

Strasbourg, 23 October 2013
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T-PVS X (2013) 16

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

33rd meeting
Strasbourg, 3-6 December 2013

APPLICATION OF THE CONVENTION
- Summary of case files and complaints -

OCTOBER 2013

*Secretariat memorandum
prepared by
the Directorate of Democratic Governance*

IMPLEMENTATION OF THE CONVENTION: FILES

1.1 Specific sites - Files open

a. Ukraine: Project for a waterway in the Bystroe estuary (Danube delta)

This case concerns the excavation of a shipping canal in Bystroe estuary of the Danube delta in Ukraine, which is likely to affect adversely both the Ukrainian Danube Biosphere Reserve – the most important of Ukraine’s wetlands – and the whole Danube delta dynamics.

The first phase of the project was conducted in 2004.

In 2004, the Standing Committee adopted Recommendation No.111 (2004) on the proposed navigable waterway through the Bystroe estuary (Danube Delta), inviting Ukraine to suspend works, except for the completion of phase I, and not to proceed with phase II of the project until certain conditions were met.

Ukraine did not send a delegate to the Standing Committee meeting in 2008, but they sent information to the Secretariat afterwards, concerning the repeal of the Final Decision regarding Phase II of the Project and confirming that the amended and updated EIA documentation would be sent to the Secretariat, and that measures would be undertaken to ensure public consultation and participation on this Project. Furthermore, the Secretariat was informed that a document entitled “Draft Time-Schedule” had been signed with the Romanian authorities for further mutual implementation of the steps to be taken by both countries.

In March 2009, the Ukrainian authorities reported to the Secretariat confirming the repeal of the Final Decision regarding Phase II of the Project, in line with Recommendation 111 (2004) of Bern Convention. The report also confirmed that “the works on the Phase II never started and are not going to start until the appropriate procedures are being implemented”.

At the 2009 meeting of the Standing Committee, the delegate of Ukraine outlined the measures taken by his government, including the initiative to collaborate with the International Commission on the Protection of the Danube River regarding research and monitoring of the transboundary part of the Danube Delta. The Standing Committee welcomed the positive co-operation underway between Ukraine and Romania, but it agreed to keep the case file open and asked Ukraine to continue to report to in 2010.

In March 2010, the European Union informed the Council of Europe that Ukraine adopted a final decision on the project at the end of January 2010. Ukraine decided to start works related to the full-scale implementation of the Danube-Black Sea Navigation Route, thus initiating the implementation of Phase II of the Bystroe Channel project.

The Secretariat asked Ukrainian authorities to inform on the issue; however, the national report was only sent on 1st December 2010, a day before the Standing Committee meeting.

Following a long discussion and after calling for an improved and regular exchange of information with the Secretariat, the Standing Committee decided to keep the case file open and agreed to set-up a Select Group of Experts to facilitate dialogue on the issue. The Group should have met after relevant Parties and the Chair of the Standing Committee agree on the terms of reference. These were sent to both Parties in January 2011; however, the Ukrainian Party was not in a position to agree on them.

In September 2011 the Bureau expressed again strong dissatisfaction towards the lack of communication from Ukrainian authorities and decided to keep the case-file opened, as well as to request to Ukraine a detailed report on the state of implementation of the Danube-Black Sea Navigation Route, as well as on the compliance with the Standing Committee Recommendation (2004) 111.

At last Standing Committee meeting, the delegate of Ukraine presented the government report, stressing that - according to the data collected through the monitoring process - no negative impacts for the Bern Convention species and habitats, as well as for the Romanian delta ecosystems could be identified in relation with the Bystroe Channel project. He further recalled that Ukraine proposed to elaborate a common Plan for the management of the basin of the Danube Delta within the framework of the International Commission for the Protection of Danube River. He informed about the content of the EIA which was elaborated by a pool of independent experts and concluded by stating that Phase II of the Bystroe Channel project has not started.

The delegate of Poland, speaking as EU Presidency, requested the case-file to be kept open. She expressed doubts on the way the recommendation was implemented and stressed the need for more detailed and precise information.

The delegate of Romania regretted the lack of clear information from Ukraine, while contesting the quality of the EIA which should be improved before being agreed by all concerned Parties. He welcomed the monitoring project while stressing that this cannot erase the concerns related to the digging of a channel in the Danube delta. He concluded by recalling that both the Aarhus and Espoo Convention have issued warnings for possible non-compliance to Ukraine, as well as by requesting that shorter but clearer and timely reports should be submitted to the Bureau by Ukrainian authorities.

The Committee decided to keep the case-file open asking the three concerned Parties, namely Republic of Moldova, Romania and Ukraine, to ensure that the Secretariat receive updated reports on the current state of the situation as well as on the implementation of the provisions included in Recommendation No. 111 (2004).

In February 2012 **Ukrainian authorities** sent a full report highlighting that the works related to the implementation of Phase II of the Bystroe Channel project did not start. Moreover, according to the report, Ukraine prepared an EIA which was handed to the Government of Romania and discussed by a panel of international experts before being amended – in 2008 - according to the comments made; a separate analysis of the impacts of the full implementation of the Channel in a transboundary context was also available; public hearings on the issue were organised without the cooperation of the Romanian government. Ukrainian government further affirmed having looked into all possible alternatives to the route of the waterway before deciding to consider the Bystroe one.

Regarding the ecological compensation and mitigation of possible damages to the environment, the Ukrainian government informed having identified specific measures to mitigate the potential negative transboundary environmental impact of the Bystroe project; furthermore, the authorities informed that appropriate measures have been taken over the past years to enhance the conservation status of the Danube Delta Biosphere Reserve and to expand its territory.

Finally, for what concerns the monitoring measures, Ukraine informed of a number of initiatives implemented since 2004, including long-term hydrobiological studies for 2004-2011 whose conclusions allow to affirm the absence of direct impact of the renewing and maintenance of waterway Danube Black Sea to the biotic communities of phytoplankton, zooplankton, zoobenthos, fish fauna, with only a few local and limited exceptions.

The report submitted in February 2012 by the **authorities of the Republic of Moldova** informed on different mechanisms for trilateral co-operation among which the implementation of the Agreement for the Establishment and Management of a Cross-Border Protected Area between the Republic of Moldova, Romania and Ukraine in the Danube Delta and the Lower Prut Nature Protected Areas. The report stresses the strong political will of the Joint Commission towards the full implementation of existing legal instruments, scientific and technical co-operation at the Delta level, a stable socio-economic context in the Delta, exchange of information, data and methodologies, and long-term harmonised monitoring.

In a report submitted in March 2012 the **authorities of Romania** informed that Ukraine has finalised the implementation of Phase I of the Bystroe project, but has also completed some of the works foreseen

in the framework of Phase II (such as the retaining dam off the mouth of the Bystroe branch of the Danube, which was continuously extended until it reached the length envisaged for Phase II of the project). Romanian authorities recognised that Ukraine has taken some positive steps in order to comply with its obligations. However, they pointed out that the works in the area had steadily continued (including maintenance dredging to reach navigational depths and work at the engineering structures in the Ukrainian side); the authorities further regretted that the bilateral cooperation was interrupted with the notification, by the authorities of Ukraine, of the “final decision” regarding the construction of the deep navigation canal, without taking into account the concern expressed by the Romanian authorities (including the persistence of gaps in the EIA). Romania maintained its view that, in its current design, the project poses significant risks of an adverse impact on the environment, including on the territory of Romania.

The report further stressed that the decision V/4 adopted by the Meeting of the Parties to the Espoo Convention at its fifth session (Geneva, 20-23 June 2011) endorsed the finding of the Implementation Committee established under this Convention that, while Ukraine had fulfilled some of its obligations under paragraph 10 of decision IV/2 with respect to both phases of the Bystroe Canal project, it had not fulfilled all of these obligations. The finding of Implementation Committee was caused by the failure of Ukraine to comply with the request of the Committee to provide a written statement confirming clearly and unambiguously that the conditions imposed in the Decision IV/2 of the Meeting of the Parties have been met.

The Bureau acknowledged good progress in communication from all the concerned Parties, who generally submitted their reports within the deadlines and focussed on key information. However, it requested to Ukrainian authorities to make available the English translation of both the EIA and the analysis of the impacts of the full implementation of the Channel in a transboundary context.

In August 2012 Ukraine sent both the EIA (as amended in 2009) and the analysis of the impact in a transboundary context. These documents conclude that the Bystroe option would represent ‘the least-impact’ alternative to the Unesco Danube Biosphere reserve (DBR) in terms of long-term viability with respect to the sustainable natural resource management and suitable governance of anthropogenic activities taking place in the areas of the Bystroe Branch.

After assessing the requested document, the Bureau - meeting in September – decided to keep the case file open and forwarded the EIAs and its annexes to the Secretariats of other relevant international Agreements for comments.

By the 32nd Standing Committee meeting only the WWF was able to provide the Secretariat with a written opinion. According to WWF analysis, the EIA seems to comply with the formal requirements of EIA but actually fails to address concrete relevant issues, as for instance: emergency situations are not assessed, the knowledge gaps and the level of uncertainties, the post-project analysis of results of the monitoring and management programmes, the social and economic forecasts, the latest hydro-morphological changes in the Delta, the cumulative environmental impact in the transboundary context. Moreover, WWF considers that the list of measures to reduce the negative impact does not contain institutional arrangements.

The delegate of Ukraine presented the EIA stressing that the document went through the assessment of 17 international experts. He explained that the EIA addresses additional aspects that were not considered in previous reports, including a rationale conduct for the transboundary EIA process, information on the socio-economic situation in the areas of the Lower Danube Basin, scientific projections to determine the potential impact of Phase II on the restoration of the environment in the affected zones, an updated assessment of transboundary aspects of some project activities and their habitat loss, considerations of alternative navigation routes and their possible environmental impact. Annex II has been particularly developed to secure answers to questions and comments expressed by the Romanian NGOs, International Non-Governmental Organizations, Romanian Public and representatives of the Romanian

authorities. The delegate of Ukraine concluded by informing that the Ramsar Convention stopped monitoring this file after considering that the conservation of the concerned wetlands is satisfactory.

The delegate of Romania thanked Ukrainian authorities for the efforts in improving communication. Yet, he noted that there are still several gaps and shortcoming in the EIA. For instance, the mathematical modelling used by Ukraine is based on data which were not transmitted to the Romanian side, despite several requests in this sense. Moreover, according to the authorities of Romania, the EIA focuses almost exclusively on the impact of the works on the Ukrainian side of the Delta while the transboundary impact is not properly assessed. In conclusion, the authorities of Romania considered themselves not completely reassured by the EIA since this does not deal with all the environmental consequences rising up from the project and the consultations undertaken under the Espoo Convention were not duly taken into account. Romania finally requested that the impact of project is further assessed before continuing with the implementation of Phase two.

The Committee took note of the reports of both Ukrainian and Romanian authorities and of comments and concern from other Parties and Observers and, following a ballot, it decided to keep the case file open and instructed the Secretariat to reiterate its requests for feedback to the other concerned stakeholders.

In January 2013 the Secretariat addressed a reminder to the EU, UNESCO, the Espoo Convention, the WCMC and the Ramsar Convention.

The Ramsar Convention confirmed that the file opened under Article 3.2 of the Convention (human-induced negative changes) had been recently closed, together with the file related to the Dniestr River Delta, after the submission of information and reports by Ukraine at the occasion of the 11th meeting of the Conference of the Parties to the Ramsar Convention. The decision was based both on the information submitted and on the consideration that the Ramsar Administrative Authority in Kyiv has taken the responsibility to declare publicly that no negative change will occur through the planned works. More particularly regarding the file opened for the Bystroe Channel in 2003, the Ramsar Convention reiterated its concern that the trilateral cooperation between Ukraine, Romania and the Republic of Moldova shall continue and that it need to be developed further in order to elaborate and coherently implement a sub-basin management plan for the Danube Delta. The Ramsar Secretariat will remain alert about any new and substantial information on negative change occurring.

Regarding the request of comments on the EIA, the Ramsar Secretariat suggests that a meaningful and thorough analysis of this document would need a specifically committed study for which apposite funds should be allocated.

The report submitted in March 2013 by the European Commission summarises the information provided so far while waiting for the possible adoption by the Parliament of Ukraine of draft law on Environmental Impact Assessment in Transboundary Context.

The Bureau held a long discussion on the possible follow-up to this complaint, including options such as: sending the file to the Standing Committee as it stand; setting up a working group tasked to analyse the EIA, or even closing the file in order to ensure coherence with the position taken by the Ramsar Convention. However, taking into account the outstanding biological diversity of the concerned area, and willing to find a satisfactory solution for all, the Bureau instructed the Secretariat to contact the three concerned States with the request of convening as soon as possible a meeting of the Joint Commission in order to inform the Standing Committee on the state of transboundary cooperation.

In the report submitted in July, Ukrainian authorities inform having sent official letters to the correspondent authorities of Romania and the Republic of Moldova, inviting them to convene a meeting of the Joint Commission, according to what the Bureau requested.

The report submitted end of August by the authorities of the Republic of Moldova inform that a meeting between the Deputy Minister of Environment (Republic of Moldova), representatives of the Ministry of Foreign Affairs and European Integration (Republic of Moldova) and representatives of the Embassy of Ukraine in the Republic of Moldova has taken place in June 2013.

The meeting was organised at the request of the Ukrainian Embassy in Chisinau who presented the measures taken by Ukraine to comply with the recommendations made by the Standing Committee to the Bern Convention. According to the report, the representatives from the Ministry of Environment took the occasion for expressing their support for a meeting of the Joint Commission. The report further recalls that the last meeting of the Commission was convened on 11 March 2011. According to the Agreement, by the end of 2011 Romania had to hold a meeting, but this did not take place as Ukraine was unable to attend. The rotation order for the Chair should be Romania, Ukraine, and the Republic of Moldova, but the report affirms that none of the Parties took the initiative of officially convening a meeting since 2011.

In a letter sent in August 2013, the Permanent Representative of Romania before the Council of Europe informed the Secretariat that Romania is taken all necessary steps for convening as soon as possible a meeting of the Joint Commission. Moreover, the letter informed that in March 2013 Ukraine provided the Danube Commission Secretariat with the details of the full implementation of the “Danube – Black Sea” canal, in apparent contradiction with what stated at last Standing Committee Meeting. The deadline for the completion of the work is 30 months. The letter further recalled that the Decision of Ukrainian authorities to finalise the Bystroe Channel project has not been cancelled or suspended and thus there is no national impediment to its implementation. The Permanent Representative concluded by noting that the attention given to this complaint by a number of International treaties has initiated a transboundary consultation process which is still in progress.

The Permanent Representative kindly attached the Proposal of Ukraine to the Danube Commission to include the Bystroe Project in the “Plan of major works recommended on the Danube”. In this proposal the project is described as “adopted in 2006 and plans to ensure safe navigation conditions with a draft of 7.2 m across the sector from km 172.36 to 0.00 on the Bystroye arm (the navigation on the sector from km 116 to 0.00 was re-established in 2004). Planned time framework for completion of the project - 30 months”.

In addition, in August 2013 the Secretariat received the reply of the ESPOO Convention, recalling that the matter has been subject to findings and recommendations by the Implementation Committee since Romania expressed its concern, back in 2004. Two decisions by the MoP were also taken on the issue, declaring effective the caution to the Government of Ukraine (in 2011) and requesting the authorities of this country to inform on steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, as well as on the implementation of the strategy of the Government of Ukraine to implement the ESPOO Convention.

The Secretariat of the ESPOO Convention also recalled that, in November 2012, the Implementation Committee decided to start drafting recommendations to assist Ukraine in complying with its obligations under the Convention at its twenty-eighth session (10–12 September 2013). The recommendations would be drafted on the basis of the information submitted by Ukraine in December 2012, as well as on the additional information that Ukraine was requested to send by 27 August 2013.

At its meeting in September the Bureau welcomed the reports submitted by the Parties, but noted that there was still no proposal or agreement on a possible date for a meeting of the Joint Commission, and regretted the lengthy and somehow dispersed dialogue on this issue. It recalled that the Joint Commission was set up to provide a framework for a true and constructive cooperation and requested the Parties to show real commitment in this sense.

The Bureau decided to keep the file open and requested again that three concerned states – Ukraine, Romania and the Republic of Moldova – convene as soon as possible a meeting of the Joint Commission and inform the Standing Committee at least on the date of the meeting as well as on the state of transboundary cooperation.

Furthermore, the Bureau welcomed the exchange of information between the Secretariats of the ESPOO and Bern Conventions, as a good example of international co-ordination on issues which are relevant to Europe’s biodiversity. It finally instructed the Secretariat of the Bern Convention to approach

the ESPOO Convention for any updated information, including any relevant outcome of the 28th Session of the Implementation Committee.

b. Cyprus: Akamas Peninsula

This case concerns plans for the tourist development in the Peninsula of Akamas (Cyprus), with detrimental effect on an ecologically valuable area with many rare plant and animal species protected under the Bern Convention.

The case was first discussed at the 16th meeting of the Standing Committee in 1996. Two on-the-spot appraisals were carried out in 1997 and 2002 and a recommendation adopted in 1997 [Recommendation No. 63 (1997)] on the conservation of the Akamas peninsula in Cyprus and, in particular, of the nesting beaches of *Caretta caretta* and *Chelonia mydas*.

In 2008, the Standing Committee asked Cyprus to send the management plan for the area as soon as it would be ready, and wished that the area of Limni would also get adequate protection. The Committee asked Cyprus to fully implement Recommendation No. 63 (1997); to create a National Park and ensure the maintenance of the ecological integrity of the area; as well as to apply the ecosystem approach to the Akamas peninsula, including Limni.

At the 29th meeting of the Standing Committee, the delegate of Cyprus informed that there had been no great changes since the previous year.

In 2010 the Committee took note of the report presented by the Secretariat in the absence of delegate of Cyprus. It further took note of the observations and reports from the NGOs and decided to keep the file open while asking Cyprus to present a report for its next meeting; to send to the Secretariat as soon as possible the translation into English of the management plan for Limni area; to fully implement its Recommendation No. 63 (1997).

In August 2011 Cyprus authorities sent the translation of the Executive Summary of the Draft Management Plan for the Limni Area, specifying that this only referred to the Natura 2000 “Polis Gialia” site (thus not including the proposed “Chersonisos Akama” site) and informing that the Government of Cyprus designated a wider area that would be managed via development regulations and restrictions, to ensure the highest possible protection of the peninsula.

The report from the NGO (Terra Cypria) informed that a formal notice letter and a reasoned opinion were sent by the EU to the Republic of Cyprus regarding the insufficient SPA proposal for the area. It is expected that the issue will be led to the European Court of Justice.

In the absence of a delegate from Cyprus at the 31st Standing Committee meeting, the Secretariat presented the case-file and called the attention of the Committee on the report on the management plan for the Natura 2000 “Polis Gialia” Natura 2000 site.

The representative of Terra Cypria argued that the size and extent of the Natura site was still being considered at the EU level. The proposal by the Cyprus government to regulate part of the area not as a Natura site, but through Town Planning regulations relating to land use (rather than conservation), was an indirect admission that the area is inadequate. She further considered that in the case of Limni, while a management plan exists, this was not implemented yet and, in any case, the area designated comprises such a narrow strip of land that it cannot protect turtles from human interventions taking place just beyond. Moreover, according to Terra Cypria, the plan proposed does not seem to include policy for foraging turtles. In both cases, developments are taking place all the time. The local authorities are allowing unsuitable activities and the threats to wildlife are continuing. Therefore, she urged that the file against Cyprus remains open.

These views were supported by the representative of MEDASSET, who pointed the attention of the Committee to deaths on the sea in different areas of Cyprus. The representative of Birdlife noted the importance of the Akamas Peninsula for some threatened birds, for which not enough Natura 2000 sites were designated.

The delegate of the European Union informed the Committee that the European Commission was analysing the information sent by Cyprus authorities in reply to a letter of formal notice for insufficient designation of the area. A decision on the follow-up to infringement procedure was expected by January 2012.

The Committee decided to keep the case file open requesting from Cyprus the full implementation of its Recommendation No. 63 (1997) as well as more information on the protection of sites in the whole of the Akamas Peninsula and Limni. The Committee asked the Secretariat to follow-up the file in close co-operation with the European Commission.

The Secretariat sent out official letters requesting updated detailed information to both the Government of Cyprus and the NGO on 19 January 2012.

In a succinct report sent in March 2012 the Government of Cyprus apologised for not having participated in the last Standing Committee meeting and expressed disagreement towards the NGO's claim of inadequate designation of both the Akamas and the "Polis Gialia" areas. More particularly regarding the latter, the authorities wanted to reassure the Committee that the developments surrounding the area were being controlled by the competent authorities and the procedures for granting building permits were observed. Furthermore, the Government stressed that maximum efforts were put in place to ensure the protection of birds, particularly by designating large SPAs.

Finally, the authorities informed that a full scientific package of information was under preparation in the framework of the complaint opened under the Commission and that this information would be forwarded at the same time to the Secretariat of the Bern Convention (around end of June).

The European Union also informed that, in the framework of a complaint on the issue of insufficient designation and protection of the Akamas area under the Natura 2000 network, a reply was received from Cypriot authorities following which the Commission issued a Letter of Formal Notice under Article 258 of the Treaty for insufficient designation of the area. The Commission analysed the reply and requested a number of further clarifications, after which they would decide on next steps.

The Bureau decided to keep the case file open and instructed the Secretariat to contact both the European Commission and Cyprus authorities by mid-July 2012 for information on further developments concerning the infringement procedure.

No substantial new information was submitted by the European Union, which in August 2012 was still expecting the reply of the authorities to its request of clarifications. No information was submitted by Cyprus authorities either.

Stressing the lack of new information the Bureau instructed the Secretariat to approach again Cyprus authorities and ensure that the scientific package of information related to the Akamas peninsula is forwarded to the Standing Committee. The complainant and the European Union are also invited to submit any relevant information available.

At last Standing Committee meeting the delegate of Cyprus informed that the Cyprus Department of Environment has proceeded to the revision of the Akamas Peninsula mapping using high resolution satellite and aerial images. Additionally, site visits and sampling were also made. Once the information will be properly analysed, appropriate protection measures will be taken. Mr Antoniou concluded by reaffirming that, concerning the "Polis-Gialia" area, the authorities disagree with the claim that the area which has been designated is inadequate. However, he informed that Cyprus is reviewing the monitoring and inspection process in place so to ensure adequate surveillance of the area.

The delegate of Norway stressed that the fact that the file that had been open for sixteen years was a sign that the actions undertaken by the authorities were so far not enough effective to solve the conservation problems encountered. There was a regrettable lack of progress, an opinion which was shared by the representatives of the NGOs.

The Committee decided to keep the case file open and encouraged Cyprus to fully implement its recommendation N°63 (1997). The Committee further instructed the Secretariat to continue co-ordination with the European Union on this complaint.

In March 2013 the European Commission informed that it had received new scientific data both from the Cypriot authorities and NGOs. The information showed controversies in its conclusions. Hence, the Commission services were assessing the results and attempted for the best solution to resolve the case.

The Secretariat requested Cyprus authorities to report after the first Bureau meeting.

In a letter received in July, Cyprus authorities communicated that the Department of Environment is finalising the mapping of the Akamas Peninsula area and that the results will be forwarded to the Secretariat once they will be published. Moreover, they affirmed being in the process of conducting a Management Plan for the Akamas Peninsula area, which is expected to be completed by the end of 2013.

Also in July, the complainant requested the Bureau to continue keeping the case under scrutiny first of all because the Akamas issue is being examined by the European Commission as a matter of “insufficient designation”, meaning that the production of a management plan for the area currently designated would presumably be insufficient for solving the problem alone. Secondly, the complainant informed that a local developer is proposing to construct two golf courses surrounded by villas and hotels in the adjoining Limni area, which would presumably directly affect the turtles nesting there. According to the complainant, the Government’s failure to take a firm stance about the distance of installations from the foreshore is now the subject of a second and different formal complaint to the Commission.

The complainant considered that the continued existence of an open file under the Bern Convention would positively support and complement the on-going process at EU level.

Finally, in its report, the European Commission informed having received extensive additional scientific information both from the Cyprus authorities and the NGOs. The Commission is currently analysing the data to determine whether the SCI has been (on the basis of scientific evidence) sufficiently designated or not.

At its meeting in September, the Bureau considered it necessary to follow the production and future implementation of the management plan for the area in connection with the developments related to the complaint pending at the EU level, more particularly regarding the presumed insufficient designation of the SCI.

The Bureau invited the Party to inform the Standing Committee at its next meeting and instructed the Secretariat to liaise with the European Commission concerning the procedure pending under EU instances.

c. Bulgaria: Wind farms in Balchik and Kaliakra – Via Pontica

This case concerns the building of windfarms in Bulgaria, at Balchik and Kaliakra, on the Black Sea coast. The NGO is challenging the chosen sites located on the Via Pontica which is one of the main migratory routes in Europe especially for soaring birds.

An on-the-spot visit was carried out in September 2005, on the basis of which the Committee adopted Recommendation No. 117 (2005), asking the Bulgarian government to reconsider its decision to approve the proposed wind farm in Balchik in view of its potential negative impact on wildlife and taking account of Bulgaria’s obligations under the Convention.

In 2006, the Bulgarian government informed the Secretariat that it did not intend to review the decision approving the wind farm project. The Secretariat received information from NGOs on a similar case involving plans to build 129 windmills 20 KMs away from Balchik, between the town of Kavarna and the Kaliakra Cape.

A new on-the-spot appraisal was carried out on 20-22 June 2007. On the basis of the expert’s conclusions the 27th meeting of the Standing Committee adopted Recommendation No. 130 (2007) “on the

windfarms planned near Balchik and Kaliakra, and other wind farm developments on the Via Pontica route (Bulgaria)".

In June 2008, the European Commission opened an infringement procedure against Bulgaria because of insufficient designation of 6 sites as SPAs under the Bird Directive, one of which is the Kaliakra IBA.

In 2009, the delegate of Bulgaria informed the Committee that a "Strategic Environmental Assessment (SEA)" of Bulgaria's Energy Strategy and National Plan for Renewable Energy Sources had been initiated in spring 2009, with meetings at expert level. Bulgaria's Ministry of Environment and Water expressed their readiness and intention to co-operate with civil society and business representatives to achieve the necessary results and fulfil the country's obligations for the protection of its nature and biodiversity.

At the Standing Committee meeting in 2010 the delegate of Bulgaria presented the government report informing, among others, of measures taken concerning the preventive protection of NATURA 2000 sites. Furthermore, she confirmed that no new authorisations for development in SPA Kaliakra and IBA Kaliakra have been issued in 2010.

Following information provided by the delegate of the European Union as well as by the representatives of BirdLife and the AEWa the Committee decided to keep the case file open and continue to follow it up in close co-operation with the European Commission, taking into account the three infringement procedures opened.

At the 2011 Standing Committee meeting the Secretariat presented the report forwarded by the Bulgarian Government, which concerned the following issues: (i.) the energy strategy up to 2020 should not bring about any significant negative effects if certain conditions were respected and if mitigating measures were taken; (ii) the national action plan for renewable energies had not been finalised as the public consultation had highlighted serious omissions; the Ministry had issued formal instructions for the General Inspectorate of the Environment and Water, asking it to reduce the number of authorisations issued pending the launching of the national plan; (iii.) there was a slowing down of projects already authorised owing to financial and technical problems (1 project involving 32 turbines had been stopped); (iv.) in April 2011 plans had been launched to map the most important sites for birds and to minimise risks.

The representative of BirdLife/Bulgaria expressed her great concern about the lack of progress made and underlined the gap between the government's promises and the situation on the ground; she also protested at the energy sector's very powerful lobby.

The Committee decided to keep the case file open, asking the authorities of Bulgaria to present a report for its next meeting, as well as to take into consideration the provisions of Recommendation No. 130 (2007). The Committee further instructed the Secretariat to continue to follow this complaint up in close co-operation with the European Union, taking into account the three on-going infringement procedures.

In 2012, the Secretariat didn't receive a reply to the reporting request addressed to the authorities in view of the first Bureau meeting.

Moreover, the Secretariat received an invitation from the AEWa Secretariat to join a possible Implementation Review Process (IRP) mission to the country, to assess the possible impact of a new windfarm project near Durankulak lake which "has the potential to endanger the coherence of the area as a wintering ground for the Red-breasted Goose as the windfarm is foreseen to be built in the main feeding area of the geese". In fact, AEWa Standing Committee was informed that the project has been approved by the Regional Inspectorate of Environment and Water in Varna in spite of the objections raised and argumentations provided by nature conservation NGOs, the local hunting organisation and local residents. The Committee further noted that this is not an isolated development and that a number of windfarms have already been established in the vicinity of Lakes Durankulak and Shabla in areas previously providing feeding habitat to wintering geese which are now avoided by the birds.

The complainant also submitted updated reports in March and September 2012 providing the NGO's analysis of the implementation of Recommendation No. 130 (2007) by the government of Bulgaria and concluding that the authorities are failing to fully implement it.

The NGO further recalled the procedures opened under the European Commission and noted the need for urgent international intervention to stop a situation which already caused irreparable damage and which would be in contravention of Articles 2, 3, 4 and 6 of the Convention.

In conclusion, the NGOs requested that the Bureau (i.) urges the authorities of Bulgaria to transmit a progress report on the implementation of the Recommendation, as well as a clear action plan of activities and measures envisaged for implementing the recommendation; (ii.) that Bulgarian authorities immediately stop issuing authorisations and licences regarding wind farm developments in the area; (iii.) that the European Commission speeds-up the on-going infringement procedures.

In a report submitted in August 2012 the European Commission informed that a reasoned opinion was sent to Bulgaria on the infringement procedure concerning wind farms and other developments in "Kaliakra complex" SCI, "Kaliakra" SPA, "Belite Skali" SPA. Through the reasoned opinion the Commission asked Bulgaria to comply with applicable EU laws in a period of two months, after which the Commission may refer the case to the EU Court of Justice.

The Bureau decided to keep the case-file open and instructed the Secretariat to contact the authorities of Bulgaria for an updated report to be assessed at next Bureau meeting; the Bureau further instructed the Secretariat to inform the AEWA about the readiness of the Bern Convention to join a field visit should this be organised.

At last Standing Committee meeting, the delegate of Bulgaria presented the government report highlighting that, of the 2526 wind energy projects received since 2007, only 117 have been constructed further to obtaining the necessary authorisations. None of these is located in a Natura 2000 area. He further reported on the measures undertaken to implement the relevant Standing Committee Recommendations stressing that, since 2007, no new development has been authorised without fulfilling the EIA/AA procedure. Moreover, the legal framework has been reviewed through the adoption of new Environmental Protection Law and Biological Diversity Law which introduce a 5-year limit of validity for EIA and AA decisions.

He concluded by highlighting that, at the request of the Ministry of Environment and Water, the National Plan of the Renewable Energy Sources was also reviewed and a ban introduced to overcome, reduce and if possible completely eliminate all potential adverse effects that the construction of windfarms may have on the Natura 2000 sites.

The representative of BirdLife Bulgaria summarised the content of the reports submitted by her NGO in 2012, stressing that the EIAs realised for Balchik and Kaliakra areas do not examine alternative solutions or locations or the possible negative and cumulative impacts.

The representative of the AEWA reiterated that the windfarm developments along the Via Pontica are a real concern and regretted to note that the AEWA Standing Committee didn't receive a reply to the offer to send an advisory mission on the ground. He concluded his intervention by making a number of proposals which received the support of the Parties.

The Committee acknowledged the steps undertaken by the Government of Bulgaria with regards to development and adoption of a National Action Plan on Renewable Energy Sources 2011-2020 and other reported measures but noted, at the same time, that concrete progress are delayed and windfarming is still insufficiently regulated. It therefore decided to keep the case-file open and asked the Government of Bulgaria to submit, before the 33rd Standing Committee meeting, a structured, detailed and comprehensive report on the implementation of all provisions of Recommendation No. 130 (2007).

In January 2013 the Secretariat addressed a reporting request to Bulgarian authorities in view of the first Bureau meeting. Following the request of the Party, the Secretariat agreed to extend the deadline

stressing that an oral summary of the content of the report would be given to the Bureau members.

In the meantime, the Secretariat was informed by the AEWA that, in December 2012, the Ministry of Environment and Water replied to the AEWA that it didn't consider appropriate to accept an IRP mission due to the on-going court case regarding the appeal of the investor against the decision of the Minister to annul the EIA decision of the Director of the RIEW-Varna. However, on 17th January 2013, the Supreme Administrative Court (SAC) of Bulgaria annulled the decision of the Minister of Environment and Water thus allowing for the project to be implemented and the windfarm constructed. As a consequence, the AEWA reiterated its offer of advice on this complicated issues which was again rejected until the court case is pending. The Minister took nonetheless the responsibility to keep the AEWA informed of any development on the court case and the environmental procedures.

Following contacts with the European Union the latter informed the Secretariat in March that the Commission was still assessing the Reasoned Opinion.

At its meeting in April 2013 the Bureau decided to keep the case-file open and instructed the Group of Experts on the conservation of birds to put the assessment of this complaint on its agenda, in order to prepare an opinion for next Bureau meeting. The Bureau further instructed the Secretariat to address to Bulgarian authorities a reporting request focussing more particularly on windfarm developments in Balchik, Kaliakra and Durankulak Lake, to be assessed by the Group of Experts.

Both the Party and the complainant sent updated reports to the attention of the Group of Experts which discussed the issue in their absence, as an exchange of views. The seriousness of the situation was generally recognised and the Group expressed concern about the high number of developments in the same flyway and, more particularly, about those that impact upon globally threatened species. The Group also recognised the wider geographical dimension taken by the file, stressing on the cumulative effect of wind farms.

In July 2013 the European Commission informed that the reply of the Bulgarian authorities to the reasoned opinion was being assessed.

At its meeting in September, the Bureau deeply discussed the complaint, clearly noting the tangible efforts of the authorities, and regretting the difficulty in conciliating bird conservation needs with the development of the green energy sector. The Bureau further discussed the coordination with the AEWA and other partners, including the EU, as a way for providing assistance to Bulgarian authorities on this matter. The Bureau members made several proposals, ending in a draft opinion for the attention of the Standing Committee.

The Bureau decided to keep the case file open and invited Bulgarian authorities to report at next Standing Committee meeting. Moreover, the Bureau instructed the Secretariat to forward its draft opinion to the Standing Committee for discussion, and to liaise with both the AEWA and the European Union on the possible follow-up to be given to this complaint.

d. France: Habitats for the survival of the common hamster (*Cricetus cricetus*) in Alsace

This complaint concerns the measures implemented by France to ensure the preservation of habitats needed for the survival of the common hamster. In 1998 the Standing Committee adopted its Recommendation No. 68 (1998) on the protection of the common hamster (*Cricetus cricetus*) in Alsace (France).

On 9 June 2011 the European Court of Justice ruled against France for failing to take adequate measures to protect the species.

At the 2011 Standing Committee meeting the delegate of France said that her government had taken note of the criticisms regarding the protection of the hamster in Alsace; a major evaluation of the 2007-2011 action plan had been undertaken, which would serve as a basis for drawing up the next plan.

The representative of DREAL Alsace said that remedial measures had been taken following the ECJ ruling.

The representative of *Sauvegarde Faune Sauvage* felt that the situation with regard to the Common Hamster was still very worrying: 50 to 100 specimens were disappearing every year; contractual measures were not taken in cases where the species had been found to be present and there was insufficient funding to maintain breeding. He asked the Committee not to close the file until a viable population had been established (1,500 specimens per ZAP).

The representative of the *Centre d'études, de recherches et de protection de l'environnement en Alsace* (CERPEA) condemned the framework agreement signed with all the stakeholders: every year dozens of sites suitable for the common hamster were built on, without any compensatory measures. He expressed concern about an urban development scheme 20 km from Obernai, in an area highly suitable for the hamster.

The representatives of *France Nature Environnement* and *Alsace Nature* likewise emphasised that the area where the species had historically been present was decreasing and said the authorities' efforts were overly concentrated on ZAPs.

The delegate of the European Union reiterated the importance of implementing the ECJ ruling and asked the French authorities to keep the European Commission better informed.

The Committee decided to keep the case file open, it welcomed the efforts made by the French authorities and asked them to fully take into account the judgment issued on 9 June by the European Court of justice.

The Secretariat didn't receive updated information from France by the two Bureau meetings in 2012. Nonetheless, it was pleased to note that, in June 2012, the road project better known as "*Grand Contournement Ouest*", foreseen within areas where the presence of the Common Hamster was confirmed, had been abandoned.

Furthermore, in August 2012 the European Commission informed that the issue was briefly discussed at the annual bilateral meeting on environmental infringements (so called "package meeting"), where the need to take swift measures to comply with the ECJ ruling was again stressed.

At last Standing Committee meeting the delegate of France presented the Government report noting that the implementation of both the Habitats Directive and the Convention are considered as priorities, but that the obligations related to this specific file have to be implemented in a difficult context of lack of local acceptance of the species which finds it difficult to survive in a changing agricultural landscape.

The representative of *Sauvegarde Faune Sauvage* explained the reasons of the decline in the species and noted that it could not be expected to survive in only 9,000 hectares spread over only four municipalities. Although recognising some efforts at the governmental level, the NGO considered that the authorities are not doing enough.

The representatives of the CERPEA, *France Nature Environnement*, *Alsace Nature* and the Conference of INGOs also invited France to speed up efforts and work more closely with municipalities and the farmers to increase the acceptance of the species.

The Committee emphasised on the decline of the species in Alsace, although it congratulated the French government for an agro-environmental programme launched for 2012-2016, wishing that this could result in a tangible increase in the distribution of the species and the number of individuals.

However, the Committee decided to keep the case-file open until conservation measures bear their fruits and invited French authorities to report to next Standing Committee meeting.

The case was not discussed at the first meeting of the Bureau in 2013, since the authorities were requested to report by August.

The updated report sent by national authorities in July 2013 informs on the progress in the implementation of the conservation measures recommended by the ECJ and foreseen in the National Action Plan (2012-2016). French authorities explain in details the collective measures put in place for the creation of winter shelters for the species in addition to the agricultural contracts for the cultivation of favourable cultures (wheat in particular), the reinforcement of the population through the release of individuals on specific plots, etc.

From the recent results of the spring 2013 count, the French authorities conclude a stabilisation of the population for the period 2012-2013. However, they recognise the need for continuing their efforts in this direction, in particular towards the awareness-raising activities among the farmer community in view of ensuring stronger participation in the conservation measures as proposed by the Action Plan.

More counts were programmed for the period June-July, but no information on their results is available/communicated yet (French authorities committed to do so by the end of September).

Sauvegarde Faune Sauvage also addressed a short update, underlying that although the population may seem stable from the spring 2013 counts, it is far from being viable. The NGO further stresses that the measures put in place so far are insufficient although going in the right direction. The NGO requests the files is kept open, until a viable population is established.

Moreover, the European Union informed continuing following-up this issue with French authorities for the implementation of the measures recommended in the ECJ ruling, in particular through bilateral meetings.

Finally, it should be noted that there are discrepancies in the numbers of hamsters presented from the last population counts from spring 2013. Although the French authorities presented the number of 319 as the number of burrows counted, the NGOs stated that this is the number of hamsters. The population counts from the summer period (still to be received) may give a clearer indication on the 2013 population, in particular because the individuals released in the artificial burrows should not be counted.

At its meeting in September, the Bureau noted the efforts deployed by the European Union to accompany France in the implementation of the measures recommended by the ECJ ruling through bilateral meetings.

Conscious that the summer counts of the species population were still undergoing and final results were pending, the Bureau decided to keep the case-file open. Both the French authorities and the NGOs are invited to report to the Standing Committee meeting on the latest population counts for the species from summer 2013.

e. Italy: Eradication and trade of the American grey squirrel (*Sciurus carolinensis*)

In 1999, the Standing Committee adopted its Recommendation No. 78 (1999) on the conservation of the red squirrel (*Sciurus vulgaris*) in Italy. Moreover, in 2005 the Committee adopted its Recommendation No. 114 (2005) on the control of the grey squirrel (*Sciurus carolinensis*) and other alien squirrels in Europe, asking Italy to start without delay an eradication programme.

In 2007, the Standing Committee asked the Bureau to examine the possibility of opening a file for a possible breach of the Convention by Italy on this case. An on-the-spot appraisal was carried out in May 2008. The main conclusions of the expert's visit were that the presence of the American grey squirrel in Italy was a serious threat for the survival of the protected native red squirrel, and that this expansive trend had the full potential to turn the invasion into a continental problem, where France and Switzerland would become the next countries to be affected.

In 2008, the Standing Committee agreed to open a case file and decided that a new Recommendation was not necessary. Instead it asked the Secretariat to communicate a list of actions to the Italian government.

In September 2009, the Italian government reported on progress to finalise the signature of a Memorandum of Understanding between the regions concerned, and the preparation of a LIFE+ project on: “Eradication and control of grey squirrel: actions for preservation of biodiversity in forest ecosystems”, with the involvement of the three regions (Lombardia, Piemonte and Liguria) and the Ministry of Environment. Regarding the decree to ban the trade and keeping of American grey squirrel which should cover the whole national territory, the final text was agreed in late July 2009, and should have been shortly examined by the legal offices of the three Ministries involved (Agriculture & Forestry; International Trade; and Public Health).

At the 29th meeting of the Standing Committee, the delegate of Italy announced that the Ministry of Environment was fully committed to implementing Recommendation No. 123 and therefore had concluded a MoU in August 2009 with the three regions involved and two research institutions. A number of activities had been planned, including control of the species, monitoring of grey and red squirrels and awareness campaigns. The Ministry was preparing a decree to prohibit the trading and keeping of the grey squirrel.

The Committee took note of the information presented and welcomed progress in the conclusion of a MoU among all the actors involved in the control of the species, as well as of plans to pass a legislation banning trade on the species. However, it considered that since there had not been yet neither any action on the ground nor legislation approved, the case file should be kept open, asking Italy to fully implement Recommendation No. 123 (2007).

At the 2010 Standing Committee meeting, the delegate of Italy presented the report from the government, informing on the state of progress of the Memorandum of cooperation to be signed by the competent Provinces before entering into force; on the negotiation around the draft decree for banning the trading and keeping of the grey squirrel; and on a Life+ Project, launched in September 2010 which was likely to contribute to solving the situation.

Noting that the decree concerning the banning of the trade and keeping of the American grey squirrel was not approved yet, the Committee decided to keep the file open and asked Italy to inform the Committee and the Bureau of progress made in the implementation of the LIFE+ Project and the adoption of appropriate legislative tools.

In 2011 the situation remained almost unchanged. The Italian delegate presented the Government report, informing on the implementation of the LIFE+ Project, particularly focussing on the elaboration of a communication action plan to target the wider and general public, highlighting the multiple challenges of obtaining a wide consensus of the civil society. No real progress could be reported on the decree on the banning of the trade and keeping of the species.

The Committee expressed deep concern for the longstanding situation which was seen as a serious threat for the long-term survival of the native Red squirrel, while damaging the woodland. The Committee was particularly worried to note that inaction could result in the spread of the invasive alien species to other Contracting Parties.

The Committee agreed to keep the case-file open and instructed the Bureau to closely follow up this issue to ensure that reporting from Italian authorities is improved and include information on concrete measures towards both the eradication of the species and the adoption of a legislative instrument to ban its trade in Italy.

Italian authorities sent updated reports in February and August 2012, informing both on the state of implementation of the LIFE+ Project “EC-SQUARE”, and on some difficulties regarding eradication in Piedmont Region, where the procedure aimed at delivering the necessary authorisations for the capture of the American Grey squirrel were temporarily suspended due to an appeal presented by animal welfare NGOs to the Regional Administrative Court of law.

Moreover, in their last report Italian authorities informed that the Ministry of Environment had finally obtained positive advices on the draft decree on banning the trade of the species from the Directorates of

the State Forestry Corps of the Ministry of Agricultural, Food and Forestry Policies and the Ministry of Economic Development. The visa of other related Ministries was still pending but the authorities were confident that a positive reply will be given to their request.

At last Standing Committee meeting, the delegate of Italy, informed about control and eradication, keeping and import, and trade in the species. The implementation of measures for the control of the species started in January 2012, unfortunately gaining sharp criticism by animal welfare organisations. Due to an appeal presented by some NGOs to the Regional Administrative Court in Piedmont Region, the eradication measures for which the necessary authorisations had been already delivered were put in stand-by.

However, the action plan was being efficiently implemented in both Liguria and Lombardy Regions despite a wide negative mass-media campaign. In addition, a survey visit by Swiss Canton technicians in charge of IAS control was successfully conducted in Lombardy to evaluate the progress of the grey squirrel management actions.

Regarding the keeping and import of the species, thanks to a proposal put forward by Italy, the grey squirrel has been listed in Annex B of the EU Council Regulation No. 338/97, thus being now among those species whose introduction into the EU is particularly dangerous to native species of flora or fauna.

Finally, concerning the ban decree, this was signed by the Minister of the Environment and forwarded to the other Ministers involved in animal trade and management for their definitive countersignature.

Some of the Parties thanked Italian authorities for their efforts in a difficult mediatic and social context, noting however that the species was still not completely under control and that the adoption of a decree on banning the trade of the species was pending since at least four years.

The Committee therefore decided to keep the file open.

In a report sent in February 2013, Italian authorities informed that, in compliance with Recommendation n. 123 (2007), the ban decree “Dispositions for the control of detention and trade of alien squirrels of the species *Callosciurus erythraeus*, *Sciurus carolinensis* and *Sciurus niger*” was issued on 24th December 2012 by the Minister of the Environment Land and Sea, in concert with the Minister of Agricultural, Food and Forestry Policies and with the Minister of Economic Development, and published on 2nd February 2013 on Official Journal n° 28. The government report explains that, further to the adoption of the decree, the trade, breeding and detention of these species is forbidden in all the national territory, with a few exemptions only for zoos, circuses, research institutes, wildlife conservation bodies and scientific institutions.

The decree also addresses the situation of those already detaining specimens of the mentioned species, fixing the rules and procedural steps for their declaration to CITES unit of National Forest Corp as well as sanctions for those who abandon the species into the wild.

Together with the decree and its English translation, Italian authorities further sent an update on the management actions foreseen within the LIFE project EC-SQUARE, informing that the Regional Administrative Court of Piedmont has stated in favour of the control activities, which implementation can now start. It should be however noted that the strong opposition of the civil society may still delay the achievement of concrete results.

In April 2013 the Bureau noted with satisfaction the legislative progress towards the eradication of the American grey squirrel in Italy. It further decided to keep the case-file open and asked Italian authorities to inform the Standing Committee, at its next meeting, on the results of the enforcement of the decree, as well as on the further implementation of the Life project.

f. Greece: threats to marine turtles in Thines Kiparissias

On 22nd August 2010 the Secretariat received a complaint from MEDASSET (The Mediterranean Association to Save the Sea Turtles) regarding development plans in a NATURA 2000 site (THINES KYPARISSIAS - GR2550005) which would affect *Caretta caretta*, a threatened species protected under the Bern Convention. The NGO reported about uncontrolled development on the site (summer houses building, construction of coastal roads, occupation of the beach by, among others, bars, umbrellas and deck chairs) and expressed concerns over the intensive pressure on the nesting activity of turtles, which can lead to reducing the unique population of *Caretta caretta*.

The complainant referred to the obligations for the Contracting Parties mentioned in articles 4 and 6 of the Bern Convention, and highlighted that *Caretta caretta* is also protected by other international agreements, among which CMS, CITES and the Barcelona Convention for the protection of the Mediterranean Sea against pollution, and the EU Habitats Directive.

At the second Bureau meeting in 2010, the Secretariat informed the Bureau that a letter requesting further information had been addressed to Greek authorities on 7 September. The Bureau took note of the information provided; due to the very short notice given to the Greek authorities to provide a reply, the Bureau decided to re-consider the complaint at its next meeting.

In March 2011 the Greek authorities forwarded to the Secretariat the response sent on 22nd December 2010 to a letter of the European Commission in relation to the protection of priority species in the Natura GR 2550005 site.

The response informed that a law concerning Conservation & Biodiversity was recently approved by the Greek Parliament to ensure a more effective protection regime for the priority species in all Natura 2000 sites. The law should have entered into force by the end of March 2011. In addition to that, the Ministry of Environment was in the process of drafting a Joint Ministerial Decision, based on a specific environmental study of 2002, which should regulate all activities within the GR 2550005 Natura 2000 site by providing a specific legal protection regime. The Joint Ministerial Decision should allow facing conservation problems in an integrated way for the whole *Thines Kyparissias* Natura 2000 site.

Among the measures taken, national authorities forwarded to Local Authorities the specific environmental study mentioned above, along with a Presidential Draft Decree which includes a Management Plan for the Area, with the request of taking these into account to enforce the necessary Environmental Protection measures. The response additionally informed that a recently adopted Ministerial Decision required the official approval of the Ministry of the Environment for any license of exploitation of the sandy seashore sites issued by the Local Authorities. However, the responsibility concerning the compliance with obligations related to the exploitation itself lies down to the Local Authorities and the State Property Service.

In a report sent in September 2011 the NGO informed that, although the law on Conservation and Biodiversity entered into force in March 2011, enforcement of specific protective measures was still poor, and a number of illegal activities continued to exert a considerable amount of pressure on the nesting activity of marine turtles. In addition, according to the NGO, the Joint Ministerial Decision announced by Greek authorities was drafted yet; furthermore, none of the demolition protocols issued by the State Property Service of the Prefecture of Messinia for the illegal constructions in the area was executed.

The NGO report denounced the degradation and erosion of the sand dunes and coastal forests, due to roads and buildings illegally developed; the lack of restoration measures to compensate the destruction part of the sand dunes; the absence of specific protection measures and lack of provision of appropriate information to local residents. The NGO considered that it would be appropriate to draft an updated Special Environmental Study (the current one was prepared in 2002), which would take into account the

new developments and assist competent Local Authorities to identify specific conservation measures for the area in question.

The Bureau took note of the information provided by the NGO, which questioned the effectiveness of the measures undertaken by Greek authorities, as described in the report submitted the government in March 2011. However, because of the lack of reply by Greek authorities, as well as of new information from the European Commission, the Bureau was not in a position to properly assess the situation. It decided to consider this complaint as a complaint in stand-by at its first meeting in 2012.

In a report sent end of March 2012, Greek authorities forwarded the “Response to the letter of the European Commission in relation to the protection of priority species in the Natura GR 2550005 site” (sent on 22nd December 2010) and further informed that the procedure for the special protection of the above area and the issuance of a Joint Ministerial Decision (J.M.D.) applicable for a period of 2 years would be jointly prepared by the competent Legislative authority of the Ministry. The updating of the Special Environmental Impact Assessment (S.E.I.A.) prepared specifically for this referenced area had been included in the overall planning for the time period 2012 - 2015.

Finally, the authorities confirmed that the Administration of Messinia Prefecture had been instructed on the need to protect the site in order to ensure that the requirements set under the EC Directive 92/43 were met.

The report sent by the complainant informed that enforcement of the specific protective measures for THINES KYPARISSIAS, included in the law concerning the Conservation and Biodiversity (entered into force at the end of March 2011) was lacking. At the same time, the provision of information to local residents by the Prefecture of Messinia regarding appropriate use of the nesting beach was also missing, while a number of activities and illegal constructions on the site continued to exert a considerable amount of pressure on the nesting activity of marine turtles. The NGO also stressed that the situation remained unchanged since last reporting, as the JMD had not yet been drafted by the National authorities and in the meantime local authorities had not prepared any specific protection measure for the area.

Finally, the NGO recalled that none of the demolition protocols issued by the State Property Service of the Prefecture of Messinia for the constructions illegally built in the area had been executed; extensions of already existing beach bars were recorded by the Land Property Service in 2011 for which new demolition protocols were issued but not executed. The same concern remained for the three beach bars that operated illegally in 2011 within the core zone of the protected area (Kalo Nero) which the NGO feared that they could restart their illegal activity soon.

The Bureau decided to consider the complaint as a possible file and to forward it to the Standing Committee to decide whether or not to open a case-file. The Bureau further instructed the Secretariat to organise an on-the-spot appraisal for putting mediation in place and gathering additional information for the attention of the Standing Committee.

In June 2012 the Secretariat addressed an official letter to Greek authorities informing about the decision of the Bureau and requesting their agreement for an on-the-spot visit which would serve to gather additional information for the Standing Committee’s attention. In September 2012 Greek authorities informed the Secretariat that its request of agreement for an on-the-spot visit was being duly considered and that a reply would be communicated soon.

At last Standing Committee meeting the Secretariat regretted to inform that no new information had been received since.

In the absence of delegates from Greece, the Chair gave the floor to the representative of MEDASSET, whom summarised the content of the reports submitted in 2012. MEDASSET used a power-point presentation illustrating with photos some few examples of degradation collected in 2011-2012, including the construction of four roads within the core NATURA 2000 area, and other disturbing human activities as, for instance, the opening of beach bars (generating light pollution and noise), fisheries with

fishing vessels operating too close to the shoreline in the Southern Kyparissia Bay, the use of heavy machinery for levelling, clearing, etc.

Moreover, MEDASSET reported that the Municipality of Trifylia continued the construction of a road network within the Natura 2000 area without either an Environmental Impact Assessment or authorisation from the Ministry of Environment. The Ministry was alerted to these works, which nevertheless continued unabated in 2012. MEDASSET concluded by requesting that a case-file be open.

The delegate of the European Union referred to the report sent to the Secretariat, informing that a field visit was carried out by the Commission services in July 2012. In the light of the findings, as well as the reply of the Greek authorities to the Letter of Formal Notice, the Commission issued in September 2012 a Reasoned Opinion under Article 258 of the Lisbon Treaty for insufficient protection of the area. In case of referral to the Court of Justice of the EU, the Commission does not exclude to ask the Court for interim measures.

Regretting the absence of delegates from Greece, the Committee further stressed the lack of relevant and substantial communications from the authorities. It decided to keep the complaint as a possible file, emphasising on the need to be informed by the authorities on the state of the situation in the area. The Committee instructed the Secretariat to request to the authorities, the NGOs and the EU, updated and complete reports on this important issue.

In January 2013 the Secretariat sent Greek authorities the decision of the Standing Committee together with a specific request inviting the Party to report on the state of conservation and management of the area, enforcement of relevant legislation, assessment of possible negative impact of the tourism developments, and mitigation measures envisaged.

In reply to this request, on 15th March, the Secretariat received a short e-mail summarising the content of a letter sent by Greek authorities to the European Commission about the official schedule foreseen by the Greek Government to prevent further degradation of the natural habitats and the improvement of the situation.

However, in March 2013 the complainant sent an updated report about the information submitted by the Ministry of Environment Energy & Climate Change to the EC. A detailed Action Plan for the protection of the area in question is currently being elaborated with the aim to halt any current development works in the area until the issuance of a Ministerial Decision, which will constitute the basis for the protection of the area until a Presidential Decree is in place.

The Ministerial Decision should be drafted based on the Special Environmental Study (SES) carried out by ARCHELON and submitted to the Ministry in 2002. A Steering Committee consisting of members representing Local and National Authorities, NGOs and experts has been established in order to supervise the implementation of the afore mentioned Action Plan.

However, MEDASSET further informed about some recent unpleasant developments, occurred despite the assurances of the Ministry, including the building – since last November - of three houses in the sand dunes of the core nesting area near Vounaki hill, for which a permit has been issued outside the city planning area.

Moreover, on 20 February 2013, a part of the back of the beach in the core nesting area was plowed, resulting one more time in the destruction of dune vegetation.

In conclusion, MEDASSET requested that the complaint is again screened by the Standing Committee and urged the Secretariat to follow up through the Greek Government the progress made over the Action Plan and in particular over the cessation of all infrastructure and/or development activities, which pose an immense threat for Thines Kyparissias.

The Bureau reiterated its request to Greek authorities for timely communication and sound information, and noted that enforcement is still a major issue. It decided to screen again the complaint at its next meeting and instructed the Secretariat to urge the Greek authorities to send an official progress

report informing: on the state of conservation and management of the area; on enforcement of relevant legislation and administrative decisions (including more particularly the execution of the demolition protocols); on the adoption of the measures whose implementation is envisaged as of June 2013; and on the progress made over the Action Plan, particularly regarding the cessation of disturbing activities and infrastructures.

The Secretariat regretted to inform that its letter to the authorities of May 2013 and the reminders sent until end of July remained unanswered by the date of the meeting of the Bureau.

In August 2013 the complainant sent an update focussing on the developments since February 2013:

1. On Kalo Nero Beach (O Sector): the Illegal wooden platforms remained despite the demolition protocols that were issued from the Land Management Agency of Kalamata. Sunbeds and umbrellas placed late May without the necessary permissions occupied almost the whole beach and were not removed at night-time. Other disturbances noticed are intense light pollution and excessive vehicular traffic on the coast road of Kalo Nero. The Municipality of Trifylia did not equip the area with informative signs and prevented ARCHELON to erect the seasonal information station. The complainant denounced a worsening situation and an increase in the number of tourists on the beach at night.

2. Beach Sector between Neda River and Kalo Nero beach (A, B, C Sectors): The Plowing of the dunes recorded in February 2013 was repeated in April 2013 (with the blessings of the Mayor of Trifylia). The construction of the houses was progressing, while planning permission was issued for the construction of another 2 buildings in the area. However, the issuance of building permits has been suspended for a part of the NATURA 2000 site since late May 2013 (Bill (FEK): 180/24-5-2013).

Intense light pollution at night and lack of informative sign-posting are a threat also to this area.

According to ARCHELONS most recent investigations, adult turtles that attempt to nest return to the sea without successfully doing so. In addition, a high number of nests were purposefully vandalised almost on a daily basis since the start of the nesting season. Moreover, ARCHELON's personnel was victim of physical and verbal offences and the scientific equipment was stolen.

No Action Plan has been elaborated yet for the area in question while the Steering Committee responsible for supervising the implementation of the Action Plan and for drafting a Ministerial Decision (MD) has convened only twice so far.

The complainant therefore requested that the case is placed on the Agenda of the 33rd Standing Committee meeting.

At its meeting in September the Bureau regretted to note that no concrete information regarding the conservation and management of the area, as well as the enforcement of relevant legislation, was transmitted by Greek authorities.

Taking into account the information submitted by the complainant, and the concern already expressed by the Bureau and the Standing Committee, the Bureau suggested that the case file mentioned above should be discussed as a File open at the 33rd Standing Committee meeting. It instructed the Secretariat to reiterate the reporting request, namely concerning: the state of conservation and management of the area; the enforcement of relevant legislation and administrative decisions (including more particularly the execution of the demolition protocols); the adoption of the measures whose implementation was envisaged as of June 2013; and the progress made over the Action Plan, particularly regarding the cessation of disturbing activities and infrastructures.

1.2 Possible files

- France: Conservation of the European green toad (*Bufo viridis*) in Alsace

A complaint was lodged in 2006 by the Association BUFO (*Association pour l'étude et la protection des amphibiens et reptiles d'Alsace*) focusing on threats to the green toad's few remaining habitats in Alsace. It specifically targeted shortcomings in the impact studies carried out for a major bypass and urban development projects, and a project for the construction of a leisure complex.

In 2008, the French government reported that a restoration plan for the common spadefoot (*Pelobates fuscus*) and the green toad (*Bufo viridis*) was under development, at the initiative of the regional authorities (DIREN Lorraine). The plan would be ready at the end of 2009, with specific actions starting in 2010.

In 2009, noting the very limited progress achieved, the Committee decided to treat this pending complaint as a "possible case file" at its next meeting.

At the 2010 Standing Committee meeting, the French delegate announced that the National Action Plan was to be validated in the spring by the Ministry of Ecology. Activities had already started. Attempts to find out more about the species and consult a very wide range of stakeholders had held up the finalisation of the plan.

The representative of the regional environment, planning and housing directorate (DREAL) said that the regional implementation of the plan would be a priority in 2011 and that all planning files were carefully monitored.

The representative of ASFS said that the population was at threat of extinction.

The Committee decided to keep the file as a possible case file as the procedure for drawing up the National Action Plan was not completed.

In 2011, the representative of the regional environment, planning and housing directorate (DREAL) informed that the delay in finalising the national action plan was due to a failure on the part of the consultancy tasked with drawing up the plan; the plan's completion, however, was not in danger. At regional level, DREAL Alsace was working with the associations and partners concerned, in particular the Bufo association, which had been mandated to draw up a regional action plan.

The representatives of the relevant NGOs, *Sauvegarde Faune Sauvage*, CERPEA and the European Environment Bureau, expressed deep concern about the delay in finalising the national action plan, the ever-growing pressures of urban development and the proliferation of schemes, slicing up land. The representative of CERPEA asked that a file be opened.

The Committee decided to keep the file as a possible file and urged the French authorities to finalise the procedure for drawing up the National Action Plan in view of its final adoption.

In a report submitted in March 2012, the French authorities indicated that the contract with the consultancy tasked with drafting the action plan had been terminated on 23 December 2011. An agreement had subsequently been signed with the National Museum of Natural History (MNHN). A new version of the plan would be sent to the members of the relevant committee during summer 2012 for approval at its meeting due in September 2012.

In Alsace, the regional action plan for the green toad had been submitted on 30 January 2012 to the Alsatian steering group of the regional action plans for amphibians. Priority measures for 2012 had also been agreed, including, in particular, monitoring of population trend indicators, continued study of the inclusion of the species in the "green and blue infrastructure" policy, inclusion in regulatory zoning and integration of the species in spatial planning strategies.

In the case of Lorraine, where the Green Toad had also been identified as a priority species requiring the establishment of protected areas, three sites had been identified and were currently being studied: the Merle gravel quarries in Freyming-Merlebach and St Avold, Rosselmont in Forbach and Petite Rosselle, and a 35-ha site in the municipality of Morsbach. Three other projects which could have an impact on the Green Toad or its habitats had been examined in 2011 or were in the process of being examined. The outcome had been either the abandonment of the project or avoidance, reduction or compensation measures: a planned urban development zone (ZAC) in Warndt community of municipalities; a photovoltaic project in Freyming-Merlebach; and the planned extension of a gravel quarry in Sentsich.

Around ten nature reserves of ecological interest for fauna and flora (ZNIEFF) had already been designated for the green toad in 2006. A Lorraine working group would be updating these reserves and proposing new ZNIEFFs. A map entitled “Green Toad ecological corridors” had also been drawn up. Lastly, a technical guide would be produced on integrating the green toad in development projects.

The Bureau welcomed the information provided by the French authorities and noted the encouraging developments at regional level, including the strengthened co-operation with the Association BUFO. The Bureau decided to keep this complaint as a possible file and instructed the Secretariat to contact French authorities for an updated report to be assessed at next Bureau meeting.

French authorities were requested to send a report by 24th August 2012. However, the updated information didn't reach the Secretariat by the given deadline.

At last Standing Committee meeting, French authorities informed that a meeting of the national committee of experts on the green toad was scheduled to take place in January 2013, in the framework of the finalisation of the new National Action Plan (PNA) commissioned to the National Museum of Natural History in Paris (MNHN).

The representatives of the NGOs welcomed the involvement of the MNHN in the preparation of the Action Plan, but deplored the lengthiness of the drafting process and the lack of available information on progress on the webpage of the Ministry. They stressed that, in the meantime, the three populations of green toad in the region were decreasing.

The Committee took note of the information presented and acknowledged progress at local level as well as the collaboration with the MNHM. The complaint was kept as a possible file.

In a report submitted in March 2013, French authorities informed that the completion of the revised Action plan was foreseen for April this year, followed by its official submission to the National Council for Nature Protection in May. Moreover, the last available draft version of the action plan has been published on a dedicated webpage.

The Secretariat didn't receive updated information from the NGO.

The Bureau noted with satisfaction the efforts of French authorities to improve the transparency of the process and it further welcomed the foreseen adoption of the Action Plan in the late spring of 2013. It decided to keep the case-file as a possible file and asked the French authorities to further inform on the formal adoption of the national action plan and the milestones set for its operational implementation

In a report submitted in August 2013, French authorities communicated that the finalisation of the National Action Plan was unfortunately again delayed, although “the file is being processed”. The Ministry of ecology received an amended draft Action Plan from the Museum of Natural History, which integrated comments made by the national group of experts. The amended draft should be submitted to the national Steering Committee in September 2013, after the final validation of the experts. The next milestones should include: consultation with all services concerned at national level, submission to the National Council for Nature Protection, and finally the organisation of public consultations. The adoption of the final version is now foreseen for the end of 2013. The implementation will start upon the distribution of the plan at national level.

At its meeting in September, the Bureau regretted the procedural delays in the adoption of the National

Action Plan, and invited the French authorities to inform the Standing Committee about the state of play. It further noted that the complainant had not reported to the Secretariat this year, and instructed the Secretariat to contact the relevant NGOs for updated information on the situation of the green toad. Finally, the Bureau considered that if it should appear that the conservation status of the green toad is suffering from the lack of an adequate action plan or other relevant measures, the Committee should decide on the opportunity of opening a case file.

- Turkey: Presumed degradation of nesting beaches in Fethiye and Patara SPAs

At the Bureau meeting in September 2012 the Secretariat informed that MEDASSET submitted an updated report regarding the implementation by Turkey of Recommendation No. 66 (1998) on the conservation status of some nesting beaches for marine turtles.

Although in 2011 some valuable steps were made to protect the loggerhead nesting areas at the Fethiye SPA, the NGO was concerned by the fact that several of these measures were not sustained in 2012.

In the light of these new elements the Bureau decided to include the follow-up of this Recommendation on next Standing Committee meeting agenda.

At last Standing Committee meeting the delegate of Turkey informed on the measures undertaken to protect the nests in the area, including caging, tagging of animals, awareness raising and monitoring.

The representative of MEDASSET made a detailed presentation based on photo supports showing, despite some efforts from the authorities, lack of guarding and of information signs, litter and light pollution, plantation of introduced species, unregulated motorised waters sports and presence of people and vehicles on nesting beaches at night. MEDASSET stressed that, in 2012, one new wooden hut with a concrete patio was installed on the nesting beach, and a hotel was built on the beachfront, destroying the last section of the remaining wetland while Recommendation No. 66 specifically states that remaining unbuilt beach plots should be secured against development.

MEDASSET proposed that a file should be open regarding Fethiye SPA, and concluded its intervention by calling upon Turkish government to inform regarding the neutralisation and removal of the toxic waste as well as sea turtle conservation efforts in Kazanlı, and informing the Committee that a new complaint has been lodged before the Convention regarding the Patara SPA.

The delegate of Turkey acknowledged that the images presenting the current situation in Fethiye were “uncomfortable” and stated that he expects matters to improve, as certain organisational issues related to the management of the beaches are expected to be resolved soon.

The delegate of Norway considered that there is reason for concern, but welcomed the conscious reaction of the delegate of Turkey. He therefore suggested, with the support of the delegate of the Slovak Republic, that the file be dealt as a possible file.

In January 2013 the Secretariat forwarded the Standing Committee’s decision to the authorities of Turkey, together with a reporting request. Turkish authorities replied on 15th March asked for an extension of the deadline for submitting the information requested. The Secretariat committed to make an oral summary to the attention of the Bureau members in case of reply before 5th April.

Meanwhile, the NGO submitted updated information on the situation in Patara, Fethiye and Kazanlı, urging the Secretariat to consider the complaints lodged for Fethiye SPA and Patara SPA as distinct.

In fact, MEDASSET argued that on the one hand the complaint and the subsequent update reports submitted to the Secretariat referring to Fethiye SPA highlight the lack of implementation of conservation and management measures, as well as the construction of new hotels and other buildings on the nesting beaches; on the other hand, the problems highlighted in the complaint referring to Patara SPA at this stage focus on the on-going large scale construction projects taking place within the protected area and failure of the current land use and management plan to secure adequate protection status to the SPA at both the

ecological and archaeological heritage management level. MEDASSET offered to invite an expert on land use and heritage site management to further inform the Standing Committee, if requested by the Bureau.

At last Bureau meeting, the Secretariat acknowledged that MEDASSET submitted a separate complaint form, initially registered as Compliant No. 2012/9, concerning Patara SPA.

Regarding more concretely Fethiye SPA, and noting the continued decline of nest numbers in the area possibly due to poor management and protection of the habitat, MEDASSET requested a detailed report by the Turkish authorities with an account of conservation and management measures to be applied in Fethiye SPA before and during the 2013 nesting season.

Concerning Kazanlı, MEDASSET requested that the issue be dealt with as a follow up to Case File No. 2000/1, which the Bureau dismissed in 2009 in order to consider the complaint under the general monitoring of the implementation of Recommendation No. 66 (1998). However, MEDASSET asked that Recommendation No. 95 (2002) on the conservation of marine turtles in Kazanlı be put on the agenda of the 33rd Standing Committee meeting since there has been no news or report on progress for the safe disposal of the 1.5 million tons of highly toxic solid waste located right next to Kazanlı's most important green turtle nesting site, posing a threat to the environment and human health.

In April 2013, after assessing the file, the Bureau took note of the concern and requests expressed by MEDASSET and agreed to monitor the implementation of Recommendation No. 95 (2002) at next Standing Committee meeting. However, the Bureau still considered that the conservation and management issues related to Fethiye and Patara SPA are interlinked and that they should be addressed in conjunction. It therefore decided to re-assess this complaint as a unique possible file at its next meeting.

The report of the national authorities reached the Secretariat a few days after the Bureau meeting.

In the report, the authorities explained that, following the restructuring of the Ministry of Environment, the General Directorate for the Protection of Natural Assets is now the body for the Special Environmental Protection Areas (SEPAs). The latter can be subject to urban developments, provided that these are foreseen in the so-called Master Plans, which fix the conditions for land use and density of developments in the respective areas.

More specifically regarding Patara, the report informed about the legal status of the area, stressing that the zone where the villas are constructed is a 3rd Degree Archaeological Site (DAS). Moreover, the construction plans related to Patara 1st DAS have been approved by decree. In addition, the report summarised the measures taken for ensuring sea turtle conservation in the period between May and September 2012, and provided some data collected as a result of monitoring studies carried out in the same timeframe (i.e. number of nests, tracks, predation, accidents, etc.).

Concerning Fethiye SEPA, the report provided the same kind of data, and further informed on more specific conservation actions, like for example the caging of nests against human activities and predators, a measure which concerned 11.23% of the nests. Public awareness actions were also implemented by night at the "Caretta Info Desk" on Çalış beach, targeting for instance local and foreign tourists.

The Secretariat acknowledged the encouraging information on some conservation actions carried out by the authorities in 2012, but invited them to complete the report submitted with more detailed information on some of the issues raised in the Secretariat's correspondence, for instance the measures and actions whose implementation was foreseen this year, as well as the steps towards the removal of illegal or unauthorised constructions in both Fethiye and Patara SPAs. The deadline for the complementary information was set to 6th September.

On 9th September the Secretariat received the report by the complainant. Regarding Fethiye, the report lists and describes into details the impact of main threats to the nesting population, affirming that in 2013 there was no improvement to the protection and effective management of the nesting beaches, with the exception of beach furniture management in a small part of the nesting beaches and some new signage which, however, remains insufficient. The main threats continues to be the lack of effective signage, the

presence of beach furniture, beach access at night, light pollution, plantation, and illegal tourism infrastructure. The report includes a list of recommendations, namely regarding the need of reinforcing guarding on the beaches, of continuing the programmes of scientific monitoring and nest protection, the need of appropriately managing beach furniture, preventing the access to the beaches at night, removing the plantations and securing the remaining unbuilt beach area against developments.

Regarding Patara, the complainant reported that the building of 27 villas to be inhabited by summer 2014 has been completed. The complainant further recalls that the whole construction project concerns the building of around 400-750 villas in total and stresses the need of urgently reconsidering the scale of the project. Moreover, like in Fethyie, signage is insufficient and apparently no guarding was foreseen to enforce conservation rules on the nesting beaches, unlike previous years. The complainant proposes to bring an expert on land use and heritage site management to further inform the Standing Committee, if requested by the Bureau.

At its meeting in September, the Bureau noted that a number of questions raised by the Secretariat remained unanswered and requested the Party to provide an updated report, including more recent information related to, among others, the breeding season. Therefore the Bureau decided to forward this complaint as a possible file at the Standing Committee meeting.

- Turkey: threats to the Mediterranean monk seal (*Monachus monachus*)

End of June 2011 the Secretariat received a complaint from the Middle East Technical University Institute of Marine Sciences regarding the development plans comprising the construction of a road as well as of a new marine terminal near Yesilovacik village (Silifke district, Mersin Province) which would eventually have a detrimental impact on the Mediterranean monk seal (*Monachus monachus*), a species listed in Appendix II of the Bern Convention (strictly protected fauna species).

The complainant expressed concern with regards to the location of the planned marine terminal, foreseen at just 500 meters away from a breeding cave acting as a bridge between the core monk seal colony of the area and the pioneers moving further east.

Moreover, the complainant considered that the breeding cave, formed by soft geological material, could eventually collapse once the planned road will be opened to lorry traffic, and that pollution, turbidity and noise will force the actual inhabitants to abandon the cave without having in the vicinity other caves with similar morphology. The complainant informed that an Environmental Impact Assessment was made by the Ministry of Environment and Forestry for the marine terminal although this had not apparently taken into account the critical importance of the chosen area for the Mediterranean monk seal.

The complainant highlighted that the Mediterranean monk seal is also protected by other international agreements, among which CMS, CITES and the Barcelona Convention.

The Bureau took note of the information provided, stressing that the Monk Seal is one of the world's most endangered mammal. However, it considered necessary to give Turkish authorities enough time to provide a reply. Therefore the Bureau instructed the Secretariat to contact Turkish authorities for a complete report, in particular concerning the status of the project and the populations of the species affected. The Bureau further required the Secretariat to contact the complainant for more detailed information and data regarding the morphology of the habitat under threat as well as on the possible habitats in the vicinity and the population likely to be affected.

The report sent in March 2012 by the complainant was accurate and provided a summary of the main studies carried-out on this issue since the '90s. However, it stressed the difficulties in providing exact information on the population size in the Mediterranean because of the fact that the seals on the Aegean coast are transboundary and move between Greece and Turkey. Nonetheless, the complainant highlighted that even if the last available estimation (2007) for the narrower coastal band between Antalya and Syria was given at 38 individuals (thus showing a certain increase if compared with the '90s), the Monk Seal

population is still low enough to consider the species as one of the most endangered as well as to concentrate conservation efforts on the protection of those habitats - more particularly the caves - in which crucial biological requirements for the species are fulfilled.

Regarding more concretely the breeding cave which is the object of this complaint, Balıklı cave, the plaintiff first stressed that Mediterranean monk seal was forced to abandon beach habitat due to human disturbance, hunting and habitat fragmentation, choosing, as a consequence, cave habitat for resting and reproduction; he further presents the results of long-term studies revealing that the total number of suitable caves in Mersin area is 37 out of which only 7 caves are located in the coast between Tasucu and Aydıncık, and only one of them, Balıklı has the morphology suitable for whelping (and hence is used by pregnant mothers) which consists of an entrance with a barrier against strong waves, a deep and wide beach located at the very far end, and a shallow protected pool in front.

Taking into account the scarcity of suitable habitats, Mersin (Cilician) coast and the targeted breeding caves and the foraging areas were designated by the competent authorities as “No-take-zone” (sea) and “1st Degree Natural Asset” (land) already in 2007. The further studies carried out right after the enforcement of conservation measures showed that the response of the seals in Mersin was very positive with increased success in breeding as from 2002.

Concerning the morphology of the Balıklı cave the complainant explained that the West side of Mersin coast (Cilician basin), where the cave is located, is characterised by ruggedness with steep mountain sand shoreline cliffs plunging into the Mediterranean. The geography on the coast is dominated by karst topography, but also by sand and sedimentary rocks. Balıklı is built by soft material mainly deposition of soil at the outskirts of the coastal ridge and therefore has a very fragile structure and a delicate ceiling. However, it is protected from prevailing winds (no risk for the pup to be wounded or die during very harsh winter storms as it is the case for other caves), and a shallow pool is located inside the cave, surrounded from right to left by a small platform, a beach, and some flat-topped rock blocks. For these reasons the complainant considered that the conservation of Balıklı cave is directly linked to the survival of the monk seal population in Mersin.

Regarding the report from the government, the Secretariat informed that an official letter requesting updated detailed information was sent to Turkish authorities on 4 October 2011, followed by several reminders in February and March 2012. The Secretariat regretted to note the absence of a reply.

The Secretariat recalled the “Criteria for selecting underground habitats of biological value” appended to Recommendation No. 36 (1992) on the conservation of underground habitats, which suggest considering as underground habitats of ecological value or value for the heritage, those habitats where – among others- vulnerable, endemic or rare species are present; those habitats whose vulnerability may result either from danger of destruction of the habitat itself (quarrying, filling in, development) or from the destruction of its fauna by chemical or organic pollution, over-visiting or thoughtless hunting; those habitats which can either serve as a reference or be used for long-term follow up of populations and biotic communities.

The Bureau considered that this issue was serious enough to deserve attention at the international level. It therefore decided to forward the complaint to the Standing Committee as a possible file; it further instructed the Secretariat to continue seeking for the opinion of the national authorities, to be referred to the Standing Committee directly.

At last Standing Committee meeting, the delegate of Turkey presented the government report, stressing that the development project was approved after undergoing all EIA procedures. Moreover, an independent evaluation of the EIA was carried out by three Professors from the Ankara University. The authorities further organised a meeting with the complainant to discuss the possible ways forward but, in the meantime, the issue has been brought before the Turkish National Court. The authorities ensured that the Turkish Ministry of Forestry and Water Affairs will be monitoring all developments related to this complaint and inform the Secretariat as soon as the Turkish Justice will emit its judgement.

The Secretariat sent a request for updated information to the Party in May 2013.

In the meantime, it received a report from the complainant, namely informing on the results of the monitoring carried out in the past two years using photo-traps. The investigation shows that Balıklı cave has been actively used by two females, two males and 1 monk seal pup that was born in the cave. Although the complainant recognises that the number of seals using the cave can be higher than the number of seals observed (only a few chambers of the cave could be monitored due to technical constraints), it seems likely that seal activities is now lower if compared to the period before the construction.

Following the letter of the Secretariat, Turkish authorities kindly informed that the competent Ministry sent a pool of experts to the area for preparing an official report on the state of the situation. The report is under inspection now and the Ministry committed to inform the Secretariat as soon as the assessment of the report is completed.

At its meeting in September, the Bureau particularly welcomed the initiative of the authorities of appointing a pool of experts for assessing the situation, and noted with satisfaction that – meanwhile – the authorities stopped the works in the area. The Bureau asked to be kept informed of the outcomes of the assessment report and invited the delegate of Turkey to report to next Standing Committee meeting.

- Possible spread of the American mink (*Neovison vison*) in Poland

In 2012 the Secretariat received a complaint by a Polish citizen claiming that the American vison (*Mustela vison*) was not included in the list of non-native plants and animals that might endanger native species. The American vison is farmed in Poland and is also present in the wild. The complainant did not specify which provisions of the Convention might be breached by the Party.

The complainant requested the inclusion of the species in a specific regulation published on 9 September 2011, particularly because of the known effects of American mink on native fauna, quoting a number of native species that may be prey.

The Secretariat addressed a reporting request to the government which replied that although the Ministry of Environment had proposed the species to be in the list, the Ministry of Agriculture opposed its inclusion as it considers the American mink as a farm animal that should not be affected by regulations such as prohibition of import or other controls on alien species. The Ministry further affirmed that the risk of escape relatively low, as there are no incidents reported so far.

The Secretariat noted that Article 11 paragraph 2 b) of the Convention commits states to strictly control the introduction of non-native species.

At its meeting of September 2012, the Bureau noted that although apparently the species has not spread yet in Poland, inaction from Parties could eventually lead to a possible breach of the Convention, particularly because the risk of escape of the American Mink into the wild is high, and several European countries have already been confronted to this situation.

The Bureau decided to re-consider this complaint as a complaint in stand-by at its first meeting in 2013 and instructed the Secretariat to contact Polish authorities for an updated report, better detailing the reasons why the species has not been listed as invasive alien, and informing on the occurrence of the species in the wild and on the measures in place to limit the risk of escape or eventually foreseen for its eradication.

A detailed reporting request was sent to Poland in January 2013. A reminder was sent in March. However the Secretariat didn't receive a reply by the preparation of the present document.

At its first meeting in April 2013 the Bureau regretted the lack of reply from Polish authorities and instructed the Secretariat to reiterate its request. It further expressed serious doubts regarding the low risk of escape of the species and decided to reassess this complaint at its next meeting as a complaint in stand-

by, stressing that if no new information will be available by then, the complaint could be forwarded to the Standing Committee as a possible file.

Despite a detailed official letter sent in May (requesting to inform on the reasons why the species has not been listed as invasive alien, as well as providing information on the occurrence of the species in the wild and on the measures in place to limit the risk of escape or possibly foreseen for its eradication) the Secretariat didn't receive any reply from Polish authorities.

Nevertheless, in June 2013, the complainant sent a short update accompanied by a recent scientific publication showing that the American Mink in Poland presents high genetic diversity and originates from different source population of their native range. According to the article, the colonization was triggered by numerous escapees from farms, as well as by immigrants from Belarus.

The complainant also contested the authorities' statement according to which in Poland the American mink is a farm animal and thus cannot be classified as IAS. In fact, the complainant provided the example of the Sika deer (*Cervus Nippon*), which is listed both in the farm animal, IAS and game lists.

At its meeting in September, the Bureau expressed deep regret for lack of reply and, as a consequence, of information from Polish authorities during the whole year. It reiterated its warning about the high risk of escape of the American Mink into the wild and stressed that the species is well known to be invasive since several European countries have already been confronted to this situation.

The Bureau decided to forward this complaint to the Standing Committee as a possible file. It further instructed the Secretariat to address a reporting request to Polish authorities, and invite them to attend next Standing Committee meeting.

1.3 On-the-spot appraisal

- France / Switzerland: threats to the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)

On 21st June 2011 the Secretariat received a complaint by the NGO Pro Natura – Swiss League for the protection of nature, concerning the threat of decline of a strictly protected species, the Rhone streber (*Zingel asper*) also known as “king of the Doubs”. The species is included in Appendix II of the Bern Convention (strictly protected fauna species) as well as in Annex II of the Habitats Directive.

The complainant denounced the pollution of its habitat, the Doubs River, as well as the lack of investigation by the relevant authorities concerning the causes of that pollution.

Furthermore, the NGO denounced the lack of intervention to stop hydraulic engineering works such as dams and weirs, which act as impassable barriers to the species and isolate sub-populations from each other. Pro-Natura additionally noted that the micropollutants related to human activities and the waste waters which fall directly into the river are leading to a severe degradation of the species' habitat.

In conclusion, the complainant evoked a possible violation by both Switzerland and France of articles 7 and 9 of the Bern Convention of Bern in the departments of Doubs (France), and in the canton of the Jura (Switzerland).

On 12th July the Secretariat addressed a letter to both French and Swiss authorities requesting a report for the Bureau. However, both governments informed that a reply was under preparation but that this would not be ready by the Bureau meeting due to the short delay.

The Secretariat further informed the Bureau that a LIFE+ Project was implemented in France in 2004-2010 and suggested to contact the project managers for more updated information.

The Bureau noted that this is a transboundary complaint and thus sufficient time should be given to the concerned government for the preparation of their respective replies. The Bureau instructed the Secretariat to contact the authorities of France and Switzerland for a report to be examined at the first Bureau meeting in 2012.

In a report submitted in February 2012, the Swiss authorities indicated that the Rhone streber is a species endemic to the Doubs which is under threat of extinction in Switzerland and is strictly protected within the meaning of the Bern Convention. Its current distribution in Switzerland is limited to a 20-km stretch of the Doubs in Jura. A study carried out in 1999 by the Federal Office for the Environment (BAFU/OFEV) and a monitoring programme running since 2000 had confirmed its critical situation in Switzerland. The population in the Doubs in Jura comprised 80 to 160 adult fish.

The authorities underline that the Doubs is a complex ecosystem subject to much disturbance. Conservation of the species therefore demands action plans co-ordinated at international level. There are many threats to the species: hydroelectric schemes on the Franco-Swiss Doubs, water quality, breaks in ecological continuum and leisure and recreational activities.

The Federal Government and the cantons (Neuchâtel and Jura) were working to improve the quality of the habitat and its capacity. The issues were being addressed comprehensively through a governance body institutionalised by France and Switzerland in May 2011.

The steps taken involved the following:

- changes to the operation of the three hydroelectric plants on the border stretch so as to reduce the sluice effects;
- improvement of water quality and control of the spread of *algae*: a binational working group had met in May 2011 to fine-tune knowledge and agree a general framework for action; the revised federal legislation on water protection had entered into force in 2011;
- a sectoral water plan for the Republic and Canton of Jura would be drawn up by 2014;
- upgrading of the three weirs to restore migration of the fish into the Clos du Doubs.

In conclusion, the Swiss authorities said that the overall strategy for the conservation of the Rhone streber and the corresponding operational arrangements are in place. However, the matter remains complex in material terms and some aspects such as the international nature of the problem, the experimental nature of the certain measures already taken and the lack of knowledge of certain issues justify a cautious approach. The efforts undertaken at both federal and cantonal level should be continued and, indeed, stepped up.

The French authorities submitted a report in March 2012 concerning the situation, the threats to the species and the measures taken.

The Rhone streber is regarded as one of the four species in the country under serious threat of extinction. It is currently found in only 11% (240 km) of the length of waters where it had traditionally been found (2 200 km). There are three populations in France, in the Loue, the Ardèche basin, and the Durance and Verdon basin, in addition to the population in Switzerland.

The threats and limiting factors involve: (i) degradation of habitats because of loss of natural river dynamics; (ii) work carried out in riverbeds; (iii) variations in water volumes and quality; (iv) the presence of dams/weirs blocking access by breeders to spawning beds and fragmenting habitats; (v) genetic deterioration.

The Rhone streber in the Swiss stretches of the Doubs and the Loue are particularly vulnerable because, being far from the Durance basin (the cradle of the population), they are genetically much less diverse.

On the section concerned, the Doubs is greatly fragmented by the presence of a large number of hydroelectric dams and weirs. In recent years, water quality seemed to have deteriorated in the Doubs and also in its affluent, the Loue. This was being accompanied by serious eutrophication of the water, reflected in substantial growth of algae.

The two LIFE Nature programmes had played a major part in improving knowledge and identifying the threats. A conservation strategy had been agreed during the first programme (1998-2001) and then implemented during the second (2004-2010). At the end of the second programme, a national action plan (2012-2016) was drawn up and validated in September 2011. The goal is to achieve the following: improved knowledge, increased populations and genetic mixing, conservation and restoration of habitats, consideration of the species in public policies, public awareness-raising and co-ordination of measures with Switzerland through the establishment and operation of a co-operation network. Several bi-national working groups were set up, including one to improve the quality of water and aquatic environments in the Franco-Swiss Doubs. The countries were also both working on the establishment of a cross-border regional nature reserve for the Doubs.

The cross-border context significantly complicates practical measures concerning the Doubs. While there is a shared desire to act, the geopolitical context and hydroelectric and agricultural activities are slowing down progress. The steps taken to expand cross-border co-operation should, however, help to optimise the efforts on the two sides of the border.

The Bureau thanked both Parties for the good reports submitted.

In consideration of the complex transboundary context, the Bureau decided that the complaint deserves to be considered by the Standing Committee as a possible file.

At last Standing Committee meeting both Parties gave a detailed presentation of the current state of the situation and ensured their commitment towards achieving the proper conservation of the Rhone streber.

The Chair reminded that the Bureau had requested EU opinion with regards to the pollution of the French part of the Doubs River in the context of the EU Water Framework Directive. The delegate of the EU thus informed that the European Commission was still assessing the River Basin Management Plans (RBMPs) that Member States have prepared for the implementation of the Water Framework Directive (WFD), and added that the Doubs Franco-Suisse sub-basin has indeed been reported as being in bad chemical status from 2006 to 2011, while the ecological status has been good for the last four years (and moderate in 2007). Both improvement on the water management in existing infrastructure and measures to restore the river continuity have been defined as priorities for the first planning cycle (2010-2015).

The representative of Pro Natura illustrated the situation in the Doubs, stressing that the issue needed urgent action and control of sewage, agricultural run off and irregular water flow by hydroelectric plants. He acknowledged the efforts from the concerned governments but requested that a case-file be open, in order to exert a certain degree of pressure which may help speeding-up the implementation of the planned measures.

The Committee noted that although both Parties were doing efforts to improve the situation, the species is in a critical state. It decided to keep the complaint as a possible file and suggested to organise an on-the-spot appraisal in order to prepare a list of recommended actions to be submitted to the Parties at their 33rd meeting. The authorities of France and Switzerland expressed their agreement.

The terms of reference for the on-the-spot appraisal were prepared by the Secretariat in March 2013 and communicated to both parties. Professor Jean-Claude Philippart accepted to be the independent expert in charge of the preparation of the appraisal's report.

The on-the-spot appraisal took place in July 2013 and included a 2-day visit to Saint-Ursanne (Canton of Jura, Switzerland), and a 1 day-visit to Ornans and Quingey (Doubs Department, France), during which the expert met with the representatives of the concerned Parties as well as of the NGOs.

The programme of the visit included in-room discussions and different in situ visits to observe the natural environment of the species and some visible problems (hydroelectric works, *algae*).

Regarding the Suisse part of the Doubs ("the Suisse loop") and its median part serving as border between France and Switzerland, discussions mainly focussed on the fragmentation of the environment, the

management of the water flow, and water quality. The measures already implemented as well the work of the bi-national working group were also examined.

Concerning the French part of the visit, discussions focused on the national action plan (2012-2016), which was presented by Ministry of Ecology and its regional Department (DREAL) from the Franche-Comté region - and the data presented by different civil society's representatives, led by the NGO France Nature Environnement (FNE).

The main criticism of the French NGOs concerned the presumed lack of attention paid by the national action plan to the environmental consequences of the intensive farming that would result in important deterioration of the soil and rivers, and collapse of several local species of fishes and invertebrates. According to the NGOs, although the Doubs department is classified as a Natura 2000 site, it presents severe gaps in terms of biodiversity conservation. They forwarded their written comments and recommendations to the expert so as to be possibly considered during the preparation of the appraisal's report.

Furthermore, following the on-the-spot appraisal Pro Natura submitted an updated report emphasising on a series of additional elements that – according to it – should need to be taken into consideration by the Standing Committee when examining the complaint, in particular:

- The occurrence in the area of four other species protected under the Bern Convention (Appendix III), and listed both in the Annex of the Standing Committee's Resolution No. 6 (1998), and in Annex II of the EU Habitat Directive, namely: South-west European nase (*Parachondrostoma toxostoma*); European brook lamprey (*Lampetra planeri*); European bullhead (*Cottus gobio*); and Souffia or Western Vairone (*Leuciscus souffia agassizi*);
- The protection status of the Suisse part of the Doubs and of its alluvial areas which are now part of the Emerald site "Doubs Valley" and the harmonisation of the management of this area with the downstream stretch of the "Suisse Loop" in France, which is a Natura 2000 site;
- Farming pollution over-exceeding the assimilation capacity of soils (Critical load index).

The first draft report was sent to the Secretariat on 12 September 2013, providing a detailed description of the current situation of the Rhone streber and its habitat, mentioning the measures already taken and/or foreseen by France and Switzerland, as well as a series of recommendations for improving the species' situation. Further to the submission of the expert's report, Pro Natura also submitted updated comments emphasising on a series of additional elements which the NGO would wish could be analysed by the Standing Committee when examining the complaint.

The Secretariat prepared a draft recommendation on the basis of the expert's report which was presented to the Bureau orally. The Bureau decided to forward the draft recommendation to the concerned parties for comments, prior to the submission to the Standing Committee for examination and possible adoption.