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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

43rd meeting

Strasbourg, 28 November - 1 December 2023

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
Council of Europe

Lisbon, 31 January 2023

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

UPDATED COMPLAINANT REPORT

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 of 6 May 2022, informing about the considerations raised by the Bureau of the Standing Committee (the “**Bureau**”) at its meeting of 6-7 April 2022, as well as in relation with note Ref. No. S-012542/2022 of 17 March 2022 filed by *ICNF - Instituto da Conservação da Natureza e das Florestas* on behalf of the Portuguese Government (hereinafter, for simplicity, the “**Portuguese Government**”) in the proceeding.

At the meeting of 6-7 April 2022, the Bureau asked the Portuguese Authorities, *inter alia*, to clarify in their next report why the Strategic Environmental Assessment (“**SEA**”) which is currently being carried out in relation with the new Lisbon airport would be limited to the evaluation of three pre-identified options and whether it would be pending until national proceedings were completed. Then, besides noting issues of communication and coordination, the Bureau invited the Portuguese Authorities to send a progress report, including the requested information as well as any other relevant updates, by 31 January 2023. The same deadline applies for the complainant to submit an updated report for the attention of the Bureau.

With regard to the above, the complainant would like to draw again the attention on how the lack of responsiveness and thoroughness manifested by the Portuguese Government is continuing to undermine the effectiveness of the current procedure. In fact, not only the Portuguese Government is not complying with the deadlines set by the Bureau (as evident from the date of its last communication), but the submitted information, besides being groundless in the merits, is also deficient and omissive.

In particular, it is worth emphasising the Bureau that most of the clarifications requested in April and in October 2021 remain unanswered. In this respect, it is worth reminding that the Portuguese Government intended to reply to such requests by means of note No. S-012542/2022 of 17 March 2022.

In this regard, it must firstly be noted that the Portuguese Government repeatedly failed to provide the Bureau with information on the following aspects: (i) “*the current status of the project, when construction is planned to begin, as well as [...] the state of play of the study on potential disturbances on birds, which was meant to be carried out for a minimum of one year before construction*”; and (ii) “*any data available on the disturbance of the current military airport on avifauna, as well as on the foreseeable growth in flight traffic, flight heights and flight routes, etc.*”. These aspects continue to be deliberately omitted by the Portuguese Government, including in its latest report.

Moreover, in the above communications, the Bureau requested the Portuguese Government to provide “*more in-depth information to facilitate its understanding of the issues identified and measures proposed*” as well as “*to share the Environmental Impact Assessment (EIA) and any other relevant publicly available documentation related to the EIA procedure*”. Despite the requests of the Bureau, the Portuguese Government did not comply with the demand for in-depth information about any of the issues at stake, simply sharing links (in Portuguese) to documents pertaining to the EIA procedure (with regards to the “*Montijo Airport*”), which are, in addition, incomplete in relation with the Court actions brought against the EIS.

The Portuguese Government then developed irrelevant and confusing arguments on the nature of the SEA procedure, which have the only effect to confirm the conclusions already raised.

In addition to this, it must also be reminded that the Portuguese Government failed to reply to any of the further arguments raised by the complainant in the initial complaint and subsequent communications, which, therefore, remain uncontested.

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In connection with the above, the complainant would also like to underline that the Bureau, in its meeting of 29 November – 3 December 2021, had mentioned that “*should no report be submitted by the national authorities to the Bureau at its next meeting, the Bureau would consider elevating the status of the case to a possible file*”. In such regard, the complainant considers that deficient and omissive reports, like the ones submitted by the Portuguese Government thus far, cannot have the effect to jeopardise the going forward of the procedure, and should thus be qualified as a lack of response. This is even more relevant, considering that, as the Environmental Impact Statement released in favour of the Montijo airport, although unlawful, continues to be valid and in force, the serious violations of, *inter alia*, the obligations provided under the Bern Convention still persist. This increases the need to elevate the case to the status of file.

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In light of the above considerations, as well as of the arguments raised in the initial complaint and subsequent communications, the complainant reiterates its statements about the violation by the Portuguese Government of applicable obligations under the Bern Convention, with all the legal consequences arising thereof, and urges the Bureau to elevate the case to the status of file.

In faith,

José Augusto Alves

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