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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Bureau of the Standing Committee

18-19 March 2024
Strasbourg

Complaint on stand-by: 2020/06

**Presumed threat to Tagus Estuary Special Protected
Area from a new airport (Portugal)**

- COMPLAINANT REPORT -

*Document prepared by
SPEA - Sociedade Portuguesa para o Estudo das Aves*

To the kind attention of
Bern Convention Secretariat
Directorate General of Democracy and Human Dignity
Council of Europe
F-67075, Strasbourg Cedex
Mr Mikaël Poutiers
Secretary of the Bern Convention

Lisbon, 9 February 2024

Reference: Complaint No. 2020/6, “Portugal: Presumed threat to Tagus Estuary Special Protected Area from a new airport”

UPDATED INFORMATION ON COMPLAINT No. 2020/6

Dear Sirs,

I refer to you, on behalf of the Portuguese Society for the Study of Birds (“**SPEA**”), with regard to the note of the Directorate General of Democracy and Human Dignity of 20 April 2023, informing about the considerations raised by the Bureau of the Standing Committee (the “**Bureau**”) at its meeting of 29-30 March 2023.

At this meeting, the Bureau, after summarising the latest updates on the case and regretting the lack of engagement from the Portuguese Authorities (which continue to be irresponsive, with no report submitted since March 2022 resulting in a long period of no communication that effectively spans two years), mentioned that national Authorities were requested to inform the Bureau of the possible locations under consideration for the construction of the new airport and to share updates on the court case files, in addition to any other information deemed relevant.

In this regard, both parties were requested to share urgent information on the Strategic Environmental Assessment (“**SEA**”) procedure by 31 July 2023, as well as updated reports for the Bureau in Spring 2024 by 9 February 2024.

As acknowledged by the Bureau at its meeting in September 2023, the complainant informed about the status of the SEA procedure and the inclusion of Montijo as a potential location to expand airport capacity in the Lisbon metropolitan area.

For the purposes of the present updates, the complainant would like to bring to the attention of the Bureau the following considerations and developments:

- To carry out the SEA procedure, the Portuguese Government has appointed an Independent Technical Committee (“**CTI**”). The coalition of NGOs involved in the Court proceeding currently pending before the Administrative Court of Lisbon has closely engaged in the relevant activities, sharing information showing the negative impacts that such a project would have, *inter alia*, on biodiversity, at both national and international levels.
- On 5 December 2023, the CTI published the first draft of the relevant SEA report. There, it was clearly stated that a solution involving Montijo would be unviable, being one of the main reasons its impacts on the environment and biodiversity.
- The SEA procedure should be concluded soon, with the publication of the SEA report (currently in consultation phase, with period for contributions ending on the 26th of January 2024) and the final decision should be taken by the upcoming Portuguese Government.

- In any case, given the results of the SEA procedure (should they be confirmed in the final version), the complainant believes that the Portuguese Government will have little or no room to overturn such clear findings.
- The outcome of this procedure will also be determinant for the above-mentioned Court case regarding the unlawfulness of the Environmental Impact Statement (“EIS”) released in favour of Montijo in January 2020 due to the major violations of the Birds and Habitats Directives as well as of international obligations. The claim remains at the moment in full force, and the claimants will insist on it, especially should the Portuguese Government adopt a final decision in contrast with the outcome of the SEA, as well as with scientific and legal reasons.
- In this latter respect, the complainant also considers important to inform the Bureau that the EIS had a validity of 4 years, and would expire on 21 January 2024.

Upon request of the proponent, however, a procedure for the renewal of the validity of the EIS is currently pending and a final decision in this regard has to be taken by the Portuguese Environmental Agency.

Upon consultation with the Institute for the Conservation of Nature and Forests, the Portuguese Environmental Agency has concluded that the conditions to renew the validity of the EIS are not met, mainly due to the impacts of the project on biodiversity as highlighted by multiple scientific contributions that emerged since the issuing of the EIS. In fact, a recent study published in Animal Conservation indicates that for the Black-tailed godwit, the disturbance originating from the Montijo Airport would impact 68% of its individuals, as compared to only 0.46-5.5% indicated in the EIS. Contrary to the EIS, this study uses up to date information on a umbrella species that occupies several habitats on the Tagus estuary (intertidal flats, saltmarshes, salt pans, rice-fields, etc) and serves to exemplify the blatant limitations of the EIS (please see [PDF document](#)).

Such impacts, as remarked in the claim before the Administrative Court of Lisbon as well as in the complaint No. 2020/6, are unequivocal and clear in leading to the conclusion that the project cannot go ahead, necessarily driving any relevant environmental assessment.

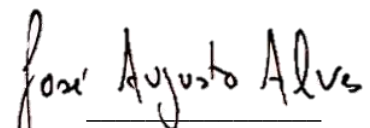
According to Portuguese law, before a final decision is taken, it is necessary that the proponent of the project is given the possibility to file observations in this regard. This procedure is thus going to conclude soon, and its final outcome will likewise be extremely relevant for the Court case.

The complainant will keep the Bureau informed about any development in such regard.

As evident from the above updates, the situation is evolving rapidly and Montijo is at the centre of the attention, as the decisions of the Portuguese Government in this regard will be determinant for the project moving forward or being definitively halted.

In this respect, the complainant would like to remark to the Bureau that any solution involving Montijo, due to its impact on the environment and on biodiversity, irremediably entails violations of applicable obligations (including under the Bern Convention), with all the legal consequences arising thereof in connection with the present complaint (with all the arguments raised in it and in the subsequent communications).

In faith,


José Augusto Alves

on behalf of SPEA - Sociedade Portuguesa para o Estudo das Aves