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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

34<sup>th</sup> meeting  
Strasbourg, 2-5 December 2014

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**APPLICATION OF THE CONVENTION**

**- Summary of case files and complaints -**

**SEPTEMBER 2014**

*Secretariat memorandum  
prepared by  
the Directorate of Democratic Governance*

## **IMPLEMENTATION OF THE CONVENTION: FILES**

### **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 1<sup>st</sup> 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 the 31<sup>st</sup> 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 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 was not sufficient to 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 issued warnings for possible non-compliance to Ukraine.

The Committee decided to keep the case-file open asking the three concerned Parties to ensure that the Secretariat receive updated reports on the 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 stressed 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 had finalised the implementation of Phase I of the Bystroe project and 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 design, the project posed 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 concluded 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 documents, 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 32<sup>nd</sup> Standing Committee meeting only the WWF was able to provide the Secretariat with a written opinion. According to WWF analysis, the EIA seemed to comply with the formal requirements of EIA but actually failed to address concrete relevant issues, as for instance: lack of assessment of emergency situations, persistence of knowledge gaps and high level of uncertainties; some concerns were also expressed at the level of 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 considered that the list of measures to reduce the negative impact did 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 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 11<sup>th</sup> 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 took 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 be developed further in order to elaborate and coherently implement a sub-basin management plan for the Danube Delta.

Regarding the request of comments on the EIA, the Ramsar Secretariat suggested 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 summarised the information provided in previous reporting while waiting for the possible adoption by the Parliament of Ukraine of the 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 2013, Ukrainian authorities informed 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 informed 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 took 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. The report further recalled 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 affirmed 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 was taking all necessary steps for convening 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 the previous Standing Committee Meeting. The deadline for the completion of the work had been established at 30 months. The letter further recalled that the Decision of Ukrainian authorities to finalise the Bystroe Channel project had not been cancelled or suspended and thus there was 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 initiated a transboundary consultation process which was 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 was described as “adopted in 2006 and planned 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)”.

In addition, in August 2013 the Secretariat received the reply of the ESPOO Convention, recalling that the matter had 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 trans-boundary 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 28<sup>th</sup> Session of the Implementation Committee.

At last Standing Committee meeting, the Delegate of Ukraine informed that a meeting of the Joint Commission was organised on 28<sup>th</sup> November, hosted by Romania. He said that the meeting was indeed a good opportunity for discussing national and international monitoring results, as well as the development of projects and joint activities to be implemented in the short term. The meeting served to plan future co-operation of the three concerned Parties based on an agreed list of priority activities. The Commission highlighted the importance of the common bilateral and trilateral large scale joint projects, including projects within the framework of the EU Strategy for the Danube Region and future Cross border Co-operation Programmes funded by the European Union.

The Delegate further confirmed that the authorities suspended activities in the area after the Phase 1 of the project and did not start the new phase. The Delegate stressed that Ukraine was taking appropriate measures to enhance the conservation status of the Danube Biosphere Reserve and to expand its territory and concluded by asking to note the efforts shown by his country to honour the provisions of the Standing Committee.

The Delegate of Romania agreed that the second meeting of the Joint Commission was positive in the sense that some progress was made by the three Parties to jointly find a way forward in respect of the issue of the canal. He stressed that on that occasion Romania asked Ukraine to provide information on the works carried out so far and on the authorities’ intention to proceed with the full scale implementation of the project. Mr Dumitru regretted to inform that although the Ukrainian side

affirmed that in 2012 and 2013 only small scale dredging was undertaken, there was no clear answer on a decision of the competent authorities to implement or renounce to implement the Phase 2 of the project.

Furthermore, the Delegate of Romania affirmed that the results of the studies and monitoring activity carried out by his authorities on the works implemented until now in the Ukrainian side of the Canal show that the Bystroe Project had already a significant impact on the Romanian territory, particularly for what concerns the hydrological conditions of the area. Therefore he reiterated Romania's strong opposition to the implementation of Phase II of the project, and underlined the need for the impact of the works on the Romanian territory to be properly and comprehensively assessed by the Ukrainian side.

The Committee welcomed the dialogue and co-operation re-established by the three concerned Parties and noted with satisfaction **that a third meeting of the Commission should be organised and held in Ukraine in May 2014**. Considering that it could be useful to examine the report of the meeting of the Joint Commission, and noting that the matter would also be assessed by the Committee of the ESPOO Convention at its 29<sup>th</sup> meeting the Committee decided to keep the case file open and gave mandate to the Bureau for ensuring the follow-up to this complaint until the next Standing Committee meeting.

The Secretariat received the report of the 2<sup>nd</sup> meeting of the Joint Commission already in January 2014. The latter confirmed the adoption of a list of priority activities based on a proposal by Romania. These included the coordination of the initiatives of the parties concerning the natural protected area of the Danube Delta and the Lower Prut, the development of joint management and monitoring programmes, the identification of possible EU grants, the possible creation of a trilateral biosphere reserve, among others. The meeting was also the occasion for an exchange of knowledge and information on the status of the respective nationally protected areas subject to the Agreement, as well as on the advancement of the common projects developed within the framework of the trilateral cooperation. However, from the report it was clear that Ukraine and Romania could not find agreement on the findings of the respective impact assessments, as confirmed by the discussions held at the Standing Committee meeting.

In March 2014, the ESPOO Convention provided the Secretariat with an updated report, informing about the latest developments following the 29<sup>th</sup> session of the ESPOO Committee meeting. In fact, although Ukraine had submitted its report within the deadlines fixed under the ESPOO Convention, the Committee at its December session found that the information provided was not sufficient to allow for the conclusions on the matter. The issue was reported at the February session, the last before the MoP (June 2014) where the Committee was obliged to reach some conclusions. Although the Committee welcomed the timely submission by Ukraine of the requested information, it regretted that Ukraine had still failed to provide complete and specific information on the progress concerning the implementation of the ESPOO Convention, the adoption of the necessary legislation, and the specific actions to bring the project for the Bystroe Canal Project in full compliance with the Convention. Moreover, the Committee considered that the decisions by Ukraine to continue dredging activities might indicate a further breach of the obligations under the ESPOO Convention. The conclusion of the Committee was that it had no basis to recommend to the MOP to revise its recommendations set out in decision V/4 concerning compliance by Ukraine, including that the caution issued at MOP-4 remain effective. The decision was then fully endorsed by the Parties at MOP-4.

In April 2014 the Bureau deeply discussed this case-file and regretted to admit the difficulties faced by the governing bodies of the Convention in dealing with this complaint.

Among the major obstacles identified against a satisfactory solution of the case, the Bureau noted again the lack of clarity regarding the present situation on the ground, the different views of the two main concerned Parties regarding the possible negative impact of the work on the ecosystem, and the diverging positions regarding the status of implementation of the Phase II of the project. In addition, the Bureau recognised again the need to urgently work towards reducing at minimum levels any negative impact and ensure that adequate compensatory measures for the works already finalised are implemented and monitored by a supervisory body.

In the light of the above, the Bureau decided to keep the case-file open and instructed the Secretariat to prepare a short note about how the Convention has in the past dealt with similar case-files, and possible scenarios for handling the present one at its next Committee meeting.

The Information Note on the Bsytrøe Case-file is included in document [T-PVS/INF \(2014\)14](#).

The document provides a short reminder of the procedure set-up for dealing with case-files in general, as well as factual information regarding complaint n° 1986/8 on *Caretta caretta* in Laganas Bay, Greece; moreover, the note provides an overview of the options that the Standing Committee has regarding the present complaint as well as a summary of the main decisions of the Standing Committee since the case was open, in 2004.

In the meantime, on 29<sup>th</sup> August 2014, the Secretariat received from Romanian authorities a non-paper with the request of forwarding it to the Bureau members for consideration at their meeting.

## **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 16<sup>th</sup> 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 29<sup>th</sup> 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 31<sup>st</sup> 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 the 32<sup>nd</sup> Standing Committee meeting the delegate of Cyprus informed that the Cyprus Department of Environment 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 would be properly analysed, appropriate protection measures would be taken. The delegate of Cyprus concluded by reaffirming that, concerning the "Polis-Gialia" area, the authorities were in disagreement with the claim that the designated area was inadequate. However, he informed that Cyprus was in the process of reviewing the monitoring and inspection protocols in place so to ensure adequate surveillance of the area.

The delegate of Norway stressed that the fact that the file had been open for sixteen years was a sign that the actions undertaken by the authorities were 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 informed being in the process of assessing the results in the attempt of finding 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 2013, Cyprus authorities communicated that the Department of Environment was finalising the mapping of the Akamas Peninsula area and that the results would be forwarded to the Secretariat once they would be published. Moreover, they affirmed being in the process of conducting a Management Plan for the Akamas Peninsula area, which was 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 was being examined by the European Commission as a matter of “insufficient designation”, meaning that the production of a management plan for the area designated would presumably be insufficient for solving the problem alone. Secondly, the complainant informed that a local developer proposed the construction of two golf courses surrounded by villas and hotels in the adjoining Limni area, which could presumably directly affect the turtles nesting there. The complainant further informed that the Government’s failure to take a firm stance about the distance of installations from the foreshore had been the subject of a second and different formal complaint to the Commission.

In its update, the European Commission informed having received extensive additional scientific information both from the Cyprus authorities and the NGOs which was under assessment to determine whether the SCI has been (on the basis of scientific evidence) sufficiently designated or not.

At its September meeting the Bureau assessed the case for the first time in 2013. The Bureau welcomed the information provided by the authorities on some progress towards the mapping and management plan of the Akamas Peninsula, but considered it necessary to follow the developments related to the complaint regarding the presumed insufficient designation of the SCI. The matter was forwarded to the Standing Committee.

Unfortunately, Cyprus could not attend last Standing Committee meeting and did not address updated information. However, the complainant presented the NGO point of view insisting on the investigation by the European Commission concerning the presumed insufficient designation of the Natura 2000 areas as a strong evidence of the possible inadequate protection of both Akamas Peninsula and Limni. Moreover, the complainant asked the Committee to make a number of recommendations to the attention of Cyprus authorities, including to promptly revising and extending the current boundaries for the areas, regulating development in the adjacent area, adopting a management plan of Akamas with all necessary measures for monitoring and control of habitats, reacting with adequate measures against illegal constructions and unsuitable activities on the surrounding beaches, and adopting an early warning system in order to closely monitor these areas, and the rest of the Natura 2000 sites, and prevent human destruction from taking place.

The Committee decided to keep the case file open and encouraged Cyprus to fully implement its Recommendation No. 63 (1997) and to report namely on the concrete measures implemented to avoid further deterioration of the concerned habitats. Furthermore, and taking into account the urgent need of protecting these unique sites from further destruction, the Committee invited Cyprus government to undertake any necessary step aimed at providing an early warning system against illegal damage and to inform the Committee on their implementation.

The decision of the Committee was forwarded by the Secretariat to the authorities in January 2014. By the end of March, Cyprus authorities addressed an updated report affirming that the areas proposed as SCI for Akamas and Limni are considered adequate and that further development of the area was subject to the necessary impact assessment as foreseen by both international and national legislation.

The authorities further informed that the Management Plan for the “Polis-Yialia” Natura 2000 site was being implemented but the management plan for the Akamas Natura 2000 site (expected to be completed by the end of 2013) was still under preparation.

Additionally, the authorities informed that a wider residential and rural area around the Akamas Natura site would be subject to special regulations and restrictions so to ensure the highest possible protection of the peninsula.

Besides, the report provided short but specific information on the implementation of operational paragraphs 7, 9 and 10 of the Standing Committee Recommendation No. 63 (1997), which are specific to Lara-Toxeftra Reserve area and to seagrass communities in Akamas.

Finally, the government report also addressed the recommendation by the Standing Committee to adopt an early warning system against illegal damage and considered that the regular monitoring mechanism already in place is both appropriate and effective. However, the authorities declared to be ready to evaluate any specific recommendations regarding the issue.

In an e-mail sent on 28<sup>th</sup> March, Terra Cypria informed being in disagreement with several points and committed to address to a detailed note to present its arguments. The Bureau decided to keep the case file open and to re-assess it at its September meeting, in order to be able to take into account the position of the NGO. It further instructed the Secretariat to contact the European Union for updated information.

The report received by the NGO mid-April 2014 analyses and contradicts the information submitted by the authorities, by affirming that:

- A huge part of the Akamas Peninsula has been excluded from the Natura 2000 network leaving very important habitats and species unprotected. The fact that the European Commission opened a case for presumed insufficient designation of the area is considered to be the evidence that the arguments submitted by the NGO are strong and science-based. Moreover, the NGO claims the largely insufficient designation of the Limni area which has enabled for the delivery of licences authorising the development of a golf course and a multi-villa project, adjacent to the Natura 2000 area, with a probable impact on the nesting beaches of the *Caretta caretta*.
- The Proposed Plan for Polis-Gialia does not contain serious implementation actions and therefore does not meet the requirements set by national law for the adequacy of management plans.
- The development regulations and restrictions announced by the Government around the Akamas Natura 2000 site are considered by the NGO to be part of the regular Town Planning framework and therefore not inspired by biodiversity conservation's considerations. In the NGO's views, since the designation of the Natura 2000 site is too exiguous and has left out areas with very important habitats, a simple Town Planning framework implemented without the involvement of a conservation agency will be insufficient to ensure the proper conservation of the area.
- Regarding the information submitted by the authorities on the implementation of the Standing Committee's recommendations specific to Lara-Toxeftra Reserve, the NGO questions the regularity and quality of the monitoring carried out by the Fisheries Department, as well as the data sent to minimise the presumed disturbance of the Thanos hotel complex.
- Finally, the NGO considers that, taking into consideration the recent experience of situations where the interventions of the authorities against biodiversity disturbance and damage failed to be carried out before damage was done, the Republic of Cyprus should seriously consider to set up an early warning system and to put in place a team of wardens with full legal powers.

The request of the NGO to the Bureau is to keep the file open.

On its side, the European Union informs being in the process of analysing the classification of special protection areas (SPAs) of the Akamas area on the basis of the recent update of the list of Important Bird Areas in Cyprus published by Birdlife. Moreover, the Commission is assessing the

alleged failure to designate the Akamas area under the Habitats Directive as a Site of Community Importance (SCI), having requested and received further technical clarifications as regards the mapping of habitat types in question as well as information on the preparation of the management plan for the broader Akamas area.

As regards the tourist development in Limni (Polis-Gyalia Natura 2000 site) the Commission has investigated through an EU Pilot the measures taken to ensure compliance of the planned development with Art. 6 and 12 of the Habitats Directive. The issue is under assessment.

Finally, in the last report submitted by Cyprus authorities at the request of the Secretariat, the latter regret not having received any evidence from the NGO showing the insufficient designation of the Akamas Peninsula and therefore not being in a position to either remedy or counteract any possible inaccuracies. Moreover, the authorities are confident that the designated area will be considered as adequate, and have provided all relevant scientific information to the European Commission.

The authorities further confirm that an EU Pilot is ongoing on Polis-Gialia situation and that the procedure is thus confidential for the moment. In addition, the authorities defend the quality and effectiveness of the Management Plan which is intended to ensure the highest possible protection of the peninsula.

The report of the authorities contradicts also the allegations concerning the lack of patrolling in Lara-Toxeftra Reserve for which a specific Turtle Monitoring Programme is assigned every year to experts through a tendering procedure. The obligations and responsibilities of the experts are considered to be in compliance with the regulations.

Regarding the adoption of an early warning system, the authorities consider that the regular monitoring of the sites is the most efficient measure, together with the prosecution of illegal acts. However, the Republic of Cyprus is now also studying possible amendments to the Nature Law so to allow for extrajudicial measures following damages to sites, habitats and species.

### **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 27<sup>th</sup> 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 could decide to 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 had been constructed further to obtaining the necessary authorisations. None of these was 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 had been authorised without fulfilling the EIA/AA procedure. Moreover, the legal framework had 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 were delayed and windfarming was still insufficiently regulated. It therefore decided to keep the case-file open and asked the Government of Bulgaria to submit, before the 33<sup>rd</sup> 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 17<sup>th</sup> 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 was pending. The Minister took nonetheless the responsibility to keep the AEWA informed of any development on the court case and the environmental procedures.

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.

At last Standing Committee meeting the Parties discussed the present case-file in the absence of Bulgarian authorities. However, the most recent actions undertaken by the authorities to address the matter were presented by the Secretariat on the basis of a written report submitted by the Delegate of Bulgaria for the Standing Committee meeting. The representative of the NGO had the opportunity to acknowledge some of the progress made by the authorities for implementing Recommendation No. 130 (2007), while stressing that some important issues were still to be addressed. For instance, the situation of the Smin windfarm was still unclear because of the pending Court ruling.

Besides, the representative of the UNEP/AEWA reported that the Ministry of Environment of Bulgaria had informed that a new EIA procedure would start for the Smin windfarm and that the authorities might appreciate advice from the UNEP/AEWA, including through an IRP mission to the country.

The Committee decided to keep the case file open and gave mandate to the Bureau for its future collaboration with the UNEP/AEWA Secretariat. Furthermore, the Committee instructed the Secretariat to continue to follow-up this complaint in coordination with the European Union, as well as to request to Bulgarian authorities some updated information regarding, in particular, any concrete step for the relocation of those windfarms which could have an impact on important conservation sites.

The case was not discussed at the first Bureau meeting in 2014: in fact, the Secretariat addressed a reporting request to Bulgarian authorities on 22 January, with a deadline set at 30<sup>th</sup> June in order to give them enough time to prepare a comprehensive reply. However, the Secretariat regrets to inform that no new information was received by the preparation of the present document, despite numerous reminders.

Nonetheless, the Secretariat maintained contacts with the Secretariat of UNEP/AEWA and received the notification of a letter from the Acting Executive Secretary of the AEWA to the Head of the International Cooperation Department of the Bulgarian Ministry of Environment and Water thanking for having facilitated, in February 2014, a meeting in Bulgaria between the competent national authorities and the AEWA Secretariat. The meeting was fruitful in the sense that the authorities undertook a series of commitments regarding mainly the windfarm project in Durankulak Lake. It is however important to note that the scope of the complaint under the Bern Convention is broader.

Updated information was submitted also by the European Commission, whom informed having referred Bulgaria to the European Court of Justice over its presumed failure to protect unique habitats and important species in the Kaliakra region due to windfarm developments.

Finally, in August 2014, the Secretariat received an updated report from the complainant, informing about the lack of any progress in the implementation of most of the actions recommended by the Standing Committee through Recommendation 130 (2007). Moreover, concerning the windfarm project in Duraknolak Lake, suspended by the Ministry, the NGO informed about the last decision of the National Court, delivered in July 2014, ruling against the Ministry of Environment and Water. As a result, the windfarm project is again a reality which may dramatically impact the Red-breasted Goose. Moreover, none of the turbines considered dangerous by the Standing Committee has been removed so far. The report further proceeded to analyse compliance with each of the operational paragraphs of the Recommendation adopted by the Standing Committee and requests the international community to urgently assist Bulgaria in addressing the issue of the windfarm developments as a matter which may cause irreversible damage to Europe's natural heritage.

**d. 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. A second set of Recommendation [No. 114 (2005)], on the control of the grey squirrel (*Sciurus carolinensis*) and other alien squirrels in Europe, was adopted in 2005 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 the 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 29<sup>th</sup> 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 informed 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 the Life+ Project, finally launched in September 2010.

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.



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.

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 the 33<sup>rd</sup> Standing Committee meeting, the delegate of Italy reported on a series of good progress, particularly concerning Liguria and Lombardy regions and informed that the ban decree 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 2013, Italian authorities informed on the implications of the adoption and entry into force of the ban decree “Dispositions for the control of detention and trade of alien squirrels of the species *Callosciurus erythraeus*, *Sciurus carolinensis* and *Sciurus niger*”. The government report explained that, further to the adoption of the decree, the trade, breeding and detention of these species had been 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.

At the last Standing Committee meeting the delegate of Italy presented the government’s report, and the project manager of the LIFE project on the eradication of the species presented the latest information related to the eradication efforts.

Despite some encouraging information concerning the return of the red squirrel in the areas where the eradication succeeded, animal welfare’s organisations were still posing big challenges to the full implementation of the project and the eradication campaign was confronting appeals to the Administrative Courts, political pressure, petitions and public demonstrations. Moreover, the project revealed that there are areas in Italy, notably those where the American grey squirrel expanded, where the red squirrel disappeared.

The Committee expressed satisfaction for the efforts of Italian authorities and very much welcomed the adoption of the decree for banning the trade, breeding and detention of the American

grey squirrel. However, considering that the LIFE project EC-SQUARE was still ongoing, the Committee decided to keep the case file open.

The case was not assessed at the first Bureau meeting in 2014 so to give the country to continue the implementation of the LIFE project and evaluate its results before the first reporting.

In the report submitted in August 2014 the Italian authorities informs about the enforcement of the decree banning the trade, breeding and detention of the American squirrel: the shops stopped selling it and the CITES Territorial Services of the cities concerned by the “invasion” didn’t register any infraction.

Concerning the LIFE project, the authorities regrets the continuous delays experienced in the implementation, due once more to the criticism of the majority population, particularly in Lombardy region. This also materialised in the lack of permission to accede to some private areas, despite the presence of the invasive species. As a consequence, the expected results of the project were already revised in 2013, with the identification of less ambitious goals. However, the efforts and commitment toward the eradication remains unchanged.

The report underlines that a population particularly dangerous has been identified just a few kilometres from the Swiss border, where the alien squirrels already colonised a large area. In order to address this problem, the competent authorities have prepared a specific Action Plan, which has been (and still is) unfortunately blocked for some months at the administrative level. The Action Plan is not adopted yet and the authorities note a high risk of not being able to stop the expansion of the population.

Regarding Piedmont region, the authorities are controlling the grey squirrel in restricted areas (of a total area of about 2,000 km<sup>2</sup>) and are considering several steps forward.

In Liguria, where the project privileged the surgical sterilisation of the animals instead of their suppression, the strong local opposition is making difficult for the authorities even to find veterinary structure willing to proceed to the sterilizations. 130 squirrels were sterilised in Genova Nervi area but the species is considered to be progressing again.

#### **e. 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 the 32<sup>nd</sup> 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 water 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 (1998) 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 situation in Fethiye were “uncomfortable” and stated that he expected matters to improve, as certain organisational issues related to the management of the beaches were expected to be resolved soon.

The delegate of Norway considered that there were reasons 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 15<sup>th</sup> 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 5<sup>th</sup> 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 ongoing 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.

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 33<sup>rd</sup> 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 had been appointed as 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 3<sup>rd</sup> Degree Archaeological Site (DAS). Moreover, the construction plans related to Patara 1<sup>st</sup> 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 6<sup>th</sup> September 2013.

On 9<sup>th</sup> September 2013 the Secretariat received the report by the complainant. Regarding Fethiye, the report listed and described into details the impact of the 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, remained insufficient. The main threats continued 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 included 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 had been completed. The complainant further recalled that the whole construction project concerns the building of around 400-750 villas in total and stressed the need of urgently reconsidering the scale of the project. Moreover, like in Fethiye, signage was insufficient and apparently no guarding was foreseen to enforce conservation rules on the nesting beaches, unlike previous years. The complainant reiterated its proposal 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 of September 2013, the Bureau requested the Party to provide the Standing Committee with an updated report, including more recent information related to, among others, the breeding season.

At the 33<sup>rd</sup> Standing Committee meeting the Secretariat informed that Turkey didn’t send a written report but the Delegate of the country expressed the wish to provide an oral update after the presentation of the representative of the complainant.

The representative of the NGO presented the most updated information, reiterating the problems already spotted in previous reports. More concretely, for Patara the NGO requested the re-evaluation of the scale of the tourism development project in the 3<sup>rd</sup> Degree Archaeological Area, the implementation of an Environmental Impact Assessment, and the elaboration of an updated SPA management plan to manage visitor flows prior to the 2014 tourist season.

On Fethiye, the NGO showed pictures taken during the summer season in 2013 clearly showing the lack of effective signage and guarding, lack of management of the beach furniture, beach access at night and consequent light pollution, creation of parking spaces, wooden pavillons, temporary discos, and even a new road.

The Delegate of Turkey explained that the authorities are aware of the situation and committed to revert it. In fact, the process of re-organisation of the competencies within the bodies responsible for nature conservation had an impact on the efficiency of the response of the government, but some measures were already envisaged to ensure that the effective management of both areas is done in compliance with the recommendations of the Standing Committee.

In the light of the above, the Committee decided to open the file as a mean for encouraging relevant bodies at national level to work towards greater accountability, co-operation, and responsibility. Besides, the Committee instructed the Secretariat to promptly approach Turkish

authorities with a detailed reporting request, and mandated the Chair of the Standing Committee to convey the Committee's concern to the responsible national authorities, together with the relevant proposals of assistance.

The Secretariat addressed a letter to Turkish authorities already in January 2014, conveying the worries of the Committee as well as the proposal of assistance, and requesting an updated report on the progress towards the management of the area. Due to a communication problem, the Delegate requested an extension of the deadlines fixed by the Secretariat until the 28 March.

Therefore the Secretariat received first the report from the complainant, concerning both Fethiye and Patara. Regarding Fethiye SPA, MEDASSET denounced the lack of preparatory actions by the authorities to improve the management and conservation of sea turtle nesting beaches. In addition, the complainant alerted on the promotion by the authorities of a "public interest decision" to allow for the relocation and construction of a shipyard/drydock on Akgöl nesting beach. The latter is an "old" project regularly denounced by MEDASSET since its construction could undermine conservation efforts in the area and have a severe impact on a pristine habitat. In its report, MEDASSET addressed a series of requests to Turkish authorities, including the preparation of a SPA management plan for both the land and marine areas, the urgent implementation of a comprehensive action plan ensuring proper management and adequate protection of the SPA, and the allocation of the necessary financial and human resources for the enforcement of regulations. Furthermore, the complainant requested to the government to reject the plans for the construction of the drydock in Akgöl.

To conclude on Fethiye, MEDASSET asked the Bureau consider the possibility of an on-the-spot assessment as a way forward in case no relevant information is communicated by the national authorities on the complaint, as well as to request an official update on the status of the shipyard construction project.

Regarding Patara, MEDASSET informed that the construction of another 300 villas inside the protected area had been documented in several press articles since January 2014. According to the complainant the summer house construction project is incompatible with the Bern Convention's related recommendations. The NGO therefore requested to the national authorities to take a clear position on the matter, to re-evaluate the scale of the construction project, to revise the SPA management plan and ensure its implementation through the necessary human and financial resources before May 2014. As for Fethiye, the complainant concluded by requesting that the Bureau consider the possibility of an on-the-spot assessment in case of lack of reporting by the Turkish authorities.

The government report, sent on 27 March, informed about the few activities undertaken in 2013 to protect marine turtles and their nests.

Concerning the Fethiye-Göcek SEPA, the report recognised the lack of a local management unit, as well as of physical points of entry/exits. Although the control of the area was not adequately maintained, the report informed about the results of the studies carried out during the 2013 nesting season, with data regarding the number of emergencies, of nests caged against predation and human activities, and hatching. Regarding the latter, only 1.92 % of the nests did not produce any hatchlings and, after considering the unfertilized eggs and the death in shell, the hatching success was calculated at 91.99%. The report further contained pictures documenting some public awareness activities, namely with hotel owners, personnel and guests, as well as the installation of three info signs at the main entrance to the beach at Çalış, Yanıklar and Akgöl sections.

Concerning Patara, the authorities noted that the area where the villas were to be constructed is about 2 km away from the beach. The Implementation Plans for the construction project received all necessary authorisations and were prepared by the Ministry of Culture and Tourism and endorsed by the Antalya Culture and Natural Heritage Protection Regional Council. Moreover, the scale of the initial plans had been already reduced of approximately 75%.

More concretely regarding sea turtle protection activities, the report informed about the results of the studies conducted between May and September 2013, showing a high percentage of eggs suffering from predation, mainly by foxes. However, around 90% of hatched turtles managed to reach the sea. Some awareness activities, similar to those carried out in Fethiye, were also organized in Patara.

The Bureau acknowledged the information submitted by both the authorities and the NGO. However, it wished to receive more detailed information from the authorities on the plans for the forthcoming tourism season, as well as on the measures to be implemented for ensuring the proper conservation of the areas in the near future. It therefore instructed the Secretariat to request to the authorities an updated report including – among others – the official position of the authorities with regards to the possible relocation and construction of the shipyard on Akgöl.

The Secretariat addressed a specific reporting request to the authorities at the beginning of May, followed by several reminders. However, no new information was submitted by the authorities by the drafting of the present document. In the meantime, the NGO submitted an updated report, mainly to question some of the assertions of the authorities.

A first contradiction concerns the location of the summer house developments, which the NGO considered to be nearer the core nesting area than what affirmed by the authorities. Moreover, the NGO stressed that the government failed to address the issue of the possible impact due to the increased users and business that will result from that development. In addition, the NGO reported about some press articles informing that 122 houses would be built on the land belonging to the HITIT Housing Cooperative, within the protected area.

Besides, the report submitted by the NGO detailed some other persisting conservation problems, such as the lack of signage, inadequate beach furniture management, discard of pesticide bottles onto the beach and into the sea, use of fishing nets close to the shore during the nesting and hatching season, the construction of a new road and the establishment of a new beach bar in Çayağzı beach. To document these allegations the NGOs included photos in its report.

The report concluded with a series of requests addressed to both the Turkish authorities and the Standing Committee. More concretely, the latter is invited to consider whether the construction of the summer houses within the SPA is compatible with the Recommendations already adopted by the Standing Committee, as well as to assist Turkish authorities in the implementation of the updated action plan, and to conduct an on-the-spot appraisal in summer 2015.

#### **f. Greece: threats to marine turtles in Thines Kiparissias**

On 22<sup>nd</sup> 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.

In March 2011 the Greek authorities forwarded to the Secretariat the response sent on 22<sup>nd</sup> 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 had been 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 included 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 again 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 22<sup>nd</sup> 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 the 32<sup>nd</sup> 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 would 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 15<sup>th</sup> 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 was being elaborated with the aim to halt any development works in the area until the issuance of a Ministerial Decision, which would constitute the basis for the protection of the area until a Presidential Decree would be in place.

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



MEDASSET further informed about some other unpleasant developments, occurred despite the assurances of the Ministry, including the building –in November 2012 - of three houses in the sand dunes of the core nesting area near Vounaki hill, for which a permit was 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 to the Standing Committee to screen again the complaint, 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 was still a major issue. It decided to screen again the complaint at its next meeting and instructed the Secretariat to urge 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.

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 still occupied almost the whole beach and were not removed at night-time. Other disturbances reported by the complainant were 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 had 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 were a threat also to this area.

According to ARCHELON's most recent investigations, adult turtles that attempted to nest returned 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 had been victim of physical and verbal offences and the scientific equipment was stolen.

No Action Plan had been elaborated for the area in question at that time, while the Steering Committee responsible for supervising the implementation of the Action Plan and for drafting a Ministerial Decision (MD) met only twice.

Regretting the lack of concrete information on the conservation and management of the area, as well as the enforcement of relevant legislation, the Bureau suggested, at its September meeting, that the case file should be discussed as a file open at the 33<sup>rd</sup> Standing Committee meeting.

Greek authorities didn't attend the 33<sup>rd</sup> Committee meeting but addressed a report in October 2013 informing that the Ministerial Decision of Suspension/Prohibition of all construction and

agricultural activities in the broader coastal area was issued in May; a Ministerial Decision issued in July had put in place a basic set of management measures concerning the reproduction of the sea turtle; in June the authorities commissioned to a Professor of the University of Athens a detailed study of the area in order to provide all the necessary environmental data that should form the basis of a Joint Ministerial Decision.

Moreover, the authorities announced that in January 2014 there would be a Decision offering a specific legal protection regime for the site (GR 2550005) during the next 2 (+1) years. This should include an integrated management plan and measures for the cessation of all disturbing activities and infrastructures with an emphasis to sand dune restoration, where possible.

After examining the presentation of the complainant, which provided examples of habitat degradation due to the recent development of roads, large and small-scale housing development plans, installation of greenhousing, and the presence of heavy machinery and vehicles on the nesting beaches the Committee expressed worries for the continued developments in the Natura 2000 site and the possible threats that these may cause to the habitats and species of the area. Considering the matter as urgent, the Committee decided to keep the case file open and instructed the Secretariat to seek the agreement of Greece on an on-the-spot appraisal to be carried out in the first semester of next year.

The Secretariat obtained the agreement of the authorities on an on-the-spot appraisal in May 2014. Dr Paolo Casale, Research fellow at the University of Rome “La Sapienza”, scientific coordinator of the sea turtle project of WWF Italy and Member of the IUCN SSC Marine Turtle Specialist Group was entrusted with the task of leading the on-the-spot visit, assess the situation, and prepare a set of possible recommendations to the Standing Committee’s attention.

The on-the-spot appraisal took place on 14-16 July 2014. The expert visited the authorities in Athens and conducted both night-time and daylight visits to the core nesting area in Thynes Kyparissias, accompanied by a member of the Secretariat as well as representatives of the authorities and of the NGOs.

According to the expert, among the potential problems, the most urgent one is the building of ca. 50 houses along the coast in the dune area, as this development would directly and indirectly induce a high increase of disturbance to nesting females and hatchlings at the nesting beach. Moreover, the expert identified a series of current problems which confirm some of the fears expressed by the complainants and namely: light pollution from tourism infrastructures, private houses and public lights; the presence of six roads perpendicular to the seashore and over the dunes; camping on the beach; attacks from feral dogs.

However, the expert also acknowledged an improvement of the situation in comparison to what reported by the NGO in the past years, particularly thanks to actions undertaken by the municipality of Trifylia and the Ministry of Environment in respect to the delivery of construction licenses (halted by decree), the removal of canteens on the beach, the closing of the roads perpendicular to the seashore, and the management of beach furniture.

In conclusion, the expert prepared a set of recommended actions which, if implemented, should lead to an improvement of the situation. The main recommendation is to give the most important areas for marine nesting a protection status equivalent to the one of National Park, and to permanently prohibit the construction of any villas, buildings, roads or infrastructure in order to keep those areas in a natural state. Other measures concern the restoration of the original dune and forest habitat, the proper management of the area, the management of the problem of photo-pollution and the control of feral dogs. The report and recommended actions are available in document T-PVS/Files (2014) 49.

The report has been forwarded to Greek authorities for comments.

Finally, the European Union informed that, following the assessment of the Reasoned Opinion received from the Greek authorities in 2013, the Commission decided in March 2014 to refer the case to the Court for breach of EU legislation (Directive 92/43). The application is currently being prepared.

## 2. Possible files

### - 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 Yesilovacık 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 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.

Unfortunately, the Secretariat didn't receive any communication from Turkish authorities between October 2011 and November 2012, until the 32<sup>nd</sup> Standing Committee meeting.

However, 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. 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.

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 suggests 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.

In the light of the information received, the Bureau decided to forward the complaint to the Standing Committee as a possible file.

At the meeting of the Standing Committee in November 2012, 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 had been brought before the Turkish National Court. The authorities ensured that the Turkish Ministry of Forestry and Water Affairs would be monitoring all developments related to this complaint and inform the Secretariat as soon as the Turkish Justice would 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 informing on the results of the monitoring carried out in the past two years using photo-traps. The investigation showed that Balıklı cave had been actively used by two females, two males and 1 monk seal pup that was born in the cave. Although the complainant recognised that the number of seals using the cave could be higher than the number of seals observed (only a few chambers of the cave could be monitored due to technical constraints), it seemed likely that seal activities lowered down 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.

At the meeting of the Standing Committee in December 2013, the Delegate of Turkey confirmed that a final judgment on the law case before the Turkish National Court was expected soon. He informed that the report following the on-the-spot investigation confirmed that the Monk seal started to use the cave again as soon as the construction in the nearby were stopped by the authorities.

The Committee decided to keep the complaint as a possible file and invited the Turkish authorities to keep the Bureau informed of any new development, including on the Court’s decision.

Soon before the first Bureau meeting in 2014, the complainant spontaneously sent an updated report warning the Secretariat in particular on the fact that the construction of the marine structure didn’t stop, contrary to what stated by the national authorities in December 2013.

The complainant provided dated pictures to illustrate the progress in time in the construction works. It further confirmed that even the pool of experts sent to the area by the Ministry for preparing an official report on the state of the situation witnessed the continuation of the works although the decision of the national court was still pending. The complainant informed that the marine works were almost finished. He also reported about a worrying decrease in seal activity in the cave during 2013, as shown by camera recordings in the period July 2013 and December 2013. The most disturbing information provided by the complainant concerned the death of a pup born in December 2012 in the cave, found dead on the beach near the construction site by local inhabitants. According to the complainant, the autopsy performed by authorised veterinarians at the Institute of Marine Sciences on 29 February 2014, revealed clear indications of the severe malnutrition of the new born pup.

Questioned by e-mail by the Secretariat, Turkish authorities sent a short note stating that, although the necropsy seemed to ascribe the reasons of the death to malnutrition, the scientists in charge of it requested to conduct more in-depth investigations to clarify the issue. In fact, illegal

fishing could also be a reason because of two holes present on the right side of the abdomen of the pup. The authorities further informed that, in April 2014, the issue was still pending before the National Court and concluded by confirming that the construction activities were suspended in the area, but only between 1<sup>st</sup> September 2013 and 1<sup>st</sup> January 2014.

The Bureau expressed disappointment for the lack of information from the authorities on the continuation of the development works, and the apparent contradictions of previous national reports with the evidence submitted by the complainant. Once more, the Bureau stressed that the Mediterranean monk seal is one of the world's most endangered marine mammals and regretted the severe impact of the already built marine terminal on the monk seal population at the Balikli cave.

The Bureau instructed the Secretariat to urge Turkish authorities a detailed report on the government's plans for recovering the habitat of Balikli cave, stimulating the return of the species next season, and avoiding repeating such a sad situation in future.

Despite an official request and several reminders, the Secretariat regrets to inform that no new information was received from Turkish authorities by the preparation of the present report.

#### - **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 mink (*Mustela vison*) was not included in the list of non-native plants and animals that might endanger native species. The American mink 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 was relatively low, as there were no incidents reported at that time.

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 had 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 had already been confronted to this situation.

The Bureau decided to re-consider this complaint as a complaint on 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 had not been listed as invasive alien, and informing on the occurrence of the species into 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 for the first meeting of the Bureau in April 2013.

Regretting the lack of reply from Polish authorities the Bureau instructed the Secretariat to reiterate its request. Despite a detailed official letter sent in May 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 colonisation 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.

In September 2013, the Bureau decided to change the status of the complaint and to forward it to the Committee as a possible file because its reiterated reporting requests to the authorities remained unanswered. It was later discovered that, because of the appointment in Poland of a new focal point for the Bern Convention, none of the reporting requests addressed to the Party were received.

At the meeting of the Standing Committee in December 2013, the Delegate of Poland provided further information on the Polish population of wild American mink, as well as on the measures implemented for its eradication, including measures to prevent escapes into the wild. An audit was also conducted, with the objective of assessing the effectiveness of the State supervision on the running of fur farms.

The Delegate of Poland was pleased to announce that, taking into account the results of this audit, the Minister of the Environment decided to amend the Regulation on the list of non-native plants and animals species, which if released to the environment might endanger native species or natural habitats, in order to include the American mink into its Annex I. In December 2013, the draft amendments to the Regulation and its Annex were under preparation.

The Committee decided to keep the complaint under scrutiny as a possible file, until the amendments to the Regulation are notified to the Secretariat and the Bureau.

In January 2014, the Secretariat sent a letter inviting the Polish authorities to send any new information on the adoption of the amendments. However, the request remained unanswered. During the discussions at the Bureau meeting in April 2014, several members noted that it should not be difficult to amend instruments like the regulations, and expressed worries about the length of the process and the lack of information. The Bureau asked the Secretariat to reiterate its reporting request.

In reply to this, the Minister of Environment informed that – after consultations and negotiations with the Minister of Agriculture and Rural Development, the authorities decided to withdraw the proposal of including the American mink into the list of non-native plants and animals that might endanger native species and habitats when released to the wild.

The reasons for this change are: i) the commitment of the Minister of Agriculture and Rural Development to improve the standards for the American mink operational farms in Poland, including animal breeding conditions; ii) an Ordinance of the Council of Ministers which makes the EIA mandatory for mink farms of minimum stocking density.

Moreover, the authorities claim that there is no provision in the Bern Convention obliging the Parties to include invasive species into the national lists and consider that there are high possibilities that the species will be included anyway in the future list of invasive species of EU concern. Finally, the report states that spread of the species is controlled in Poland through specific actions.

### **3. Complaints in stand-by**

#### **- France: Protection 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 Sentzich.

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 24<sup>th</sup> August 2012 but were unable to reply by the given deadline.

At the Standing Committee meeting in 2013, the 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, followed by its official submission to the National Council for Nature Protection in May. Moreover, the last available draft version of the action plan had been published on a dedicated webpage.

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 had to 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 was therefore foreseen for the end of 2013. The implementation would start upon the distribution of the plan at national level.

At its meeting in September 2013, 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 during 2013, 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 was 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.

At its meeting in December 2013, the Standing Committee took note of the information presented by the Delegate of France and the summary of the observations of the NGO. The Committee acknowledged the progress in the implementation of measures in favour of the conservation of the species through the enforcement of the regional Action Plans in the Alsace and Lorraine regions, and noted the upcoming finalisation and adoption of the National Action Plan in the summer of 2014. The Committee welcomed the good co-operation between the regional authorities and the complainant NGO on the planning and implementation of actions in the Alsace region, and decided to keep the complaint in stand-by.

The report sent by the French authorities in August 2014 acknowledges that the consultation procedure for the National Action Plan (NAP) has been completed and its text finalised. The final adoption of the NAP by the Minister of the Environment is foreseen for September 2014. A copy of the final National Action Plan was also submitted to the Secretariat.

The report, prepared by the Regional directorate of the environment, planning and housing (DREAL) of Lorraine and Alsace, also informs about the actions already implemented in favour of the



Green toad in 2014, mainly through Regional Action Plans<sup>1</sup>, respectively in Alsace, which is concerned by the complaint, but also in Lorraine and Corse, where the species is present.

Several prioritised actions in 2014 are listed for Alsace, among them: monitoring of changes in populations; study on the genetic characterisation of populations of Green toad; production of a documentary film on the species; prevention against infectious disease, chytridiomycosis on the Green toad; maintenance, creation and restoration of wetlands, mostly in quarries; training of technical staff of the State. The report further highlights two flagship projects in 2014 in Alsace and in Lorraine, which concern the online availability and distribution of the “Guide of consideration of species subject to a Regional Action Plan in territorial development policies”.

In addition, the report mentions the development projects concerned by the request for exemption regarding protected species in the Bas-Rhin, including the Green toad, and how the authorities dealt with those requests

The report finally points out the inclusion of the species in territorial development policies: 1) the modernisation of the ZNIEFFs (nature reserves of ecological interest for fauna and flora) will enable to identify and bring to the attention to various project managers the territories and habitats that are favourable to the Green toad; 2) the Regional Scheme for the Ecological Coherence (SRCE) will contribute to the maintenance and preservation of reservoirs and ecological corridors associated with this species; as of today, two reservoirs of biodiversity have been identified around Strasbourg and Mulhouse; and 3) in the framework of the instruction of territorial development projects, the opportunities and needs to preserve the habitats of the Green toad will be taken into consideration.

**- Morocco: Tourism development project in Saïdia affecting the Moulouya wetland site**

A complaint was lodged in 2009 by the *Espace de Solidarité et de Coopération de l'Oriental* (ESCO), based in Oujda, Morocco. It related to the 4 500-hectare Moulouya estuary site, which ranks as a “zone of biological and ecological interest” (SIBE, in the French acronym), and has been a Ramsar site since 2005. The organisation denounced the huge project for a new tourist resort in Saïdia, which formed part of the country’s ‘Blue plan’ for the strategic development of the tourist industry. The project was, they claimed, devised without prior environmental impact studies and the planned infrastructure (roads, canals, water treatment plants) would damage the Ramsar site of Moulouya, which was very important for migratory bird species and hosted two thirds of Morocco’s total known bird species. The organisation had submitted a complaint to the public prosecutor at the Berkane Court of First Instance in 2006, to which it had had no response to date. They had also organised a petition to safeguard the Moulouya site, which had been signed by 680 people.

The Moroccan authorities informed the Secretariat that this 700-hectare project along a 6 km-long beachfront lies outside the limits of the SIBE and the Ramsar site. It is part of the strategic priorities for the region’s development and was agreed to, launched and encouraged by the Government. The authorities stressed that the studies carried out under the MedWestCoast project are completely reliable.

At the 2010 Standing Committee meeting the Secretariat announced that a Ramsar Advisory Mission had been conducted on the site from 12 to 16 October 2010. As a result, many recommendations had been made, covering all aspects of plant and wildlife conservation.

The Moroccan Delegate, who had taken part in this visit, informed the Committee that the tourism project next to the Ramsar site had indeed raised concerns but these had been dispelled as a result of the on-the-spot visit. The report was being validated by the Moroccan authorities but certain measures had already been taken.

The Committee instructed the Bureau to analyse the report of the consultative visit organised from 12 to 16 October 2010 in the framework of the Ramsar Convention and take appropriate decision on this issue.

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<sup>1</sup><http://www.alsace.developpement-durable.gouv.fr/les-plans-regionaux-d-actions-a1626.html>;  
<http://www.lorraine.developpement-durable.gouv.fr/crapaud-vert-r2720.html>

At the 2011 Standing Committee meeting, the Delegate of Morocco confirmed that her government shared the concerns expressed both by the Ramsar Convention and the Bern Convention and said it had made of sustainable development a central plank in its development policy. Some recommendations were already being implemented, moreover.

The Committee decided to keep the complaint as a complaint in stand-by and asked the Moroccan Government to report on the progress made in the implementation of the recommendations issued as a result of the advisory visit. It further instructed the Bureau to continue to co-operate with the Ramsar Convention on this issue.

In 2012, the Secretariat continued to receive information from ESCO concerning the concreting over and drying out of the Moulouya SIBE.

In a letter dated 20 February 2012, the Moroccan authorities reasserted their desire to focus efforts on restoring and rehabilitating the areas concerned and underlined that all the local NGOs had been involved in the advisory visit and helped to draft the recommendations, which in no way hid the problems with water management. The authorities also questioned the reliability of the information submitted by ESCO and asked the Secretariat to treat it with maximum caution.

The Secretariat remained in contact with the Ramsar Convention which had not received any detailed information on the implementation of the recommendations.

At its April 2012 meeting, the Bureau noted with satisfaction the progress made by national authorities towards fulfilling the requirements of the recommendations raised by the Ramsar Convention. It decided to keep this complaint as a complaint in stand-by and to reassess it in September, in light of updated information from both Moroccan authorities and the Ramsar Convention.

In August 2012 the Secretariat received a report by the complainant, analysing the recommendations addressed by the Ramsar Convention and the measures implemented by the Government. In the complainant's view, the actions undertaken by the authorities were neither sufficient nor satisfactory. Furthermore, the complainant informed about other problems which apparently occurred after the Ramsar consultative mission, as for instance a supposed ecological disaster (caused by the accidental discharge, in July 2012, of sewage and chemical pollutants in the Moulouya River by the SUCRAFOR sugar plant in Zaio, leading to a complaint submitted by local NGOs to the competent court). According to the complainant, local NGOs were also obliged to lodge an appeal to stop three new constructions foreseen in the SIBE disregarding the status of the site.

Noting with disappointment the lack of reply by the national authorities but further noting that no new information was available under the Ramsar Convention either, the Bureau decided to keep this complaint as a complaint in stand-by and to reassess it at its first Bureau meeting in 2013.

While the complainant informed about other developments in the area, no information was submitted by the national authorities on time for the Bureau meeting.

The Bureau instructed the Secretariat to consult with the Ramsar Secretariat on the need to keep the complaint under scrutiny.

The Ramsar Secretariat answered in February 2014 that the case was not be closed on its side. The colleagues were in fact working at re-establishing a constructive relationship with the government of Morocco, in view of a possible meeting in 2014.

At its meeting in April 2014, the Bureau instructed the Secretariat to approach the Moroccan authorities for an update on the implementation of the recommendations adopted under the Ramsar Convention, as well as for renewing its proposal of assistance and advice, if needed. In addition, the Bureau requested the Secretariat to address an official reporting request to the colleagues of the Ramsar Secretariat, in order to gather all necessary information on their follow-up of the case on time for the next Bureau meeting. The complaint remained on stand-by in the meantime.

By the beginning of July 2014, the complainant sent a new report listing the threats to the Site of Biological and Ecological Interest of Moulouya (*Site d'Intérêt Biologique et Ecologique* - SIBE). The complainant mentions the strong human pressure during the summer and the impact of the extension

of the harbour on the shore, the shoreline erosion, the intrusion of seawater into the SIBE and the clearing of land, the decline in the environmental flow and risk of SIBE's desiccation, the pollution and wastewater discharges. The report also presents other important dysfunctions, some of them recurrent. Moreover, the report gives an account of the status and the progress of the actions implemented by the Moroccan authorities to comply with the Ramsar's recommendations which, in the complainant's view, are not satisfactory.

The complainant concludes that the project Mediterranean-Saïdia and the touristic infrastructure have been done with no Impact Assessment Study on the site, although IAS are compulsory for these cases by Moroccan law 12-03, and without taking into account the ecological value of the site and its importance for the biodiversity. Eventually, the complainant wished to present a couple of suggestions which, in his opinion, could contribute to the preservation of the site.

On their side, the Moroccan authorities provided an updated report underlining that the Moulouya site is included among the priority sites to be designated as protected areas, in accordance with the new law on protected areas. The report informs that the Regional Directorate of Water and Forests and Fight Against Desertification of Oriental (*La Direction Régionale des Eaux et Forêts et de la Lutte Contre la Désertification de l'Oriental* - DREFLCD-O) has already put in place a structure responsible for the site management.

In addition, a project for the conservation of the site is currently being implemented, as part of a program of Integrated Management of Coastal Areas specific to the Mediterranean coast of Morocco's eastern region, more particularly at the site of Moulouya. The main actions of this project, financed by the Global Environment Facility and the World Bank and ending in March 2017, include ecological and hydrological studies of the wetland, studies for designing a plan for the use and management of the beach, and drafting of a signage charter. Furthermore, the project will achieve facilities on the site, as rehabilitation of drainage, restoration of the dune, hydro-ecological developments, awareness raising, etc. This project is managed by the Department of Environment and carried out in partnership with the High Commission for Water and Forests and the Fight Against Desertification, the Ministry of Agriculture and Maritime Fisheries, the National Agency for Development of Aquaculture, the Agency for Agricultural Development and the Ministry of Tourism.

The authorities' report also lists other positive actions, implemented in the framework of a regular programme initiated in 2013 to minimise the strong pressure on the site during the summer, and concerning reforestation, infrastructure development, operations of caretaking and surveillance.

The Secretariat of the Ramsar Convention also sent a report with the last updates, accompanied by several appendices, some of them confirming the positive information already forwarded by the authorities on the launching of the new project. The Ramsar Convention noticed an improvement in the communication with the Moroccan government, and established a schedule and a list of people to contact in order to collect updated data and information.

The report makes an inventory of the Site of Moulouya where there is massive stream fish mortality at the upstream end of the site, probably due to direct discharge into the river of harmful residue contained into large collection tanks of a sugar industry. Furthermore, the report further takes stock of the measures already implemented in the framework of the Ramsar Convention's recommendations, with a view to improve the state of conservation of the site's biodiversity. The report mentions the drafting of a strategy document for wetland conservation that should be finalised and validated before the end of 2014.

In conclusion, the Secretariat of Ramsar considers that despite the commendable and positive efforts of the Moroccan government, it is still necessary to continue implementing the recommendations of the Ramsar Consultative Mission. Restoring a balanced system in which the most vulnerable species can find a place and a suitable habitat remains the highest priority.

The Secretariat of the Ramsar Convention thus recommends the High Commission for Water and Forests and the Fight Against Desertification to include the following activities in the work-plan of the project of Integrated Management of Coastal Areas for the Oriental region: i) appeal and lobbying targeting the House of Representatives and the Chamber of Councillors; ii) assessment of the

economic value of the Ramsar site of Moulouya and organisation of a joint visit of the Ramsar Convention and the Bern Convention to the site of Moulouya.

**- Sport and recreation facilities in Cirali key turtle nesting beach (Turkey)**

In May 2012 the Secretariat received a complaint submitted by the Ulupinar – Çıralı community, questioning the allocation of a land including 75% of Çıralı beach to “Orman Spor” – a football society - for the establishment of football grounds and recreation facilities. Çıralı beach is in fact among the 20 key nesting areas in Turkey and has been designated as 1<sup>st</sup> Degree Natural Site, belonging to the National Park Olimpos-Beydaglari. Furthermore, the area is well known in Turkey as it has been pioneer in establishing eco-agriculture; for instance, the local community set-up a Cooperative which is in charge of managing and conserving the area.

According to the complainants, the land was allocated to the sport society by the Ministry of Forests, while the Ministry of Environment and Development delivered a permit to use the area as “C Class” excursion area”, i.e. allowing for the touristic exploitation of the site. The complainants highlighted that Orman Spor’s sponsor is in fact a tourism promoter. Therefore the complainants expressed strong worries regarding the impact that new infrastructures and an increased human presence will certainly have on the nesting activity of *Caretta caretta*.

Despite a reporting request addressed to Turkish authorities for the Bureau meeting of September, the Secretariat didn’t receive any notification from the Party.

In the meantime, the Secretariat received a notification by the complainants informing that some local residents and the Bar Association of Antalya lodged a complaint against the Ministry of Environment and Development, requesting both the cancellation of the decision converting the area into a “forest recreation area” and the decision to allocate it to “Orman Spor”. The 2<sup>nd</sup> Administrative Court of Antalya delivered its ruling, quashing the decision consisting in allocating to Orman Spor the land in question, but confirmed the decision regarding the land uses and development of the area.

As a result, the complainants applied to a regional, higher, court which, in June 2012, quashed the array of the Antalya 2<sup>nd</sup> Administrative Court which has now to reconsider its position and emit a new judgment.

The Bureau strongly regretted the absence of an official report from Turkish authorities on such an important issue and decided to forward this complaint to the Standing Committee as a possible file

At the meeting of the Standing Committee in November 2012, the delegate of Turkey apologised for the lack of reply to the reporting requests, explaining that the authorities preferred to wait for the Court decision before informing the Secretariat. He emphasised that, following the ruling by the 2<sup>nd</sup> Administrative Court of Antalya, the authorities gave back the protection status to the site while waiting for the decision on the appeal.

The representative of MEDASSET welcomed the information provided by the delegate of Turkey and stated it hoped that the re-designation of the area would mean better protection in Cirali.

The Committee decided to forward the complaint to the Bureau for its follow-up as a complaint in stand-by. The Secretariat addressed a request of possible update to the Party in May 2013.

The Turkish authorities informed that the decision of the Court was still pending, and that the construction works were suspended in the meantime.

At its meeting in September 2013, the Bureau welcomed the suspension of the works pending the court’s decision and decided to discuss again this complaint as a complaint in stand-by at its first meeting in 2014. The Secretariat contacted the Turkish authorities with a request for updated information if any, on 23 January 2014. No updated information was submitted by the given deadline.

In April 2014 the Bureau noted the lack of new information and instructed the Secretariat to contact both the Turkish authorities and the complainant for an updated on the status of the trial as well as on the estimated delays for the court’s decision. The Secretariat regrets to inform that no new information was submitted by the preparation of the present report.

## **- Presumed illegal killing of birds in Malta**

This complaint concerns the bird-killing by Maltese nationals during the spring season, in presumed violation of Articles 6-9 of the Bern Convention. The complaint was lodged by a private citizen and registered by the Secretariat in July 2012.

The complainant referred to CABS and BirdLife reports, according to which the phenomenon in Malta concerns a number of migratory birds whose populations are suffering a dramatic decline, such as the Honey Buzzard and the Golden Oriole, or which are legally huntable in Malta but red listed in other European countries (like for example Golden Plover, Lapwing and Skylark). According to BirdLife Malta, the poachers are specifically targeting raptors and Herons, as well as other rare migratory birds.

The complainant further referred to the CBD, the CITES, the Barcelona Convention and the CMS, of which Malta is Party, and the AEWA. She recalled The European Court of Justice in 2009 issued a judgment against Malta determining that it was in violation of the European Bird Directive by allowing the hunting of skylarks and quail in the spring. In light of continued violations by the Maltese government the European Community was considering returning to court against Malta asking to impose fines on the Maltese government.

The report sent by Maltese authorities in January 2013 informed about the legal framework put in place to transpose into the national legislation both the provisions of the Bern Convention and those of the EU Directive 2009/147/EC on the Conservation of Wild Birds (Birds Directive), stressing that all species of birds which may be hunted or taken under Maltese legislation are either listed under Appendix III of the Bern Convention or not listed in any of its Appendices. Regarding the EU Directive, Malta recalled the derogations which allow, under strictly controlled and supervised conditions, to legally hunt certain species protected under the Directive. Moreover, the import or export, sale, transport for sale, keeping for sale or offering for sale of live, or dead birds, or any recognisable parts or derivatives of birds protected under the Maltese Regulations is prohibited and appropriate fines are foreseen for the offenders.

Regarding the reporting obligations under Article 9 of the Convention, on exceptions made to the provisions of the Convention, the authorities of Malta referred to the Updated Biennial report form, according to which “European Community states do not need to report on exceptions regarding birds, as the European Community will cover that obligation for all its member States”.

Furthermore, the authorities questioned the statement that the consequences of hunting on Malta are catastrophic for many European migrant bird species since they affirmed that huge passages of migratory birds over Malta are considered to be rare. The report further detailed special provisions regarding spring hunting in Malta, stressing the government’s commitment to their enforcement, and highlighting that spring hunting is subject to a stricter regime of control than that provided for in the Conservation of Wild Birds Regulations as applicable.

Concerning the illegal hunting of birds of prey, the government affirmed its commitment towards condemning it and informed about the applicable legislative framework, revised in the past years, and which foresees severe fines for the offenders.

On the (legal) hunting of species listed in Appendix III of the Convention, the government report stressed that this is allowed under certain conditions which ensure that the population concerned are taken out of danger, as requested by the Convention.

In April 2013, the Bureau asked the Group of Experts on the conservation of birds to examine this complaint at its forthcoming meeting. It further invited the authorities of Malta to attend the 2<sup>nd</sup> Conference on Illegal killing, trapping and trade of wild birds, as well as the 4<sup>th</sup> Meeting of the Group of Experts on the conservation of birds, and to report to the Group. Finally, the Bureau instructed the Secretariat to seek for the EU opinion on a possible joint follow-up.

A delegation of Malta positively replied to the request of the Bureau, and so did BirdLife Malta, whom supported the complainant.

The discussions on the complaint raised the interest of the participants, and questions arose for example on the quota for hunting turtle doves in the spring, or on the figures relating to the number of turtle doves passing through the island. Participants also recalled an IMPEL meeting will take place in Malta on 1-3 October 2013. The Group decided to leave to the Standing Committee's institutions to decide on the status of the complaint.

Moreover, in July 2013 the European Union (European Commission) sent a specific report recalling that the Commission raised the issue of enforcement of wildlife regulations with the authorities of Malta in several occasions, calling for appropriate measures to ensure its effectiveness.

In this regard the Commission acknowledged that some measures had been taken by the authorities, for instance concerning penalties possible under Maltese legislation; the Commission further noted a substantial record of prosecutions and referred that the government was envisaging the setting up of a specialised Wildlife Crime Unit, exclusively dedicated to enforcement of wildlife regulations.

The report further confirmed that the judgment of the ECJ left open the possibility of a limited spring hunting derogation of Turtle Dove and Quail, under strictly supervised conditions, and informed that relevant national regulations appeared to comply with the parameters of the Court's judgment.

The Commission received in early June 2013 a detailed derogation report from the Maltese Government which should be assessed in order to see whether the spring 2013 hunting derogation has been applied in line with the strict conditions of the EU's Birds Directive.

Concerning the reports on derogations under Art. 9 of the Birds Directive, the Commission confirmed that Malta should have sent three reports since 2010 (for the period 2009-2011) and that none of these reached the Secretariat.

At its meeting in September 2013 the Bureau considered that this complaint addresses a serious concern but acknowledged the tangible efforts of the authorities, and decided to keep it as a complaint in stand-by. It further instructed the Secretariat to request further information regarding the assessment of the autumn migration season to both the Party and the complainant.

The report submitted by the national authorities in March 2014 provided detailed information on some recent institutional and policy developments including: the establishment, in July 2013, of a Wild Birds Regulation Unit with a Specialist Enforcement branch; an undergoing inter-ministerial consultation for the setting up of a national Wildlife Crime Investigation Unit within the Malta Police Force; the setting-up – in October 2013 - of a working group to develop a national strategy for the eradication of illegal killing, trapping and trade in wild birds; a special focus given by the Malta Ornithological Committee to the issues object of this complaint.

Furthermore, amendments to the legal regime on the conservation of wild birds has allowed for rendering the present system of dealing with certain types of offences much more effective, and resulted in a considerable increase in the amount and range of penalties for all types of offences.

The report also presented the specific legal framework governing Autumn 2013 hunting and live-capturing seasons (1<sup>st</sup> October 2013 – 31<sup>st</sup> January 2014) which contemplates particularly strict conditions for hunting and trapping and ancillary activities regarding wild birds.

For what concerns enforcement, the report informed that the Administrative Law Enforcement Unit doubled its human resources during peak raptor migration period; as a result over 40 offences of various categories were disclosed in a period of three weeks.

The report provided comparative statistics between the 2012 and the 2013 hunting seasons, showing an improvement in enforcement of legislation. The latter extended to cases of suspected illegal possession and taxidermy of protected species.

Maltese authorities further produced a table detailing the offences and Court's decisions on cases disclosed during the period autumn hunting season. The table showed an increase in the financial fines (up to 4.600 Euros in one case) although none of the convicted was condemned to imprisonment.

The last part of the report is an interesting list of remaining challenges and commitments which showed the plans of Maltese authorities for the short and medium term, in line with the Bern Convention Tunis Action Plan for the eradication of illegal killing, trapping and trade of wild birds.

In its report submitted in March 2013, BirdLife Malta – in support of the complainant – acknowledged the recent amendments and improvements to the legal framework for bird protection, but affirmed that, despite being positive and in favour of harsher penalties, the changes in regulations did not result in any significant improvement in implementation and enforcement which remained insufficient to prevent extensive illegal incidents of hunting and trapping. More particularly, the NGO was still concerned by insufficient controls and widespread illegal hunting and trapping practices which BirdLife had witnessed and documented.

Further worries were expressed regarding the specific derogation regime under the EU legislation which, according to the complainant, allows for spring hunting and autumn trapping in Malta, with the result of exacerbating the illegal hunting and trapping of migratory birds, and undermining prevention.

Spring hunting derogations for Turtle Dove and Quail are particularly denounced since they are considered to be inadequate for granting the proper conservation of the species. The system of controls in place under these derogations presents, according to BirdLife Malta, several failures which already based the ground for the verdict of the European Court of Justice against Malta. Moreover, the authorities failed – in the opinion of the complainant – to ensure the necessary strict regime of supervision and proportionality in the numbers of birds killed.

The same systematic failures for the spring hunting season are relevant for trapping derogations for Song Thrush and Golden Plover, with a lack of enforcement leading to the indiscriminate trapping of birds in particular during derogated seasons.

Moreover, some of the amendments to the legislation have paradoxically weakened enforcement in return, and the report provided a few concrete examples, including the consequences of the removal of the 50 euros spring hunting license fee, or the removal of a 3pm curfew in September 2013 aimed at protecting migrating birds of prey during the autumn season.

The use of bag limits and their calculation was also questioned, particularly because BirdLife considers this measure as very difficult to be enforced.

Concerning illegal hunting of birds of prey, BirdLife Malta reported 65 incidents of shooting at protected species, 62 incidents of protected birds flying with gunshot injuries and 21 birds belonging to 14 different species received by the organisation with gunshot injuries for the sole derogation period of the 10<sup>th</sup> to the 30<sup>th</sup> April 2013. Again, the resources allocated by the authorities to tackle wildlife crime are considered to be insufficient by BirdLife Malta which denounced lack of improvements in this sense.

In addition, BirdLife Malta reported about the concerns already conveyed to the Malta Ornis Committee regarding its recommendation, issued on 4<sup>th</sup> March, to open a spring hunting season.

In conclusion, the complainant requested that the Bureau assists Malta to properly conserve Europe's wild birds and demands the European Union to effectively ensure the adequate implementation of the Birds' Directive in the country. Moreover, BirdLife Malta was of the opinion that abusive derogations which lead to the further indiscriminate illegal killing and trapping of birds over and above customary hunting seasons, should not be permitted until Maltese authorities show concrete improvement of the situation on the ground.

At its meeting in April 2014 the Bureau assessed the complaint and was pleased to acknowledge the timely and precise communications from the Maltese government, as well as the seriousness with which the authorities try to address the problem. The changes in the national legislation were considered as an expression of the authorities' good will, but the Bureau recognised that the results of their practical may not be always encouraging. The Bureau expressed again concern for poor enforcement, noted the worrying reports about illegal killings still widespread across the country, and called on an even stronger political will towards eradicating these practices.

The Bureau further instructed the Secretariat to contact the Maltese authorities for an updated report about the output of next spring season, enforcement of legislation, and checks of the bag limits.

Coordination with the European Union, namely on the issue of derogation reports was considered to be an asset.

In reply of the Bureau request, Maltese authorities prepared a detailed report on the outcomes of the 2014 Spring hunting season, describing the legal and policy basis for the application of a derogation allowing for spring hunting, the analysis of the 2013 autumn bag data for Turtle dove and Quail, the requirements and procedure for the determination of the 2014 spring hunting bag limit, as well as more in depth and updated information on the institutional, legal, and administrative improvements already presented in the previous report and which allowed for better enforcement particularly in preparation for, and during the limited period of the derogation.

The main conclusions of the authorities are that there has been an improvement of the verification mechanisms for bag data reporting and collection (a migration monitoring study carried out in April 2014 was attached), but also in transparency in decision making and consultation; moreover the mandatory hunting licence return requirements, the penalties for late returns, an exceptionally high rate of licence returns achieved in February 2014, and the multiple levels of data extraction quality checks are the evidence of the ongoing efforts put in place to improve the quality and reliability of autumn bag data. Furthermore, the government report includes considerations on the conservation status of the species concerned, which are being taken into consideration and shared with stakeholders. The arsenal of legal deterrent put in place in the last two years is leading, in the authorities' views, to a decline in the number of serious hunting-related violations, particularly a reduction in the incidence of illegal shooting or trapping of protected species. In the light of the extensive information submitted the authorities request the Bureau to consider ascertain Malta's fulfilment with the requirements of the Bern Convention.

In its report, the complainant again recognises some commendable efforts from the authorities, but increases disappointment with regards to the use of derogations under EU legislation. According to the complainant, a lack of action on elements of the derogation allowing spring hunting of Turtle Dove and Common Quail and trapping of Golden Plover and Song Thrush has, in July 2014, led to Malta issuing legislation permitting the trapping of seven species of wild finches, all protected species, which it intends to justify by means of a further derogation for stated traditional purposes. Furthermore, BirdLife Malta denounces changes in the legislation over the past 10 months on which the authorities failed to report, and which can be considered as being in favour of increased hunting opportunities. More particularly, BirdLife contests any progress towards enforcement and bag limit verification and on combating illegal killing of protected species and lists the presumed failures of the authorities on this matter. Moreover, the complainant considers the changes in the legislation not in favour of adequate and improved protection (particularly concerning the decision of postponing the curfew permanently at 7 p.m.) and denounces the negative effects of the opening of the trapping season for Song thrush and Golden plover which, on their side, the authorities affirm doing in the legal execution of the permitted derogations. The re-introduction of finch trapping practices by means of derogation is another matter of concern. The complainant urges for immediate attention and intervention from both the Bern Convention and the European Union.

In its report, the European Union recalls that the ECJ ruling against Malta in 2009 found that, exceptionally, strictly limited spring hunting would be possible for Turtle doves and Quails, under controlled conditions, due to very specific circumstances prevalent in Malta. These conditions are set out in the relevant national regulations which establish the parameters on how such a limited spring hunting may be authorised in Malta in line with the requirements of the EU Birds Directive (Article 9) and within the parameters of the Court's judgment. The Commission has been closely monitoring how spring hunting derogations have been applied by Malta over the past few years and is aware of some problems related to the application and enforcement of the applicable regulations. However, the Commission is now assessing the last report submitted by the authorities and will continue the dialogue with the country, particularly taking into account the recent efforts and commitments undertaken by the authorities, as showed by the preparation of a strategy to eradicate illegal killing of birds and the setting-up of a specialised wildlife crime investigation unit within the police force.



**- Western rustwort (*Marsupella profunda*) threatened by a waste burn incinerator at Rostowrack Farm St Dennis, UK**

The complaint was submitted in October 2012 and concerns a project of incinerator plant, which is likely to affect the Special Area of Conservation (SAC) in close vicinity (2 km) to the project location. The site is listed as a Natura 2000 site (code: UK0030282) and provides the habitat for bryophyte *Marsupella profunda*, a species listed in the Appendix I to the Bern Convention. The species exists in only three sites in the UK, where it is thought to represent 50% of the known world population.

According to the information submitted by the NGO, an impact assessment was carried out by a private Environment Agency (Cornwall Environmental Consultants Ltd) commissioned by the waste company in charge of the project plant, but it is claimed to be inadequate by the complainant as it underestimates the local impacts on bryophytes. The EIA did, however, acknowledge that the incinerator project is likely to have distant ecological impacts as a result of emission of low levels of atmospheric pollution during the plant operation.

Moreover, the complainant informed that a complaint to the European Commission was under preparation. Taking into account that the area of concern falls under the site protected by the EU Habitats Directive, the Secretariat invited the Bureau, at its meeting in April 2013, to consider whether an additional follow up under the Bern Convention would be necessary.

The Secretariat further informed that a reporting request had been addressed to UK authorities, whom requested an extension of the deadline.

The Bureau took note of the information provided and decided to postpone its decision to the next Bureau meeting pending the report from UK authorities.

The report sent by UK authorities in July 2013 informed that the application for building a waste burn incinerator was consulted on and involved extensive community engagement. According to the report, the Environment Agency (EA) provided technical information and explanations of the assessment process to the community, including the applicant, during the permitting determination process.

In the review of the applicant's assessment, EA had considered both critical loads and levels of the air quality as regards different chemical compounds (ammonia, nitrogen oxides and hydrogen fluoride) and generic habitat of acid grassland. It concluded that the impacts were not likely to be significant and that there could be no measurable damage to the Western rustwort. The EA considered that an appropriate assessment for the species was not required.

The report of the UK government was sent to the complainant who provided his comments.

Concerning critical loads and levels, the complainant underlined that *Marsupella profunda* is not subject to any variation in the critical load as it does not absorb nutrients via its roots (in fact the species has no roots). The habitat comparison to acid grassland would be totally mistaken as *Marsupella profunda* grows on outcrops of crumbling granite or clay waste substrates. Referring to existing scientific opinions of various experts of this species, the complainant emphasised that impact on *Marsupella profunda* and its habitat is believed to be substantial, but this can only be proved by a study of the critical level of the species concerned. In the complainant's views, according to the Habitats Directive, this would mean that an appropriate assessment is required.

The complainant suggested finally that the precautionary principle is applied.

Taking into account the specificity of the species, the Bureau instructed the Secretariat, at its meeting in September 2013, to contact the UK government for a reply to the last concerns expressed by the complainant. The Bureau decided to postpone its decision until the next meeting in 2014.

The authorities' report, submitted in November 2013, mentioned that as there are no critical levels specific to the Western rustwort, the EA used generic critical levels for the protection of vegetation and ecosystems. Critical levels for ammonia, nitrogen oxides and hydrogen fluoride were considered in the review of the applicant's modelling and the EA concluded that the impacts were not likely to be significant.

Moreover, the EA assessed the predicted acid deposition at the Claypits with background acid concentrations quoted in Air Pollution Information System (APIS). Concerning the hydrogen fluoride, the EA considered the predicted process contribution from the proposed incinerator at the Claypits and compared that with background on APIS. The assessment in combination with other sources (and background) was therefore carried out.

The UK government's report underlined that the EA used the best available information for this species and followed the advice received from Natural England, which agreed with the EA's methodology for the assessment and the conclusions reached, and had not raised specific concerns in this respect.

The new report of the UK government was sent to the complainant who provided its comments in February 2014.

In the first place the complainant stressed that, as the Western rustwort has no roots, only the measurement of acid deposition directly from the air would indicate effect on the species.

The complainant also provided the advice of two academics, Dr Porley and Dr Holyoak, both working for Natural England at the time when the assessment was carried out, and whom respectively stated that "the emissions from the incinerator were likely to affect *Marsupella profunda*, particularly its reproductive ability", and that the species was "endangered and declining" and likely to suffer ill effect from over shading as a result of soil nitrification feeding vascular plants. Besides, according to Dr Holyoak, pollution deposition effects cannot be accurately predicted due to the climatic variations caused by the unique microclimate of the area. Both experts ceased working for Natural England after publishing their findings.

The complainant concluded that the assessment was done using data from the wrong plant, in the wrong habitat, and with unscientific methods because of the lack of correct data. He asked the Bureau to note that, according to his opinion, the Appropriate Assessment under the terms of the EU Habitats Directive has not been correctly carried out.

Later in February 2014, the complainant further informed the Secretariat that a survey carried out by Imerys Minerals Limited, operating in the vicinity of the proposed incinerator, identified *Marsupella profunda* at several of its China Clay Works across the Mid Cornwall China Clay area. Following discussions with Natural England, a Management Plan for the *Marsupella profunda* had been agreed.

At its meeting in April 2014, the Bureau thanked both the U.K. authorities and the complainant for their reports. It noted that *Marsupella profunda* is an endemic European species, red-listed by the IUCN, only present in a few countries, among which the U.K., where the species is rare.

The Bureau decided to keep the complaint on stand-by and instructed the Secretariat to contact the European Union to check if the Natura 2000 site St Austell Clay Pits (site code UK0030282) has been designated because of the occurrence of the species in question, as well as for any useful information on the complaint they received.

The report received from the European Union by the end of June 2014 informed that the Commission was finalising its assessment of the case and would send further information to the Secretariat.

However, based on the information available in the EUNIS database about the St Austell Clay Pits, it appears that the site protects one species listed in the Habitats Directive - *Marsupella profunda* - and one habitat – the European dry heaths.

End of June 2014, the complainant sent to the secretariat additional information including a brief background of the case. The first planning application for the incinerator submitted by the contractor in 2008 was unanimously refused at Parish, District and Cornwall Council planning committee levels. An appeal by the contractor resulted in a Public Inquiry in 2010 with the Inspector acting for the Secretary of State upholding the planning application. Following this decision the complainant challenged the decision in the High Court which suppressed the planning permission, but gave the contractor leave to appeal. Eventually, the Court of Appeal reinstated the planning permission and refused the complainant leave to appeal to the Supreme Court.

Hence, the complainant provided to the Secretariat information from a number of reports, originated for the Appropriate Assessment reports compiled for the Cornwall Council in 2009 and for the Public Inquiry in 2010.

Both of them converged on confirming that it could not be ascertained that the incinerator, either alone or in combination with other projects, would not have an adverse impact in respect of air quality; for the designated species in the Clay Pits Special Area of Conservation (SAC) this arose from nitrogen deposition. In the end, it is again stated that the screening process in the Habitats Directive was not followed.

Furthermore, the complainant sent to the Secretariat copies of letters exchanged with the European Commission (EC) on the complaint addressed to the latter.

An oral summary of the latter will be made to the Bureau at its meeting on 10<sup>th</sup> September.

The UK government didn't provide updated information, neither following the Secretariat's reminders, nor in response to the last complainant's report.

**- Impact of a project for the regulation of the Danube River on the river's biodiversity**

This complaint was submitted in December 2012 by the WWF to denounce the planning of an "over dimensioned" project for the regulation of the Danube river in Croatia, for navigation purposes, which could affect a relatively important number of species and habitats listed in Appendices I-II-III of the Convention.

The complainant's report explained that, according to the official description, the project was aimed at "fixing the river regulation line in order to establish navigation route, stability of river banks, protection of banks from erosion and proper transport of ice and sediment". However, the complainant stressed that the project intended to finalise the implementation of the regulation corridor, which was defined in the 1970s when environmental needs, such as the protection of the unique natural values in the area, were not taken properly into account. The complainant further denounced that: the project was approved by the authorities without previous EIA or analysis of the transboundary impact on Serbia (in possible contradiction with the ESPOO Convention); that the river regulation, as it stood, was not coherent with the standards set under the Convention, EU Directives or the Ramsar Convention; and that possible negative impacts could affect national and international key protected areas of about 50,000 ha.

In conclusions, the complainant feared that the implementation of the planned measures could lead to a deterioration of the ecological and hydro-morphological quality of the Danube River, constituting a clear violation of several international Conventions and European legislation.

The Secretariat forwarded copy of the complaint to both the EU and the Ramsar Convention. It further addressed a reporting request to Croatian authorities.

In a report submitted for the April 2013 meeting of the Bureau, Croatian authorities affirmed first of all that the development project had been updated to take account of the situation, and subsequently harmonised with relevant legislation.

Moreover, an Environmental Impact Assessment (EIA) procedure was underway and carried out in line with the Regulation on Environmental Impact Assessment, in full compliance with the European Union *acquis*. An advisory Expert Committee was set up in September 2011, gathering representatives of all the Ministries involved, as well as independent experts, representatives of the Public Institution Nature Park Kopački rit, and representatives of municipalities. In addition, public consultations took place and the opinions expressed were taken into account and the EI Study amended accordingly.

The expert assessment of the study carried out afterwards concluded that this addressed all necessary elements and relevant data for the implementation of the EIA procedure concerning the conservation of the area provided that continuous monitoring continues to be carried out before and during project implementation as well as during the use of the facilities.

The Ministry further informed on the procedure related to the transboundary assessment: a public presentation of the project was carried out in Serbia and the competent body for the implementation of

the Espoo Convention in the country is preparing its position or possible comments on the Study itself. Regarding Hungary, the country requested detailed information on the project plans and communicated its wish of commenting the documentation received.

In conclusion, the Ministry of Environmental and Nature Protection envisaged two possible scenarios: either the EIA procedure for the project in question would be completed on the basis of the expert study, and after finalising all transboundary consultations, or the investor would withdraw the study. The Ministry of Environmental and Nature Protection would wait for the final opinion of the Expert Committee before deciding whether the project could be considered environmentally acceptable or not.

Concerning the Ramsar Convention, its Secretariat was already informed of river channelisation measures in the area, and had liaised with the European Union in the framework of the analysis of a number of specific programmes of investments for river bank stabilisations, dredging and others along the Danube and Drava rivers. Already a year ago, the Ramsar Convention offered to the Minister of Environment an on-site Advisory Mission, which the EU should join, and which had been several times postponed since. The Ramsar Convention suggested that the complaint submitted under the Bern Convention could help relaunching the consultation process among the concerned actors.

At its meeting of April 2013, the Bureau thanked the WWF for the active role in raising attention on possible problems, as well as the Croatian authorities for the constructive reply and useful information. It also recognised the interest of this complaint and agreed that it could deserve international attention. Nevertheless, the Bureau further noted that the situation was already monitored by the Ramsar Convention and the European Union and expressed the wish that in future a better coordination among all international stakeholders would favour a more timely exchange of information.

In view of the meeting of the Bureau in September 2013, the Secretariat approached the Croatian authorities, the European Union and the Ramsar Convention with a request for updated information on the state of play of the EIA procedure for the project. Nor the Croatian authorities, nor the Ramsar Convention Secretariat provided a report with new information for the meeting of the Bureau.

The Bureau regretted the lack of updates and instructed the Secretariat to reiterate its reporting requests. The complaint was kept as a complaint on stand-by pending the completion of the EIA, with a possibility to request the opinion of the ESPOO Convention on this EIA.

In a report submitted by the Croatian authorities in March 2014, the Minister of Environment gave additional details on the projects planned for the Drava and Danube rivers in Croatia. He confirmed that three projects are planned and concern the regulation of the rivers. Only one of them (on the waterway regulatory works at the Danube River from km 1382 to 1433) was still under an EIA procedure, including a transboundary environmental impact of the project. The public consultation produced a lot of comments and objections which were currently being considered. The complainant did not submit a report for the meeting of the Bureau in April 2014.

Taking the available information into account, the Bureau instructed the Secretariat to request the opinion of the complainant on the last available update by the Croatian authorities and to contact again the Croatian authorities for information on the state of implementation of the authorised projects as well as on the EIA still pending for one of them.

The Croatian Government submitted a new report for the September meeting of the Bureau, indicating that the project's developer of the Danube river regulatory works, the Agency for Inland Waterways, decided to withdraw its application for an EIA procedure. After receiving a reminder on the several consecutive requests for updated information, the complainant confirmed that the investor decided to give up with the project and, since the other projects were properly negotiated and assessed, the complainant has no more grounds to continue with this file, unless other controversial projects should be launched.

**- Hydro power development within the territory of Mavrovo National Park (“the former Yugoslav Republic of Macedonia”)**

The complaint was submitted in March 2013 by the NGO “Eco-vest - Center for environmental research and information” to denounce a possible breach of the Convention by “the former Yugoslav Republic of Macedonia” with regards to the development of hydro-power projects within the territory of Mavrovo National Park, an Emerald candidate site since 2011.

According to the complainant, the construction of several hydro-power plants and supporting infrastructures (roads, bridges and transmission lines) will result in the direct destruction of forests, severe disturbance of water sources and fragmentation of wildlife habitats – the home of numerous strictly protected species of plants, mammals, birds, amphibians and reptiles listed in Appendix I and II of the Bern Convention.

The complainant emphasised that some of these species, namely the *Lynx lynx balcanicus*, might be critically endangered if the projects are implemented.

The Secretariat addressed a reporting request to the government, stressing that according to the Recommendation No. 162 (2012) of the Standing Committee, on the conservation of large carnivore populations in Europe requesting special conservation action, “the former Yugoslav Republic of Macedonia” should assess the environmental impact on the lynx population of dams in the Mavrovo National Park - a site identified as a candidate for the Emerald Network - and consider abandoning the project if the dam poses a risk of endangering the lynx population. The Secretariat also reminded that, according to Recommendation No. 157 (2011) of the Standing Committee, on the status of candidate Emerald sites and guidelines on the criteria for their nomination, national authorities should “take the necessary protection and conservation measures in order to maintain the ecological characteristics of the candidate Emerald sites”, until their full inclusion in the Emerald Network.

The Government report, received on the 2<sup>nd</sup> September 2013, informed that an Environmental Impact Assessment Study for the hydropower plant project Boshkov Most was prepared by GEING Skopje, “the former Yugoslav Republic of Macedonia” based engineering company with operation in the Balkan area. Additionally, a 4-seasons biodiversity monitoring had been carried out by a team of experts on invertebrate and vertebrate species. The report said that according to EIAS and monitoring study, the hydropower plant project Boshkov Most satisfied entirely the requirements of the national legislation and that a decision authorising the development of Boshkov Most’s project had been already issued.

The report did not provide conclusions from the EIAS or monitoring study allowing to judge about possible impacts of the project on the species and their habitat, referred to by the complainant.

The report further informed that the MEPP instructed the ELEM to implement an Environmental Impact Assessment Study for the hydropower plant project Lukovo. An international tender was published and the company BRL from France was selected to develop the EIA Study by engaging international and national experts. When accomplished, the ELEM would send the Study to the independent expert committee established by MEPP, for review.

At its meeting in September 2013, the Bureau decided to keep the complaint on stand-by pending the authorities’ reply and asked the Secretariat to contact them with a request to provide more detailed information about the possible impacts of the hydropower project implementation in Mavrovo National Park on species and habitats.

In a report submitted in January 2014 the complainant informed that a lawsuit was pending before the Administrative court against the decision of the Ministry of environment to approve an incomplete EIA study for the hydropower plant project Boshkov Most. The complainant underlined that the irregularities on the EIA study were confirmed by a EBRD compliance review report (January 2014) which concluded that the EIA was “not sufficiently comprehensive and conclusive”.

In a short report submitted in March 2014, the national authorities informed that the EIA for the Hydropower plant Boshkov Most was concluded, and that the results of the biodiversity monitoring implemented were taken into account in the final EIA report. The EIA for the Hydropower Plant

Lukovo Pole was under preparation. No mention was made by the authorities of the pending lawsuits against the EIA results and procedures, reported on by the complainant.

At its meeting in April 2014, the Bureau regretted the lack of informative reports on behalf of the national authorities. The Bureau instructed the Secretariat to contact again the authorities of “the former Yugoslav Republic of Macedonia” for more detailed and comprehensive information on what was added to the EIAs study further to the biodiversity monitoring, what was already implemented on the site and under which conditions, as well as on the pending lawsuit.

The national authorities have not submitted a report for the September 2014 meeting of the Bureau, but have informed via e-mail that the EIA report for HPP Lukovo Pole is expected for the end of December 2014. The authorities claimed that they have not received the requests for information sent by the Secretariat.

The complainant, who was copied in the reporting request addressed by the Secretariat to the authorities, has - on the contrary - submitted detailed information regarding both hydropower plant's projects. Regarding the Boshkov Most HPP project, the complainant informs on two pending lawsuits, (1) one claiming that the Ministry approved the EIA report based on insufficient data (supported by a compliance report of an independent experts charged by EBRD) and (2) a second one on denied access to the expert reports on Mavrovo HPP projects.

In addition, the complainant claims that the civil society organisations were supposed to participate to the bio-monitoring mentioned by the national authorities, but their comments and proposals were not included in the final EIA report. Comments on the insufficient data used for the bio-monitoring report were also made by the Vice-Chair of the IUCN World Commission on Protected Areas and many other IUCN committees, and Birdlife and national/international experts. A copy of these support letters and comments was sent to the Secretariat. In May 2014, the EBRD informed that a new bio-monitoring will be implemented, although a written confirmation is expected on this.

**- Presumed impact of a construction of Overhead Power Line (OHL) in an environmentally sensitive area in the Lithuanian-Polish borderland**

This complaint was lodged in May 2013, to denounce a possible breach of the Convention by Lithuania with regards to permissions issued for the construction of a 400 kV, 1000 MW Overhead Power Line (OHL) in an environmentally sensitive area in the Lithuanian-Polish borderland.

Due to further developments which will be detailed later in this text, the complainant requested – in September 2014 - to enlarge the file to Poland.

According to the complainant, the construction of the OHL will not only have a direct impact on a number of species and habitats protected under the Convention, but also involve the development of other infrastructures and disturbing activities (for instance a new road network, clearance of forests, cultivation of land, increased pollution levels, technical maintenance, etc.). These infrastructures may result, among others, in destruction and fragmentation of the habitats and the migration routes, disturbance of the species by the noise and vibration caused by the operation and the necessary service works, accidental killing by vehicles, chemical pollution.

Moreover, for Lithuania, the complainant considers that the EIA procedure was not transparent and that the EIA report (approved in January 2011), is of insufficient quality. It further highlights that reasonable alternatives to the chosen OHL route and its technology were identified by the community and experts, but not considered for the EIA because the OHL project has a short deadline due to the current EU financial framework.

End of May 2013 the Secretariat sent a reporting request to Lithuanian authorities.

In their report, the authorities expressed disagreement with the arguments of the complainant and informed that the OHL was approved by law as a project of Strategic State importance (i.e. relevant for the well-being of the society). The project is also important for the strategic security of the country.

Furthermore, the authorities detailed the process according to which the EIA was carried out, stressing that this was prepared in full compliance with the national legislation. Information on the EIA was published in the newspapers, while the EIA programme was available on the website and in

the municipality. A specific booklet was published and printed for broader distribution. The authorities further list the numerous public presentations done. The comments received by different sources, including the public, were integrated in the final version of the report.

The authorities considered that the decision to approve the EIA report on the construction of the Power Line was made after comprehensively and fully considering and evaluating the conclusions and proposals of all EIA subjects, in accordance with all the procedures set out in the Law on Environmental Impact Assessment of the Proposed Economic Activity and by ensuring submission of proper information and participation of public in all stages of EIA procedure.

The authorities further recalled that the OHL construction is carried out in two countries (Lithuania and Poland) and that the EIA procedures were carried out in both national territories. In addition, the applicant already questioned the lawfulness of the EIA report before national courts in Lithuania (first instance and appeal). The application was dismissed in May 2013 by the Supreme Administrative Court of Lithuania.

Concerning the non-establishment of two protected areas near the Polish Natura 2000 Network area PLH200007, the authorities informed that the possibility of setting-up two landscape and geologically sensitive protected sites nearby the area of dispute was being studied, but that the process for this had not started yet and it was anyway independent from the OHL construction. They further stressed that no new roads have been constructed in the area identified by the complainant, and that only reconstruction of the existing local road was carried out.

On the presumed lack of assessment of the impact of the OHL on an important bird migratory corridor, the authorities affirmed having carried out comprehensive biodiversity studies which included measures to avoid or mitigate possible negative effects and that no negative impact on migrating birds could be found. As a consequence, the EIA report was validated by the State Service for Protected Areas under the Ministry of Environment.

Lithuanian authorities further informed that the submission of comments by the complainant, including the technological alternatives, were comprehensively assessed and rejected as unfounded, not because of the financial obligations to the EU, but rather due to the fact that the proposed alternatives were considered contrary to a number of already adopted territory planning documents and could have an unacceptable negative environmental impact on another Natura 2000 area, Kalvarija Biosphere Polygon.

Regarding the allegation of negative impact of the OHL on the European pond turtle (*Emys orbicularis*), the authorities considered that the applicant didn't prove the presence of the species in the exact area where the power line will be constructed and that this species was not confirmed by the survey of amphibians and reptiles performed by the NGO Lithuanian Fund for Nature in July/August 2013 in part of the area or by the investigations which took place for the preparation of the EIA report. To conclude on this point, and based on all the surveys research done, the authorities affirmed that there are no European pond turtle and its habitats in the the planned route of the Power Line from Žemaitkiemis village, Lazdijai District Municipality to Filicijanavas village, Lazdijai District Municipality.

Moreover, the authorities also detailed the main negative impact reducing measures foreseen in the EIA report, which will be taken into account during the construction of the OHL, namely for reducing the significant negative impact to fauna of the construction works.

On the possible impact of the power line on Galadusys Lake hydrological regime, the authorities informed that the digging works will not be performed along the whole OHL route but only at the power line support building places. Again, they referred to the EIA and to the measures identified to reduce possible negative impact.

Finally, the report submitted by the authorities of Lithuania informed that there are no other development or infrastructure projects planned in the area other than the power line building works. The authorities considered having taken all necessary legislative and administrative measures, including those foreseen by the Convention, to conserve wild flora and fauna and their natural habitats.

On 9 September the complainant sent a reply, informing about the results of five half-day visits carried out in 2013, which would suggest that the European pond turtle (*Emys orbicularis*) is present in the area, so as the European fire-bellied toad (*Bombina Bombina*), Great crested newt (*Triturus cristatus*), Common spadefoot (*Pelobates fuscus*) and the European tree frog (*Hyla arborea*). For the European pond turtle, the complainant recalled that the species is listed as present in the Polish Natura 2000 site which forms one ecosystem with the Lithuanian area. The complainant further provided a list of birds which have been observed in the area, and mentioned some other plant habitats maintaining that the rich biodiversity of the area has not been properly assessed.

At its meeting on 17 September 2013, the Bureau decided to keep the complaint in stand-by and to consider it again at its first meeting in 2014. The Secretariat was charged to request further clarification concerning the presence of protected species, and in particular the European Pond Turtle, in the area where the OHL will be built.

In the reply sent on 7 March to the Secretariat, the national authorities informed that no additional information could be provided on the presumed presence of the species as no research or surveys were carried out due to the unsuitable winter season. The non-governmental organisation Lithuanian Fund for Nature informed the authorities that surveys on the presence of nesting sites within the area concerned would be conducted during the spring season of 2014. The results of these surveys would be sent to the Secretariat as soon as available.

The authorities further recalled that during the preparation of the EIA report, the qualified experts participating did not find any European pond turtle nesting places in the area of investigations. They also remind that the technical project for the construction of the OHL had been prepared and the building permit issued. Construction works were expected to start in spring 2014. In the building contract, special clauses included mandatory ecological supervision and works and direct inspection of the future construction sites by an ecology expert, before the works start.

In its report of March 2014, the complainant provided some recent evidence (through photos) of the OHL project works that had already started and presumably damaged the area. The complainant provided further information to support the data already submitted for the 2013 Bureau meeting on the presence of the species in the area of concern.

Opinions of eminent experts of the European pond turtle from the country seemed to confirm that the area is an important habitat for the species and that individuals were found by local people at less than 1 km from the planned OHL. The presence of the rare species was further confirmed by recent biology students' thesis. Supporting letters were also provided on behalf of an expert from the University of Warsaw, testifying that the area on the Polish side comprises a lot of good habitats for the pond turtles. He further explained that the area is very poorly investigated and requires detailed research.

In a last e-mail sent to the Secretariat soon before the April Bureau meeting, the complainant expressed some doubts on the objectivity of the organisation that would conduct research in the area in spring 2014. According to the complainant, the NGO would depend financially from the Ministry of Environment, even though its past work on the species is of quality. In addition, the complainant reminded that the construction works had already started - a fact not without a consequence on the surveys planned. The complainant also reminded that the file did not concern solely the European pond turtle, but other species too.

After assessing the information received at its meeting in April 2014, the Bureau welcomed the good response from the Lithuanian authorities but regretted to learn that, despite the ongoing assessment of the complaint, the works were due to start soon. The Bureau recommended postponing the construction of the OHL, at least until the survey on the occurrence of the European Pond turtle was carried out and its results analysed. In addition, the Bureau feared that the starting of the works could interfere with the survey.

The Secretariat was requested to forward the concern of the Bureau to the authorities, together with the request of considering the possibility of associating the complainant to the survey to be carried out by the selected NGO.



In the report submitted by Lithuanian authorities on 25 August 2014, the Ministry of Environment confirms that a survey on the presence of the European pond turtle in the area where the OHL had to be built was carried out according to the request of the Bureau. The survey was carried out for two months, from 20<sup>th</sup> May to 20<sup>th</sup> July 2014, by specialists of the Lithuanian Fund for Nature.

The authorities affirms that the survey concludes that the European pond turtle (*Emys orbicularis*) does not live and breed in the territories where the OHL is planned to be constructed. No individuals or nesting sites of the European pond turtle were found along the route, as already stated in the conclusions of the EIA Report, approved at the end of 2010.

The report briefly describe the methodology used for the survey, including inspection of the habitats, metal traps with bait (from 6 to 30 June) and monitoring of the areas suitable for laying eggs. According to the report of the survey, attached to the authorities' report, no European pond turtle was found there.

The authorities also inform that, on 2 July, they encouraged the complainant to contact the Lithuanian Fund for Nature (LFN) so to be associated to the survey. The LFN also contacted the complainant, by phone on 16<sup>th</sup> July, and by letter on 8<sup>th</sup> August, when it invited the Rudamina community to join an official meeting with the authorities to discuss the protection of Bern Convention's species and habitats along the OHL route. The authorities state that the Rudamina community didn't accept any of the proposals of cooperation.

The government also denounces that the complainant attempted to request the help of local people to collect evidence about the presence of the turtle, by taking the turtles from the environment, something which is forbidden by national law when it comes to protected species. Finally, the report concludes with some information on the occurrence in Lithuania of the European pond turtle, as well as on the measures generally implemented for the protection of the species mentioned in the complaint.

The complainant informed the Secretariat several times since last Bureau meeting, and addressed a report on 3 September 2014.

He denounces first of some (in his opinion) misleading information sent out through the press, which would lead to presume that the Bureau or Secretariat of the Bern Convention would participate (or at least be invited to) in the survey.

The complainant also regrets the lack of genuine cooperation from the authorities with regards to the participation of the Rudamina community in the survey. First of all he denounces that the LFN has been entrusted by the OHL construction for carrying out the ecological monitoring of the whole construction project. This would lead to presume a clear conflict of interests, or at least a lack of independence which would jeopardise the seriousness of the survey itself. Moreover, has recognized by the authorities, the complainant was invited to join the survey only at a very late stage (18 days before its end) and didn't receive any information on the terms of reference and agreed methodology.

Besides, the complainant considers the area object of the survey insufficient for giving a clear picture of the situation, particularly because the construction works had already started there (April 2014) at the time of the survey. In addition, the complainant recalls that while the migration range of the pond turtle is about 2 km, the area affected by the OHL is about 50 km<sup>2</sup>. Concluding on the survey, the complainant notes that the report submitted by the LFN had no information about the other species listed in the complaint.

Concerning the status of the works, the complainant informs that these started also in the Polish side of the OHL (in June 2014). Species like *Grus grus*, *Egretta alba*, and *Bombina bombina* are common in the area affected by the works in Poland. The complainant also recalls that – as stated in previous reporting - the official Polish database lists the pond turtle in this bordering area.

Regarding the scale of the already implemented works in Lithuania, the complainant informs that the cutting of the forest started already in April, i.e. well before the survey (and independently from it). He affirms having found *Bombina bombina* in the area affected by the works, and provides pictures of egg shell of the pond turtle found on the OHL route.

After denouncing the situation to the Bern Convention, the complainant presented a claim also to the Aarhus Convention. The Compliance Committee recently considered that the complaint is, on a preliminary basis, admissible for investigation.

Finally, in his report the complainant stresses that the construction works in the Polish side receive important co-funding by the European Commission (€ 60M). The funds were allocated to Poland in May and the works started soon after the signature of the contract. Moreover, the complainant highlights that the European Commission is quoted among the co-funders also of the Lithuanian part of the project.

The complainant concludes by requesting that Poland is associated to the current complaint.

Following the instructions of the Bureau, the Secretariat addressed an official reporting request to the European Union in April 2014, thus only concerning the Lithuanian part of the complaint.

In reply to this, the EU informed that the Lithuanian side of the project received EU funding under the TEN-E programme, aimed mainly at financing the feasibility studies to support faster implementation and prepare future works. This contract is ongoing and will finish at the end of 2014. The report states that, in line with EU legislation, **“all necessary environmental permits have to be granted by the responsible national authorities before the construction can begin”**. Before awarding EU funding to the project, the European Commission will verify whether the Action implementing the PCI is in compliance with EU environmental legislation.

Finally, the Secretariat of the Bern Convention has also some other information which still needs to be verified and which – in case it is – might be necessary to address jointly with the European Union:

1. the presumed signature by Lithuania and Poland of an agreement to reciprocally renounce to an environmental impact assessment in a transboundary context;
  2. the launch of the construction works in Poland, despite some pending court cases lodged by landowners putting into question the existence of all the necessary permits;
  3. a presumed contract concluded for the preparation of an EIA for a gas pipeline in the vicinities of the area in question, meaning that the OHL is probably not the only development which will intervene in the area and that it could be useful to take into account also the cumulative effects of these works.
- **France / Switzerland: threats to the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)**

On 21<sup>st</sup> 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 micropolluants 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 12<sup>th</sup> July the Secretariat addressed a letter to both French and Swiss authorities requesting reports for the next Bureau meeting in 2012.

In a report submitted in February 2012, the Swiss authorities recognised 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 distribution in Switzerland was 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 underlined that the Doubs is a complex ecosystem subject to much disturbance. Conservation of the species therefore demands action plans co-ordinated at international level. Among the main threats the authorities evoked: 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 were in place. However, the matter remained 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 justified 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 was actually 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 involved: (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 were considered to be particularly vulnerable because, being far from the Durance basin (the cradle of the population), they were 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.

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 one (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 was 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 complicated practical measures concerning the Doubs. While there was a shared desire to act, the geopolitical context and hydroelectric and agricultural activities were 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.

In consideration of the complex transboundary context, the Bureau decided that the complaint deserved 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 prepared for the implementation of the Water Framework Directive (WFD), and added that the Doubs Franco-Suisse sub-basin had indeed been reported as being in bad chemical status from 2006 to 2011, while the ecological status had 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 had 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 33<sup>rd</sup> 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 were just declared 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).

At its meeting in December 2013, the Standing Committee took note of the report of the on-the-spot appraisal and of the comments of both the concerned Parties and the complainants. Despite a very complex situation at the beginning of the process, the concerned stakeholders welcomed the dynamic of transboundary co-operation initiated by the on-the-spot appraisal, which also helped gathering information and initiating discussions at regional level on a very swift way.

The Committee noticed that the concerned Parties and the complainants reached agreement on a number of amendments to the recommendations proposed following the on-the-spot appraisal and therefore examined and adopted the Recommendation No. 169 (2013) on the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland).

Finally, taking into account the good progress on addressing the survival of the Rhone streber in the Doubs and in the canton of Jura, the Committee instructed the Bureau to assess this complaint as a complaint in stand-by at its meetings, in the light of the implementation by the Parties of the recommended actions.

The Secretariat further requested the French and Swiss authorities to send their reports by 25 July 2014.

Both Swiss and French authorities submitted their progress report and informed about the actions carried out together concerning the 10 common recommendations.

Each country has its own "Streber" action plan. The Swiss action plan "Streber" is being prepared by the Federal Office for the Environment and proposes a global approach integrating all the different measures in the river basin, through specifically created working groups. This action plan addresses the measures for the restoration at a favourable conservation status of the population of the Rhone streber (*Zingel asper*) and for preventing the species from becoming extinct. It also includes the elaboration of a management plan for the Emerald site CH02 – "Clos du Doubs/Saint-Ursanne".

At the same time, the French National Action Plan for the Rhone streber (2012-2016), which is already being implemented, includes measures necessary to restore a favourable conservation status of the Streber's population. The documents defining the objectives for the Natura 2000 sites FR4301298 - "Vallée du Dessoubre, de la Réverotte et du Doubs" and FR4301291 - "Vallée de la Loue et du Lison" were respectively approved in 2009 and 2011 and are being implemented as well.

Two Swiss-French Binational Working Groups, on "flow management" and on "water quality" work on improving respectively the hydrological regime and water quality of the Doubs. The revision of the regulation of waters is in progress and can be considered satisfactory; the goal of a complete revision for the end of 2014 seems realistic. However, in accordance with the Swiss legislation on water protection, measures to eliminate the negative effects of sluices should be defined as part of a cantonal planning. The cantons of Neuchâtel and Jura have already submitted their interim report and the final report is expected by the end of 2014.

Concerning the water quality, roadmaps validated by the two States plan to work simultaneously on several fronts to reduce the flow of pollution, regardless of their origins. Moreover, discussions have been initiated within the technical working group to develop a dashboard in order to have a coherent and effective monitoring of the implementation of actions on the Swiss-French Doubs on water quality.

Moreover, an appraisal of the pollutants flows on the Swiss watershed has been launched in 2014, to identify and quantify the various sources of pollution, but also to understand the flow and pathways of these substances into the Doubs and to determine their effects. In France, special governance was established in the department of Doubs to address issues of water quality in several rivers including the Loue. In the watershed, where the Streber population is located, and upstream, a draft land contract covering the Haut-Doubs and Haute-Loue is being prepared.

Concerning the collect of knowledge on the Rhône streber in the Doubs, this is ensured in Switzerland since 2000 by the Swiss Confederation and the Canton of Jura, through the monitoring of the evolution of the species' numbers. Regarding environmental parameters, the Swiss report mentions the putting into service, in early 2014, of a new station of sampling, as well as the continuous analytical monitoring of waters of the Doubs to Ocourt, at the output of the system and in the area of occurrence of the Streber.

In France, the knowledge collected on the Rhône streber is synthesised under the National Action Plan for this species. Besides the known and followed populations, additional surveys have been conducted on Lower Doubs valley and the Lantern. These did not detect the presence of the Streber in the areas. On the other hand, the main sources of knowledge about the state of water flow come from data collected in France for the implementation of the European Water Framework Directive.

Both countries report that work towards changing the management of the plants (Châtelot, Refrain and La Goule) to come under control of one single operator (instead of three separate ones at present) is not possible within the legal framework of current permissions. However, the review of the regulation of water designed to improve coordination between the three operators is clearly in line with the recommendation.

The Swiss authorities equally report on the progress in the implementation of the four additional recommendations specific to Switzerland. Concerning the re-establishment of connectivity among critical habitats for the Rhône streber, the report informs that a project of the hydroelectric plant's contract-holder to restore fish passage at the threshold of St. Ursanne was stopped due to the opposition of the municipality and some NGOs. The cantonal and federal authorities have launched a new project in the form of a stream of semi-natural bypass and the remediation works should be conducted during the summer 2015. The first results of a study on the restoration of fish passage at four thresholds on the Doubs border were presented in June 2014. The cantonal planning for the revitalisation of water of Jura and Neuchâtel is being finalised as well, and the final reports are expected in late 2014.

The Swiss report concludes that six months after the recommendations of the Standing Committee to the Bern Convention, the progress to improve the overall quality of the Doubs and its ecosystems can be considered satisfactory. Significant advances have been made in almost all the areas mentioned in the recommendations, some work will be in progress for several years, and other activities have yet to be started.

The Secretariat has equally received the reports from the two complainants.

The Swiss complainant expressed disappointment on the fact that the NGOs are not being consulted by the Swiss authorities "at the time of designing the action plan" (as required by the recommendation), but that they will be only before the adoption of the action plan. He considers that the revised regulation of waters improves the situation with respect to the regulation in force, but not enough to sufficiently reduce the negative impact caused by the Doubs sluicing waters. Concerning the reestablishment of connectivity, the complainant deplores that the Swiss report is concentrating on the four French-Swiss thresholds and on the St.-Ursanne one, while it does not mention those from Bellefontaine and Moulin d'Ocourt. Eventually, with regard to the construction stopped at St.-Ursanne, the Swiss complainant points out that the conflict is not recent. NGOs are advocating for connectivity to be re-established as soon as possible as a way to contribute to the conservation of the Rhône streber. Moreover, the solution found should be sustainable and take into consideration both the different interests and the stakeholders'

views. The complainant intends to submit to the Swiss authorities a critical analysis of the national report after its extensive study. He also reserves the right to communicate again to the Bern Convention on the subject. The Swiss complainant concludes that the NGOs wish to be actively involved in the working groups, and plan to fund scientific support and provide additional information to the basic work done by the authorities.

The French complainant considers that the situation of the Doubs has not improved since mid-2013. Concerning the water flows, numerous reports of deaths at the level of the 3 hydroelectric dams were made, indicating substantial damage to fish and invertebrates. An example of report written by a fishing guard is attached. The complainant informs that EDF (Electricity of France) was forced to close its plant in Refrain, due to inadequate management of storage capacity of the dam Châtelot in April 2014. That had, as a direct consequence, a significant reduction in the flow of the Doubs. The report points out that juveniles Rhone streber 0+ have never been observed, and therefore the mortality of this species cannot be put into evidence when it occurs. A statement attached to the complainant's report denounces the violation of the decree on the protection of aquatic environment in the Doubs bordering France and Switzerland, and the lack of regulations in this respect.

The French complainant further considers that the specific conservation measures for the species Rhone streber are not taken into account in the drafting of the future water regulation. He therefore asks that the species' reproduction and growth phases are taken duly into account when updating the regulation. This will only be possible if a sufficient base flow is ensured by the managers of dams without possibility of unwatering of spawning grounds. In addition, the French complainant considers that the results pursued through the roadmaps of the Binational Group on water quality, will presumably arrive in a too long-term and will therefore be unsuitable for addressing the critical and urgent situation of the Rhône streber. He finds that there is a gap between the French state's declaration that the situation is under control by means of actions to re-establish the water quality, and the slowness of the progress obtained through the implementation of the planned measures. Finally, the complainant strongly regrets that his reports and observations on water flows and water quality are not taken into consideration by the authorities.

#### **- Presumed abusive eradication of European badgers (*Meles meles*), France**

This complaint was submitted in October 2013 by a French citizen, to denounce a possible breach of the Convention by France with regards to the policy of control of the European badger (*Meles meles*) with its possible eradication on the national territory.

The complainant's report stated that the badger has no more been classified as damaging species since 1988 and thus its trapping cannot be authorized. But the Code of the environment foresees an article which allows the prefects to order badger hunting and culling in case of culture damages.

The report mentioned that the hunting with hounds is authorised for badgers during the hunting season and ends most often by killing the badger. Several examples of events, such as championships, organised in different French departments around this particular type of hunting were enumerated.

Furthermore, the report listed several examples of French departments where actions of trapping, unearthing, or night shooting, sometimes with use of light sources were organised. The night shooting with use of light sources is forbidden by ministerial decree, excepting for lieutenants of "louveterie", who organised and led these operations.

On the other hand, the detection of bovine tuberculosis, *Mycobacterium bovis*, in wildlife in 2001 and the resurgence of infection in cattle farms since 2004, have highlighted cases of bovine tuberculosis on wild species, among which the badger, in the neighbourhood of the infected flocks. The report lists several examples of French departments where actions of badgers capture and drastic regulation for the purpose of testing for bovine tuberculosis and population control have been ordered.

The complainant's report mentioned a draft ministerial order on certain measures to fight against tuberculosis in wildlife, which was open to public consultation on 21 July 2013. Among the prevention and control measures listed in the ministerial order, article 7 states that for the badger, in case of proven infection on individuals, a program of population control and destruction of infected specimens and their burrows can be implemented.

The complainant considers that all these operations have a negative impact on the survival or the preservation of the concerned populations.

The Secretariat assessed the complaint and noticed that the European badger (*Meles meles*) is a protected fauna species listed in Annex III to the Bern Convention, and therefore benefits from a less strict degree of protection.

The Secretariat informed the French authorities about the new complaint and requested them to send a report by 14 March 2014, eventually delayed to 25 March 2014. Unfortunately, the report did not reach the Secretariat on time for the first Bureau's meeting in 2014.

At its meeting, the Bureau recalled that - as specified in Article 8 of the Bern Convention - "in respect of the capture or killing of wild fauna species specified in Appendix III (...), Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing (...) and in particular, the means specified in Appendix IV".

Noting the lack of information from the French authorities, the Bureau decided to consider this complaint as a complaint on stand-by at its next meeting. The Bureau further instructed the Secretariat to reiterate its reporting request to French authorities, asking them to namely address the adverse allegations concerning the possible use of the prohibited means and methods of killing listed in Appendix IV of the Convention.

The report sent by the French authorities in July 2014 underlines that, although the discreet and nocturnal behaviour of European badgers prevents from an accurate estimation, the complete estimation, continuous monitoring carried out since 2001 has shown that the overall population at national level is stable, if not rising.

The report informs that in the framework of the programme of eradication of bovine tuberculosis, led by the Ministry of Agriculture, a package of measures for the epidemiological surveillance of bovine tuberculosis in wildlife, called Sylvatub, was set-up in 2011, and updated since. The French departments have been classified in three levels of risk, which determine the type of action for the monitoring of badger population possibly infested. In the departments of risk 2 and 3, two methods are applied: 1) collect of badgers found dead on the roadside following road collisions and 2) trapping of badgers at the periphery of bovine infection zones. The monitoring of infection through the reinforced trapping actions at the periphery of burrows near which the infected individuals of *Meles meles* were identified, are controlled by orders of the prefect and supervised by lieutenants of "louveterie".

The report further lists the French departments particularly targeted by the complainant and details, where available, the number of badgers killed by the trapping interventions ordered by the Prefect and the hunting interventions and road collisions. The conclusion is that the species is not endangered.

Two appendices (only paper documents) are attached to the report: the first one is provided by the National Office for Hunting and Wildlife (ONCFS) and concerns the state of knowledge and proposals for monitoring and management of badger's populations; the second is provided by the Directorate general of food (DGAI), and concerns the trapping of badgers for health purposes related to the fight against bovine tuberculosis.

The appendix 1 points out that an order by the Prefect can authorise, with a view to avoid damages and threats to public safety, for certain periods of time and in specific areas of department, the lieutenants of "louveterie" to organise capture's campaigns. In these specific cases, the means used are most frequently night shooting, extraction from the setts, or the trapping. The gassing of setts is no longer used. As the species is nocturnal, the capture by shooting at night is very rarely used; a survey concerning the night shooting for the hunting season 2011/2012 is in progress and data should be available by 2015. However, the appendix does not mention the use of light sources in night shooting.

The two appendices mention that snare with retainer (a snare equipped with a stopping mechanism) is mainly used as trapping method. At the contrary of the capture with snare which is prohibited, the use of snare with retainer is legal in France for foxes and, is ordered by the Prefect, for badgers too. Once the animal is captured by the neck, the retainer allows stopping the tightening and avoiding injuring the animal.



On the other hand, the appendix 2 affirms that the hunting with hounds, initially authorised, has been forbidden for security reasons. It also mentions the collaboration with Great-Britain and Spain on the development of oral vaccines against tuberculosis.

**- Presumed destruction of birds' and bats habitats due to tourism developments in Ukrainian Natural Reserves (Ukraine)**

The complaint was submitted by the "Nature Protection Squad "Green Future" in November 2013 and concerns a presumed breach by Ukraine of Article 6 of the Convention. According to the complainant, the destruction of important habitats of bats and rare bird species due to the issuing of permits (ceiling limits) for the boating of tourists along the cliffs and the walking tours of caves in two Nature Reserves in Ukraine (Opuk and Karadag), was adversely affecting the populations of the above-mentioned species.

The ceiling permits concerned the Karadag Nature Reserve (Crimean peninsula), while the walking tours permits concerned the Opuk Natural Reserve. Both areas were presented as two of the most important habitats for endangered species like the peregrine falcon, Saker falcon, European Shag, Rosy starling, Lesser mouse-eared bat, Greater horseshoe bat and Geoffroy's bat.

The complainant further explained that as a result of the stress caused by the tourists visiting the habitats, many bats died and birds abandoned their nests with eggs and squabs. In the last years, the number of shags nesting would have decreased by 200.

It should further be noted that the Karadag Nature Reserve is an applicant for the award of the European Diploma of Protected Areas. During his on-the-spot appraisal of the area in view of the award the Diploma, the independent expert appointed by the Council of Europe witnessed illegal recreational activities within the nominated area, like boating and jet skis, in particular in the marine area of the strict reserve.

In their report, sent on 13 March 2014, the national authorities informed on initiating an investigation immediately after receiving the letter of request for more information from the Secretariat. The investigation was conducted with the involvement in the process of all relevant stakeholders (managers of the areas, NGOs, wider public, experts, etc.). A Workshop was held at the Ministry of Ecology and Natural resources of Ukraine on 20 February on the same matter, to which the Head of the Nature Protection Squad "Green Future" was also invited.

The national authorities further informed that according to the Head of the Nature Protection Squad "Green Future", the author of the complaint Mr Ivan Parnicoza was fired from the organisation before the official submission of the complaint and that this complaint was therefore not official.

In their report, the national authorities informed that visiting of strict nature protected areas took place under very strict conditions and only for scientific and ecological purposes. Such visits took place only by predefined routes and were headed by PA guides. The authorities further developed on the dynamics of the nest numbers for the bird species and bat colonies in both National Reserves. These were discussed at the meeting organised by the Ministry and the conclusions show that the small variations in the number of some of the mentioned species were within the natural short term fluctuations, with a general trend for increasing the numbers. In particular, the authorities confirmed that the small fluctuations were not linked to the limited amount of official visits.

Nevertheless, as a result of the meetings and expert conclusions, the Ministry issued some recommendations for the authorities of both reserves, in particular to enhance the protective measures by warden services, which were already very well established, to reconsider the terms, location and regime of marine eco-tourism visiting the Karadag Reserve based upon scientific evidence from 2014 and to enhance the general public awareness on the need of protection of rare wildlife species.

At its meeting in April 2014, the Bureau welcomed the information submitted by the Ukrainian authorities and the efforts toward addressing the issues mentioned in the complaint. Furthermore, the Bureau considered that the issue could be further monitored within the European Diploma of Protected Areas' monitoring mechanism, in case the Committee of Ministers decides to grant the award to the Karadag Nature Reserve. Therefore the Bureau decided to keep the complaint on stand-by until its next meeting, pending the decision of the Committee of Ministers on the EDPA.

The award of the European Diploma of Protected Areas to Karadag Nature Reserve was initially on the agenda of the –Committee of Ministers on 17 June 2014 but was postponed to a further session at the request of the Permanent Representation of Ukraine to the Council of Europe. By the preparation of this document, the item has not been scheduled yet.

#### 4. Other complaints

##### - Impact of corn monoculture on the conservation status of protected species in Alsace, France

This complaint was submitted in November 2013 by the NGO “Sauvegarde Faune Sauvage”, and concerns the presumed destruction of 75-80 % of the flora and fauna of Alsace region because of the monoculture of corn in the plains of Haut-Rhin.

The complainant denounces the very strong decrease in Alsace of the populations of Red kite (*Milvus milvus*) and of Western marsh-harrier (*Circus aeruginosus*) from the order of Falconiformes as well as of Corncrake (*Crex crex*) and Moor frog (*Rana arvalis*), all species listed in Appendix II of the Bern Convention. The Eurasian curlew (*Numenius arquata*), listed in Appendix III, is also subject to strong regression. According to the complainant the transformation of gravel pits into corn culture led equally, to important decrease of the European Green toad (*Bufo viridis*), listed in the Appendix II.

The complaint indicates as well the disappearance from Alsace of Montagu's harrier (*Circus pygargus*), of Bustard (family of *Otididae*) and of Tawny pipit (*Anthus campestris*), species listed in Appendix II.

Finally, the complainant evokes the failure by France to comply with the "Habitats", "Birds" and "Nitrates" European Directives (analyses on nitrates being, according to him, almost non-existent).

The Secretariat assessed the complaint and forwarded it to French authorities, together with a reporting request.

By mid-July, the complainant provided additional elements concerning the threats on the species mentioned in the complaint. .

According to the complainant, the major threat to these species is the disappearance and fragmentation of meadows in Alsace, mainly due to the development of industrial agriculture and the changes in agricultural practices, and more specifically to the increasing corn monoculture. In Alsace, 726 km<sup>2</sup> of grassland disappeared between 1970 and 2000 (based on Datagreste source of the Ministry of Agriculture and Fisheries).

The report draws attention to the Corncrake, listed in Appendix I of the Birds Directive and in Appendix II of the Bern Convention. More alarming, according to the complainant, the Moor frog is considered on the verge of extinction in Alsace. If its presence was proved in the sixties in a vast meadow in Sundgau, the last specimen was seen in the region of Fort-Louis in 2009. The report also mentions that the decline of the Grey partridge, which was the most common bird in the field, reflects the degradation of the biotope.

In August 2014, the French government sent a report prepared by the Regional Directorate of the Environment, Planning and Housing (DREAL) of Alsace.

The report acknowledges that Alsace concentrates a large proportion of protected species, of which about 30 to 40% are listed as threatened and near-threatened species. This is, in the authorities' opinion, in contradiction with the statement regarding the presumed destruction of 75-80% of the flora and fauna of Alsace reported by the complainant, otherwise they would be listed as threatened species.

The French report further analyses the situation of the species listed in the complaint and develop on a number of actions undertaken to improve it. . For instance, measures have been developed with the concerned farmers for a “mowing delay” to July, in order to preserve the few remaining Corncrakes (*Crex crex*) which nest later. The presence of 13 singing males during the spring 2013 in the sector of Schwenheim is, according to the authorities, absolutely exceptional and was undoubtedly a result of the enforcement of these measures.

The report points out that the decrease of the species object of the complaint is only partially due to agriculture, and even less to corn monoculture, a practice which remained stable in Alsace in the past 13 years.

The main causes related to agriculture are linked to the standardisation of agricultural landscape through the simplification of crop rotation and also the reduction of hedges, reed beds, slopes, groves and isolated trees. The fragmentation related to infrastructures and urbanisation and the tourism in natural areas are complementary factors with strong impact on the species in the Alsace plain that concentrates important density of population and habitats, economical activities and developed infrastructures.

The report further lists the public policy programmes implemented in Alsace to contribute to the preservation of the species and their habitats: the Regional Plans of Actions to preserve the threatened species (among which the Red kite, the Corncrake and the European Green toad<sup>2</sup>); the Strategy of designation of protected areas (SCAP); the management of Natura 2000 sites; the Regional Scheme for the Ecological Coherence (SRCE), and an Action Plan supported by the State and the Regional Council - to be approved by the end of 2014 - that will take into account the reservoirs of biodiversity concentrating in 137 sites for the protection of species on 26% of the Alsatian territory.

Moreover, the report informs about the measures for the preservation of wetlands and rivers that enabled, between 2007 and 2014, the restoration of more than 800 km of watercourse and 600 ha of protected wetlands in Alsace.

Finally, the French authorities' report disproves the absence of nitrates analysis supposed by the complainant. It underlines that there are more than ten networks of supervision of the quality of groundwater and surface water in Alsace, which analyse the nitrates, the results being available. The nitrates are also assessed on more than 900 points of the Rhine in Alsace. Moreover, based on the regional assessment of the 4<sup>th</sup> programme of actions of the Nitrates Directive, produced in 2013, the water quality in Alsace is good in 95% of points of surface water and 75% of points of groundwater points, above the national average. In addition, the commitment of the authorities to address this issue is also shown by the fact that the Prefect of the Alsace Region signed on 2 June 2014 a Regional Order reinforcing the 5<sup>th</sup> programme of actions of the Nitrates Directive.

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<sup>2</sup> <http://www.alsace.developpement-durable.gouv.fr/plans-nationaux-d-actions-r94.html>