

REPORT ON MEETING

REPORT ON MEETING OF THE EUROPEAN OMBUDSMAN INQUIRY TEAM WITH REPRESENTATIVES OF THE EUROPEAN COMMISSION AND THE EUROPEAN HEALTH AND DIGITAL EXECUTIVE AGENCY

COMPLAINT: 530/2023/OAM

Case title: How the European Commission dealt with concerns related to the implementation of an Horizon 2020 project at the San Finx mine in Spain

Date: Wednesday, 11 October 2023

Remote meeting via WebEx

Present

European Commission

Directorate-General Common Legal Support Service (DG GROW)

Two representatives from Unit I.1 Energy Intensive Industries, Raw Materials, Hydrogen

One representative from the Directorate I Ecosystems IV: Mobility & Energy Intensive Industries

One representative from Unit D.4 Inter-Institutional Relations, Outreach

Directorate-General Environment (DG ENV)

Two representatives from Unit E.2 Environmental Compliance – Implementation

Directorate-General Research and Innovation (DG RTD)

One representative from the Unit H.1 Common Legal Support Service

Secretariat-General

One representative from the Ethics, Good Administration & Relations with the European Ombudsman Unit

European Health and Digital Executive Agency (HaDEA)

Three representatives from Unit B.3 Industry

One representative from Unit C.2 Financial support and control

European Ombudsman

Tina Nilsson, Head of Case-handling Unit

Christophe Lesauvage, Legal Expert

Oana Marin, Inquiries Officer

Amandine le Bellec, Inquiries Officer

Daria Stanculescu, Inquiries Trainee



Purpose of the meeting

The meeting was held in the context of an inquiry into how the European Commission dealt with allegations of environmental breaches in the implementation of a Horizon 2020 project, New Exploration Technologies (NEXT)¹, at the San Finx mine. The purpose of the meeting was for the Ombudsman inquiry team to better understand how the Commission addressed the complainant's concerns.

Introduction and procedural information

The Ombudsman inquiry team introduced themselves, thanked the representatives of the Commission and the European Health and Digital Executive Agency (HaDEA) and set out the purpose of the meeting. They outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by the Commission or HaDEA as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the Commission's or HaDEA's prior consent.²

The inquiry team explained that they would draw up a draft report on the meeting to be sent to the Commission and HaDEA to ensure that the contents were factually accurate and complete. The meeting report would then be finalised, included in the file and provided to the complainant. No confidential information would be included in the report or otherwise provided to the complainant or any third party. The inquiry team also informed the representatives of the Commission and HaDEA that the Ombudsman may ask for a written reply and request to inspect documents after the meeting.

Information exchanged

The Commission representatives shared a presentation providing information about the NEXT project. They explained that the aim of the NEXT project was research, namely to develop new geomodels and sensitive exploration technologies and data analysis, not to conduct mining or extractions of raw materials. The San Finx site, and the company responsible for it, was part of a consortium carrying out the project

The Commission representatives presented a timeline of the project and an overview of their communication with the complainant and other NGOs, regarding concerns in relation to the San Finx mine. The Ombudsman inquiry team noted that one of the letters listed by the Commission, from 18 October 2022, was not in the files the complainant submitted to the Ombudsman.

1) How the Commission handles alleged breaches of EU law or ethical matters in grant agreements

The Ombudsman inquiry team asked the Commission representatives how they generally check alleged breaches of EU law or ethical breaches in the context of grant agreements.

¹ More information about the NEXT project is available at: <https://cordis.europa.eu/project/id/776804>

² Article 4.8 of the European Ombudsman's Implementing Provisions.



The Commission representatives replied that the level of checks depends on the case, allegations and type of breach. They clarified that they conduct an investigation and contact the services in charge of the grants. If necessary, they will also consult the consortium and request additional information. If the allegations appear to have some grounding the Commission carries out further internal checks and/or a specific review³ to ensure that the beneficiaries have complied with EU law or with the ethics requirements, and may also request the necessary documents, such as authorisations, to prove compliance. If needed, the granting authority may be assisted by independent experts, may carry out on-the-spot checks, or consult other services of the Commission. If breaches of EU law by Member States are suspected, they may refer the case to the legal service of the Commission and/or the departments in charge of that particular EU law or of the infringement procedures. Other services like the Directorate in charge of the EU budget or Secretary-General could also be consulted. The procedure also depends on whether the allegations concern breaches of financial or non-financial obligations under the grant agreement. If there are financial implications, the Commission may carry out a financial audit; and if there is a suspicion of fraud the matter could also be transmitted to the European Anti-Fraud Office or the European Public Prosecutor's Office.

2) How the Commission and HaDEA assessed the complainant's concerns related to alleged environmental issues

The Ombudsman inquiry team asked the representatives of the Commission and HaDEA how they assessed the complainant's concerns related to alleged environmental issues in the implementation of the NEXT project at the San Finx mine.

The Commission representatives replied that, in general, when receiving letters such as the one sent by the complainant (and other NGOs), the Commission is the one responsible for dealing with policy aspects, while issues related to the implementation of projects are the responsibility of the relevant executive agency. The executive agency performs the assessment and shares its conclusions.

The HaDEA representatives explained that HaDEA has been operating since April 2021 under a Memorandum of Understanding⁴ with the Commission. HaDEA is entrusted with the implementation of part of Horizon Europe projects and projects that are part of the legacy of Horizon 2020. The NEXT project is part of the Horizon 2020 legacy and it was closed shortly after HaDEA's launch. HaDEA follows the same procedures for checking projects as those foreseen at corporate level for the Horizon 2020 and Horizon Europe projects.

The HaDEA representatives provided additional background information on the NEXT project. They stated that, under the call for proposals launched in 2017, the Commission was looking for proposals for new and more sensitive environmentally sound mineral exploration technologies. They explained that one of the global expected impacts was to reduce exploration costs through cost-effective technologies while safeguarding long and

³ In accordance with Article 25 of the Horizon Europe model grant agreement: [general-mga_horizon-euratom_en.pdf \(europa.eu\)](#), and Article 22 of the Horizon 2020 model grant agreement: [H2020 General MGA Multi V5.0 \(europa.eu\)](#).

⁴ Commission Decision delegating power to HaDEA: https://hadea.ec.europa.eu/system/files/2021-04/C_2021_948_Delegation_act_2021_2027.pdf.



short-term environmental stability. The NEXT proposal was submitted by a consortium of 16 partners from different Member States.

The HaDEA representatives explained that the NEXT proposal was assessed by four independent experts against predefined evaluation criteria. There were three phases to the experts' assessment: individual, consensus and panel review. After the experts' assessment, a different group of independent experts, who are well-acquainted with ethical issues, conducted an ethics review under the supervision of the Executive Agency for Small and Medium-sized Enterprises (EASME) staff - in charge at that time.⁵ The ethics review generally focuses on different areas, such as human embryos, humans, human cells/tissues, protection of personal data, animals, third countries, environment, health and safety, dual use, exclusive use on civil applications, misuse, and other ethics issues. The ethics review has two stages, screening and assessment. Following the screening, if no immediate issues are identified the project is cleared for signature of the grant agreement. If issues are identified, additional information is requested. The grant agreement cannot be signed until the ethics review has been completed.

In the context of the NEXT project, the ethics review concluded that five specific ethics requirements had to be fulfilled, including an environmental requirement.⁶ This involved the preparation of mandatory ethics deliverables in an additional work package to the grant agreement and the obligation to fulfil specific requirements. Three relevant environmental requirements of the NEXT project were:

- the applicant must provide further information about the possible harm to the environment caused by the research and state the measures that will be taken to mitigate the risks;
- if relevant, copies of facilities/activities authorisations must be kept on file and submitted upon request (e.g. mining/drilling permits);
- the applicant must ensure that appropriate health and safety procedures conforming to relevant local/national guidelines/legislation are followed for staff involved in this project.

After the meeting, HaDEA clarified that the above must also address the environmental, health and safety provisions of Directives 92/91/EEC (drilling), 98/24/EC (chemical agents) 2013/40/EC (electromagnetic fields) and 2006/25/EC (artificial optical radiation).

The HaDEA representatives explained that executive agency in charge at that time received all required information from the consortium, including the additional ethics deliverables. HaDEA asked for clarifications when needed. They also stated that the project was supervised by the project/consortium coordinator, a public institution from Finland. The project coordinator confirmed that drilling would not be carried out for the NEXT project. According to the response received from the project coordinator, at the San Finx mine, the activities were performed in the dry, unflooded levels.

The HaDEA representatives also explained that, under the grant agreement, the executive agency in charge performs regular project reviews and if necessary relies on independent external experts for these tasks. In this case, an independent expert from Spain, one of the leading experts in mineral explorations, also with a solid knowledge of the relevant local

⁵ The inquiry team noted that the Ombudsman did not have access to the ethics review document in this case.

⁶ The most recent guidance note on ethics requirements in EU-funded projects is available at: https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/guidance/roles-and-functions-of-ethics-advisory-ethics-advisory-boards-in-ec-funded-projects_en.pdf



context, was involved in the review performed at the end of 2019. The conclusion at that time was that the performance for the respective period was satisfactory. In the review report, the coordinator was asked to monitor closely any needs for licences and permits for all the research locations. The respective external expert was also involved in the final review at the end of 2021.

When HaDEA received the letters from NGOs, it checked once again the deliverables submitted, the grant agreement packages and discussed the issue with the external expert and the coordinator of the project. The HaDEA representatives emphasised that HaDEA conducted all necessary checks of administrative, technical and financial aspects to understand the problem and were not able to identify elements that would indicate possible breach of the grant agreement provisions. HaDEA also received written confirmation from the project coordinator that there was no need to discharge any water from the mine in order to perform NEXT related activities. The HaDEA representatives stated that based on all these verifications, there was no reason to believe that, for the purpose of the NEXT project which was focused on geologic modelling research, dewatering of the mine was necessary.

The Ombudsman inquiry team asked for clarification on whether there were any activities performed directly in the mine. The inquiry team also asked whether there was flooding at level 5 of the mine.

The HaDEA representatives explained that the project uses remote sensing to correlate the types of rocks located aboveground with those located underground. The project also involved the collection of samples from underground, however no drilling was required to collect the samples, dewatering was also not needed for this. When assessing the allegations, HaDEA looked at whether what the complainant claimed (dewatering activities) could in any way happen in the context of the project. It concluded that it could not, after looking at the scope of the project, the work packages and deliverables, estimated budget for the action, including the supporting documents submitted (such as licences to operate), and the independent expert review report. Moreover, given the significant cost of dewatering, and by comparing that cost category with the total amount of money allocated for all planned activities in the research grant, there was no scope for that in the NEXT project. The project coordinator also confirmed several times that dewatering had not occurred. The HaDEA representatives explained that they asked for extensive documentation which showed that the entity operated in accordance with the licenses required by local, regional and national authorities. HaDEA was not aware of any measures taken by the Spanish authorities in relation to the complainant's claims, and thus considered that there were no grounds to terminate the project. The HaDEA representatives concluded that the checks carried out were extensive, from the submission of the proposal to the conclusion of the project, and definitely going beyond verifications with the project coordinator only.

The Commission representatives stated that the Commission has no evidence that dewatering took place in the context of this project or as a result of it. The project coordinator confirmed in writing that the project activities took place in dry, unflooded parts of levels 4 and 5. Furthermore, the Commission emphasised that the complainant did not provide proof, including from local authorities, to sustain the allegations that dewatering had taken place for the purpose of the NEXT project. The Commission



representatives stated that, if they had received such documentation, they would have considered looking further into the issue to see what measures could be taken.

The Ombudsman inquiry team asked whether the Commission or HaDEA representatives were aware of any dewatering taking place at the San Finx mine that was not related to the NEXT project, during the relevant period.

The HaDEA representatives stated that they cannot confirm whether there was any dewatering at the mine for other purposes not related to the NEXT project. They reiterated that HaDEA is not an investigative body, and its powers are limited to checking the EU-funded activities for which it is responsible. HaDEA did all within its mandate and responsibilities to check the allegations received in relation to the NEXT project. There were no elements to correlate the allegations with the reality of what the project was about. That is, dewatering was not planned/required in the project documentation, it was not needed for the activities of the project, dewatering activity and its costs were not reported in the technical and financial deliverables of the project, and HaDEA did not receive proof that dewatering has actually happened for the project. It was therefore disproportionate to take any further measures.

The Ombudsman inquiry team asked whether, as part of the thorough proposal assessment, there was any knowledge that the water discharge authorisation was missing from this specific site or whether this was discovered later after the start of the NEXT project.

The HaDEA representatives clarified that HaDEA was not aware of the missing water discharge authorisation. They only became aware of the history of the mine when they received letters from NGOs. They mentioned that the project would not have been granted if there had been any sign of potential negative impact. Since no part of the project required dewatering, HaDEA did not check whether the applicant had a discharge authorisation.

The HaDEA representatives explained that the NEXT project received EU funding following the evaluation of external experts. Any proposals are, before signature of grants, assessed by specialised external experts. It is only based on such evaluations, which are outside the Commission's or HaDEA's power, that project funding is decided. HaDEA also emphasised that the NEXT project was carried out by a consortium. When consortiums are formed, those composing it have no interest in allowing a compromised entity to join. The entities in consortium put their reputations at risk if, in the course of their cooperation, they do not act in accordance with the planned requirements (ethical requirements included).

The Commission representatives noted that the Commission is interested in projects following rules and being implemented correctly. They mentioned that, whenever there is an allegation, the Commission invites civil society to provide evidence to prove it, so that the Commission can decide whether any action is justified. However, in this case, the Commission did not receive any evidence supporting the allegations put forward by the NGOs, notably that dewatering at the San Finx mine happened in the context of the NEXT project.

Before concluding the meeting, the Ombudsman inquiry team informed the Commission and HaDEA representatives that they will request additional documents after the meeting.



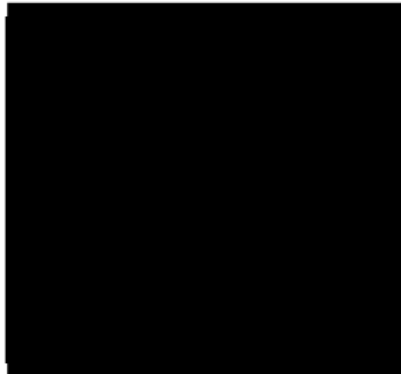
Conclusion of the meeting

The Ombudsman inquiry team thanked the Commission and HaDEA representatives for their time and for the explanations provided, and the meeting ended.

Brussels, 11/10/2023



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Annex: Presentation by the European Commission



Introductory presentation by the European Commission

Meeting with the European Ombudsman

Case 530/2023

11.10.2023

Submission of project application	2017	SC5-13-2016-2017: New solutions for sustainable production of raw materials c) New sensitive exploration technologies (2017) European Commission Decision C(2017)2468 of 24 April 2017
Evaluation	2017	
Grant Agreement	2018	
Project Kick off	1 May 2018	

<https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/sc5-13-2016-2017?tenders=false&callIdentifier=H2020-SC5-2016-2017&pageNumber=4>

Project objective:

NEXT will develop new geomodels, novel sensitive **exploration technologies** and data analysis methods which together are fast, cost-effective, environmentally safe and socially accepted.
(Mining was not an objective)

Consortium:

NEXT proposal has been compiled by a pan-European consortium, which consists of 16 partners from leading research institutes (3), academia (3), service providers (5) and industry (5). The members come from 6 EU member states (FI, FR, DE, MT, ES and SE) and represent the main metal producing regions of Europe, Fennoscandian Shield, Iberian Pyrite Belt and Central European Belt.

Detailed information on the project is available in CORDIS: <https://cordis.europa.eu/project/id/776804>

Project lifetime

2018

2019

2020

2021

1 May 2018

30 September 2021

Sampling in the San Finx mine

21 January -
1 February

6-8 August

NGO letters

01.09.2020*

16.09.2020*

26.10.2020*

NGO letters

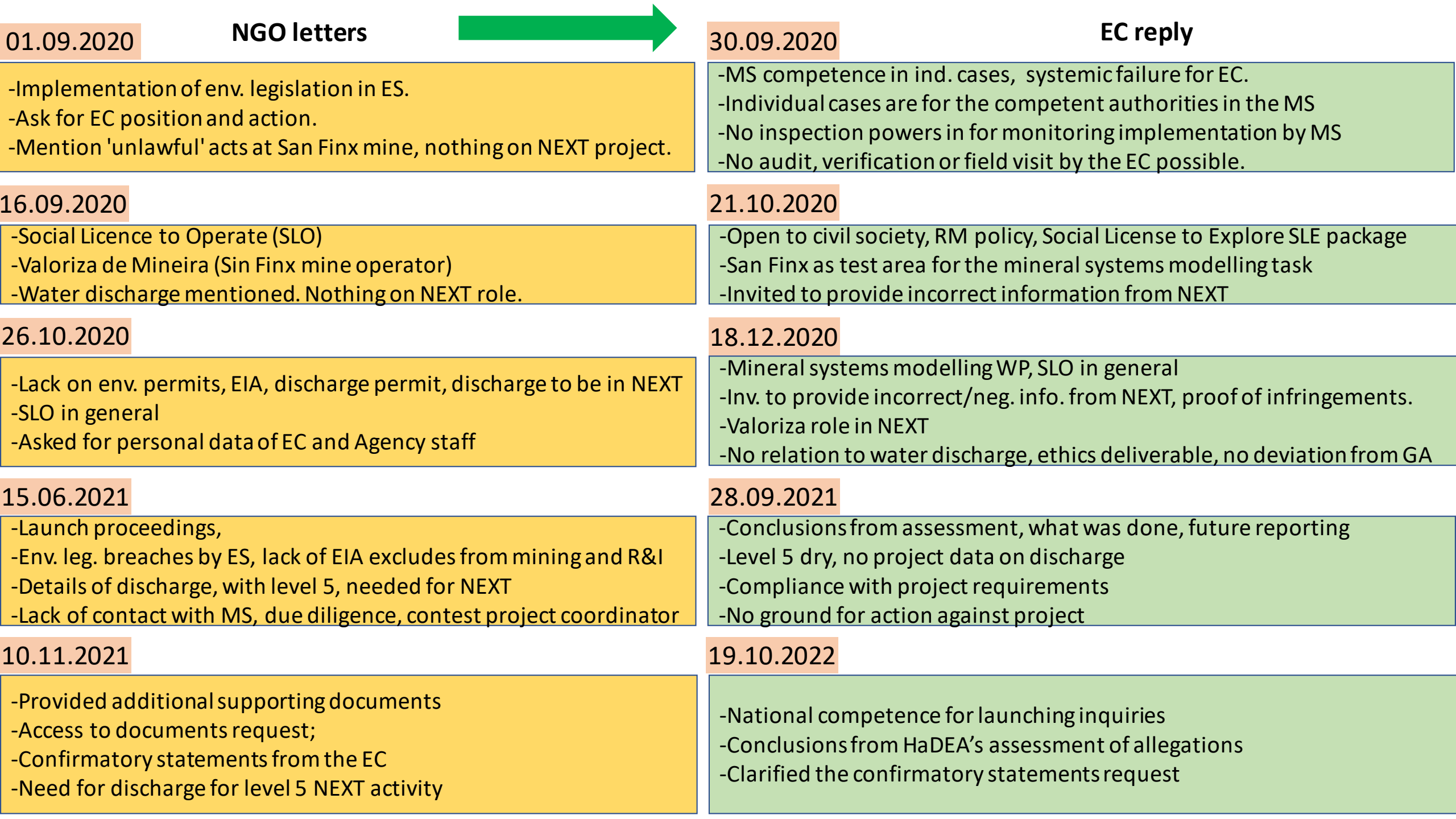
15.06.2021

10.11.2021

*No reference made to the NEXT project

*Related to the letter below, not attached

*Quoted in the complaint, not attached



ANNEX

The provided dates of letters correspond to registration dates in ARES

NGO letters		EC reply	
01.09.2020	Ares(2020)4532432	30.09.2020	Ares(2020)5120429
16.09.2020	Ares(2020)4843362	21.10.2020	Ares(2020)5712918
26.10.2020	Ares(2020)5916340	18.12.2020	Ares(2020)7731163
15.06.2021	Ares(2021)3909576	28.09.2021	Ares(2021)5892056
10.11.2021	Ares(2021)6905464	19.10.2022	Ares(2022)7248907