

Ana Gomes
anamargomes@outlook.com
Lisbon, Portugal

22 March, 2021

Ref. Portugal - Illegal state aid and abusive tax schemes in a deal between Chinese controlled EDP and French ENGIE

**Dear President Ursula Von der Leyen
and dear Commissioners,**

Portuguese media and Parliament have been discussing the sale of 6 dams in the Douro river by power utility EDP (controlled by CHINA THREE GORGES) to French ENGIE without paying taxes. See annexes below.

EDP cashed 2.2 billion € in this operation. Almost as much as the 2.7 billion € for which EDP was sold in 2011, in the context of the austerity policies and with the blessing of the Troika, to CHINA THREE GORGES, a State company controlled by the Chinese Communist Party. (See a letter that MEP Elmar Brok and I have addressed to President Juncker and his reply.)

EDP does not own the 6 dams: the Portuguese State does. And so the State had to authorize the transfer of their concession. Or not authorize. Weirdly, the Minister of Environment did authorize the transaction and said that all due taxes were to be paid.

However, NGO “Movimento Cultural Terras de Miranda” questioned how the Ministry of Environment (via Agência Portuguesa do Ambiente e a Direcção-geral de Energia e Geologia) evaluated the transaction and denounced the “juridical construction” engineered by EDP as being determined by the aim of invoking article 60.º of the Tax Exemptions Statute and art 73.º of the IRC Code (corporate tax code), to enable EDP to escape paying taxes - IdS, IMI, IMT and IRC. The scheme is abusive, unnecessary, without any economic rationality, but to avoid taxation, MCTM charged.

The OEGF - Observatory of the Economy and Fraud Management - notes that the State did not defend its interests by failing to exercise its preference right, and by not demanding compensation, thus fueling the suspicion that it turned blind eyes to a deal engineered to ensure tax dodging.

Questioned in Parliament last week, the CEO of EDP argued the scheme was “standard”, but could not indicate the law according to which EDP deemed legal not to pay taxes in this deal. He assured, nevertheless, that VAT would be paid.

Prime Minister Antonio Costa, in Parliament last week, provided a conspicuously vague and non committal justification, suggesting that it was up to the Tax Authority at any time to investigate, thus increasing suspicions on the deal and possible complicity behind it.

This opacity and confusion should never be tolerated by the authorities, even more so when the majority of citizens is facing unemployment and extremely difficult conditions, as a result of the covid pandemics, and when State coffers need to collect tax and other resources to prompt economic recovery and reinforce health and other public services.

The contradictions and apparent neglect by the Portuguese government in this case involving EDP, with a long history of engaging in excessive rents, revolving doors, corruption and other criminal practices, fuels suspicions of State capture and, of course, provides ammunition to extremist anti-democracy forces.

News were reported yesterday that a judicial investigation was opened following a complaint sent by the MCTM to the Portuguese Attorney General.

Nevertheless, there are enough reasons why EC scrutiny of this deal is also needed, for possible abusive tax scheme, illegal state aid, corruption and mismanagement of State assets.

I will also send copy of this letter to the relevant Portuguese authorities and to EP, OECD and GRECO.

Best regards,

Ana Gomes
Former MEP (2004-2019)

Annexes:

<https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBQAAAB%2BLCAAAAAAABAAzNDC3NAQAH%2BA21AUAAAA%3D>

<https://www.esquerda.net/artigo/o-governo-desprotegeu-o-interesse-publico-favor-da-edp/72933>

<https://observador.pt/2020/11/13/luz-verde-a-venda-das-barragens-do-douro-da-edp-e-ngie-mantem-empresas-gestoras-em-portugal/>

<https://www.publico.pt/2021/02/25/economia/noticia/terra-miranda-lanca-suspeita-frau-de-fiscal-venda-barragens-edp-1952024>

<https://observador.pt/2020/11/13/luz-verde-a-venda-das-barragens-do-douro-da-edp-e-engie-mantem-empresas-gestoras-em-portugal/>

<https://observador.pt/2020/11/13/luz-verde-a-venda-das-barragens-do-douro-da-edp-e-engie-mantem-empresas-gestoras-em-portugal/>

<https://observador.pt/2019/12/19/edp-vendeu-seis-barragens-no-rio-douro-por-22-mil-milhoes-a-engie/>

<https://www.publico.pt/2021/02/25/economia/noticia/edp-negocio-venda-barragens-operacao-standard-dentro-lei-1952113>

<https://www.publico.pt/2021/03/19/economia/noticia/historia-mal-contada-venda-barragens-edp-1955063>

<https://www.dinheirovivo.pt/empresas/venda-das-barragens-no-douro-paga-imposto-fisco-decide-em-janeiro-13177485.html>

<https://eco.sapo.pt/2021/02/21/bloco-acusa-edp-de-fugir-ao-imposto-de-selo-na-venda-de-barragens-a-engie/>

<https://www.jornaldenegocios.pt/empresas/energia/detalhe/ministro-diz-que-venda-das-barragens-da-edp-e-negocio-societario-atraves-de-concessao-que-e-do-estado>

<https://observador.pt/2020/12/24/movimento-responsabiliza-ministro-por-borla-fiscal-a-edp-na-venda-de-barragens/>

https://www.rtp.pt/noticias/politica/edp-costa-acredita-que-negocio-da-barragens-esta-a-ser-investigado_a1305319

https://www.rtp.pt/noticias/pais/edp-mp-investiga-venda-de-seis-barragens-a-engie_v1306161