

# PALP's Communications to the Aarhus Convention Compliance Committee – January 2019

## Contents

I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION .....	1
II. PARTY CONCERNED .....	2
III. FACTS OF THE COMMUNICATION .....	2
A. Systematic obstruction to access to the information, including documents as well as decisions adopted by public authorities .....	3
A.1 Information regarding the oil contracts and its effective execution.....	3
A.2 Information regarding the TUPEM ("Título para Utilização Privativo do Espaço Marítimo")..	8
A.3. Information regarding the decision whether or not there is a need to subject the deep offshore oil drilling project in Aljezur (contract named "Santola") to an Environmental Impact Assessment .....	10
A.4 Information regarding the oil contracts and a possible resignation .....	12
IV. PROVISIONS OF THE CONVENTION ALLEGED TO BE IN NON-COMPLIANCE.....	12
V. NATURE OF ALLEGED NON-COMPLIANCE.....	12
VI. USE OF DOMESTIC REMEDIES.....	13
VII. USE OF OTHER INTERNATIONAL PROCEDURES .....	15
VIII. SUPPORTING DOCUMENTATION .....	15
IX. SENDING THE COMMUNICATION .....	15
X. SIGNATURE.....	15

## I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION

Full name of organization or person(s) submitting the communication:

ALMARGEM – "*Associação de defesa do património cultural e ambiental do Algarve*" an Association for the Defense of the Algarve's Cultural and Environmental Heritage, member of Algarve Free of Petroleum Platform ("*Plataforma Algarve Livre de Petróleo*", PALP).

Permanent address: Largo de S. Domingos, 65, CP 8100-536 Loulé, Portugal

Telephone: 00351 289 412 959 E-mail: [palpalgarve@gmail.com](mailto:palpalgarve@gmail.com)

Contacts authorized to represent the organization in connection with this communication:

Name: José Luís Raposo Victoriano

Title/Position: Presidente

Telephone: 00351 289 412 959

E-mail: [almargem@mail.telepac.pt](mailto:almargem@mail.telepac.pt)

and

Name: Manuel Vieira  
Telephone: 00351 289 412 959

Title/Position: Almargem's Representative in PALP  
E-mail: [madressilva@almargem.org](mailto:madressilva@almargem.org)

PALP («Platform for an Algarve Free of Oil» – “Plataforma Algarve Livre de Petróleo” in Portuguese) emerged in early 2015 and brings together several national and international environmental non-governmental organizations (ENGO), as well as individual citizens. This platform was formed with the aim to raise awareness regarding the inherent risks due to the exploitation of fossil fuels in the Algarve Region<sup>1</sup> encourage the public debate of the impacts of such activity and pressure the government to publish all documentation relevant to the oil exploration in the Algarve.

## II. PARTY CONCERNED

Name of the Party concerned by the communication:

Portuguese Government, namely the Ministry of Economy, the Ministry of the Sea, the Ministry of the Environment (since November 2018 changed to Ministry of Economy and Energy Transition), Portuguese National Authority for Fuel Market (ENMC - “*Entidade Nacional para o Mercado de Combustíveis*”), Directorate-General for Natural Resources, Safety and Maritime Services (DGRM - “*Direção Geral de Recursos Naturais, Segurança e Serviços Marítimos*”) and the Environmental Portuguese Agency (APA - “*Agência Portuguesa do Ambiente*”).

## III. FACTS OF THE COMMUNICATION

We will present situations related to access to information and public participation during administrative procedures for the oil exploration, research, development and production contracts (“*contratos de prospecção, pesquisa, desenvolvimento e produção*”) in Portugal, where the right to information and the respect for the results of the public consultation are written down in the law but in practice are inexistent.

The Portuguese law establishing the legal regime for exploration, research and production of oil, Decree-Law No 109/94 of 26 April was written in 1994 and remains unchanged. In its preamble, paragraph 6, it establishes explicitly that its main objective is to “give a new impulse to prospecting and exploration and consequently to development and production with this present law” [“*dar um novo impulso às actividades de prospecção e pesquisa de petróleo e, consequentemente, de desenvolvimento e produção*”]. In addition, in paragraph 8, it is clear that with the execution of the agreement, the concessionaires acquire from the beginning an right to the production because, “[t]he exercise of activities will be covered by a single title (...) covering all the phases of activity” [“*O exercício das actividades fica subordinado a um único título (...) contemplando todas as fases de actividade*”]. This explains the efforts of the government to deny access to information and the reluctance to take into account public participation: to avoid having to revoke the contract and be liable for damages to the contractor.

In this particular case, the contracts for the concessions entitled “Lavagante”, “Santola” and “Gamba” in the deep-offshore off the south western mainland coast (also known as Costa Vicentina and Litoral

<sup>1</sup> Algarve is located in the South of Portugal with a natural beauty, attracting (nature) tourism all year round

Alentejo)<sup>2</sup> in the Atlantic Ocean were signed in February 2007, with the three same contractual terms and conditions. In 2007 these contracts were concluded between the Portuguese State and the companies Hardman, Galp and Partex, allowing for 8 years of prospecting/exploration (“prospecção”). In addendum I, in February 2010, the concessions were held by Petrobras and Galp and the prospecting period was extended to 11 years; in addendum II, in September 2014, Petrobras abandoned the project, and the period that would be 8 years and extendable up to 2 years, increased to 13 years of extended deadline; in addendum III, in December 2014, the entrance of ENI allowed for the formation of the consortium ENI and Galp.

These contracts only became public in 2015, where the access to various documents continued to be denied, which led to PALP filing complaints to the Portuguese Commission for Access to Administrative Documents (CADA), an administrative body responsible for receiving complaints but unable to issue orders. CADA is only competent for issuing non-binding acts.

Portugal has ratified and should therefore comply with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters but the facts reveal that Portugal is not complying namely with articles(paragraphs) 4(2), 4(4), 4(8) and 6(8).

**PALP considers that there is a major illegal fact and circumstances that represent a lack of compliance with the provisions of the Aarhus Convention. The situations is:**

**A. Systematic obstruction to access to the information, including documents as well as decisions adopted by public authorities**

**A.1 Information regarding the oil contracts and its effective execution**

On 4 June 2015, a written request was sent to ENMC<sup>3\*</sup> requesting access to a copy of the original contracts (initially signed in 2007) celebrated between the Portuguese State and companies wishing to prospect/explore hydrocarbons in the small region of Algarve (representing around 5,5% of the territory and 12,3% of the national coastline). For months no answer was received but in the end part of the contracts were published on the ENMC website. Yet, two important addendas (amendments to the contacts) were not disclosed (neither published not made available in any form to the applicants). No justification was given for the previous non-disclosure of the contracts.

On January 19<sup>th</sup> of 2016, a meeting took place at the ENMC headquarters, in Lisbon, with its chair and representatives of PALP (requested by this Platform) during which various documents were requested (See Table 1, Full list of documents requested by PALP - left column of table), namely the "Baseline Study"; the cetacean observers' reports during the seismic survey, the activity reports and all annual plans of the concessionaires. During this meeting, the ENMC representatives reassured that from March or April the annual plans of the concessionaires would be made available on the ENMC website. They affirmed that some basic documents (such as the cetacean observers reports during the seismic survey) would soon be made available to PALP. Finally, the Activity Reports<sup>4</sup>, would not be disclosed. The presidency of the ENMC was not aware of the Opinions by the national authority for nature

<sup>2</sup> Host of a large variety of species and habitat types, this area been classified as a Natural Park (including a Marine Protected Area) and is integrated within the EU 2000 Natura Network (including the Site of Community Interest “Costa Sudoeste”, PTCO0012).

<sup>3</sup> National Entity for the Fuel Market. “ENMC, E.P.E. is a public corporation whose mission is to ensure compliance with the obligations adopted by Portugal within the European Union and the International Energy Agency, with respect to oil and petroleum products emergency reserves, as stipulated in national legislation. ENMC's mission also includes fuels and biofuels market monitoring and the prospecting, research, oil resources development and exploitation, as well as consumer protection.” <http://www.enmc.pt/en-GB/enmc/mission> (Accessed in October 2018).

<sup>4</sup> The Activity reports are mandatory according to national law on oil prospecting and extraction (Decree Law 109/94)

conservation (ICNF – “Instituto de Conservação da Natureza e Florestas” in Portuguese). These opinions should have been elaborated before the seismic research campaigns that already had been carried out. Therefore, this opinion would not be disclosed as well<sup>5</sup>.

On 29<sup>th</sup> of March 2016, PALP, having not received any information or justification from ENMC, requested in writing access to the information previously requested and promised during the January meeting, sending the list of requested documents (See Table 1)

On 8<sup>th</sup> of April, ENMC replied that "(...) *given the complexity of the application, the time span coverage and the set of documents that are within the scope of the application, requires a more time-consuming classification of documents which are legally admissible for consultation (...)*".

PALP does not agree that either the volume or the complexity of the information justify extending the period necessary for disclosing the information beyond 3 months.

In the same message, the ENMC also informed "*that all technical and scientific data and reports subsequent to 2012 are not available for consultation because they are in a confidentiality period, as required by law and in the concession contracts. Due to these constraints, ENMC is very pleased to make available for the consultation on our premises, the processes requested within the scope of what is legally possible, where its classification and preparation for consultation will take some time given the extension of the requested. In this regard, we request that you may propose a date in mid-June to proceed with the scheduling and organization of the consultation.*"

PALP knows that such confidentiality is not provided for neither in the oil extraction law nor in the law on access to environmental information and as a consequence, on April 26<sup>th</sup>, PALP reacted to ENMC's message, contesting the need for two more months to organize the documentation and requesting clarifications regarding what articles of Decree No. 109/94 on oil extraction, provided the basis for the restrictions on access to information.

On May 2<sup>nd</sup> 2016, ENMC responded that two of the studies were available for face-to-face consultation at the headquarters of the ENMC: the Baseline Environmental Study referring to the contracts of the Repsol/Partex concessions (the concessions are named “Lagosta” and “Lagostim”) and another Baseline Environmental Study for the ENI/Galp concession contract (the concession named “Santola”). This time a new justification by ENMC was given for not providing the other documents: the competences on these matters had been transferred from the Directorate General on Energy to the National Entity for the Fuel Market (ENMC)<sup>6</sup> and the documents had been moved.

On May 9<sup>th</sup>, three PALP representatives visited the ENMC headquarters, to consult the two Baseline Environmental Studies mentioned above. No other documents were allowed to be consulted, with the justification that ENMC had changed facilities and documentation was not organized and was still in boxes.

On May 17<sup>th</sup>, PALP sent another written message reaffirming **that by the time the documentation should be accessible mainly when it is composed of documents dating back to 1998, 1999, 2007, 2010 or 2012. After so many years these documents should have been archived and organized in order to**

<sup>5</sup> On November 23<sup>th</sup> 2016, ICNF informed PALP that it had never been consulted, as mandatory by law.

<sup>6</sup> "(...) as it is publicly known, the fact that the cases were transferred, in mid-year, from DGEG to ENMC, many of which - especially the oldest - are in the cataloguing stage, rendering the identification of the documents more difficult and time consuming (...)"

make it accessible to the public. PALP requested, once again, a clarification on the specific legal reasons for the availability/non-availability document by document.

The following day, May 18<sup>th</sup>, PALP received a response allowing *the consultation of the "disorganised" papers to be carried out in person at the headquarters of the ENMC, for a limited period of time and as from June 5<sup>th</sup>*. No justification was given regarding the limited time period (3 hours) available to consult the documents.

On 1<sup>st</sup> of June 2016, PALP responded in written: "*Once again the central issue has not been clarified: to explain, for each document, what the specific legal reasons for its availability/non-availability*", as it has been reaffirmed that ENMC would not provide all requested documents. ENMC proposed three hours to consult an unknown number and type of documents, which according to PALP this time limit can be insufficient. According to the "*Law on access to administrative information (Law 46/2007 of August 24, 2007 various forms of access are possible, from the face-to-face to the electronic transmission of data. We intend to be informed of what documents are available and the legal reasons of restriction for each non-disclosed document*".

On June 6, 2016, PALP received a written message from ENMC informing "*(...) as of next week the requested documents will be available for consultation. To proceed with your consultation in loco, it is requested that, in advance, two possible dates be indicated, as well as the identification of a maximum of 4 representatives who will be present at the ENMC.*" None of the PALP's questions were answered. It should be noted only the "face-to-face consultation" is referred.

**On June 14, 2016, a written complaint by PALP was made to the national authority on access to information (CADA - "Comissão de Acesso aos Documentos Administrativos" in Portuguese)<sup>7\*</sup> reporting all the facts previously described (Process No. 350/2016).**

The Political parties in the Parliament were also informed of the events.

On 20<sup>th</sup> of June 2016, two PALP representatives went to ENMC to consult the documentation. The documentation was disorganized, presented without criteria. Although, according to one of the provisions of the Aarhus Convention, "public authorities must provide copies of documents when requested, rather than simply providing the opportunity to examine documents", the PALP representative were given a limited time to examine the paper documents. PALP representatives were informed that they were not allowed to take photos (with mobile phone) of the documentation. The cost for the photocopies was completely unreasonable (2 Euros/page) mainly considering that photocopies were allowed, under the condition that the complete document should be photocopied (and not only the pages that interested PALP). The two PALP representatives had to sign a declaration of confidentiality over the use of the information. No explanation was given for these restrictions. PALP requested copies of the declaration of confidentiality and the receipt.

On 20 September 2016, CADA issued an advisory opinion ("Parecer no. 350/2016, Processo no. 386/2016"), where it concluded that ENMC must allow access to the environmental information. (See Document No. 1 and <http://www.cada.pt/uploads/Pareceres/2016/350.pdf> in Portuguese).

<sup>7</sup> CADA is an independent administrative entity, which works with the Assembly of the Republic (Parliament) and should ensure, in accordance with the law, compliance with the legal provisions regarding the access to administrative information.- Article 30, n° 1 of Law n° 26/2016, of August 22. The CADA issues non-binding advisory opinions ("pareceres") as a result of a complaint or a consultation request.

On 13 February 2017, ENMC sent a written message to PALP informing that the documents would be available as from 2<sup>nd</sup> of March (See Document No. 2). However, comparing the list of documents by ENMC and those requested by PALP, the majority and most relevant documentation were not made available (See Table 1).

**Table 1.** List of documents requested by PALP (in 19/01/2016) with the response by ENMC (in 13/02/2017). Type of access to documents. See also Supporting Document No. 2. Concessions/contracts "Lavagante", "Santola", and "Gamba" was "explored" by the companies "Hardman", "Petrogal" and "Partex" between 2007 and 2009; between 2010 and 2014 "Petrobras and "Galp; Galp without consortium partners between April and December 2014; and December 2014 is owned by the companies Eni/GALP. Concessions "Batalha" e "Pomba" is managed by the company Australis since 2015.

Request for Access to Documents	Response and type of access
Annual activity plans (Australis, Repsol/Partex and ENI/GALP) since 1998	<b>No access.</b> The request was simply ignored except for the documents relative to 2017 (Australis and ENI/Galp), where access to information was denied with the following justification: "since it contains sensible commercial information or trade secrets". It was stated be kept confidential for a period of 5 years (until the end of 2021).
Activity reports since 1998	<b>Partial access (PA).</b> <ul style="list-style-type: none"> <li>• The request was refused regarding the reports by Australis (2015-2017) with the justification that "it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years".</li> <li>• The request was refused for the Concessions "Lavagante", "Santola", and "Gamba reports in 2012, 2013, 2014, 2015 e 2016. The reason given was that the information requested "contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years." At the end of 2017, the 2012 document was not made available.</li> <li>• Access to the annual reports regarding the Concessions "Lavagante", "Santola", and "Gamba were allowed only for 2007, 2008, 2009, 2010 and 2011.</li> </ul>
Reports of cetacean observers during seismic surveys campaigns, namely in the various <u>2D campaigns</u> by: TGS-NOPEC between 1999-2002; HARDMAN/GALP/PARTEX in 2008; PETROBRAS/GALP/PARTEX in 2008; CHARGE OIL i 2013;	<b>Partial access.</b> The "Studies, Advice and Report – 2D Seismic Campaign" ("Estudos, Parecer e Relatório – Pesquisa Sismica 2D") documents were made available, which contain general information but does not contain specific information on the cetacean and other marine biodiversity observations (which were the documents requested and most relevant).
And in various <u>3D campaigns</u> by: PETROBRAS/GALP/PARTEX in 2010; PETROBRAS/GALP from 2010	<b>Partial access.</b> The "Studies, Advice and Report – 3D Seismic Campaign" ("Estudos, Parecer e Relatório – Pesquisa Sismica 3D") documents were made available, which contain general information but does not contain specific information on the cetacean and other marine biodiversity observations.
Reports of cetacean observers during seismic surveys campaigns, in various <u>3D campaigns</u> : PETROBRAS/GALP from 2011 to 2012; REPSOL in 2012	<b>No access.</b> Access to documents was refused with the following reason: "it contains sensible commercial information or trade secrets. It will, therefore, be kept confidential for a period of 5 years".
Reports of 3D campaigns – Repsol in 2015	<b>No access. The request was ignored.</b>
Documents which demonstrate the technical and economic eligibility of all the companies with concessions	<b>No access.</b> <ul style="list-style-type: none"> <li>• Access to documents concerning ENI/Galp in 2014 was refused.</li> <li>• Access was refused for the documents regarding Hardman, Petrogal and Partex companies in 2007.</li> <li>• Access was refused for the documents regarding Australis company in 2015</li> <li>• The three above requests were refused with the following reason: "it contains sensible commercial information or trade secrets. It will be considered confidential information, made available only with the authorization of the company."</li> </ul>

ICNF and APA opinions and/or authorizations to carry out Research and Exploration (“Pesquisa e Prospecção”) activities	<ul style="list-style-type: none"> <li>• <b>Access to Repsol documents was ignored.</b></li> </ul> <p><b>No access.</b></p> <p><b>Request was refused without providing a reason.</b></p> <ul style="list-style-type: none"> <li>• PALP requested access to documents (technical advices and/or authorizations) regarding all of the activities in the oil Research and Exploration by ICNF (Nature Conservation and Forests Institute) and APA (Portuguese Environmental Agency). These documents (advices and authorizations) are necessary by law so that ENMC can authorize (or not) any activity to be carried out.</li> <li>• In their reply, the request for access to the documents was simply ignored, even though the documents are of ENMC’s responsibility and should be in their possession. The only documentation mentioned (which are not those requested) were “reports issued for the TUPEM (private use of maritime space), and are in the possession of the DGRM” (another entity, not ENMC)”.</li> </ul>
Environmental Impact Assessments of the various works carried out	<b>Request was simply ignored.</b>
<i>Environmental Studies</i> carried out by concessionaires	<p><b>Partial Access.</b></p> <ul style="list-style-type: none"> <li>• Request was accepted for only two studies: REPSOL 2013 and ENI 2015.</li> <li>• Request was ignored for the study by Australis.</li> </ul>
Plans to respond in case of accidents, including funds reserved for such cases	<p><b>Partial Access.</b></p> <ul style="list-style-type: none"> <li>• Request was refused for the Repsol document with the reason that “the process of exploration was not started, therefore this kind of report has not been submitted, as stated in the Decree Law 13/2016, of the 9<sup>th</sup> of March.”</li> <li>• Request to access the document by ENI was accepted.</li> <li>• Request was ignored for the Australis document.</li> </ul>

On 30<sup>th</sup> of March 2017, PALP sent a written message to ENMC “*requesting a clarification regarding which contracts for the exploitation of hydrocarbons are currently in force in Portugal. If contracts have been annulled, we ask access to the supporting documentation, stating that you tell us the reasons that led to the contract termination.*” The reason behind this email were the successive changes to the concessions maps of the concessions, presented in the site of the ENMC, having no official explanation been presented.

On 4<sup>th</sup> of April 2017, ENMC replied that: “*The 4 concessions in the south of the Algarve were removed from the map of the areas in force on the ENMC website, as the concession contracts were terminated by the Portuguese State.*”

On May 2<sup>nd</sup> 2017, PALP sent a written message to the Secretary of State for Energy, requesting the number, date and text of the order (“despacho”) or any official decision cancelling or termination the four offshore contracts applicable to the south of the Algarve, namely the contracts *Lagosta, Lagostim, Sapateira and Carangueijo* with the consortium Repsol/ Partex”.

The Secretary of State for Energy never replied.

On 10<sup>th</sup> of May 2017, PALP received an unsigned e-mail message from ENMC not to provide access to the information requested, but to “*prove the legal status*” of the PALP representative (Rosa Guedes, as usual) “*as representative of the requesting entity (PALP), and provide the postal address for the Algarve Free Petroleum Platform, in order receive by post mail, the reply*”.

On 11<sup>th</sup> of May 2017, PALP responded in written providing the identification of its representative, providing her number of Citizen Card and personal address. In the same message CADA’s advisory opinion was referred to: “*We assume that termination of the contracts occurred by means of an order or an official letter, they must be compulsorily public, according to CADA opinion no. 350/2016, an*

*opinion that was directly addressed to you, so we do not accept the delay in response. This is why we repeat our request for a copy of the document with the decision / order regarding the 4 offshore concessions in the south of the Algarve”.*

On 19 May 2017, Almargem, a Portuguese ENGO and also a member association of PALP, also sent a written message to ENMC requesting *“a copy of the document with the decision/order on the termination of the 4 contracts between the State and the consortium formed by Repsol and Partex to grant rights to exploration, research, development and production of offshore oil in the south of the Algarve.”* The e-mail was signed by Manuel Vieira.

On 24 May 2017 ENMC replied requesting Mr. Manuel Vieira to prove his *“legal status as representative of the requesting entity (Almargem), and to provide the postal address for the Algarve Free Petroleum Platform, in order receive by post mail, the reply to the requested "Order for the annulment of the contracts" (“Despacho de anulação dos contratos” in Portuguese) relating to the offshore concession contracts of the Algarve Basin”*. The reply was signed again by Filipe Meirinho Chairman of the Board of Directors.

On the 25<sup>th</sup> of May 2017, Almargem replied that the information requested be sent to the Association's President, José Luis Victoriano considering Almargem's address: Rua de S. Domingos, 65, paragraph 251, 8100-536 Loulé. An official document, confirming the legal status of José Victoriano as representative of Almargem, was sent.

On 25 May 25<sup>th</sup> 2017 fourteen days later, ENMC replied PALP by reaffirming their previous request (proof of the legal quality of the representative of the requesting entity, PALP). The reply was signed by Filipe Meirinho, Chairman of the Board of Directors).

On that same day (25<sup>th</sup> of May), Quercus, a Portuguese ENGO and also a member association of PALP, reinforced the request by sending an email requesting a *“copy of the document with the decision/order regarding the termination of the 4 contracts between the state and the consortium formed by Repsol and Partex to grant rights to prospect, research, development and production of offshore oil in the southern Algarve”*, and signed by João Branco, President of the National Board of Quercus.

On 14<sup>th</sup> of July 2017, ENMC replied to Almargem that after having carried out a careful analysis of the documents received, it was not possible to determine if the signatory may exercise powers of representation in relation to the Association in question. Additional documentation proving powers of representation of the signatory was requested. ENMC did not provide Almargem the requested information.

On the same day, Quercus received the documentation regarding the contract termination order (“Despacho”) requested by PALP.

On 31<sup>st</sup> of October 2017 PALP sent another complaint to CADA. On November 3, 2017 CADA archived the PALP's process on the grounds that the deadline for complaining had expired.

## **A.2 Information regarding the TUPEM (“Titulo para Utilização Privativo do Espaço Marítimo”).**

On May 18, 2016, Notice (“Edital”) No. 005/2016 TUPEM is published on the DGRM website:, where it becomes public knowledge that Eni and GALP required the assignment of a TUPEM (Title of Private Use of Maritime Space) to carry out a survey on the deep offshore of the Alentejo Basin, about 46.5km from Aljezur. The opening of a public consultation is announced regarding the license grant, which will run from 31<sup>st</sup> May to 22<sup>nd</sup> June 2016.

The public consultation ended on the 3rd of August (Notice No. 008/2016 TUPEM).



On August 29<sup>th</sup>, PALP, requests with a written message (e-mail) that DGRM provide access to the results of the public consultation, the publication of which was foreseen in Notice N°005/2016 TUPEM, namely with regard to "(...) [the] number of validated participations, as well as [the] meaning of the opinions of the entities consulted under number 60 of Decree-Law 38/2015(...)".

On September 8<sup>th</sup>, 2016, DGRM sends to PALP the letter no. 10101/2016/DMA/06-09-2016, which informs vaguely the number of participations received in the public consultation, as well as its content (type).

On 26<sup>th</sup> of September, a new request for information by PALP is sent to DGRM. The request to know the content and the participation of the official entities be identified, according to paragraph 2 of article 60 of Decree-Law no. 13/2015. *"What we ask is that we be allowed access to the information regarding who provided a positive opinion, who abstained, and their respective argument statements (...)."*

On September 29<sup>th</sup>, DGRM remits letter no. 10862/2016 / DMA / 28-09-2016. The Directorate-General rejects the previous request, requesting that several requirements must be fulfilled for the provision of information.

On November 9<sup>th</sup>, PALP requests that DGRM ensure that comprehensive information be provided regarding the mandatory consultation of the official entities listed in paragraph 2 of article 60 of Decree-Law no. 38/2015: *"Again we request that we be informed regarding the position of the opinion (positive and absence of opinion) and the respective argumentation produced by each of the entities consulted under Article no. 60 of Decree-Law 38/2015 (...) We also want to clarify the effects of the aforementioned public consultation and consequently on the allocation and maintenance of the authorization for the use of maritime space (TUPEM), in question in [the above-mentioned] Notice (no. 005/2016) (...)"*

On November 17<sup>th</sup>, DGRM sends letter no. 14000/2016 / DMA / 17-11-2016, which appoints the entities consulted, as well as the orientation of their opinions and also their recommended constraints. It was later known that there was missing information regarding the opinion/position by the entity DGPC (Directorate General of Cultural Heritage). This entity, responsible for managing the cultural heritage in Portugal presented some reservations/constraints ("condicionantes" in Portuguese) regarding the issue of the license for a maritime use of oil drilling in the southwest coast of Portugal (TUPEM).

On December 2<sup>nd</sup> 2016, PALP once again responded emphasizing the insufficiency of the information provided: *"Again we contact the service that you represent to inform us of the specific date, the legal period during which you received the opinion of the entities consulted under [article] number 60 of Decree-Law 38/2015 (...)."*

On December 13<sup>th</sup> 2016, DGRM replies with the official letter no. 14774/2016/DMA/06-12-2016. The Directorate-General satisfied with the information provided in the previous letter, refuses to the request and does not provide access to the information: *"(...) it is informed that all the information requested has already been answered through letter 14000/2016/DMA of November 17 (...)."*

On January 11<sup>th</sup> 2017, the Title of Private Use of the Maritime Space is issued, having been published in a different website ("Plan of Situation of the Planning of the National Maritime Space or "Plano de Situação do Ordenamento do Espaço Marítimo Nacional" in Portuguese; PSOEM - [www.psoem.pt](http://www.psoem.pt)) than that which it issued the Notice of the public consultation (DGRM - <https://www.dgrm.mm.gov.pt/>).

PALP learned of the decision through a press article<sup>8</sup>, on January 27<sup>th</sup>, 2017.

On February 16<sup>th</sup>, 2017, the DGRM sends to PALP, about 200 days after the public consultation and 37 days after the issuance of TUPEM, letter no. 1662/2017/DMA/ 08-02-2017, the alleged report of the

<sup>8</sup> <http://www.sabado.pt/opiniao/detalhe/farsa-publica-governo-autoriza-furo-de-petroleo-no-mar-de-aljezur> in Portuguese

public consultation. It should be noted that, once again, the opinions by the other official entities were not mentioned or published.

Table 2. Summary of the information requested by PALP concerning the TUPEM (authorization regarding private usage of maritime space, "Título para Utilização Privativo do Espaço Marítimo").

Request by PALP	Response by DGRM
<p>On August 29<sup>th</sup>, and then on 26<sup>th</sup> of September and again on November 9<sup>th</sup> 2016, PALP requested DGRM for access to the results of the public consultation, namely the number of participations received, the number of validated participations, the type of Opinion/Advice (in favour, against or absence of opinion) and the respective argument (advice) produced by each of the entities, It is a legal requirement that these entities should be consulted.</p> <p>On December 2<sup>nd</sup>, PALP requested the information regarding the specific date, the legal period during which DGRM received the opinion of the entities consulted under article number 60 of Decree-Law 38/2015 was also requested.</p>	<p><b>Partial Access.</b></p> <p>On September 8<sup>th</sup>, DGRM ignores most of the request and replies only the number of participation received in the public consultation and its content (type).</p> <p>On September 29<sup>th</sup>, DGRM refuses access regarding documentation of the content and participation of the official entities with the justification (demanding) that several requirements must be fulfilled for the provision of information.</p> <p>On November 17<sup>th</sup>, DGRM shared information identifying some of the entities consulted, as well as the orientation of their opinions (in favour or against) and also their recommended constraints.</p> <p>The official Advices (Opinions) by the other official entities are not mentioned or published, in other words the request was simply ignored. DGRM did not allow access to the Advice (with the position) of the DGPC (Directorate General of Cultural Patrimony), no justification was provided.</p> <p>It should be noted that the documents exist but were not made available publicly although DGRM's reply suggested that it was made available for the public consultation.</p>
<p>On November 9<sup>th</sup> 2016, PALP also requested the information regarding the effects of the aforementioned public consultation and consequently on the allocation and maintenance of authorization for the use of maritime space (TUPEM).</p>	<p>The request was simply ignored, with the following reply by DGRM on December 13<sup>th</sup> 2016 "(...) all the information requested has already been answered". They do not inform whether or not there is an Opinion, an assessment of the participations.</p>

### A.3. Information regarding the decision whether or not there is a need to subject the deep offshore oil drilling project in Aljezur (contract named "Santola") to an Environmental Impact Assessment

On 31<sup>st</sup> of January and 7<sup>th</sup> of February 2018, after having sent a number of emails – with the objective to be informed regarding the decisions on the deep offshore drilling project planned in one of the contracts ("Santola") and the role of the public consultation relative to the TUPEM, which took place between 31/05/2016 and 03/08/2016 – which were not answered, PALP requested an urgent meeting with the Ministry of Environment. On February 8<sup>th</sup>, the Ministry of Environment replied that the matter was of the responsibility of the Ministry of the Economy, without having scheduled a meeting (with neither of the Ministries).

On February 8, 16 and 28<sup>th</sup>, PALP once again requested a meeting with various entities to obtain information regarding the decision to carry out or not an Environmental Impact Assessment (EIA) associated with the offshore exploratory drilling off the southwest coast of Portugal. The entities were the Environment Ministry, the Portuguese Environment Agency ("Agencia Portuguesa do Ambiente", APA), the President of APA, Nuno Lacasta and Head of Environmental Assessment Department – Portuguese Environment Agency, Maria do Carmo Figueira.

PALP received no reply.

On 16th of May, APA informed the media their decision to not carry out an Environmental Impact Assessment (EIA). A large part of the reasons by APA to not carry out an EIA are based on undisclosed documents during the public consultation process, namely:

- the Environmental Characterization Report (“o Relatório de Caracterização Ambiental”),
- the Oil Spill Contingency Plan (“Plano de Contingência para Derrame de Petróleo”),
- the Survey Operation Notification (“Notificação da Operação de sondagem”),
- the Monitoring Report on Serious Hazards for the Installation of the Non-Production Facility Saipem 12000 (“Relatório sobre riscos graves para a Instalação de Não Produção Saipem 12000”),
- the Waste Management Plan (“Plano de Gestão dos Resíduos”),
- the Environmental Monitoring Program (“Programa de Monitorização Ambiental”),
- the Cetacean Monitoring Program (“Programa de Monitorização de Cetáceos”) and
- the Reporting of Characterization and Mapping of Associated Marine Habitats and Biotopes (“Relatório de Caracterização e Mapeamento de Habitats e Biótopos Marinhos Associados”).

Several Opinions warned of the absence of such documents that would potentially have relevant information for the assessment of the process.

On June 6 2018, Sciaena, a Portuguese ENGO and also a member association of PALP, emailed various entities individually requesting their Opinions (decisions, “pareceres”) in the public consultation (in 2018) on the need for an EIA for offshore drilling project. The entities contacted were Algarve Regional Coordination and Development Commission (CCDR - “Comissão de Coordenação e Desenvolvimento Regional”) Algarve, CCDR Alentejo, National Maritime Authority Directorate (DGAM - “Direção-Geral da Autoridade Marítima”), Cultural Heritage (“Património Cultural”), “Direção-Geral de Saúde” DGS), ICNF, Portuguese Institute for the Ocean and Atmosphere (IPMA - “Instituto Português do Mar e da Atmosfera”) and DGRM. CCDR Algarve was the first to respond, forwarding its decision (issued on 22nd May) that the Project in question should be subject to an EIA. Only two others entities responded, namely ENMC and ICNF.

Table 3. Summary of the information requested by PALP regarding the decision whether or not there is a need to subject the deep offshore oil drilling project in Aljezur (contract named “Santola”) to an Environmental Impact Assessment

Requests by PALP	Response
Palp demanded, on the 31 <sup>st</sup> of January and 7 <sup>th</sup> of February, an urgent meeting with the Ministry of the Environment, after having sent unreplyed emails requesting more information about the decision on the deep off shore drilling hole and the role of the Public Consultation relative to the TUPEM which ended on the 3 <sup>rd</sup> of August, 2016.	<b>No access.</b> <b>The Environment Minister refused the request by PALP to access the information.</b> The reason provided was that the matter concerns the Ministry of Economy, and did not schedule a meeting.
Palp requested a meeting with the Environment Minister and the Portuguese Environment Agency, to obtain information on the decision whether or not to carry out an Environmental Impact Assessment for the oil drilling project in Aljezur.	<b>No access.</b> <b>The request was simply ignored.</b>
On May 16th 2018, the APA informed through the media that it had decided not to need Environmental Impact Assessment. Sciaena, one of the associations that make up PALP, sent individualized requests on the Opinions (Advice) given to all the entities that APA reported having consulted, in other words CCDR Algarve, ENMC, ICNF, DGAM, DGS, IPMA and DGRM..	<b>Partial Access.</b> Only CCDR Algarve and later ENMC and ICNF replied by sending its Opinion. The Opinion (Advice) of CCDR Algarve was in the favour of the need for an EIA The access to the Opinion documents by DGAM, DGS, IPMA and DGRM was not possible.

#### **A.4 Information regarding the waiver of the oil contracts by ENI/GALP**

On October 29<sup>th</sup> 2018, the media announced that the Ministry of Environment had confirmed that ENI/GALP had requested a waiver relatively to the oil exploration, research, development and production contracts (“contratos de prospecção, pesquisa, desenvolvimento e produção”) for the areas known as “Santola”, “Lavagante” and “Gamba”. **PALP requested access to the official document confirming the renunciation by ENI/GALP of the Aljezur contracts. This request was simply ignored.** PALP also sent the request to the Directorate General of Energy and Geology (DGEG), this was the entity responsible for the contracts (ENMC was previously responsible for the contracts).

There was a restructure of the Government, including a new Ministry of Environment and Energy Transition. In December 2018, PALP had a meeting with the newly appointed Secretary of State for Energy, João Galamba. During this meeting, access to the documentation was once again requested by PALP. The Secretary of State informed that the request was not possible due to technical problems on the day of the meeting, but he agreed that the documents would be sent afterwards to PALP and by the end of the year. After some time, on the 27<sup>th</sup> of December, PALP sent an email reminding the request to have access to the official document(s).

On 15<sup>th</sup> of January, PALP received an email, with an official reply (letter) attached, from the Office of the Secretary of State for Energy. The official letter No. 551 (“Ofício” No. 551 dated 15-01-2019 with the subject Request for the copy of the renunciation Eni/Galp; See Document No. 3) was addressed to the Directorate-General of Energy and Geology, Dr. João Correia Bernardo and PALP (representative) informing that **the request was not possible due to the reason that “the waiver submitted by the ENI/GALP consortium has not yet produced the legal effects for which it is intended.”** PALP answered two days later, on the 17<sup>th</sup> of January, that the reply was not an answer to what was requested. Furthermore, PALP request the clarification of some issues which occurred with their reply and has requested once again for the access of the official document with the waiver.

#### **IV. PROVISIONS OF THE CONVENTION ALLEGED TO BE IN NON-COMPLIANCE**

The Portuguese government (and the deep-water exploratory drilling project in national waters) is in breach (non-compliance) of the articles 4 (Access to environmental information) and article 6 (Public participation in decisions on specific activities), **namely Articles 4(2), 4(4), 4(8) and 6(8)** of the Aarhus Convention.

#### **V. NATURE OF ALLEGED NON-COMPLIANCE**

The case we have presented above is **not in compliance with Articles 4(2), 4(4), 4(8) and 6(8) of the Aarhus Convention.**

As stated above, most of the documents requested by PALP and other ENGOs and necessary to have a better understanding and evaluation of the project in question were not made available. It was the case of documents in the possession of ENMC as annual work plans; annual reports on the accomplishment of the work, Memoranda of Understanding and Justifications, among others; other documents in the possession of ENMC, APA or DGRM were not disclosed as well. It was the case of the Environmental Characterization Report (RCA), the Oil Spill Contingency Plan, the Descriptive and Justification Report, the Survey Operation Notification, the Report on Serious Hazards for the Installation of the Non-Production Facility Saipem 12000, the Environmental Monitoring Program for offshore research drilling activities, the Cetacean Monitoring Program for offshore research survey activities, the

Offshore Monitoring Campaign, the Report on Characterization and Mapping of Habitats and Associated Marine Biotopes. The Opinions of the official bodies on whether or not to carry out an EIA, said to be requested by APA during the decision-making procedure were never disclosed.

In several cases, no justification was given for not making available the requested documents. In other cases, the alleged justifications were legally not acceptable: complexity or volume of the information required, confidentiality of data. For example, some documents were not provided access with the justification that it contained private confidential information. This is in non-compliance with Article 4(4) of the Aarhus Convention and as CADA indicated, information relevant to the protection of the environment should be accessible. To our best knowledge, disclosure would have adversely affect the listed interests. Furthermore, information exempted from disclosure could have been separated out, making available the remainder of the requested information.

Yet in other cases the justifications were mere artifices, schemes or manoeuvres to delay or in practice refuse the information: moving the boxes with the documents around (after transferring the competences from one public organ to another), disorganized old documents, unclear identification of the applicant, *in loco* (face to face) consultation, short time period (3 hours) for *in loco* consultation, unreasonable price for each copy (€2), conditioning the right to get copies to the acceptance of copying the full documentation file. According to Article 4, paragraph 8 of the Aarhus Convention “[e]ach Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. [...]”. The inflated cost of the photocopies is also in non-compliance with Paragraph 6 of Article 6: “[e]ach Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge, ... to all information relevant to the decision-making [...]”. Having imposed a charge of 2 Euro/page of copy, this clearly violates the requirement of Article 6 to “give access for examination ... free of charge ... to all information relevant to the decision making...”

Obstacles and invented excuses have been successively created to withhold information or only partially provide data of marginal importance and far beyond the time-limits laid down in the Aarhus Convention.

## VI. USE OF DOMESTIC REMEDIES

During these past few years PALP and other ENGOs systematically requested access to information, the three ministries involved (Economy, Sea and Environment). PALP has also sent numerous written messages to the responsible entities, ENMC, DGRM, APA, and many others who have competences in the matter or had intervention in the procedure.

PALP’s complaint to CADA (Commission for Access to Administrative Documents), regarding the denial of information and the conditions of access to documentation imposed by the ENMC was victorious. Despite the fact that CADA recognized PALPs arguments and issued an opinion favourable to the disclosure of the documents, neither ENMC nor the other authorities involved changed their behaviour.

Some of PALP’s association members submitted a “Providencia Cautelar” (court injunction) on the 24th of April 2017 in the Administrative and Fiscal Court of Loulé. This court injunction concerns the private use of maritime space challenging the authorization (TUPEM) for the exploratory drilling hole (“furo de sondagem”) and the failure of an effective participation in the public consultation (and in the decision-making process) of matters that affect their health and environment, ignoring the position of the people, local municipalities and organizations.

The court injunction is a process which should have an immediate response for cases of irreparable damages (“danos irreversíveis”). However, after almost two years, there is still no final decision. The

first instance court's ruling in September 2018 was favorable to PALP, but the Ministry of the Sea appealed to a higher court. The amount of the costs with the court injunction, up to now and including the lawyers' fee, is approximately twenty-five thousand Euros<sup>9</sup>.

**Justice in Portugal is slow, (economically) inaccessible and ineffective.**

**Slow justice.** In Portugal, the length of time that court proceedings may take is extremely high. The typical duration to resolve civil, commercial and administrative proceedings before the courts of first instance in Portugal is on average 710 days, according to a Press Release by the Portuguese Lawyer Associations ("Ordem dos Advogados") having analysed the report by the European Commission and based on 2015 statistics<sup>10</sup> (The 2017 EU Justice Scoreboard<sup>11</sup>). When considering specifically the administrative cases, the delay reaches 989 days in 2015<sup>12</sup> (2017 EU Justice Scoreboard) and about 900 days in 2016 (The 2018 EU Justice Scoreboard<sup>13</sup>). Portuguese justice is undeniably slow.

Cases where violation of Article 6.1. of the European Convention of Human Rights (ECHR, right to a fair trial - reasonable time) has been declared by the European Court in Strasbourg: Case of *Liga Portuguesa de Futebol Profissional v. Portugal*<sup>14</sup>, Case of *Pereira da Silva v. Portugal*<sup>15</sup>, Case of *Valada Matos das Neves v. Portugal*<sup>16</sup>, Case of *Sociedade de Construções Martins and Vieira, Lda v. Portugal*<sup>17</sup>, Case of *Comingersoll S.A. v. Portugal*<sup>18</sup>.

Another indicator of the inefficiency is the (clearance) rate of resolving administrative cases in the first instance, Portugal registered the lowest value, approximately 80% in 2015, in comparison to the European Member States (2017 EU Justice Scoreboard).

**Expensive justice.** There is no single way of measuring the quality of justice systems (2018 EU Justice Scoreboard). The accessibility of justice for citizens and businesses; adequate material and human resources; putting in place assessment tools and using quality standards are some of the factors to measure and improve the quality of justice systems (2017 EU Justice Scoreboard). According to the 2018 Scoreboard, there is no data for Portugal to estimate "income threshold for legal aid in a specific consumer case (\*) (differences in % from Eurostat poverty threshold)" or "court fee to start a judicial proceeding in a specific consumer case (\*) (level of court fee as a share of the value of the claim)", which are indicators of the accessibility of justice systems.

The availability of legal aid and the level of court fees have a key impact on access to justice (2017 EU Justice Scoreboard). Portuguese justice has been identified as expensive, not accessible to all, especially due to the cost of lawyers' fees and because the loser pays principle applies. This situation is in **non-compliance with Article 9 of the Aarhus Convention.**

<sup>9</sup> This is a relatively high value when considering that the minimum wage in Portugal is 600 Euros per month, since January 2019 (<http://theportugalnews.com/news/government-proposes-overall-minimum-wage-to-rise-to-600/47751>)

<sup>10</sup> <https://portal.oa.pt/comunicacao/imprensa/2017/04/11/portugal-esta-entre-os-paises-da-ue-com-justica-mais-lenta/> Published 11<sup>th</sup> of April, 2017. Accessed 25<sup>th</sup> of January, 2019.

<sup>11</sup> COM(2017) 167 final. Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions **The 2018 EU Justice scoreboard.** Justice and Consumers [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2017_en.pdf)

<sup>12</sup> <https://portal.oa.pt/comunicacao/imprensa/2017/04/11/portugal-esta-entre-os-paises-da-ue-com-justica-mais-lenta/> Published 11<sup>th</sup> of April, 2017. Accessed 25<sup>th</sup> of January, 2019.

<sup>13</sup> COM(2018) 364 final. Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions. **The 2018 EU Justice Scoreboard.** Justice and Consumers. [https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf)

<sup>14</sup> Application no. 4687/11 Judgment Date 17/05/2016 (<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%224687/11%22%5D%7D>).

<sup>15</sup> Application no. 77050/11 Judgment Date 22/03/2016 (<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2277050/11%22%5D%7D>)

<sup>16</sup> Application no. 73798/13 Judgment Date 29/10/2015 (<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2273798/13%22%5D%7D>)

<sup>17</sup> Application no. 56637/10; 59856/10; 72525/10; 7646/11; 12592/11, Judgment Date 30/10/2014

(<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2256637/10%22%5D%7D>)

<sup>18</sup> Application no. 35382/97 Judgment Date 6/04/2000 (<https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2235382/97%22%5D%7D>)

With the principle of public access to information, citizens are entitled to read all judgments or decisions. However, according to the 2017 EU Justice Scoreboard (data collected in 2016) the “access to published judgments online to the general public (\*) (civil/commercial and administrative cases, all instances)” was only observed in the 2nd and highest instance in the Portuguese courts; no access exists in the 1st instance.

**Non effective justice.** According to the 2018 EU Justice Scoreboard, standards can drive up the quality of justice.

“Timeliness, independence, affordability and user-friendly access are some of the essential parameters of an effective justice system, whatever the model of the national justice system or the legal tradition in which it is anchored” (2017 EU Justice Scoreboard), which does not seem to be the case for Portugal.

**To sum up, in what concerns access to information (much of which was denied during all the procedure) there is no effective domestic remedy.**

## VII. USE OF OTHER INTERNATIONAL PROCEDURES

Up to now, no international procedures besides the Aarhus Convention Compliance Committee have been invoked to address the issue of non-compliance which is the subject of the communication.

## VIII. SUPPORTING DOCUMENTATION

List of supporting documents:

- Document No. 1. CADA Advisory Opinion (“Parecer”). September 2016. (“Parecer no. 350/2016, Processo no. 386/2016”) <http://www.cada.pt/uploads/Pareceres/2016/350.pdf> (in Portuguese);
- Document No. 2. Table. Documents made available by ENMC with a justification (or not) 13<sup>th</sup> of February 2017.
- Document No. 3. “Ofício N. 551”. Official letter (response) regarding ENI/GALP resignation. Dated 15.01.2019

All supporting documents were originally in Portuguese and translated into English.

## IX. SENDING THE COMMUNICATION

This communication (“PALP’s Communication to the Aarhus Convention Compliance Committee – January 2019”) has been **sent by e-mail** to the following address [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org).

## X. SIGNATURE

Portugal, January of 2019

Signature: Almargem

