of environmental impacts"*. In relation to the issues of environment, recital 17 of the CRMA explains that new critical raw minerals projects should be planned and implemented sustainably, meaning that **they need to ensure environmental protection**. To provide project promoters with a clear and efficient way of complying with this criterion, Annex III requires the Commission to *"take into account an overall assessment of a project's compliance with relevant Union or national law as well as relevant supplementary evidence, taking into account the location of the project."*⁷⁸
86. It is therefore evident that the criterion under Article 6(1), point (c) of CRMA is not a standalone requirement. Instead, it must be interpreted and applied within the broader context of EU environmental law. This ensures that strategic projects can effectively demonstrate their capacity to monitor, prevent, or mitigate environmental impacts, thereby upholding environmental protection standards. The explicit reference to compliance with relevant Union

⁷⁵ Recital 7 of the preamble of the Decision.

⁷⁶ Judgment of 9 November 2023, *Chemours Netherlands B.V. v ECHA*, 293/22 P, ECLI:EU:C:2023:847, paragraph 135; see also Judgment of 9 March 2023, *PlasticsEurope v ECHA*, C-119/21 P, EU:C:2023:180, paragraph 47.

⁷⁷ Judgment of 9 September 2019, *PlasticsEurope v ECHA*, T-636/17, ECLI:EU:T:2019:639, paragraph. 59, see also judgment of 9 September 2011, *France v Commission*, T-257/07, EU:T:2011:444, paragraph 87.

⁷⁸ Point 5 of Annex III, CRMA.

and national legislation underscores the legislator's intent to align the CRMA's environmental sustainability assessment with existing EU legal frameworks. This alignment is essential for the practical implementation and enforcement of the CRMA's provisions. Accordingly, the key EU legal instruments that form part of the legal and procedural framework necessary to enforce the CRMA's environmental requirements include, in particular, the EIA Directive, the Birds and Habitats Directives, and the WFD, as well as other relevant pieces of EU environmental legislation.

87. The EIA Directive, Habitats Directive, Birds Directive and WFD are all grounded in Article 192(1) TFEU, which provides the legal basis for EU action in pursuit of its environmental policy objectives.⁷⁹ In relation to the EIA Directive in particular, mining projects are explicitly included within the scope of the Directive.⁸⁰ The CJEU has clarified that the information required from developers under Article 5(1) and Annex IV of the EIA Directive, serves the purpose to assess the various environmental impacts⁸¹, meaning that through the project promoter's information provided under Article 5 and Annex IV, and the competent authority's analysis required by Article 3, the EIA process is the mechanism by which competent authorities determine whether environmental impacts are sufficiently prevented, minimised, or monitored, as required by the CRMA. Therefore, failure to implement or apply the EIA Directive properly clearly undermines any conclusion that a project meets the environmental prevention obligation under Article 6(1)(c) CRMA.
88. The overall aim of the Habitats Directive, as defined in Article 2, is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora. The measures taken under the Directive are to ensure that the species and habitat types covered achieve 'favourable conservation status', i.e. that their long-term survival is secured across their entire natural range within the EU. For that purpose, where a project may affect a Natura 2000 site, Article 6(3) of the Habitats Directive requires an appropriate assessment of its implications for the site's conservation objectives. This obligation arises even when the site lies outside the project boundary. A project cannot claim to prevent or minimise environmental impacts — as required by the CRMA — if it bypasses or conducts an inadequate assessment under the Habitats Directive.
89. The main purpose of the Water Framework Directive, as defined in Article 1, is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, with the aim of achieving good status for all water bodies and ensuring sustainable water use based on long-term protection of water resources. The CRMA requirement to prevent and minimise impacts extends to water resources, where the WFD sets a legal obligation to prevent deterioration of water status (Article 4 WFD) and achieve good ecological and chemical status. Any authorisation of a strategic project that compromises those objectives and fails to properly apply the directive cannot be seen as sustainable under the CRMA.
90. In light of the above, compliance with Article 6(1), point (c) CRMA cannot be assessed in isolation. It must be interpreted in conjunction with other relevant EU environmental legislation,

⁷⁹ Environmental Impact Assessment of Projects Rulings of the Court of Justice of The European Union, p. 9, available at: <https://op.europa.eu/en/publication-detail/-/publication/a831d19b-6f99-11ed-9887-01aa75ed71a1/language-en>.

⁸⁰ Mining projects are listed as both Annex I projects which must be subject to an EIA in all cases, and as Annex II projects, which are considered likely to have significant effects depending on their nature, size and location.

⁸¹ Judgment of 14 March 2013, *Leth*, C-420/11, EU:C:2013:166, paragraph 28.

which together establish the substantive and procedural legal foundations for effective environmental protection. This integrated approach is essential to ensure the proper operationalisation and enforcement of the CRMA. **Therefore, in assessing environmental sustainability under Article 6(1), point (c) CRMA, the Commission is bound to examine the EIA and other assessments made under EU environmental law.** This was confirmed by the General Court in relation to the approval of national plans by implementing decisions, relevant by analogy: *“the Commission has its own decision-making power in the procedure for the approval of a [...] Plan, the exercise of which necessarily involves examining the content of that plan”*.⁸² It follows that, where provisions and principles of EU law *“form part of the rules the observance of which by proposed [plan] is monitored by the Commission in the approval procedure”*, the Commission is accountable for verifying such compliance.⁸³

4.2. First plea: there are serious doubts that the Project fulfils the criteria for a strategic project under Article 6(1), point (c) CRMA

91. The Applicants submit that there are serious doubts that the Project fulfils both environmental and social sustainability criteria under Article 6(1), point (c) CRMA. In the following section, the Applicants will address firstly, the Project’s failure to comply with the sustainability requirement in relation to the monitoring, prevention and minimisation of environmental impacts (section 4.2.1) and secondly, its failure to comply with the sustainability requirement in relation to the prevention and minimisation of socially adverse impacts (section 4.2.2).

4.2.1. In relation to the monitoring, prevention and minimisation of environmental impacts

92. As explained in section 4.1.2, assessing whether strategic projects would be implemented sustainably, in particular in regards to monitoring, prevention and minimisation of environmental impacts, as required by Article 6(1), point (c) CRMA, needs to be assessed in conjunction with existing EU environmental legal framework. The Applicants’ assessment below identifies key shortcomings in the EIA study and highlights the failure of national authorities to conduct a proper evaluation, resulting in breaches of the EIA Directive, WFD, and the Habitats Directive which make the Commission’s conclusion that the Project met the sustainability requirements of Article 6(1), point (c) CRMA at the date of the Decision implausible.

4.2.1.1. Non-compliance with Article 3, Article 5 and Annex IV of Directive 2011/92/EU, Article 4(1) and (7) of Directive 2000/60/EC and Article 6(3) of Directive 92/43/EEC: identified deficiencies in the Environmental Impact Assessment (EIA) Study

⁸² Order of the General Court of 17 October 2024, *Complejo Agrícola Las Lomas v. Commission*, T-729/22, ECLI:EU:T:2024:711, paragraph 85.

⁸³ *Idem*, paragraphs 91-92.

93. The Applicants submit that the EIA for the Project does not satisfy the requirements of Articles 3 and 5 of the EIA Directive, Article 4(1) and (7) of the WFD and Article 6(3) of the Habitats Directive, due to:

- i. Inadequate assessment of water resources - the Modified EIA fails to provide an adequate description of the current state of the environment, in particular of factors specified in Article 5(1) (Annex IV, points 3 and 4) of the EIA Directive; The assessment lacks a sufficient assessment of likely significant effects (Annex IV, point 5), including in the context of climate and cumulative impacts; The assessment proposes unreliable or insufficient mitigation measures (Annex IV, point 7); The Project fails to properly assess impacts on environmental objectives of the WFD (Article 4(1) and 4(7) WFD).
- ii. Inadequate biodiversity impact assessment – The Modified EIA fails to properly assess impacts on Natura 2000 sites designated for Iberian wolf, as required by Article 6(3) of the Habitats Directive.
- iii. Failure to assess risks of major accidents - The Modified EIA does not sufficiently describe the Project in terms of its physical characteristics (Annex IV point 1(b) of the EIA Directive) and does not contain an adequate evaluation of the risks of major accidents (Annex IV point 8 of the EIA Directive).

4.2.1.2. Inadequate assessment of water resources

94. In the original version of the project, the Evaluation Committee identified very significant negative impacts in terms of the determining factors for the evaluation, namely water resources, ecological systems, landscape and socioeconomics (also including transversal factors such as the noise environment, vibrations and air quality). Given that these impacts were not minimised, the Evaluation Committee considered that they made the project unfeasible in its initial configuration, and therefore issued an unfavourable opinion in June 2022.⁸⁴

95. A modified version of the Project was therefore presented, which involved altering various elements, including the assessment of water resources. As stated in its latest Opinion, the Evaluation Committee confirmed that:

“The water resources factor is decisive in the impact assessment carried out. The impacts on surface and underground water resources are particularly important in this project, given the size of the operation, the fact that the area under study directly interferes with several water lines (as is the specific case of the Grandão cut⁸⁵), the possibility of interference with the water table, the effects related to high water consumption and the possibility of anomalies that could jeopardise the state of the bodies of water directly affected and those downstream. Impacts on water resources will occur continuously throughout all phases of the project and even after the end of operations.”⁸⁶

96. The original version of the Project planned to use water drained directly from the mining cuttings —estimated at 79,000 m³/year — as the primary supply for the mine and support facilities,

⁸⁴ DIA, p. 4.

⁸⁵ In mining, a "cut" refers to an area where earth or rock is removed, generally to access an ore deposit or for other construction purposes.

⁸⁶ DIA, p. 13.

supplemented by three additional water source options. It also included a network of diversion channels and 13 sediment control structures for managing disturbed waters, along with three surface runoff diversion structures. However, after the Covas River intake was deemed unfeasible by the Evaluation Committee, the modified Project now relies on Environmental Control Reservoirs (RCA) and Sediment Control Reservoirs (RCS1 and RCS2), with a combined capacity of 1,125,265 m³, to supply water for ore processing, dust suppression, and domestic use. In exceptional cases, clean water reservoirs RA1 and RA3—together holding 160,372 m³—may also be used.

97. The current version of the Project, therefore, provides for the construction of three types of water management structures:

- three clean water reservoirs (RA1, RA2 and RA3), upstream of Cortas do Grandão and Cortas do Pinheiro, with the aim of retaining surface run-off upstream to protect exploitation areas;
- two sediment control reservoirs (RCS1 and RCS2), with the function of capturing fine sediments from cuttings;
- an environmental control reservoir (RCA), to contain and temporarily store contact water for reuse in processing.

These structures are rockfill dams with upstream concrete walls (concrete face rockfill dams—CFRD) and include spillways.

98. The source of the water for the three clean water reservoirs are existing water lines. RA1 and RA2 dam the water lines that cross the site where the Grandão Cut will be located and RA3 those that cross the Reservoir Cut area. They also collect surface run-off upstream from the mine. These reservoirs are located upstream of the Project and water can be gravity-fed from them to the final discharge positions in tributaries of the Covas River. The capacity of reservoirs is outlined on page 142 of the Modified EIA. Water Supply Structures – two Sediment Control Reservoirs and an Environmental Control Reservoir, are to meet the water needs of all the activities at Mina do Barroso. The capacity of RCA, RCS1 and RCS2 is outlined on pages 142 and 143 of the Modified EIA.

99. The expected water consumption of the project is shown on table 6.5 (page 146) of the Modified EIA, amounting to 811,984 m³/year of water for the Year 1 and 735, 970.1 m³/year from the Year 2 onwards.

100. In Chapter 10.3.1 of the Modified EIA, the study provides for the assessment of Project's impact on water resources. The study states that: *"Impacts on water resources will occur continuously throughout all phases of the project and are expected to continue to be affected for a period of time, even after the mining operation has closed."*

101. The Modified EIA identifies significant, often irreversible impacts on water resources from the construction and operation of multiple reservoirs (RA1–3, RCS1, RCA), particularly in the Covas River basin. The study explains that damming tributaries like the Corgo do Fojo and altering natural drainage will disrupt flow, sediment transport, and water quality, with vegetation clearance and earthworks increasing sediment loads. Reservoirs will transform flowing streams into still water bodies, reduce runoff, and cause permanent changes to hydromorphology. High-retention reservoirs such as RA3 and RCA will divert water for mining with minimal return flow,

destroying tributary beds—some permanently, like at the Pinheiro cut, due to the tailings storage facility. Sediment trapping will lead to upstream accumulation and downstream erosion, with effects that are largely non-mitigable, local, and of varying magnitude, but often permanent and negative.⁸⁷

102. The Modified EIA highlights that groundwater levels will be significantly lowered during the exploration of the Grandão and Pinheiro cuts, with certain, potentially regional impacts, especially at Grandão, where vertical drainage will cause substantial water table decline. The Modified EIA admits that these changes may affect groundwater-dependent ecosystems and local water availability, stressing that public supplies are unlikely to be impacted. While the impact is temporary and varies seasonally, it is considered significant. To mitigate risks to local users and agriculture, the study proposes a monitoring plan and compensatory water supply from clean water reservoirs.⁸⁸
103. The Modified EIA explains that during the construction of Sediment Control Reservoir 2 (RCS2) and a diversion channel, local drainage patterns will be altered, whilst the natural flow regimes in tributaries of the Covas River will be disrupted. These structures will act as physical barriers, affecting sediment transport and hydrological balance, with construction activities like vegetation removal and blasting increasing sediment loads. While the impact on torrential streams is considered minor in terms of flow, the overall effect is negative, direct, probable, and locally permanent. Excavation for RCS2 poses the greatest risk to groundwater, with probable, temporary impacts on both water quality and quantity. Although runoff reduction is considered minor (up to 0.8%), it is expected that direct and irreversible impacts will occur on smaller watercourses, including the destruction of streambeds and banks for mining. Restoration is planned post-closure, but significant temporary impacts on local hydrology remain.⁸⁹
104. During the exploration phase of the Noa and Reservoir cuts, groundwater drawdown from pumping into RCS2 will cause a certain, local, and significant—though temporary—impact, with recovery expected during closure. While public supplies are unlikely to be affected, it is stated that a monitoring plan is needed due to hydrogeological uncertainty. The project will also affect several sub-basins in the Covas and Beça river systems, though the overall regional impact is expected to be minor.⁹⁰
105. Despite this comprehensive evaluation of the water impacts, the Modified EIA contains limited information concerning the exact water sources. For instance, on page 141 of the Modified EIA it is stated that, “*the water sent to and retained in the Environmental Control Reservoir (RCA), Sediment Control Reservoir (RCS1 and RCS2), and in exceptional cases, RA1 and RA3*”, will be used to meet the water needs of all the activities of the mine. It is then explained that “*the source of the water are the existing water lines. RA 1 and RA 2 dam the water lines that cross the site where the Grandão Cut will be located) and RA 3 those that cross the Reservoir Cut area. They also collect surface run-off upstream of the farm.*”⁹¹
106. RCA is to be filled with surface runoff and leachate from the Tailings Storage Facility (‘TSF’) - potentially contaminated sources - yet it is unclear whether this water is meant for human

⁸⁷ Modified EIA, chapter 10.3.

⁸⁸ Modified EIA, pp. 386-387.

⁸⁹ Modified EIA, chapter 10.3.3.2.

⁹⁰ Modified EIA, chapter 10.3.3.2.

⁹¹ Evaluation Committee Opinion, p. 31.

consumption or limited to industrial use. Similarly, RCS1 and RCS2 will collect runoff from heaps and mining pits, further compounding contamination risks. Only RA1, RA2, and RA3 will capture water from natural streams, and these are confined to Phase 1. For Phase 2, RCS2 appears to be the sole water source, with no clear storage infrastructure beyond diversion channels (VD1 and VD2).⁹² Moreover, compounding these concerns, the EIA identifies daily water deficits at the start of operations, as the wash plant and mining activities depend on water sourced from the reservoirs. It concludes that the reservoirs must be initially filled to ensure operational readiness. Yet, no sources are identified for this critical initial filling, so it is unclear whether this will come from the existing water lines or from some other sources.⁹³

107. Even more concerning is the complete absence of any reference to groundwater sources as a potential supply, despite the project's significant impact on local aquifers, as explained in the EIA. Furthermore, in their opinion to the modified project, the Evaluation Committee pointed to the fact that *"at the time the EIA was drawn up, there was no data on the aquifer productivity (e.g. specific flow, transmissivity, storage coefficient) of the formations intersected by the concession area, and no study had been carried out in this regard"*.⁹⁴ Consequently, all assessments of groundwater impacts are based on a fundamental lack of knowledge about the quantity and quality of groundwater resources.
108. Apart from the lack of this crucial environmental baseline description as required by Annex IV (3) and (4) of the EIA Directive, the EIA further lacks proper description of the Project's likely significant environmental effects, including those from resource use, cumulative impacts, and climate-related effects, as required by Annex IV(5) of the Directive. For instance, the assessment fails to provide any meaningful calculations or estimates of the actual water availability from the proposed sources — particularly when considered cumulatively with other local water demands and future projections under climate adaptation scenarios.
109. On cumulative water uses, the Modified EIA makes no reference to existing water uses in the region. As noted by the Evaluation Committee (p. 80), the concession area includes several groundwater abstractions, some serving public supply, underscoring the strategic importance of these resources. The Evaluation Committee further emphasised that, given the local reliance on agriculture and extensive livestock farming, the existing inventory likely underrepresents the true extent of groundwater use, including natural springs.⁹⁵ In the present case, the Modified EIA not only fails to mention any other uses in this sense, but it also fails to assess and quantify the actual availability of water in the stream where water is foreseen, despite the project's significant water use.
110. Chapter 10.13 of the Modified EIA fails to reach any substantive conclusions regarding the cumulative impact on water availability from other projects considered in the analysis. Similarly, the Evaluation Committee's Opinion does not provide any meaningful assessment of this issue, despite water availability being a central concern raised repeatedly during public consultations.⁹⁶ This omission raises significant concerns about the Project's potential to compete with or compromise essential regional water needs, particularly in the absence of evidence demonstrating that its substantial water consumption requirements can be sustainably met. This

⁹² Modified EIA, p. 141.

⁹³ Modified EIA, p. 145.

⁹⁴ Evaluation Committee Opinion, p. 81.

⁹⁵ Evaluation Committee Opinion, p. 80.

⁹⁶ See comments from public consultations from page 232 of the Evaluation Committee Opinion.

concern becomes even more pressing in light of Independent CIA – an independent cumulative impact study carried out by Instituto do Ambiente e Desenvolvimento da Universidade de Aveiro in July 2021⁹⁷ - highlighting that altering natural watercourses and extracting surface and groundwater to support mining operations is likely to produce cumulative impacts, further straining water availability for existing uses and compounding pressures on already vulnerable local resources.⁹⁸

111. On climate adaptation, the EIA references the Alto Tâmega Intermunicipal Climate Change Adaptation Plan, which includes the municipality of Boticas (where most of the project area is located) to assess climate-related vulnerabilities. The plan identifies key risks for the region, including reduced water availability due to declining average annual rainfall, increased flooding and infrastructure damage from more frequent extreme rainfall events, heightened wildfire risk, and more intense and prolonged droughts and heatwaves.
112. While the Modified EIA acknowledges these risks, it fails to meaningfully integrate them into the project's water balance. This failing was also mentioned by the Evaluation Committee, which stated (page 74) that given the mine's high water consumption, it is essential that long-term climate scenarios be factored into water availability estimates.⁹⁹ By making this point, the Committee acknowledges that the current assessment is incomplete and that the project risks severely underestimating future water scarcity. This oversight could have serious consequences, further threatening local ecosystems, agriculture, and community resilience already strained by climate change, which was also acknowledged by the Evaluation Committee that noted that the project adds competitive pressure on water resources and, through cumulative effects, could jeopardize water availability - especially as climate change is expected to reduce supply.¹⁰⁰
113. Given the absence of a clear and comprehensive description of the water resources likely to be significantly affected by the Project – primarily due to insufficient baseline data on water sources, groundwater conditions, and overall water availability – the Applicants submit that **it was not possible to reach a substantiated conclusion on the Project's actual impact, as required under Article 5(1)(b) and Annex IV(5) of the EIA Directive**. This shortcoming is further compounded by the failure to adequately assess the likelihood and severity of impacts in the context of climate adaptation and cumulative pressures, which raises serious concerns about the Project's potential to over-extract or degrade local water supplies, threatening communities that rely on these resources for drinking, agriculture, and industry, as well as ecosystems. Without this foundational information, it is impossible to determine whether the project is environmentally sustainable or to assess the risks of water scarcity, especially in the context of climate vulnerability or cumulative effects. As a result, **the gravity of the Project's overall impact on water resources remains undetermined, casting serious doubt on the integrity of the environmental assessment process and the sustainability of the Project as a whole**.
114. Given that the Project's assessment is based on incomplete baseline data on water sources, groundwater conditions, and overall water availability, and due to the failure to adequately assess the likelihood and severity of impacts in the context of climate adaptation and cumulative pressures (which consequently prevented any substantiated conclusion on the project's actual

⁹⁷ See section Background, para. 5.

⁹⁸ Independent cumulative impact assessment, Chapter 5.5.1.

⁹⁹ Evaluation Committee Opinion, p. 74.

¹⁰⁰ Evaluation Committee Opinion, p. 127.

impact on water resources and availability of water), it is clear that the mitigation measures proposed are not based on appropriate analysis. Therefore, with regard to point (c) of Article 5(1) of the EIA Directive, the study fails to describe effective and possible measures, by which the impact on water resources could be mitigated.

115. In addition to the concerns highlighted above, it is also **important to critically examine the measures actually proposed**. Chapter 11 of the Modified EIA outlines various mitigation measures tailored to different phases of the project. While the Modified EIA does, in principle, include “proposed measures to avoid, minimise or compensate for negative impacts,” as required by Annex IV(7) of the EIA Directive, it is important to stress that in regards to the identified impacts on water resources, the Modified EIA in many occasions relies on the proposed Surface and Groundwater Monitoring Plans as a central component of its mitigation strategy. These plans are presented both as mitigation measures in Chapter 11 and as monitoring tools in Chapter 13. This dual role raises questions about whether monitoring alone can be considered a sufficient or effective mitigation measure in the absence of clearly defined, proactive interventions.
116. The Evaluation Committee gave a favourable conditional opinion to the Modified EIA, although stressing that *“the project continues to have significant impacts on ground and surface water resources, although this time, by making provision for filling in the ditches, changing the location of the waste facility and replenishing the water lines, these impacts may be partially reversed, thus ceasing to be permanent and definitive as was the case in the initial version of the project.”*¹⁰¹ However, in several places of the Opinion, the Committee also relies on the proposed monitoring plans as a suitable measures to ensure minimisation of impact on water resources.¹⁰²
117. Crucially, regarding the surface water management option, the Committee agrees that the proposed measures are unlikely to satisfactorily mitigate the significant impacts identified. It emphasises the necessity of implementing actions to preserve the water quality of the River Covas and its tributaries, prevent groundwater contamination, and maintain ecological flow. However, the Committee does not specify which measures would effectively achieve these objectives, which questions the Project Promoter’s actual obligation to implement these specific measures.¹⁰³
118. Even more concerning is the explanation provided under the Monitoring Programmes in subchapter 1.3 of the Opinion (page 288), where it is stated that the purpose of monitoring groundwater resources is to *“monitor the availability and quality of groundwater from existing sources in the area of influence of the exploitation.”* This is a task that should have been undertaken during the EIA itself, rather than deferred to the monitoring phase.
119. With that in mind, it is important to clarify the difference between the mitigation measures and monitoring measures which are clearly distinguished under the EIA Directive. Firstly, under Article 5(1)(d), the environmental impact assessment must include *“a description of the measures envisaged to avoid, prevent, reduce and, if possible, offset any identified significant adverse effects on the environment.”* Annex IV(7) further requires a description of the mitigation measures *“and, where appropriate, of any proposed monitoring arrangements (for example the*

¹⁰¹ Evaluation Committee Opinion, p. 93.

¹⁰² Evaluation Committee Opinion, pp. 84, 86, 88, 93, 94 and 244.

¹⁰³ Evaluation Committee Opinion, p. 244.

preparation of a post-project analysis)." Therefore, it is clear that the two do not serve the same purpose, since mitigation measures are meant to avoid, reduce, or offset impacts before they occur, whilst the monitoring measures track the effectiveness of mitigation and detect unexpected effects.

120. **Monitoring does not substitute for the obligation to avoid or reduce harm ex ante and a project cannot be approved based solely on post-factum observation** without having first demonstrated that effective, enforceable mitigation measures are in place to address the likely significant effects. Simply deferring impact control to the monitoring phase undermines the preventive purpose of the EIA Directive, which is to ensure that public and private projects are assessed for their potential environmental effects before they are authorised. As clarified by the Court of Justice, the information which must be supplied by the developer under Article 5(1) and Annex IV of the EIA Directive, also relate to that purpose.¹⁰⁴
121. In terms of compliance with the WFD, the Project Promoter provided together with the Modified EIA, an autonomous document verifying whether the project would jeopardise environmental objectives of the Article 4(1) of the WFD and therefore fall within the exceptions/derogations provided for in Article 4(7) of that directive.¹⁰⁵ This assessment concluded that there would be changes to the elements listed in the WFD in the directly affected tributaries of the River Covas (Management Area of the River Covas and Management Area of the River Beça), but that the physical changes to be made with the implementation of the project will not directly affect the main watercourse of these Management Areas (which is the River Covas), but rather permanent tributary watercourses with strong seasonal variation and torrential watercourses.¹⁰⁶
122. The assessment on impacts on WFD objectives concluded that given the scale of the project within the affected Management Areas, its impact is considered insignificant and that it was not certain that the physical alterations of Fojo, Cortiços, Misarela, and Pinheiro - tributaries of the Covas River, are likely to compromise environmental objectives or alter the quality of key ecological elements. The assessment then clarified that these changes are temporary and that they will be reversed during the operational phase through restoration and ecological requalification, aiming to replicate pre-project conditions.
123. The assessment of the Evaluation Committee finally concluded that while the Project may have some significant impacts, it is not expected to compromise the environmental objectives of the WFD for the affected Management Areas, provided all mitigation measures from the Modified EIA are implemented. To ensure their effectiveness and support adaptive management, the Committee again relies on a monitoring programme for surface and groundwater resources.¹⁰⁷ However, the Committee acknowledged that in case of non-compliance with the defined minimisation measures and others that may be imposed in the implementation project phase, impacts may occur.¹⁰⁸
124. Therefore, it is important to look at the proposed measures. Namely, in chapter 10.3 of the Evaluation Committee's opinion, two compensation measures are proposed, namely: (i) Environmental and Landscape Requalification Study of the Covas River water body

¹⁰⁴ Judgment of 14 March 2013, *Leth*, C-420/11, EU:C:2013:166, paragraphs 25-31 and 35-36.

¹⁰⁵ Modified EIA, Annex IV - Water Resources - VOLUME III.

¹⁰⁶ Evaluation Committee Opinion, p. 90.

¹⁰⁷ Evaluation Committee Opinion, p. 93.

¹⁰⁸ Evaluation Committee Opinion, p. 93.

(PT03DOU0204), in the municipality of Boticas and part of the Beça River water body (PT03DOU0300A) up to the confluence of the Covas River with the Beça River, in the municipality of Ribeira de Pena, and (ii) Development of an agreement with the APA, in which Savannah undertakes to assist in all the studies/work deemed necessary by the competent authority, in order to achieve the objectives of the Water Framework Directive for obtaining good status in the Covas River body of water.

125. The necessity of the proposed measures calls into question the validity of the conclusions reached in the Modified EIA that the Project would not affect the environmental objectives of the WFD, thereby revealing an internal inconsistency in the evaluation. Namely, if the EIA assessment concludes that the status of the Covas and Beça Rivers will remain unaffected, the necessity of a requalification study—and the developer’s commitment to support efforts aimed at achieving the WFD objectives for these rivers—appears contradictory and undermines the credibility of the assessment’s findings.
126. In this regard, the CJEU has established that Article 4(1)(a) of the WFD imposes binding obligations¹⁰⁹ and that any deterioration in the status of a water body — regardless of whether it is temporary, transitory, or short-term — must be avoided due to the potential for adverse environmental effects or harm to human health.¹¹⁰ Consequently, a Member State **must refuse** authorisation for any project likely to cause such deterioration or jeopardise the achievement of good surface water status, unless the project qualifies for a derogation under Article 4(7) of the Directive.¹¹¹
127. Furthermore, it must be emphasised that any derogation under Article 4(7) of the WFD requires strict compliance with all its conditions. The burden lies with the developer to demonstrate that each of the following criteria is fully satisfied: (a) all practicable steps have been taken to mitigate the adverse impact on the status of the water body; (b) the reasons for the modifications or alterations are clearly set out and justified in the relevant river basin management plan; (c) those reasons are of overriding public interest and/or the benefits to human health, safety, or sustainable development outweigh the environmental and societal benefits of achieving the Directive’s objectives; and (d) the beneficial objectives of the modifications or alterations cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means that would present a significantly better environmental option.
128. The existence of an environmental and landscape requalification study does not, in itself, satisfy the substantive obligations imposed by the WFD. Unless any potential deterioration is thoroughly assessed and a derogation under Article 4(7) is properly invoked and justified, the project remains at risk of violating EU water law. A voluntary commitment to support future studies cannot substitute for these binding legal requirements, nor does it guarantee the effectiveness or enforceability of the measures mandated under EU law.
129. Accordingly, the proposal of compensatory measures that contradict the conclusions of the environmental assessments casts serious doubt on the validity of those conclusions. This

¹⁰⁹ Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraphs 43 and 47.

¹¹⁰ Judgment of 5 May 2022, *Association France Nature Environnement*, C-525/20, ECLI:EU:C:2022:350, paragraph 39.

¹¹¹ Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 50.

inconsistency undermines the credibility of the assessment's findings regarding the potential impacts on the environmental objectives protected under Article 4(1) of the WFD.

130. **Given the clear deficiencies in the EIA assessment identified above, particularly the lack of a comprehensive and reliable description of the current and future water resources and water availability, as well as inadequate assessment of potential impacts on the environmental objectives under Article 4(1) of the WFD, there are serious doubts about the environmental sustainability of the Project. It is thus implausible that the Commission could find that the requirement under Article 6(1), point (c) CRMA was met .**

4.2.1.3. Inadequate assessment of impact on biodiversity

131. In the Original EIA, section 1.12 of Volume II provided an outline and assessment of the Ecological Systems with the idea to characterise the natural values present in the study area and to present and assess the foreseeable impacts on flora and fauna resulting from the project's actions. The study focused mainly on the assessment of flora and fauna stating that the study area for the implementation of the project does not overlap with any classified areas or Important Bird Areas (IBA), however it listed several classified areas nearby.¹¹²
132. With regards to the sites protected under the Habitats Directive, the study mentions namely the Alvão/Marão SAC (PTCON0003) and Peneda/Gerês SAC (PTCON0001), both designated for the protection of, among others, mammals, in particular wolves (which has the largest population at national level). The Alvão/Marão SAC (PTCON0003) is located around 7km in the south-east from the concession area, whilst the Peneda/Gerês SAC (PTCON0001) is located around 13.8km in the north-west of the concession area.¹¹³
133. Aside from these and similar references, the study did not include any assessment of the impacts on the Natura 2000 sites themselves.
134. In the Evaluation Committee's Opinion on the Original EIA, the only reference to impacts on the Natura 2000 site appeared in the section summarising public consultation comments, without any clear assessment or position from the Committee itself.¹¹⁴
135. In the Modified EIA, the developer was obliged to include a reassessment of certain environmental factors, including among others Ecological Systems – Iberian Wolf Range and Other Ranges.¹¹⁵ The assessment focused again primarily on the impact on species, pointing that the project does not intersect with any sensitive areas.¹¹⁶
136. The Modified EIA reassessed the reference situation for the Iberian wolf seeking to respond to the limitations identified in the Original EIA. The study concluded regular wolf presence in mountainous areas, especially to the west and north, with occasional sightings in the southeast

¹¹² Original EIA, Volume II, p. 172.

¹¹³ Original EIA, Volume II, pp. 173-174.

¹¹⁴ Opinion of the Evaluation Committee on the Original EIA, p. 298 and 387. Similar comment was raised during the public consultations for the Modified Project, see page 231 of the Evaluation Committee Opinion.

¹¹⁵ Evaluation Committee Opinion, p. 67.

¹¹⁶ Modified EIA, Section 5, p. 64.

(Alvão range). Two packs—Barroso (west) and Leiranco (north)—were confirmed in both monitoring years, with breeding observed, whilst the Minhéu pack likely persists in the southeast. High wolf activity is expected north and west of the Mina do Barroso concession, whilst the Covas do Barroso area was expected to show low suitability, occasional passage was deemed possible.¹¹⁷

137. The environmental study acknowledges various potential impacts on Iberian wolf, including exclusion effects, mortality, and habitat loss during both the construction and operation phases. Specifically, it notes that the exclusion effect may cause the displacement of wolf populations. For the habitats loss, the study states that the impacts derive mainly from the destruction of vegetation cover and changes to the landscape, which will influence the use of space not only by the wolf but also by its domestic and wild prey, but the impacts were considered negligible and of little significance.¹¹⁸
138. While the study concludes that the project is not expected to be an obstacle to wolf movements and will not cause an interruption in the genetic flow between packs in nearby population centres (Peneda/Gerês and Alvão/Padrela)¹¹⁹, this assertion is made without the benefit of an appropriate assessment as required by Article 6(3) of the Habitats Directive, even though the two Natura 2000 sites, namely the Alvão/Marão SAC (PTCON0003) in the south-east from concession area, and Peneda/Gerês SAC (PTCON0001) in the north-west of the concession area, are designated for wolf species.
139. This isolated statement, whilst implicitly recognising that the project **may have** effects beyond the boundaries of designated sites, fails to meet the Directive's strict precautionary standard. The likelihood of significant effect may arise not only from plans and projects located within a protected site, but also from those located outside a protected site.¹²⁰ Moreover, the procedure under Article 6(3) is triggered not by certainty, but follows from the mere probability that such an effect attaches to that plan or project.¹²¹ Under the settled case law of the CJEU¹²², any project likely to have a significant effect on a Natura 2000 site must be subject to an appropriate assessment of its implications for the site's conservation objectives, irrespective of whether the effect is deemed significant by the developer. The absence of such an assessment despite the acknowledged presence of potential impacts, constitutes a clear breach of Article 6(3).
140. On the cumulative impact, the study recognises the potential for cumulative impacts on the Iberian wolf and its prey species over the lifetime of the project, noting that these may result from existing and planned infrastructure, including nearby mining projects (e.g. Romano and Borralha) and hydroelectric developments. It concludes that these cumulative effects may contribute to gradual habitat reduction, fragmentation of the landscape, and potential displacement of wolves into degraded or unsuitable areas. The study further acknowledges that if wolves are forced into the project area—already at risk of habitat degradation—negative

¹¹⁷ Modified EIA, Chapter 10.8.

¹¹⁸ Evaluation Committee Opinion, pp. 158 and 160 and Modified EIA, Chapter 10.8.

¹¹⁹ Evaluation Committee Opinion, p. 158; Modified EIA, Chapter 10.8.

¹²⁰ Judgment of 26 April 2016, *Commission v Germany*, C-142/16, ECLI:EU:C:2017:301, paragraph 29.

¹²¹ Judgment of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee*, C-127/02, ECLI:EU:C:2004:482, paragraphs 39–44.

¹²² e.g. Judgment of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee*, C-127/02, ECLI:EU:C:2004:482.

effects on the species could result, particularly due to the loss of shelter and breeding grounds.¹²³

141. Despite these admissions of potential significant effects, the conclusions of cumulative impacts were unsupported by the required formal, rigorous and appropriate analysis required by Article 6(3) of the Habitats Directive. In this context, each element of the plan or project should be examined in turn and their potential effects should be considered in relation to each of the species or habitat types for which the site has been designated. This is important because the Habitats Directive ensures the protection of species listed in Annex IV under Article 12. Some of these species may also appear in Annex II, thereby benefiting from the conservation measures outlined in Article 6 within the Natura 2000 sites where they are present. This is the situation with the wolf, for which the two sites in close proximity of the mine have been designated, and which therefore benefits from both the chapter on conservation of natural habitats and habitats of species and the chapter on protection of species. Therefore, assessment of effects on the conservation status of the two Natura 2000 sites is needed, since the scope and the nature of the relevant provisions are different.
142. Although the meaning of the concept of 'appropriate assessment' within Article 6(3) of the Habitats Directive does not define any particular method for carrying out such an assessment, according to the wording of that provision, an appropriate assessment of the implications of the plan or project for the site concerned must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects **in view of the site's conservation objectives**.¹²⁴ This clearly indicates that such assessment, even in the context of cumulative assessment, is different from the one mandated under the EIA Directive, namely Article 5(1) and Annex IV.¹²⁵
143. Such an assessment therefore implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those conservation objectives must be identified in the light of the best scientific knowledge in the field. Those objectives may, as is clear from Articles 3 and 4 of the Habitats Directive, in particular Article 4(4), be established on the basis, inter alia, of the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I to that directive or a species in Annex II thereto and for the coherence of Natura 2000, and of the threats of degradation or destruction to which they are exposed.¹²⁶
144. Critically, considering the current's project cumulative impact assessment, it is worrying that these effects have the potential to be even greater. The Independent CIA analysis clarifies that in addition to some of the existing projects such as the hydropower plants – which constitute an insurmountable barrier to the movement of the species in the region – other projects have

¹²³ Evaluation Committee Opinion, p. 172; Modified EIA, Chapter 10.13.

¹²⁴ Judgment of 7 September 2004, *Landelijke Vereniging tot Behoud van de Waddenzee*, C-127/02, ECLI:EU:C:2004:482, paragraphs 52 - 61.

¹²⁵ This was further confirmed by the Court in the judgment of 13 December 2004, *Commission v Ireland*, C-418/04, ECLI:EU:C:2007:780, paragraph 231: 'Those two (EIA and SEA) Directives contain provisions relating to the deliberation procedure, without binding the Member States as to the decision, and relate to only certain projects and plans. By contrast, under the second sentence of Article 6(3) of the Habitats Directive, a plan or project can be authorised only after the national authorities have ascertained that it will not adversely affect the integrity of the site. Accordingly, assessments carried out under the EIA Directive or SEA Directive cannot replace the procedure provided for in Article 6(3) and (4) of the Habitats Directive'.

significant cumulative effects on wolf populations, particularly on the Alvão populations and overall on the Alvão-Padrela population centre, **which includes packs in the Alvão-Marão SCI area.**¹²⁷ This is the case, in particular, of wind farms and motorways implemented in the area between the Gerês and Alvão mountains, with Barroso in the middle zone. The assessment concludes that existing infrastructure has already reduced habitat availability and fragmented the landscape, restricting wolf movement and genetic flow. The project will exacerbate these issues by causing further habitat loss, fragmentation, and disturbance, disrupting dispersal routes and altering the species' use of the area. These cumulative impacts will worsen the Iberian wolf's already critical conservation status and could significantly threaten its long-term survival. In particular, the project will intensify the barrier effect in the Gerês/Alvão corridor, further hindering movement and reducing genetic exchange.¹²⁸

145. The Modified EIA finally concluded that the exclusion and habitat loss effects from the Mina do Barroso project are local, temporary, and minor, due to the wolves' occasional use of the area. These impacts are minimizable, insignificant, and reversible with planned mitigation and compensation measures and post-closure landscape restoration.¹²⁹
146. The Evaluation Committee concluded that the Iberian wolf is likely to avoid the project area due to the mine's continuous 24-hour operations, including ore washing and material transport. Although this may not greatly affect the overall range of local wolf packs, it is expected to increase population fragmentation in north-central Portugal. This could isolate the Barroso and Alvão/Marão groups, leading to reproductive isolation, reduced genetic diversity, and a higher risk of local extinction. Additionally, the project may reduce food availability by decreasing domestic livestock prey and displacing wild prey. These impacts are considered irreversible and particularly severe given the species' already precarious conservation status.¹³⁰
147. Despite the clear identification of potential impacts on sites designated for the protection of the Iberian wolf throughout the EIA, the Evaluation Committee issued a favourable opinion regarding ecological factors.¹³¹ Both the EIA and the Independent CIA acknowledge the probability of significant effects on the relevant Natura 2000 sites, and conservation status of species for which those sites have been designated. Yet, the Committee failed to trigger or even mention the need for an appropriate assessment as required under Article 6(3) of the Habitats Directive. **By proceeding in the absence of such an assessment, the competent authorities have bypassed a mandatory procedural safeguard, thereby endorsing a project assessment that is not compliant with the Directive.** According to the settled case-law, the authorisation can only be granted if the competent national authorities are convinced that it will not adversely affect the integrity of the site concerned, otherwise, **where doubt remains as to the absence of adverse effects on the integrity of the site the authorisation must be refused.**¹³² In this case, the acknowledged risk of impacts on the protected sites triggered the obligation to carry out an appropriate assessment.

¹²⁷ Independent CIA, p. 87.

¹²⁸ Independent CIA, p. 88.

¹²⁹ Modified EIA page, 574.

¹³⁰ Evaluation Committee Opinion, p. 243.

¹³¹ Evaluation Committee Opinion, p. 177.

¹³² Judgment of 24 November 2011, *Commission v Spain*, Case C-404/09, ECLI:EU:C:2011:768, paragraphs 101-105, 128-148.

148. In light of the above, there is evidence that the Project's assessment under the Habitats Directive was inadequate; therefore, there are serious doubts about the environmental sustainability of the Project. It is thus implausible that the Commission could find that the requirement under Article 6(1), point (c) CRMA was met .

4.2.1.4. Failure to assess risks of major accidents

149. One of the changes made in the modified Project was to include a waste facility exclusively for tailings – the Tailings Storage Facility (TSF) with a storage capacity of 20.1 Mt, occupying an area of 28.5 ha. The TSF is a permanent structure where the waste from mineral processing and the activities of the mine would be stored. This material is made up predominantly of sandy silt with low plasticity and a moisture content of less than 15 per cent.¹³³
150. The Modified EIA outlines that approximately 11.5 Mt of waste will be deposited in the TSF by Year 10, with an additional 2.3 Mt by Years 11–12, including waste rock, plant land, and tailings from various project stages. After Grandão extraction, debris will be placed in the excavation void while tailings continue to be stored in the TSF.¹³⁴
151. Concerning the possible risks of rupture of the TSF waste facility causing direct impact on the water quality of the River Covas, the Modified EIA indicates that tailings will be dry-deposited following prior preparation. The facility will be located on a hillside, reinforced by a tailings heap to enhance stability, and situated over 1 km from the river. According to the Modified EIA, a rupture is considered unlikely and even if it occurs, it is unlikely to reach the Covas River.¹³⁵ Chapter 10.12 of the Modified EIA classifies the risk of soil and water contamination as moderate and outlines preventive measures, including proper non-mining waste management, regular equipment maintenance, and worker training. Structures likely to cause soil and water contamination, such as the TSF and the Environmental Control Reservoir, are lined with waterproof coatings to minimise contamination risks.¹³⁶ Other risks associated with the TSF are not mentioned in the Modified EIA, nor the Committee's Opinion.
152. However, there are serious concerns regarding the proper assessment of this facility. Namely, according to the independent *“Evaluation of the Filtered Tailings Storage Facility in the Updated Proposal for the Savannah Lithium Barroso Mine”* by Dr. Steven H. Emerman (**‘Steven H. Emerman Report’, Annex 13**), there are serious concerns regarding the accurate description of the project, such as the physical characteristics and features and risks of possible accidents. Namely, although the TFS would be confined by waste rock, which should be regarded as a dam by industry standards, the Modified EIA never uses the word “dam” to describe the embankment of waste rock, although the embankment of waste rock is repeatedly described as having the exact same functions as a dam.¹³⁷
153. Since the Modified EIA does not characterise the TSF's embankment as a dam, dam safety standards for this facility are not considered, which consequently causes a serious risk to the stability and safety of this facility. Namely, the Modified EIA proposes the use of an upstream

¹³³ Evaluation Committee Opinion, p. 30.

¹³⁴ Modified EIA, Chapter 6.

¹³⁵ Evaluation Committee Opinion, p. 84.

¹³⁶ Modified EIA, Chapter 10.12.

¹³⁷ Steven H. Emerman Report, p. 6.

construction method, meaning that the waste rock would be emplaced on top of the filtered tailings that are being confined. The consequence is that, if the tailings liquefied, the waste rock dam could fail by sliding over or falling into the liquefied tailings. This is why the upstream method of construction is prohibited in a number of countries and denounced by the industry.¹³⁸

154. In the context of the Barroso mine, the problem of lack of confinement after liquefaction is particularly acute in the case of the filtered tailings storage facility because the Modified EIA identifies the tailings as susceptible to liquefaction. However, the design does not further consider the potential for liquefaction. In particular, there is no plan as to what to do with the tailings that will be too wet for proper compaction, either because they left the filter presses with excessive water content or because they were re-wetted by precipitation prior to compaction. Moreover, only one tailings sample — previously used in the Original EIA — was tested, with the Project Promoter confirming that shear strength parameters were not measured but estimated from grain size data and limited classification testing. Based on the above, it should be assumed that the geotechnical properties of the tailings are very poorly known.¹³⁹
155. Apart from not providing the correct classification and description of this facility, the independent analysis also points to the contradictory information on the actual size and the volume of the TSF. Namely, although the Project Promoter variously states the height of the filtered tailings storage facility as 70, 85 or 103 meters, a table from the Project Promoter clarifies that the correct height would be 140 meters.¹⁴⁰ With a height of 140 meters, the filtered tailings storage facility at the Barroso mine would be the second tallest filtered tailings storage facility ever constructed, whilst with a mean annual precipitation of 1649 mm, the site of the Barroso mine would be the third wettest site for any filtered tailings storage facility that has ever been constructed, meaning that the TSF at the Barroso mine would be 97 meters above **or about 230% of the current technological limit.**¹⁴¹
156. Apart from its height, the independent analysis also criticises the expected steepness of the filtered TSF. Namely, due to the steep topography and the steepness of the slopes of the filtered tailings storage facility at the proposed Barroso mine, with a height of 140 meters and storage volume of 7.1 million cubic meters, the facility would be unusually tall for the volume of tailings that would be stored, which would make it 99 meters taller than would be predicted for its tailing storage volume. This is important, because the high ratio of height to tailings storage volume is connected with both the steep topography and the proposed steepness of the slopes of the filtered tailings storage facility.¹⁴²
157. Finally, the Modified EIA suggests that the TSF would be 1,000 meters from the Covas River and on that basis, concludes that tailings are unlikely to reach said river in the event of a failure. However, the Modified EIA fails to delineate the specific pathway that spilled tailings would follow, nor does it provide any modelling, calculation, or empirical data to substantiate the claim that tailings would not travel beyond 1,000 meters.¹⁴³

¹³⁸ Steven H. Emerman Report, p. 14.

¹³⁹ Steven H. Emerman Report, p. 15.

¹⁴⁰ Steven H. Emerman Report, p. 3.

¹⁴¹ Steven H. Emerman Report, pp. 4 and 8.

¹⁴² Steven H. Emerman Report, p. 14.

¹⁴³ Steven H. Emerman Report, p. 6.

158. In contrast, an independent technical study establishes that, given the TSF's height of 140 meters, a failure event would result in a tailings flow extending approximately 2,415 meters beyond the toe of the facility—well beyond the 1,000-meter threshold and directly into the Covas River. Furthermore, once the tailings enter the Covas River or any connected watercourse, they will form a fluidised mass capable of continuing downstream movement, irrespective of whether the initial failure involved liquefaction. Under a worst-case scenario, such as one triggered by an extreme precipitation event, the tailings flow could extend to the Atlantic Ocean.¹⁴⁴ Accordingly, the Modified EIA's conclusion regarding the risks of major accidents and improbability of tailings reaching the Covas River is unsubstantiated, misleading, and contradicted by independent scientific analysis.
159. Therefore, given the absence of a clear and comprehensive description of the TSF as a dam, that geotechnical properties of the tailings are very poorly known due to the only one tailings sample being tested, and due to the contradictory information on the actual size of the TSF, the Modified EIA failed to provide an accurate description of the project, namely the physical characteristic and features of the whole project, as required by Article 5(1) point (a) and Annex IV(1)(b) of the EIA Directive.
160. Moreover, the use of the upstream construction method for the TSF **presents a significant risk of structural failure**, particularly in the event of tailings liquefaction, **which could cause the waste rock dam to collapse into the liquefied mass**. Given the TSF's height of 140 meters, such a failure would result in a tailings flow extending approximately 2,415 meters beyond the facility's toe—far exceeding the 1,000-meter distance to the Covas River—and potentially reaching the Atlantic Ocean under extreme precipitation conditions. Accordingly, the Modified EIA fails to comply with Article 5(1) and Annex IV, point 8 of the EIA Directive, as it does not adequately describe the expected significant adverse environmental effects arising from the project's vulnerability to major accidents or disasters, nor does it propose appropriate mitigation measures.
161. **Consequently, due to the absence of sufficient baseline data and adequate description of the expected significant adverse environmental effects arising from the project's vulnerability to major accidents or disasters, a substantiated conclusion on the project's actual environmental impact could not be reached. Therefore, failure to implement or apply the EIA Directive properly clearly casts serious doubts on any conclusion that a project meets the environmental prevention obligation under Article 6(1), point (c) CRMA.**
162. Given the clear inadequacies in the EIA assessment identified above, particularly the lack of a comprehensive and reliable description of the water resources and water availability - especially in light of climate adaptation needs and cumulative environmental pressures – as well as inadequate assessment of the biodiversity impacts and the risks of major accidents, it is clear that a proper assessment of the direct and indirect effects of the planned projects, under the Article 3 of the of EIA Directive, was hindered.
163. Based on the evidence presented, and the fact that the Committee gave favourable opinion to the shortcoming raised above, and that it did not consider to request for any additional information or conditions from the Project Promoter to supplement those gaps, it is clear that the competent authority did not obtain sufficient information from the Project Promoter and

¹⁴⁴ Steven H. Emerman Report, p. 11.

consequently could not ensure a proper analysis of the direct and indirect effects of the project concerned under Article 3. Thus, in the absence of this information, it was not possible to reach a conclusion on the likely significant impact on the factors protected under Article 3 of the EIA Directive.

164. **Consequently, it is clear that due to all the deficiencies in the EIA identified above, it is implausible that the Commission could find that the Project meets the environmental sustainability requirement under Article 6(1), point (c) CRMA.**

4.2.2. In relation to the prevention and minimisation of socially adverse impacts through the use of socially responsible practices, including respect for human rights

165. The Applicants submit that there are serious doubts that the Project would be implemented sustainably as regards the prevention and minimisation of socially adverse impacts and, thus, that it would meet the corresponding criterion in Article 6(1), point (c) CRMA.
166. According to Article 6(1), point (c) CRMA, a strategic project must be implemented sustainably, among others, with regard to the prevention and minimisation of socially adverse impacts. This is essential to ensure that critical raw materials independence in the EU is not achieved by destroying the traditional life of local communities surrounding the projects and to ensure that they can sustainably co-exist with the mining project during and after its lifespan. The CRMA also recognizes that “*public acceptance of mining projects is crucial for their effective implementation.*”¹⁴⁵ Prevention and minimisation of the negative social consequences of a project are also a key means to strengthen public acceptance.
167. Recital 17 of the CRMA specifies that “*new critical raw materials projects should be planned and implemented sustainably, covering all aspects of sustainability highlighted in the Commission’s publication of 11 September 2021, entitled ‘EU principles for sustainable raw materials.’*” According to this document, social sustainability is a key principle guiding the EU’s efforts to secure critical minerals independence.¹⁴⁶ Social sustainability is specified in particular in Principle 1, which requires sustainable raw materials extraction and processing to *support* (i.e. a positive obligation) human rights, communities and sound governance through, among others:
- a. respect for human rights, cultures, customs and values of people, including indigenous populations, affected by extraction and processing activities;
 - b. a constructive and active dialogue with communities and workers concerned, including those of indigenous people, to advance the social, economic and institutional development of those communities.
168. According to recital 17 to the CRMA mentioned above, these principles must be taken into account in the assessment of the Project’s compatibility with Article 6(1), point (c), in particular while assessing the social impact a decline in environmental conditions will cause. In the context of the Barroso Lithium Mine, the Applicants note that in the region and local communities

¹⁴⁵ Recital 19 of the Preamble, CRMA.

¹⁴⁶ EU principles for sustainable raw materials, DG GROW, 2021, available at: <https://op.europa.eu/en/publication-detail/-/publication/6d541f66-0f81-11ec-9151-01aa75ed71a1/language-en>.

surrounding the Project, social and environmental sustainability are intrinsically linked. As the Applicants have already noted, the Project is located between green mountains in Northern Portugal, surrounded by a FAO agricultural heritage site due to the region's unique traditional livestock farming and agriculture practices built on a close, intelligent relationship with the natural environment and the sustainable resource uses.¹⁴⁷ Agricultural activity, in particular, is of significant importance in the Alto Tâmega region, particularly in the municipalities of Boticas, Montalegre, Ribeira de Pena and Valpaços.¹⁴⁸ Traditional farming, which is practised in harmony with the environment and is heavily dependent on the availability of natural resources such as water and clean air, is practised in the community and serves as the main driver of the local economy.¹⁴⁹ These factors have reinforced social and cultural aspects of great resilience, and the populations, despite the social and economic transformations that Portugal has undergone, have managed to preserve their identity, culture and traditional knowledge over the years.¹⁵⁰ Social structures are closely related to traditional farming practices, therefore, negative impact on the environment on which the local communities depend can fundamentally disrupt and undermine human rights, cultures, customs and values of local communities surrounding the Project.

169. In this section, the Applicants will argue that there is serious doubt that the Project is socially sustainable because (a) the Project's implementation would cause a decline in environmental conditions that will have socially adverse impacts; and (b) these impacts remain unaddressed with no targeted mitigation measures to either prevent or minimise them. The Applicants' doubts are based on the information given during the EIA procedures, in particular the Modified EIA and its assessment by the Evaluation Committee. In addition, various aspects of the Independent CIA made on the original project are still relevant insofar as they concern socially adverse impacts of the Project, which remain unaddressed.¹⁵¹ Finally, the Public Prosecutor's Opinion supports concerns about the Project's social sustainability.

4.2.2.1. Socially adverse impacts

170. One of the key environmental impacts the Project will have is the reduced availability and quality of water. This impact remains improperly assessed and thus unmitigated (see Section 4.2.1.2). Availability of water is fundamental to the landscape and the functioning of the ecosystem, and shortage of clean water would threaten the cultural heritage status of the region.¹⁵² This is expected to result in several serious socially adverse impacts, which These impacts and their interdependencies are described both in the Modified EIA and its assessment by the Evaluation Committee.¹⁵³ The findings of the Independent CIA on socially negative impacts also remain relevant as they are not mitigated in the Modified EIA or other documents.
171. The Modified EIA states that the Project will increase competition for the use of the existing natural resources, *"with direct consequences for the socio-economic framework."*¹⁵⁴ This is

¹⁴⁷ Food and Agriculture Organization of the United Nations, Development Association of the Alto Tâmega Region, Barroso Agro-Sylvo-Pastoral System, Potential GIAHS/FAO site, March 2018, p. 6, available at: <https://openknowledge.fao.org/server/api/core/bitstreams/c53fb8b7-7a3a-4a45-b556-a050e2aa8cdb/content>.

¹⁴⁸ Independent CIA, Section 5.3.5.1., p. 52.

¹⁴⁹ Independent CIA, Section 5.3.5.1., p. 53.

¹⁵⁰ Independent CIA, Section 5.3.5.1., p. 53., see also Section 5.3.5.2., p. 55.

¹⁵¹ See the comparative table 10.58, Modified EIA, p. 549.

¹⁵² See Section 4.2.2.1.

¹⁵³ On the sequence of the process and documents involved, see above Section 1.5.

¹⁵⁴ Modified EIA, p. 576.

particularly striking with regard to the availability and quality of water.¹⁵⁵ As shown in Section 4.2.1.2 the Project will use large amounts of water, while the general long-term availability of water in the region is not properly assessed and can be expected to shrink due to the cumulative impacts of water use for various purposes and climate change. Agriculture and traditional farming practices, which are the basis of the local economy, require fresh water and are built on water-dependent ecosystems. The Modified EIA notes in this regard that the Project could jeopardise the availability and quality of surface and underground water resources and this effect would be *“prevalent in the Barroso region, due to the importance of water as a fundamental asset for the development of the primary [agricultural] sector, and is also related to the image of Barroso. There is also the use of water to supply the population, namely through underground abstractions.”*¹⁵⁶

172. The acquisition of large amounts of land to extract the ore will also fragment the territory of the Barroso region. This will have a large negative impact on the landscape and will be in conflict with the current uses of land, such as agriculture, forestry and livestock grazing.¹⁵⁷ Both Turismo de Portugal (Portugal’s national tourist authority) and the Public Prosecutor stress the risk of disturbances caused by the mining activities resulting in the declassification of the neighbouring territory (Gerês/Xurês Transfrontier Biosphere Reserve) as a UNESCO biosphere reserve, which would have a further negative impact on the region’s attractiveness for tourism.¹⁵⁸ Due to these environmental impacts, the Project will, as the Evaluation Committee has stated, cause economic displacement, i.e., prevention or limitation on people’s access to productive goods, affecting the living standards of those who depend on the resources located there.¹⁵⁹ This is worsened by the Project’s conflict with commitments made to receive funding under the EU’s Common Agricultural Policy, which is deemed to sustain its unique traditional agricultural system.¹⁶⁰
173. The Modified EIA admits that *“the long-term effects of [...] disturbances [such as noise, vibrations, dust, change in road conditions, waste] and their daily continuity can contribute to a deterioration in the population’s quality of life and health.”*¹⁶¹ Furthermore, the Modified EIA expects a decrease in the local population’s well-being, due to the alteration of ecological, water and landscape systems, which historically and culturally are essential for the community’s identity.¹⁶²
174. The above-mentioned aspects have the potential to impact the enjoyment of the local population’s human rights. Negative effects on the possibility to carry out agricultural activities could interfere with the local population’s right to peacefully enjoy their property and pursue their occupation, rights protected under Articles 15 and 17 of the Charter of Fundamental Rights of the European Union (CFR). Noise, dust, and other disturbances could also affect people’s right to private life (Article 7 CFR) and health, the protection of which should be taken into account in all Union policies (Article 35 CFR).

¹⁵⁵ Evaluation Committee Opinion, p. 127; Modified EIA, p. 538.

¹⁵⁶ Modified EIA, p. 538.

¹⁵⁷ Evaluation Committee Opinion, p. 125, Modified EIA, p. 529.

¹⁵⁸ See the Prosecutor’s Opinion, para. 22, attached as Annex 7a and Evaluation Committee Opinion, p. 124, with a reference to “Turismo de Portugal”.

¹⁵⁹ Evaluation Committee Opinion, p. 130. See also Modified EIA, p. 529.

¹⁶⁰ Prosecutor’s Opinion, paras. 31-48, attached as Annex 7a.

¹⁶¹ Modified EIA, p. 535.

¹⁶² Modified EIA, pp. 527, 536.

175. The Project would also risk destroying the cultural heritage of the region.¹⁶³ Indeed, the Project's conflicts with existing regional development policies and strategies, such as the "*strategic axes of Alto Tâmega and the Action Plan for the Barroso region, which are geared towards utilising natural resources (...) for the region's sustainable development by, e.g. enhancing production of local agricultural goods,*"¹⁶⁴ which further indicates the serious socially adverse impacts it will have. The Evaluation Committee also states that after 17 years of mining, the changes in environmental and socio-economic conditions, such as on the landscape and agricultural activities, could become permanent.¹⁶⁵
176. Consequently, the local community opposes the Project. In the latest public consultation, 894 of 916 participants objected to the project.¹⁶⁶ The United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment stressed that the overwhelming majority of the local community, as well as the local administration, NGOs and regional associations, oppose the Project as "*the local communities [...] would bear a disproportionate burden of the adverse environmental, food security and social impacts.*"¹⁶⁷
177. **Furthermore, the potential declassification of the region as GIAHS¹⁶⁸ is emblematic of the fundamental conflict between the Project and the existing local economy and cultural identity and long-standing forms of subsistence.**¹⁶⁹
178. The Barroso region has been granted GIAHS status by the FAO in 2018. The Project area includes land classified as FAO Class A soils, in the context of its GIAHS classification, which is recognized for its high agricultural productivity. The GIAHS designation acknowledges the region's sustainable agricultural methods, including extensive livestock production (notably the Barrosã cattle breed), cultivation of crops like potatoes and rye, and communal land ("*baldios*") management practices. These systems have contributed to the conservation of significant environmental areas and the maintenance of a strong local food culture.
179. At the national level, the Project includes areas that are part of the National Agricultural Reserve ("RAN"), governed by Decree-Law no. 73/2009, and the National Ecological Reserve ("REN"), regulated by Decree-Law no. 166/2008. Under Articles 4 and 22 of Decree-Law no. 73/2009, which govern RAN areas, such land can only be allocated to non-agricultural uses when a public interest justification is clearly established, and no viable alternative location exists. This requirement is reinforced by the Municipal Master Plan (PDM) of Boticas, which designates these soils as "high-quality agricultural land." Similar limitations are established under Article 20 and 21 of Decree-Law no. 166/2008, which govern REN areas.
180. Furthermore, Decree-Law No. 30/202, related to mineral deposits, updating procedures and environmental, social, and economic requirements for the prospecting, exploration, and

¹⁶³ See Section 4.2.2.1.

¹⁶⁴ Evaluation Committee Opinion, p. 130; see also Modified EIA, p. 529; Annual Report Barroso SIPAM/GIAHS, ADRAT, August 2020, available at: <https://openknowledge.fao.org/server/api/core/bitstreams/8759b4c3-b0bd-4842-a4e8-290afd88ac2e/content>.

¹⁶⁵ Evaluation Committee Opinion, p. 130.

¹⁶⁶ Evaluation Committee Opinion, p. 123; EIA, pp. 533, 544.

¹⁶⁷ A/HRC/52/33/Add.1, para.77, available at: <https://www.ohchr.org/en/documents/country-reports/ahrc5233add1-visit-portugal-report-special-rapporteur-issue-human-rights>.

¹⁶⁸ See Section 4.2.2.1.

¹⁶⁹ Evaluation Committee Opinion, p. 130

exploitation of mineral resources, in its Article 17, expressly prohibits mineral exploration and exploitation in areas classified under international instruments, including GIAHS.

181. Several Portuguese public entities¹⁷⁰ anticipate that the Project's implementation would lead to the loss of GIAHS status, and this risk should have been properly evaluated. However, the EIA fails to address this legal constraint. There is no meaningful assessment of the conflict between the Project and the EU and national legal framework protecting agricultural land. The Project's siting is not justified in relation to alternative locations, nor is any overriding public interest demonstrated. This results in a violation of mandatory land-use protections and a breach of administrative legality under Articles 161(2)(d) and 163(1) of the Portuguese Code of Administrative Procedure and Article 3 of Law no. 19/2014 (Portuguese Environmental Framework Law).
182. At the heart of the GIAHS framework and the corresponding national legislation lies the principle of preservation of agricultural heritage, which encompasses not only ecological sustainability but also the safeguarding of traditional knowledge, rural livelihoods, and cultural identity. The Project, with its inevitable land degradation, water contamination risks, and noise and dust pollution, directly threatens these very elements. The displacement of farmers, fragmentation of communal lands, and destruction of habitats cannot reasonably be reconciled with the FAO's criteria for GIAHS sites or Portuguese national legislation protecting these sites.
183. Moreover, the social fabric of the Barroso region, which is closely tied to collective land use and multi-generational agricultural practices, would likely be irreparably harmed. The mine's operation could erode community cohesion and local food sovereignty, both of which are cornerstones of the designation of GIAHS, RAN and REN statuses.
184. While the Project Promoter claims that mitigation measures can protect the landscape and coexist with farming, there is serious doubt that such an open-pit mining project can avoid undermining the integrity of a heritage system that depends precisely on the absence of such extractive pressures. The Alto Tâmega Region Development Association (ADRAT), a regional development agency, also issued a negative opinion on the Project.¹⁷¹ ADRAT stressed that an open-pit mine would negatively affect a range of factors unique to the Barroso region and essential for GIAHS classification such as "the landscape, soil and climate characteristics, agri-environmental and heritage assets, the competitiveness of local products, genuineness and even many of the factors related to local identity and the "Barroso" brand."¹⁷² Therefore the association concludes that the mine, if approved, will have a "terrible impact on the agri-environment, landscape and culture even if very strict and restrictive conditions are implemented."¹⁷³
185. In this context, it is implausible that Covas do Barroso would retain its GIAHS, RAN and REN status if the lithium mine proceeds. To argue otherwise is to ignore the essence of what this recognition was meant to protect: a living, working landscape where agriculture, ecology, and culture are interwoven in a fragile balance.

¹⁷⁰ Including Direção-Regional de Agricultura e Pescas do Norte (Regional Directorate for Agriculture and Fisheries of the North), Direção-Geral de Coordenação e Planeamento (Directorate-General for Coordination and Planning), Comissão de Coordenação e Desenvolvimento Regional do Norte (Regional Coordination and Development Commission of the North).

¹⁷¹ See ADRAT opinion, included in the Evaluation Committee Opinion, p. 301.

¹⁷² ADRAT opinion, included in the Evaluation Committee Opinion, p. 301.

¹⁷³ ADRAT opinion, included in the Evaluation Committee Opinion, p. 302.

186. All this evidence presented leads to the conclusion that the Project would not be in line with Principle 1 of the EU principles for sustainable raw materials, which highlights that respect for, among others, cultures, customs and values of people affected by the extraction are crucial for sustainable raw materials extraction.
187. **In light of the serious doubts about the social sustainability (inextricably linked to environmental sustainability) of the Project raised above, the Applicants submit that it is implausible that the Commission could conclude that the Project meets the requirement to be implemented in a socially sustainable manner under Article 6(1), point (c) CRMA.**

4.2.2.2. These socially adverse impacts cannot be expected to be prevented or minimised

188. According to Article 6(1), point (c) CRMA, a project can be considered to be implemented sustainably if its socially adverse impacts are prevented or minimised through, among others, the use of socially responsible practices including respect for human rights, its potential for quality job creation and meaningful engagement with local communities and relevant social partners.
189. Based on the evidence at hand, it is not demonstrated that the Project's socially adverse impacts will be prevented or minimised through socially responsible practices including respect for human rights. The Evaluation Committee has recognized that impacts that cannot be minimized are: economic displacement, land acquisition, a reduction in the well-being, quality of life and health of the population, alienation of vulnerable communities and decreased water availability¹⁷⁴ – all those factors that ground the opposition of local communities to the development of the Project. These impacts are assessed as being significant to very significant at all stages of the Project.¹⁷⁵
190. Instead, the Project Promoter has presented an "Action Plan", promising to compensate for the Project's negative impacts that cannot be minimised.¹⁷⁶ However, only a summary of the Action Plan is public, so there is only very limited information on how the Project Promoter plans to compensate for each negative impact. The EIA only contains a short summary of the Action Plan's main steps, without timelines or measurable benchmarks.¹⁷⁷ The Action Plan builds on different documents and procedural steps, leading to the negotiation of a "Benefit Sharing Agreement". It is, however, not at all clear what the result of these negotiations will be, and there is no guarantee that it will be sufficient, or even adequate to compensate for the irreversible socially adverse impacts caused by the Project.¹⁷⁸
191. On the contrary, local NGOs cast doubts on the Project Promoter's willingness to truly engage with the local community.¹⁷⁹ A fact sheet published by several environmental NGOs alleges that

¹⁷⁴ Evaluation Committee Opinion, p. 131.

¹⁷⁵ Evaluation Committee Opinion, p. 131.

¹⁷⁶ Evaluation Committee Opinion, p. 131.

¹⁷⁷ Modified EIA, pp. 618-624.

¹⁷⁸ In this regard, the Evaluation Committee also concludes that the Action Plan's "*implementation is based on the parties' ability to communicate and negotiate*", Evaluation Committee Opinion, p. 136.

¹⁷⁹ See Background, paras. 1-5.

the Project Promoter has contracted a 24/7 private security service, which passed in front of people's houses during the night and stopped them on mountain roads.¹⁸⁰

192. This is also why the Evaluation Committee finds that if the Action Plan is unsuccessful or not implemented “with the community continuing to oppose the exploitation and a lack of dialogue with the Promoter, it is considered that the conditions for continuing the Procedure [of the Action Plan] have not been met.”¹⁸¹
193. The socially adverse impacts caused by the Project would also not be prevented or minimised through its “potential for quality job creation”.¹⁸² The Project Promoter expects to create between 300-350 job opportunities during the construction phase (2 years) and approximately 200 job opportunities during the exploitation phase (12 years), in addition to an estimated number of indirect jobs.¹⁸³ However, this does not mitigate the social adverse impacts for the local community, described above, because, as the Evaluation Committee has pointed out, the Project might only withdraw workforce from other mining projects in the region, jeopardise more jobs than it creates due to the reduction in the area of common land with afforestation, and not offer many jobs, which match local peoples’ knowledge and skills.¹⁸⁴ Thus, the Applicants have serious doubts that the Project would create adequate job opportunities to mitigate for potential loss of jobs for the members of the local community.
194. In addition, the created jobs cannot be expected to be of certain *quality*, firstly, because they are only associated with the mining itself and not related to higher processing stages of the ore.¹⁸⁵ Secondly, because both the direct and indirect jobs created during the construction and extraction phase are only temporary until the mine closes. Both the Modified EIA and the Opinion of the Evaluation Committee argue that long-term jobs may be created “due to strategic community investment” but they do not specify in what sense people would be skilled and whether these skills would fit local or regional job opportunities.¹⁸⁶ This also contradicts Principle 2 of the EU principles for sustainable raw materials, which demands sustainable raw materials extraction to continuously improve the skills of the workers, creating and maintaining a stable and quality workplace.
195. **Therefore, in the absence of demonstration by the Project Promoter that the serious socially adverse impacts demonstrated above can be prevented and mitigated, whereas evidence shows that they cannot plausibly be, the Applicants submit that the Commission could not plausibly conclude that the Project meets the requirement under Article 6(1), point (c) to be implemented in a socially sustainable manner.**

¹⁸⁰ Fact Sheet, p. 5, available at <https://friendsoftheearth.eu/wp-content/uploads/2024/12/Factsheet-Strategic-Projects-Barroso-021224.pdf>

¹⁸¹ Evaluation Committee Opinion, p. 135

¹⁸² Article 6(1)(c) CRMA.

¹⁸³ Modified EIA, p. 542; DIA, p. 5

¹⁸⁴ Evaluation Committee Opinion, p. 122.

¹⁸⁵ Evaluation Committee Opinion, p. 122.

¹⁸⁶ Evaluation Committee Opinion, p. 129; Modified EIA, pp. 546, 547.

4.3. Second plea: there are serious doubts that the Project fulfils the criteria for a strategic project under Article 6(1), point (b) CRMA

196. Article 6(1), point (b) CRMA requires that the project be or become technically feasible within a reasonable timeframe and that the expected production volume of the project can be estimated with a sufficient level of confidence. Annex III(3) CRMA specifies that the corresponding assessment shall take into account:

“(a) the quality of the feasibility studies carried out on the potential of development of the project;

(b) whether the technology intended to be used has been demonstrated in the relevant environment.”

197. Annex III(4) CRMA further stipulates that:

“The feasibility studies referred to in point 3(a) shall be designed to:

(a) assess whether a proposed project is likely to be successful by analysing technological and environmental considerations;

(b) identify potential technical issues and problems that could arise while pursuing the project.

Further studies may be required to confirm the feasibility of the project.”

198. According to the independent Steven H. Emerman Report¹⁸⁷, which was already analysed in section 4.2.1.4, the Project does not only create the risk of major accidents, but also makes its technical feasibility implausible. As already mentioned, the risks mainly come from the construction of the TSF, which is a permanent structure where the waste from mineral processing and the activities of the mine would be stored. The facility is confined by an embankment of waste rock, which, according to industry standards, would be classified as a dam. However, neither the Modified EIA nor the Evaluation Committee's Opinion acknowledge that **it is a dam**, although it is repeatedly described as having the exact same function.¹⁸⁸

199. This is very problematic from a feasibility point of view. As in the Modified EIA the TSF's embankment of waste rock has not been classified as a dam, **dam safety standards have not been considered**. In addition, it is proposed to construct the TSF using the co-called upstream construction method, which means that it is constructed in levels, each level confined by a waste rock dam and filled with filtered tailings to form the basis for subsequent levels.¹⁸⁹ If the tailings were to liquefy, the waste rock dam could fail by sliding over or falling into the liquefied tailings. For this reason, the upstream method of construction is prohibited in a number of countries and denounced by the industry.¹⁹⁰

200. As already explained in section 4.2.1.4 concerning the size of the TSF, since filtered tailings can be re-saturated by precipitation, the mean annual precipitation is the chief constraint on the current technological limit of the height of a filtered tailings storage facility. The facility at the

¹⁸⁷ Annex 22.

¹⁸⁸ Steven H. Emerman Report, pp. 2, 6.

¹⁸⁹ See [ICMM - About Tailings](https://www.icmm.com/en-gb/our-work/tailings/about-tailings), available at: <https://www.icmm.com/en-gb/our-work/tailings/about-tailings>.

¹⁹⁰ Steven H. Emerman Report, pp. 2, 14, 15..

Barroso mine is planned to be at the height of 140m and would be the second tallest ever to be constructed. However, with a mean annual precipitation of 1649 mm, it would be the third wettest site for any filtered tailings storage facility that has ever been constructed. On that basis, the height of the filtered tailings storage facility at the Barroso mine would exceed the current technological limit by 97 meters or about 230%. Similarly, concerning its steepness, the facility would be 99 meters taller than would be predicted for its tailings storage volume, making it excessively steep by industry standards.¹⁹¹

201. **Contrary to the requirement contained in Annex III(3) CRMA, the technology intended to be used to store the mine's waste has not been demonstrated in the relevant environment, and significantly exceeds the common industry standards for this type of facility.**¹⁹²
202. Furthermore, the official documents - particularly the Modified EIA and the Committee's Opinion for the Project - fail to substantively address critical safety concerns associated with the TSF. These documents merely assert that dry deposition of tailings is planned and that the structure will be lined with a three-layer waterproofing system.¹⁹³ However, such a liner can only be installed atop the facility once tailings deposition has ceased. Until that point, which may span several years, the tailings remain exposed and susceptible to re-saturation from precipitation events. This omission raises serious concerns regarding the Project Promoter's ability to adequately assess technological and environmental considerations and to identify potential technical failures, as required by Annex III(4) CRMA.
203. In short, the Project relies on a technically-unproven and potentially unsafe facility to store a large share of its waste¹⁹⁴ and proposes no alternatives, safety improvements or mitigation measures to prevent the risks associated with the proposed facility.
204. **Therefore, the Applicants submit that the Project has not demonstrated its technical feasibility and that the Commission could not plausibly conclude that the Project meets the requirement under Article 6(1), point (b).**

5. CONCLUSION

205. In this Request for Internal Review, the Applicants have put forward facts and legal arguments raising serious doubts about the lawfulness of the designation of the Project as strategic under Article 7(9) CRMA, in conjunction with Article 6(1) CRMA.
206. The Applicants hereby request the Commission to review Article 1 of the Decision together with point (5) of the Annex, in accordance with Article 10 Regulation 1367/2006.

¹⁹¹ Steven H. Emerman Report, pp. 1, 4, 16.

¹⁹² "The assessment of whether a project fulfils the criterion laid down in Article 6(1), point (b) shall take into account: ... (b) whether the technology intended to be used has been demonstrated in the relevant environment."

¹⁹³ On page 137, the Modified EIA merely mentions that dry deposition of the tailings is planned, and that the structure will be lined/ waterproofed in 3 layers. On the other hand, on p. 552 the Modified EIA acknowledges that climate change will lead to "an increase in the number of extreme rainfall events, increasing the possibility of landslides, floods and accidents". The DIA, p. 22, only asks for a solute (contaminant) transport model to be drawn in order to create scenarios for the possible spread of a contamination plume from the TSF.

¹⁹⁴ Modified EIA, p. 137.

LIST OF ANNEXES

Annex 1. Criminal complaint to the Ministério Público - Procuradoria da República da Comarca de Vila Real, Processo Nr. 2282/23.0T9VRL

Annex 2.

- a. MiningWatch's access to document request to DG GROW of 10 September 2024 (CASE EASE 2024/4763)
- b. DG GROW's reply to MiningWatch Portugal's access to documents request of 14 October 2024 (CASE EASE 2024/4763)

Annex 3.

- a. ClientEarth access to document request to DG GROW of 20 November 2024 (CASE EASE 2024/6198)
- b. DG GROW reply to ClientEarth's access to document request of 24 January 2025 (CASE EASE 2024/6198)
- c. ClientEarth's confirmatory application of 7 February 2025 (CASE EASE 2024/6198)

Annex 4.

- a. MiningWatch's access to document request to Portugal Gabinete da Ministra do Ambiente e Energia's of 18 December 2024
- b. Portugal Gabinete da Ministra do Ambiente e Energia's reply to MiningWatch's access to document request of 7 January 2025

Annex 5.

- a. MiningWatch's access to document request to DG GROW of 2 April 2025 (CASE EASE 2025/1867)
- b. DG GROW's reply to MiningWatch access to document request of 10 June 2025 (CASE EASE 2025/1867)

Annex 6. ClientEarth's access to documents request to DG GROW of 24 April 2025

Annex 7.

- a. Intervention of the Public prosecutor, Processo Nr. 302/23.8BEMDL (Portuguese language original)
- b. Intervention of the Public prosecutor, Processo Nr. 302/23.8BEMDL (free English translation)

Annex 8.

- a. Statutes of Associação Unidos em Defesa de Covas do Barroso
- b. Certificate of registration of Associação Unidos em Defesa de Covas do Barroso of 18 December 2018
- c. Extract of registration of Associação Unidos em Defesa de Covas do Barroso of 15 March 2024

Annex 9.

- a. Statutes of MiningWatch Portugal
- b. Certificate of registration of MiningWatch Portugal of 21 October 2024

Annex 10.

- a. Statutes of Fundación ClientEarth delegación en España
- b. Certificate of registration of Fundación ClientEarth delegación en España of 12 January 2023
- c. Resolution of ClientEarth UK of 19 September 2024 appointing Ms Emma Howard Boyd to administer Fundación ClientEarth delegación en España
- d. Delegation of powers from Ms Emma Howard Boyd to Ms Soledad Gallego Bernad to represent Fundación ClientEarth delegación en España in administrative complaints and other litigation matters, of 29 January 2025
- e. Power of attorney to Ms Soledad Gallego Bernad of 11 June 2025

Annex 11.

- a. Statutes of ClientEarth AISBL
- b. Extract of registration of ClientEarth AISBL of 18 April 2023

Annex 12. ClientEarth's contribution to public consultation on the Mina do Barroso EIA conducted between 2 April and 22 June 2021

Annex 13. Steven H. Emerman, Evaluation of the Filtered Tailings Storage Facility in the Updated Proposal for the Savannah Lithium Barroso Mine, Northern Portugal, revised version of 13 April 2023

Annex 14. Steven H. Emerman, Visual summary of the tailings dam report