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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

41<sup>st</sup> meeting  
Strasbourg, 29 November – 3 December 2021

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**Complaint on stand-by: 2020/06**

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

**- REPORT BY THE COMPLAINANT -**

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

*To the kind attention of*  
**Bern Convention Secretariat**  
Directorate General of Democracy  
Council of Europe  
F-67075, Strasbourg Cedex  
**Ms Ursula Sticker**  
**Secretary of the Bern Convention**

Lisbon, 31<sup>st</sup> July 2021

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

Dear Members of the Standing Committee,

The Bureau of the Standing Committee of the Bern Convention requested the complainant to provide (i) any updates, including on the procedures taking place with the Lisbon Administrative Court, and (ii) a response to the report of the Portuguese Authorities for the next Bureau meeting in September 2021.

With regard to the above requests, please note the following.

(i) On the updates, including on the procedure

On 3 June 2020, SPEA, supported by seven Portuguese NGOs, filed a claim before the Lisbon Administrative Court to obtain the annulment of the Environmental Impact Statement (EIS)<sup>1</sup> of 21 January 2020 with regard to the Montijo Airport. In October-November 2020, the opponents filed their responses to the claim presented by SPEA.

In April 2021, the Public Prosecutor (which, in Portugal, intervenes in administrative judicial proceedings as well) submitted its opinion with reference to the legal case. In accordance with SPEA’s request, the Public Prosecutor concluded that the EIS is invalid or null, because it was not based on the best technical-scientific criteria and distorted the true impacts on avifauna. The opinion also pointed to the transboundary impacts on migratory birds which were unjustifiably suppressed in the EIS. The Public Prosecutor emphasised the absence of an adequate technical analysis of the impacts on avifauna in the SPA Tagus Estuary and the lack of the appropriate assessment required by the Habitats (92/43/EEC) and Birds (2009/147/EC) Directives.

To date, the proceeding before the Lisbon Administrative Court is pending and no decision has been released yet.

(ii) On the report of the Portuguese Authorities we would like to highlight the following:

1. This is a new commercial airport project. Impacts are not comparable to the previous Air Force base (as suggested). Air traffic as well as road and river traffic will increase heavily.
2. The airport will have very negative impacts on the migratory and wintering birdlife of the internationally protected Tagus Estuary. Not only will the airport overlap a part of the SPA (Special Protected Area for Birds), the commercial airplanes will overfly (i.e. approach and take off) over the protected area at low altitude, with high noise levels.
3. There is a clear lack of complete information in the environmental assessment carried out. Numerous bird species that will be affected by the project were excluded from the EIS analysis for lack of information or other reasons. Experts and scientists warn that 49% of the Tagus Estuary’s intertidal area (inside and

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<sup>1</sup> For the purposes of the present document, for the sake of clarity, please note that:

- 1) **EIA** shall mean the Environmental Impact Assessment carried out with regard to the Montijo airport, including the assessment and study of environmental compatibility of the project;
- 2) **EIS** shall mean the Environmental Impact Statement adopted upon the EIA proceeding. The same is referred to by the Portuguese Authorities as DIA (*i.e. Declaração de impacte ambiental*).

outside the SPA) and the birds using them will experience increased disturbance levels, being therefore impossible to compensate for these impacts, as there is not enough remaining intertidal area available to maintain the functional integrity of the site<sup>2</sup>. A recent scientific paper estimates that implementation of the new Lisbon airport at the heart of the estuary may lead to a loss of up to 30% in the conservation value of this wetland for shorebirds<sup>3</sup>. As a consequence, if implemented, this project will adversely affect the integrity of the Tagus Estuary SPA. And in any case, it will cause deterioration of habitats and significant disturbance of bird species for which the SPA has been designated.

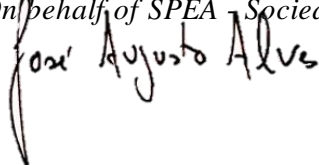
4. The EIS did not take into account any potential transboundary effects, although the project adversely affects a very important international migration and wintering area for migratory birds from most other European countries and Natura 2000 sites in Europe.
5. The considerations outlined by the Portuguese Authorities in their report according to which, *inter alia*, “the environmental impact procedure of the project in question was developed in the preliminary study phase, and should be complemented with the procedure for checking the environmental conformity of the execution project” is distorting and deceiving. The proceeding aimed at checking the environmental conformity of the executive project is merely aimed at verifying whether the same complies with the measures provided within the EIS and, in any case, cannot substitute or modify the latter. This, again, confirms the incorrectness and superficiality of the EIA carried out (based on a “preliminary study”). The impacts of a project likely to affect the environment must be comprehensively assessed, prior to a favourable EIS.
6. In light of the above, as well as of the arguments raised, *inter alia*, in complaint No. 2020/6, the EIS has to be considered in violation, besides all further applicable provisions under national, European Union and/or international law, of the applicable obligations provided under the Bern Convention.

The above considerations already confirm that the EIS and, as a consequence, the behaviour of the Portuguese Authorities, irremediably and radically infringed, *inter alia*, the applicable obligations under the Bern Convention. In addition to this, for the sake of completeness, further punctual and specific observations to the response of the Portuguese Authorities have been developed. In this regard, and without prejudice to the above, please refer to the considerations outlined in Annex I to the present document.

Remaining at your complete disposal for any clarification, we take the occasion to send you our most distinguished regards,

In faith,

On behalf of SPEA Sociedade Portuguesa para o Estudo das Aves



#### Annexes:

- 1) Specific observations regarding the report submitted by the Portuguese authorities (24.02.2021);

<sup>2</sup> Alves J.A. 2020. Perhaps the most prominent threat to waders in the East Atlantic Flyway. Wader Study, 127: 89-91. DOI: 10.18194/ws.00195

<sup>3</sup> Catry T. et al. 2021. Estimating the conservation cost of the projected new international Lisbon airport for migratory shorebirds of the Tagus estuary, Portugal. Bird Conservation International. DOI: 10.1017/S0959270921000125

## ANNEX I

### Specific observations regarding the report submitted by the Portuguese Authorities<sup>4</sup>

The present Annex I contains, in addition and without prejudice to the report, further specific observations regarding the content of the report submitted by the Portuguese Authorities (dated: 24.02.2021). Each commentary/clarification is presented based upon excerpts of the text of the same report and shown in *italics*.

Page 2, 2nd paragraph:

*1) Montijo Airport is projected to be built on the premises of a military airport that has been operating since 1952, aimed at maritime patrol operations, anti-submarine fighting, search and rescue. The new civil airport will use one of the existing runways.*

As mentioned under point 1 above, it should be noted that the Montijo Airport will be a new commercial airport with new associated infrastructure (e.g. passenger terminal, parking areas, etc.). Its impacts will not be comparable to the previous Air Force base as air traffic, as well as road and river traffic will increase heavily. According to the EIA, the current military airport (BA6 Montijo) has an average monthly record of 889 aircraft movements. For the commercial Montijo Airport 7.8 million passengers and 46,000 aircraft movements per year are predicted for 2022 (early years of operation). By 2062 (40 years later) it is predicted that such figures will gradually increase up to 17.4 million passengers and 85,000 aircraft movements per year.

The Portuguese Authorities mention that the new civil airport "will use one of the existing runways". In this regard, it should be noted that, according to the EIA, the existing runway will be extended by 300 meters "over the Tagus estuary" (Point 4.5.4.3.2, EIS vol.ii.a.). This means that it will be extended by at least 300 meters into the intertidal area (as explicitly stated there). In addition, such extension of the current runway, a concrete porticoed structure, built over the intertidal of the Tagus estuary, will be supported by foundation piles (1568 columns with 5 meters long and 350 columns with 15 meters).

The same section of the EIA refers that both "extremities will be extended by 90m". Even assuming that, as to one of the extremities, these 90 meters will be included in the 300 meters that will intrude the intertidal area, the current runway will be extended by at least 390 meters, which correspond to an increasing of the 19.4% of the current size. Furthermore, by extending the runway of 300 meters into the estuary, the entity of the actually affected area remains unclear.

The transformation of the military airport into a commercial one, with an associated 431% increase in monthly aircraft movements, which gradually increments to 797% of current levels, is by no measure as trivial as it is presented by the Portuguese Authorities, given aircraft movements alone. Likewise, the transformation of the existing runway, entailing an extension makes it hard to maintain that it can be regarded as the same infrastructure, also specifically considering that such extension will intrude into the intertidal of the Tagus estuary (covering an unknown area) which is prime foraging habitat for waders and other water-birds.

Page 2, 2nd paragraph:

*2) The entire airport implementation area and access roads are outside the protected areas (Estuario do Tejo nature reserve or Natura 2000 SPA and site).*

In this same report, on the page 3, 3<sup>rd</sup> paragraph (following the items listed as bullet points), it is stated the following:

*"It [the intervention area] still marginally overlaps, at its northern and western limits, with the Special*

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<sup>4</sup> For the purposes of the present document, for the sake of clarity, please note that:

- 1) **EIA** shall mean the Environmental Impact Assessment carried out with regard to the Montijo airport, including the assessment and study of environmental compatibility of the project;
- 2) **EIS** shall mean the Environmental Impact Statement adopted upon the EIA proceeding. The same is referred to by the Portuguese Authorities as DIA (i.e. *Declaração de impacte ambiental*).

*Protection Area (SPA) of the Tagus Estuary (PTZPE0010, Decree-Law no. 140/99, of 24 April, in its most current wording)."*

This same text is also present in the EIS and it is therefore contradictory within the present report by the Portuguese Authorities. The understanding is that the intervention area does indeed overlap with the SPA, as stated in the EIS and in this report.

Page 2, 2nd paragraph:

3) *The expected impact will occur in the area between **the approach and take off from the runway**, near the mudflats, used by waterfowl as a shelter and feeding areas, and the flyover of the Tagus estuary.* The overflight of the SPA during approach and take-off is indeed likely to result in multiple impacts due to noise, visual and chemical pollution as well as bird strike. The intertidal flats, which function as feeding areas, as well as the large supratidal roosting sites, which operate as shelter for water- birds, will be impacted from the presence of aircrafts overflying below 200 m inside the SPA and at 500 m when inside the Nature Reserve/RAMSAR site (see figure 2.2 EIA Annex 13).

Other impacts besides noise pollution are yet to be assessed. Nonetheless, the EIA (vol.ii.b. figure 5.141 - 5.145) already shows multiple species flying above 200 meters in the vicinity of the projected location for the new airport. Moreover, figure 3.67 (Annex 13) shows birds flying within 500 m height for up to 4 km away from the airport location, as recorded by radar. Figure 3.69 also shows that the largest percentage of events (*i.e.* bird movement flights) takes place between 200- 500 m of altitude.

Page 2, 3rd paragraph:

4) *In the formal process of Environmental Impact Assessment, with public discussion at national level, the situations that may potentially have **negative impacts on the ecological character of the site have been identified and they will be monitored and minimized**, both during the construction phase or when the airport is in operation.*

Some negative impacts were identified, but several others were entirely neglected. Examples of the aspects that were completely disregarded in the proceeding concern, in particular, the transboundary impacts of the project, with specific attention to international connectivity of migratory birds. Hence, considering that negative impacts were incorrectly assessed (see point 7 below), or even not assessed (as for transboundary impacts), it is unclear how minimisation measures may even be regarded as potentially effective.

These shortcomings were indeed raised during public discussion and consultation with little or no effect.

Page 2, 4th paragraph:

5) *The national authority for the conservation of nature and biodiversity (the Institute for Nature Conservation and Forests) **also issued a favourable opinion** to the project*

As highlighted by the Public Prosecutor in its opinion the original technical assessment elaborated by the technicians of the Institute for Nature Conservation and Forests (ICNF) was not favourable. In particular, the original assessment had considered transboundary impacts, which were later deleted without any justification, thus undermining the trigger for consultations with other States and minimising the magnitude and quality of the negative impact of the project. Several parts of the original assessment were also abbreviated or altered without any scientific basis.

With regard to the consideration raised by the Portuguese Authorities in relation with the alleged mitigation/compensation measures (pages 2 and 3), please note the following.

It must be firstly emphasised the measures cited here by the Portuguese Authorities are mere and flawed compensation measures (see below). The Portuguese Government supports that the EIA had received a positive evaluation based on these conditions. Nonetheless, such conditions do not mitigate the impairment of the integrity of the SPA, but (allegedly) are aimed to partially compensate the serious negative impact of the project. In addition, the proposed compensatory measures cannot, in any case, be qualified as such. They are, in fact, management and implementation measures under the Birds and Habitats Directives, as they regard normal site health monitoring requirements. And in any case, the proposed compensatory measures will not be able to compensate for the high negative impact of the project.

6) *setting up a fund for the protection and conservation of wild birds worth €7.2 M, plus a payment of €4.5*

*per aeronautical movement;*

Previous experiences of similar arrangements have not translated into effective conservation of wild birds. For example, *Fundação das Salinas do Samouco*, (where the Portuguese Government through ICNF is part of this foundation's administration) was established as a compensation measure connected to the realisation of the Vasco da Gama Bridge in Lisbon in order to (also) conserve water-birds in the same estuary. Targeted conservation actions for water-birds, however, are seldom applied on the ground (own observations).

The establishment of such fund in relation to the "Montijo Airport" is not supported by indications as to the related execution plan (and its regulation). In the absence of such specifications, it is unclear how these funds will be applied. Numbers mean nothing without a clear execution plan and regulation of such plan. Therefore it is not possible to consider it as an effective compensation measure.

7) *acquisition of salt pans in a total area (minimum) equal to the area subject to increased disturbance by noise of aeronautical movement, i.e. 1467 ha;*

Following public discussion, where the incorrect application of the single noise model used was highlighted (Alves 2019), the "Evaluation Commission" Evaluation Report (CA Report 2019), subjectively identified a noise level of 65 dB as causing "*strong disturbance*", given that 20% of birds are predicted to take flight.

Nevertheless, at 65 dB, using the same model as presented in EIA (with correct application), it is 25% of birds that will take flight. It appears that the CA report disregarded 5% of the disturbance effect ("*strong disturbance*] is not met at 75 dB, but at 65 dB, ***or rather before that***, noting that with such noise volume 25% of birds will take flight" (page 100, last paragraph CA Report)). The adopted value [65 dB] is excessively high (particularly inside a protected area) and very deceiving for flocking birds species as waders and other water-birds. The flocking behaviour of these species will translate into all individuals present in a given flock taking flight. In short, in any given flock, if 20% or 25% of birds take flight, they will all do.

A further inaccuracy regards the nature of the area that will be acquired. Even considering 65 dB (which severely underestimates disturbance levels as stated above), the effects are specified by habitats: "*feeding habitat*" (i.e. intertidal areas) and "*roosting habitat*" (i.e. supratidal areas). Given that intertidal areas are prime feeding habitat and that, at 65 dB, up to 16% of this habitat inside the SPA is affected (CA Report – table 13, page 101), it is unclear how its functional role may be compensated by the "*acquisition salt pans*", which are supratidal roosting habitat and incomparably poorer in terms of food abundance and quality for water-birds.

This compensation measure is ecologically flawed. It may result from a lack of understanding of the ecological functionality of these systems.

8) *acquisition of land and/or management contracts and/or application of compensatory measures for lost productivity in agricultural fields in Tejo Lezíria;*

It is unclear how such measure will compensate the impacts of the project on avifauna.

9) *intervention in the requalification and/or recovery of habitats in acquired and/or contractualised areas;*

In this regard, it must firstly be noted that the species which would benefit of this measure are not identified. More importantly, however, it must be emphasised that the Portuguese Government already bears such obligation under the Habitats and Birds Directives as well as under applicable national legislation. It is therefore unclear how this could be considered a compensation/mitigation measure to a new disturbance effect.

Moreover, it would be essential to clarify whether the saltpans mentioned under point 7 above are contemplated in the measures to be taken in "*acquired*" areas. There could, in fact, be a risk that this being the same measure from the standpoint of compensating the new impacts on water-birds. Therefore, it would also be important to verify if the mentioned 1467 ha of saltpans to be acquired exist outside the SPA of the Tagus estuary, given that several of these saltpans within the SPA (and nature reserve) are already subject to management by the Portuguese Government under the Management plan for Tagus Estuary Nature Reserve (*PORNET - Plano de Ordenamento e Gestão para a Reserva Natural do Estuário do Tejo*, 2007), particularly the saltpans of Saragoça, Vasa Sacos, viveiro Norte da Bela Vista and Vale Frades, which are designated there as "*areas of specific intervention*" (the last one owned by the Portuguese Government). Also, it should be

noted that several old/abandoned saltpans outside the SPA that could serve this purpose are unsuitable as the relevant noise levels are superior to the disturbance thresholds. In several cases the 55 dB noise level (according to which already 5% of the birds take flight - according to the EIA,) is reached (*e.g.* Moita; Seixal), while in others even the 65 dB threshold is overcome (*e.g.* Alhos Vedros). It thus remains unclear if there is enough available (and suitable) saltpan area in the Tagus estuary outside the SPA to reach the intended 1467 ha.

*10) recognition of Mouchão da Póvoa island as shelter and feeding area for waterbirds species;*

This is an island composed of sediments in the North-Western side of SPA and Nature Reserve. One seawall collapsed some years ago on this island and tidal waters currently ingress during high tide. Because it is already inside the SPA and Nature Reserve, it already acts as an area of shelter for water-birds. It is therefore unclear how can this be considered a measure of compensation. The same, in fact, is located inside SPA and Nature Reserve and already provides such a role.

In addition, this island (together with other two: Mouchão de Alhandra and Mouchão do Lombo do Tejo) was also designated as “*area of specific intervention*” under PORNET 2007, but none of the actions for these habitats have been executed, as indicated in report *Evaluation of Progress of PORNET*, from 2017 (more than 9.5 years since PORNET’s approval).

For these reasons, the recognition of Mouchão da Póvoa island as shelter and feeding area for water-birds species cannot be regarded neither as a mitigation nor a compensatory measure.

*11) requalification of the facilities of the Portuguese Centre for Migration Studies and Bird Protection (CEMPA), as well as the facilities of the salt pans of Vale de Frades and Zaragoza (currently disabled);*

It is not clear how the requalification of buildings (currently in poor conditions) and other *facilities* in the property of the Portuguese Government (CEMPA), particularly the Vale Frades salt pan, would “*improve habitat for water-birds and therefore compensate/minimize impacts of a new development*”. Besides the lack of indications as to whether these saltpans will be considered under the 1467 ha mentioned above, it must be mentioned that such areas (located inside the SPA and Nature Reserve) are already property of the Portuguese Government and should, therefore, already be managed for birds. In fact, this is again one of the management actions proposed in the execution programme of PORNET in 2007 that was reported not to be achieved on PORNET’s evaluation in 2017 (PORNET 2018).

*12) plan to monitor the effectiveness of compensation measures for waterbirds species.*

A plan to monitor the effectiveness of these measures cannot be considered as a measure itself. Page 3, 1st paragraph (following the items referring to the compensation and mitigation measures):

*13) The environmental impact assessment process has therefore established an extensive set of mitigation and compensation measures which aim to reduce bird disturbance to non- significant and acceptable levels, ensuring that the site (is not affected in its ecological character and in the values that support its designation.*

The considerations outlined above, in fact, demonstrate how the identified measures cannot be considered as an “*extensive set*”. Indeed, very few of them address the avifauna and, in any case, present significant deficiencies, which hinder their qualification as compensatory/mitigation measures. Furthermore, “*aiming at*” is very far away from even demonstrating that their efficacy is remotely possible

The report indicates that “*some 160 measures*” are included in the EIS, but there is absolutely no evidence that such number has any real effective action toward water-birds and their habitats, let alone compensate/mitigate negative effects arising from the new project. Certainly not the ones listed above (which are the same as listed in the EIS).

Page 3, final paragraph:

*14) The environmental impact procedure of the project in question was developed in the preliminary study phase, and should be complemented with the procedure for checking the environmental conformity of the execution project, to be developed under the terms of articles 20 and following of the environmental impact assessment regimen. This procedure for verifying the environmental conformity of the execution*

*project presupposes the deepening of the impacts resulting from the execution project that **will be developed** in compliance with the conditions included in the DIA issued in the previous phase of the previous study. Depending on the results of this study, **the need to define new conditions to avoid or minimize the impacts of the project or to revise and adapt** to the previously proposed conditions can be identified.*

As mentioned above, the present paragraph contains distorting conclusions. The Portuguese Government considers that the EIA is a preliminary study, and more in-depth studies will be prepared at the RECAPE stage, before authorisation. The RECAPE refers to the implementation phase (Execution Project Environmental Compliance Report). But the RECAPE is a document elaborated by the applicant in the context of the verification of the implementation project's conformity with the EIS. This stage is only to demonstrate that the execution project complies with the measures established in EIS. It is subordinated to the already approved EIS, and cannot change its content or favourable pronouncement.

This leads to a further consideration. According to such statement *“the environmental impact procedure of the project in question was developed in the preliminary study phase”* and the impacts of the execution project still need to be deepened as to their environmental conformity. Such conclusions represent a clear admission of the limited, erroneous and superficial character of the EIA as well as of the favourable EIS adopted thereupon.

Page 4, 2nd paragraph:

15) According to the Portuguese Government, the issues EIS incorporates *“elements that refer specifically to nature conservation issues”*, including a *Wildlife Management Plan* to be developed, *“in accordance with the guidelines listed in the EIA”*, in the context of the Execution Project Environmental Compliance Report (RECAPE).

Leaving aside any consideration as to the adequacy of the *“guidelines listed in the EIA”*, with regard to such Plan the following is specified: *“Regarding the implementation of measures to reduce attractiveness, and considering that the ecological function of the Tagus estuary cannot be eliminated, risk situations can only be solved based on the management of aircraft circulation.”*

In this respect, it is quite unclear what *“management of aircraft circulation”* means and stands for. A question therefore arises – will the airport be closed to aircraft circulation during migration periods, when an estimated 300.000 birds move through the estuary (CA Report page 106, 3<sup>rd</sup> paragraph)?

Page 4, 3rd paragraph:

16) According to the Portuguese Authorities, it is also necessary to carry out a *“study to assess the disturbance effect of aircraft on birds in the Tagus Estuary SPA, prior to the construction phase, with a minimum duration of one year, in order to establish the real reference situation in the estuary and help to define the monitoring plan (s) to be carried out during the construction and exploration phase.”*

This statement confirms the conclusions outlined above as to the deficiencies of the EIA as well as of the related EIS, which do not contain an adequate assessment of the disturbance effect of aircrafts on birds in the Tagus estuary. Also, the above study shall include the following (Page 4, 5<sup>th</sup> paragraph):

*Reinforce bird tagging and tracking programs in order to accurately determine: **connectivity between feeding and refuge areas; movements in the airport surroundings with a view to assessing bird strike risks; to determine the barrier effect created by the measures to deter birdlife and noise in the area of the SPA***

Note that all these were suggestions presented by Alves 2019 (and not by the Portuguese Government as it may seem in this report) during public consultation, in good faith and in the hope that a proper EIA would be achieved prior to issuing a (negative or favourable) DIA. Such aspects shall have been assessed in the context of the EIA as well. This is a further confirmation of the severe deficiencies affecting the whole proceeding.

Page 4, 6th paragraph:

17) *It should be noted that Portugal has a Natura 2000 Sectorial Plan that lists for the SPA (PTZPE0010) and for the SAC (PTCON0009), both the threat factors and the detailed management guidelines for each*



*habitat, species and type of land use, which allowed robustness in the assessment of project impacts.*

The data on which the Sectorial Plan for PTZPE0010 is based date back to the 1990s and early 2000s. The SPA has changed substantially over the last 20 years, as the information currently available for the site also has. For example, the Sectorial Plan states that 100.000 water-birds are present - this is clearly outdated based on statements on the very observations of the Portuguese Authorities (see, for example, page 3: 200.000 water-birds wintering and 300.000 during migration *plus other birds*).

Page 4, 7th paragraph:

18) *It should also be noted that for the Tagus Estuary SPA, Portaria No. 670-A/99, of 30 June, published the Management Plan for the Special Protection Zone of the Tagus Estuary, which defines management guidelines for the protection of avifauna.*

The same Management Plan regarding the SPA provides, under Article 2, a), for “*the prohibition of construction of urban and industrial projects (inside SPA)*”. As stated above, this infrastructure overlaps with the SPA and the “*prohibition of construction*” should therefore be upheld.

Page 4, 8th paragraph:

19) *The basis used for assessing the impact of the project consisted of verifying and surveying in situ the habitats and species existing in the project intervention area<sup>i</sup>, as well as the bird count database in the Tagus Estuary carried out by the ICNF team / CEMPA<sup>ii</sup> carried out over several years, and academic studies<sup>iii</sup> prepared by several avifauna researchers in the area of the Tagus Estuary.*

In this regard, two main aspects are worth addressing in detail:

(i) The survey presented in EIA consisted of:

**20 days** of fieldwork total on data-collection regarding water-bird species on intertidal (18 sites) and supratidal (8 sites):

**Intertidal** (total survey days =15)

Winter - 6 days (3 in November; 3 in December); Spring migration - 3 days (March); Breeding - 3 days (May); autumn migration - 3 days (September-October).

**Supratidal** (total survey days = 5)

Winter - 2 days; all other seasons 1 day = 3.

*(All the above is extracted from EIA, vol.ii.b. section 5.7.1.3.4)*

In this regard, it must first be mentioned that it is unclear how the survey was carried out (with reference, for instance, to the counting of sites per season). In fact, if only one count per season per site was done, then the values shall be deemed of low accuracy given the stochasticity on the occurrence of these species. Also, additional radar studies (a radar was set outside the airport location for 42 days; and in the proposed airport location for 96 days) have been carried out. However, such data are not species-specific. Therefore, they cannot be used to survey “*species existing in the project intervention area*”. Hence, the survey comprised a total of 20 days of fieldwork with possibly only one count done on each site per season. By any standard, and even if more than one count per site and season was done, this is an extremely poor survey to properly assess “*the impact of the project*”.

(ii) 2 - This may be true for part of the data, but the high tide roost dataset is partially maintained and collected by volunteers (many of which are academics), with no support from the Portuguese government (including the surveying of several sites inside the SPA). It would be only fair and polite to be explicit about this and not omit this aspect, insinuating such data originates entirely from ICNF.

- The mentioned studies are outdated and/or incomplete and not designed for assessing impacts. The key studies referred to in the EIS are:
- Santos et al. 2009; intertidal counts (for 8 waders species and "all birds" together) carried out in 2002 and 2003 (December-March - exact dates unknown, but March is a month with ongoing migration, and not winter, for many species and this cannot be split on this dataset, hence in the EIA all considered the same). This dataset is 15 years old and no attempt to confirm if numbers remained similar was made (e.g. re-sample some of the surveyed locations in 2002-2003). This is one of the studies used to determine impacts by noise pollution, therefore severely hampering the validity of such estimations.

- Dias et al. 2006 & Rodrigues 2012; distance between roost-site and feeding area estimated only for dunlin, and assumed equal for all 27 wader species assessed in EIA;
- Lourenco et al. 2018; counts of supratidal roosts which do not include the entire estuary (only 9 wader species have species-specific data available out of 28). This is used to assess noise effect on roosts and other impossible assumptions such as to estimate average abundance of a given population when only part of the estuary is considered.

Given the aforementioned limitations it cannot be considered that the impact assessment was developed to the required standards.

Page 5:

20) *The procedure for verifying the environmental compliance of the execution project culminates in the issuance of a Declaration of Environmental Conformity for the Execution Project (DCAPE) which, being compliant, integrates all the necessary conditions to avoid, minimize and / or compensate the impacts of the subsequent phases project development (Conditions, Minimization and Compensation Measures, Monitoring Programs and others, applicable to the construction, exploration and deactivation phases of the project). This binding decision is prior to the project's licensing / authorization, revoking the DIA issued in the preliminary study phase. From which it is concluded that, having the project "Aeroporto do Montijo and its Accessibilities" been subject to an EIA procedure in the preliminary study phase, the evaluation carried out identified a set of elements to be presented in order to verify the environmental conformity of the execution project that will allow to embody the measures already recommended and may even imply the consideration of new minimization measures.*

As broadly described above, the impacts of the project on the environment must be comprehensively assessed in the frame of the EIA proceeding, which is, as known, aimed at verifying whether the project, before it is consented, is compatible with the environmental context where it is going to be realised. Such assessment cannot be fragmented and postponed to later stages and, of course, to the evaluation of environmental compatibility of the executive project. The latter proceeding, in fact, has the mere aim to verify the compliance of the executive project with the measures already provided for in the context of the EIS. And, as outlined above, the EIS (like the EIA on which it is based) is erroneous and based on incorrect and deceiving assumptions.

Far from an alleged need to illegitimately complement an inadequate and superficial EIA proceeding, what the EIS shows is that the Montijo airport will most certainly cause an irremediable impairment of the integrity of the SPA and, therefore, should not have received a positive EIS in the first place.

**The way of proceeding of the Portuguese Authorities is, again, distorting and contrary to applicable regulations, at international, EU and national level, and confirms the profound inadequacy and unlawfulness of the EIA/EIS that have been adopted in the frame of the authorisation project of the Montijo Airport.**

**References:**

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