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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

35th meeting
Strasbourg, 1-4 December 2015

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

MARCH 2015

*Secretariat memorandum
prepared by
the Directorate of Democratic Governance*

IMPLEMENTATION OF THE CONVENTION: FILES

1.1 Specific sites - Files open

a. 2004/1: Ukraine: Project for a waterway in the Bystroe estuary (Danube delta)

(IdA)

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.

The same year 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.

In 2008, Ukraine informed the Secretariat of the repeal of the Final Decision regarding Phase II of the Project, confirmed that the amended and updated EIA documentation would be sent to the Secretariat, and that measures would be undertaken to ensure public consultation and participation on this Project. Furthermore, the Secretariat was informed that a document entitled “Draft Time-Schedule” had been signed with the Romanian authorities for further mutual implementation of the steps to be taken by both countries.

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

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

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

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

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

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

At the 31st 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 had not started.

The delegate of Romania contested the quality of the EIA and, although he welcomed the monitoring project, he further stressed 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 to Ukraine for possible non-compliance.

The Committee decided to keep the case-file open asking the three concerned Parties for updated reports 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.

Finally Ukraine informed of a number of initiatives implemented since 2004, including long-term hydrobiological studies for 2004-2011 whose conclusions would allow affirming 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 had 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 32nd 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 addressed 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 had 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 several gaps and shortcoming in the EIA. For instance, the mathematical modelling used by Ukraine, 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 focused almost exclusively on the impact of the works on the Ukrainian side of the Delta while the transboundary impact had not been properly assessed. In conclusion, the authorities of Romania were completely-reassured by the EIA since this did not address all the environmental consequences rising up from the project and the consultations undertaken under the Espoo Convention where not duly taken into account. Romania finally requested that the impact of project is further assessed before continuing with the implementation of Phase two.

Following a ballot, the Committee 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 for their views on the EIA.

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 11th meeting of the Conference of the Parties to the Ramsar Convention. The decision was based both on the information submitted and on the consideration that the Ramsar Administrative Authority in Kyiv took the responsibility to declare publicly that no negative change will occur through the planned works..

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 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.

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.

At the 33rd Standing Committee meeting, the Delegate of Ukraine informed that a meeting of the Joint Commission was organised on 28th 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. However, Romania reiterated its request to receive a clear answer on a decision of the Ukrainian competent authorities to implement or renounce to implement the Phase 2 of the project.

Furthermore, the Delegate of Romania recalled 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, showing 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 29th 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 2nd 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.

In March 2014, the ESPOO Convention provided the Secretariat with an updated report, informing about the latest developments following the 29th 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 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 Secretariat prepared an Information Note on the Bystroe Case-file, including 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 provided an overview of the options that the Standing Committee could have regarding the present complaint, including the advantages and disadvantages of each option, as well as a summary of the main decisions of the Standing Committee since the case was open, back in 2004.

Among the possible scenarios the Secretariat identified the following three:

- a) Keeping the case file open;

b) Closing the file with a declaration of failure to comply with the decisions and recommendations of the Standing Committee. The Committee might also wish to emphasise on the right foreseen under Article 18 and on the relevance of cooperation for the effective exploitation of the case-file system.

c) Closing the file as mentioned above, with a recommendation for the implementation of compensatory and mitigation measures to reduce the impact of the works already realised. The task of identifying the relevant compensatory and mitigation measures could be entrusted to the Joint Commission as a way to ensure that all concerned Parties take the responsibility in the resolution of the problem, and the ownership of the recommended actions. The Joint Commission could be called to report to the Standing Committee on an annual basis.

After a careful discussion, the Bureau decided to advise the Standing Committee to keep the case-file open for one more year, in order to be able to gather objective and specific information on the situation, also in view of the preparation of a possible new draft Recommendation, based on the views, data and opinion of the Joint Commission. At the last Standing Committee meeting the discussions focussed on how to solve this complaint. The Committee agreed that for a solution to be found, Parties must be able to receive and assess tangible results of the cooperation between the Parties, including their own proposals of possible ways out.

Therefore the Committee decided to keep the case-file open for one more year, and to request to the Trilateral Commission to organise a meeting in the first half of 2015. The Trilateral Commission should address the issues at stake in the Bystroe estuary case file, and forward a report to the Bureau for assessment at its meeting in September 2015. The Bureau will then take a position on the case-file and prepare a proposal.

The Secretariat forwarded the decision of the Standing Committee to the three concerned Parties, with the request of updating the Bureau on the state of preparation of the next meeting of the Trilateral Commission.

In reply to this, Ukraine informed that the Ukrainian Ministry of Environment invited the correspondent authorities of both Romania and the Republic of Moldova to hold the third meeting of the Joint Commission on 27-28 May 2015. The items to be discussed would be the implementation of Recommendation No. 111 (2004), as well as the conservation status of key species present in the Danube Delta and listed in the annexes of the Bern Convention. The meeting should also serve for an exchange of information in light of the preparation of a series of recommended actions intended to improve the situation in the area.

b. 2004/2: Bulgaria: Wind farms in Balchik and Kaliakra – Via Pontica

(IdA)

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

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

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

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

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

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

In 2009, the delegate of Bulgaria informed the Committee that a "Strategic Environmental Assessment (SEA)" of Bulgaria's Energy Strategy and National Plan for Renewable Energy Sources had been initiated in spring, with meetings at expert level. Bulgaria's Ministry of Environment and Water expressed its 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.

At the 2011 Standing Committee meeting the Secretariat presented the report forwarded by the Bulgarian Government, focussing on the new energy strategy up to 2020, as well as on progress on the drafting of a national action plan for renewable energies, which was still pending after that the public consultation highlighted serious omissions.

In addition, the Ministry issued formal instructions for the General Inspectorate of the Environment and Water, asking to reduce the number of authorisations issued pending the launching of the national plan; there was also a slowing down of projects already authorised owing to financial and technical problems (1 project involving 32 turbines had been stopped).

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).

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". This project was 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. This was not an isolated development as a number of windfarms had already been established in the vicinity of Lakes Durankulak and Shabla in areas previously providing feeding habitat to wintering geese, 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 were still 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 stop issuing authorisations and licences regarding wind farm developments in the area; (iii.) that the European Commission speeds-up the 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 inform the AEWA about the readiness of the Bern Convention to join a field visit should this be organised.

At the 32nd 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 continued to be 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 33rd Standing Committee meeting, a structured, detailed and comprehensive report on the implementation of all provisions of Recommendation No. 130 (2007).

In January 2013 the Secretariat addressed a reporting request to Bulgarian authorities in view of the first Bureau meeting. Following the request of the Party, the Secretariat agreed to extend the deadline stressing that an oral summary of the content of the report would be given to the Bureau members.

In the meantime, the Secretariat was informed by the AEWA that, in December 2012, the Ministry of Environment and Water replied to the AEWA that it didn't consider appropriate to accept an IRP mission due to a pending court case regarding the appeal of the investor against the decision of the Minister to annul the EIA decision of the Director of the RIEW-Varna. However, on 17th January 2013, the Supreme

Administrative Court (SAC) of Bulgaria annulled the decision of the Minister of Environment and Water thus allowing for the project to be implemented and the windfarm constructed. As a consequence, the AEWA reiterated its offer of advice on this complicated issues which was again rejected until the court case 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.

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.

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.

At the 34th Standing Committee meeting the Parties discussed the present case-file in the absence of Bulgarian authorities. However, the 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. 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 and 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. Bulgarian authorities didn't reply to the reporting requests sent by the Secretariat for the two Bureau meetings in 2014.

Nonetheless, the UNEP/AEWA informed about a meeting held in February 2014 with representatives of the Bulgarian Ministry of Environment and Water, during which the authorities undertook a series of commitments regarding mainly the windfarm project in Durankulak Lake. 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 Durankulak 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 was again a reality which could dramatically impact the Red-breasted Goose. In addition, none of the turbines considered dangerous by the Standing Committee had been removed. The report further proceeded to analyse compliance with each of the operational paragraphs of the

Recommendation adopted by the Standing Committee and requested 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.

The Bureau referred the case as an open file to the Standing Committee. The Committee examined the arguments put forward by the authorities of Bulgaria, the complainant, and the representative of the AEWA, and asked the national authorities to be much more reactive to the reporting requests so to help the Institutions of the Convention putting forward the necessary recommendations in a more efficient way.

As a follow-up to this complaint, the Committee decided to keep the case-file open and asked Bulgarian authorities to provide the Bureau with a comprehensive report, including a detailed description of the actions taken in order to comply with the Recommendation of the Standing Committee, also in light of the most recent administrative and legal provisions in force at both national and international level.

Moreover, the Committee encouraged Bulgaria to prepare and communicate to the Standing Committee an Action Plan detailing the measures envisaged for ensuring the expedite and effective implementation of Recommendation No. 130 (2007), including a timetable to be delivered for the Bureau meeting in April 2015.

Finally, the Committee strongly invited Bulgaria to reconsider its position regarding the IRP mission proposed under the AEWA as it can contribute to a better assessment of the current challenges and needs.

In January 2014 the Secretariat addressed to Bulgarian authorities a specific reporting request, based on the decision of the Standing Committee.

Unfortunately, the request remained unanswered.

- **[1995/6: Cyprus: Akamas Peninsula]**
- **[2010/5: Greece: threats to marine turtles in Thines Kiparissias]**
- **[2007/1: Italy: Eradication and trade of the American grey squirrel (*Sciurus carolinensis*)]**

1.2 Possible files

- **2011/4: Turkey: threats to the Mediterranean monk seal (*Monachus monachus*)**

(IdA)

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 would be opened to lorry traffic, and that pollution, turbidity and noise would force the 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 stressed that the monk Seal is one of the world's most endangered mammal and considered the complaint with the utmost seriousness.. It therefore requested more specific information to both Turkish authorities and the complainant.

In reply, the complainant sent an accurate report providing 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 presented 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).

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 1st September 2013 and 1st 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. It therefore urged Turkish authorities to send 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.

However, no new information reached the Secretariat by the second Bureau meeting. The Bureau decided to keep the case as a possible file, and invited the Turkish authorities to attend the Standing Committee meeting and to submit an updated report in writing addressing the questions raised by the Bureau since April 2014.

Turkish authorities orally reported to the last Standing Committee meeting. They informed that, as required by the ecosystem evaluation report, the company in charge of the construction of the marine terminal committed to comply with some of the recommendations included in the EIA report. For instance, it committed to suspend construction activities during the monk seal breeding season of monk seal, which is between September and January. This commitment was fulfilled. Moreover, the company worked in close cooperation with academic staff to monitor the monk seal activity. As a result, two monitoring reports covering a three month monitoring period

in the whelping season were produced. The monitoring also confirmed that the cause of the death of the young seal was related to fishing activities around the region.

The delegate also stressed that the national action plan for the protection of Mediterranean monk seal in Turkey, identifies 17 important breeding sites, 5 of which are located in Mersin province. A local action plan to be implemented over a five year period had been prepared in 2012 and revised in 2014 to ensure proper conservation of the Monk Seal in the area. It includes monitoring measures, a conservation programme, education and inspection programmes. The delegate also recalled that the case was still under consideration of a Turkish National Court and ensured the Parties of the highest consideration of the Ministry for this matter.

The Committee thanked the authorities for the encouraging information provided by the delegate of Turkey regarding the finalisation of an Action Plan for the monk seal in Mersin area; still, the Committee strongly regretted that, as shown by the complainant, marine infrastructures have been built in the vicinity of a fundamental reproduction and breeding zone, despite these having an obvious impact on the species.

Therefore the Committee decided to keep this complaint as a possible file, requesting a timely and complete report on the implementation of the Action Plan, on any other measures undertaken for the conservation of the Mediterranean Monk Seal, as well as the conclusions of the pending Court case if available.

Finally, the Committee mandated the Bureau, in close cooperation with the Barcelona Convention, to analyse the situation of the monk seal in the East Mediterranean in light of the information received, and to prepare proposals and recommendations for the next Standing Committee.

In the report sent in March 2015 Turkish authorities confirm that Turkey holds a fourth of the World Monk seal population, half of which inhabits the Mersin Province.

The report provides a very succinct presentation of the structure of the Action plan, identifying three majors threats, namely: habitat loss due to tourism and road infrastructures (including in Mersin), deliberate or unintentional killing, human disturbance. The Action Plans counts with four main field of activities including research, conservation measures, monitoring, and education.

Despite some information on activities implemented in 2014, the measures so far undertaken for the implementation of the Action Plan seem insufficient to ensure adequate protection of the species in general, and in Mersin province in particular. For instance, the activities foreseen for 2015 mainly concern research, awareness and education but little or no information is provided on recovery or conservation measures.

- **[2012/3 - Possible spread of the American mink (*Neovison vison*) in Poland]**

1.3 Complaints on stand-by

- **2013/8: Presumed abusive eradication of European badgers (*Meles meles*), France**

(TSM)

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 underlined that, although the discreet and nocturnal behaviour of European badgers prevents from an accurate estimation, continuous monitoring carried out since 2001 showed that the overall population at national level is stable, if not rising.

The report informed 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 levels 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 listed the French departments particularly targeted by the complainant and detailed, where available, the number of badgers killed by the trapping interventions ordered by the Prefect, the hunting interventions, and road collisions. The conclusion was that the species is not endangered.

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

The appendix 1 pointed 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 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 was in progress and data should be available by 2015. It was important to note that the appendix did not clarify whether light sources were used for night shooting.

The two appendices also mentioned that snares with retainer (a snare equipped with a stopping mechanism) are mainly used as trapping method. The use of snares with retainer can be ordered for badgers by the Prefect. Once the animal is captured by the neck, the retainer allows stopping the tightening and avoiding injuring the animal.

Finally, according to appendix 2 of the report, the hunting with hounds, initially authorised, has been forbidden for security reasons. It also mentioned the collaboration with Great-Britain and Spain on the development of oral vaccines against tuberculosis.

The Bureau pointed out in September 2014 that the use, even under very specific circumstances, of the prohibited means and methods of killing listed in Appendix IV to the Bern Convention is a breach to the Convention. Therefore, the Bureau decided to consider the complaint as a possible file and invited the French authorities to present their report to the 34th Standing Committee meeting.

The Standing Committee took note of the reports presented by the representative of France and by the complainant. It noted that, under certain conditions, France authorises the use of snares and of artificial light sources in the implementation of its badgers’ control policies. The Committee recalled that the Convention allows Parties to make exceptions to its provisions, under the reasons, conditions and modalities enumerated in Article 9, provided that the Party reports every two years on the use made of these exceptions.

The Committee also noted that France has not reported on exceptions made to the provisions of the Convention since 2007. Therefore the Committee decided to forward the complaint to the

Bureau as a complaint on stand-by, and requested France to submit its biennial reports to the Bureau on time for its second meeting in March 2015.

The French authorities submitted the biennial report on the badger with a list of exceptions made from 2009 to 2013 and two other documents.

The latter were already provided with the report in July 2014. The first, prepared by the Directorate general of food (DGAI), informs about the trapping of badgers for health purposes related to the fight against bovine tuberculosis and explains the Sylvatub programme. The second document was prepared by the National Office for Hunting and Wildlife (ONCFS) and informs about the state of knowledge and proposals for monitoring and management of badger's populations in France. The two of them were summarised to the Bureau in September 2014.

In addition to the information already available in the previous documents, the biannual report reminds that the data collected at national level do not enable to estimate the number of badgers. However, thanks to the continuous observations between 2001 and 2012, it is supposed that the variations of population were not significant during this period of time.

There is a substantial increase of the number of exceptions made for 2012 and 2013 and most of them are in Côte d'Or. 12911 badgers were collected "in the interests of public health and safety, air safety or other overriding public interests", and 6226 "to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property".

The indiscriminate means of capture and killing mentioned are the traps. The report reminds that the methods used are to date the most effective; nevertheless, the authorities continue to seek other possibilities. For instance, ONCFS works together with the Ministry of agriculture to control the bovine tuberculosis.

- 2012/5: Sport and recreation facilities in Çirali key turtle nesting beach (Turkey)

(IdA)

In May 2012 the Secretariat received a complaint submitted by the Ulupinar – Çirali community, questioning the allocation of a land including 75% of Çirali beach to "Orman Spor" – a football society - for the establishment of football grounds and recreation facilities. Çirali beach is in fact among the 20 key nesting areas in Turkey and has been designated as 1st 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 would certainly have on the nesting activity of *Caretta caretta*.

Despite a reporting request addressed to Turkish authorities the Secretariat didn't receive any notification from the Party prior to the 32nd Standing Committee meeting.

However, the complainants informed 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 2nd 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 2nd Administrative Court which was, as a consequence, requested reconsider its position and emit a new judgment.

The Bureau forwarded 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 2nd 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 forwarded the complaint back to the Bureau as a complaint on stand-by.

In May 2013 Turkish authorities informed that the decision of the Court was still pending, but informed that the construction works were suspended in the meantime.

The Bureau welcomed the suspension of the works pending the court's decision and decided to keep the complaint on stand-by until further notice.

No new information was submitted to the Secretariat since then. For this reason, in January 2014 the Secretariat addressed two separate letters, respectively to the authorities and the complainants, requesting a short report on the situation, including any useful information regarding the complaint pending before the national court. The Secretariat didn't receive any reply from the complainants. From the authorities' side, a short note sent in March 2015 confirms that the decision of the court is still pending and that, in the meantime, the area continues to enjoy the protection granted to the site, with no sport activities implemented.

- **2011/5: France / Switzerland: threats to the Rhone streber (*Zingel asper*) in the Doubs (France) and in the canton of Jura (Switzerland)**

(TSM)

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

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

Furthermore, the NGO denounced the lack of intervention to stop hydraulic engineering works such as dams and weirs, which act as impassable barriers to the species and isolate sub-populations from each other. Pro-Natura additionally noted that the 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 12th 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 and on-the-spot appraisal in order to prepare a list of recommended actions to be submitted to the Parties at their 33rd meeting. The authorities of France and Switzerland expressed their agreement.

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

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

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

Regarding the Suisse part of the Doubs ("the Suisse loop") and its median part serving as border between France and Switzerland, discussions mainly focussed on the fragmentation of the environment, the management of the water flow, and water quality. The measures already implemented as well the work of the bi-national working group were also examined.

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

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

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

- The occurrence in the area of four other species protected under the Bern Convention (Appendix III), and listed both in the Annex of the Standing Committee's Resolution No. 6 (1998), and in Annex II of the EU Habitat Directive, namely: South-west European nase (*Parachondrostoma toxostoma*); European brook lamprey (*Lampetra planeri*); European bullhead (*Cottus gobio*); and Souffia or Western Vairone (*Leuciscus souffia agassizi*);
- The protection status of the Suisse part of the Doubs and of its alluvial areas which 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 had its own “Streber” action plan. The Swiss action plan “Streber” was being prepared by the Federal Office for the Environment and proposed a global approach integrating all the different measures in the river basin, through specifically created working groups. This action plan addressed 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 included 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 was already being implemented, included 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 were being implemented as well.

Two Swiss-French Binational Working Groups, on “flow management” and on “water quality” worked on improving respectively the hydrological regime and water quality of the Doubs. The revision of the regulation of waters was in progress and could be considered satisfactory; the goal of a complete revision for the end of 2014 seemed 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 was expected by the end of 2014.

Concerning the water quality, roadmaps validated by the two States planned to work simultaneously on several fronts to reduce the flow of pollution, regardless of their origins. Moreover, discussions had 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 was being prepared.

Concerning the collect of knowledge on the Rhône streber in the Doubs, this was 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 mentioned 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 was synthesised under the National Action Plan for this species. Besides the known and followed populations, additional surveys had 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 came from data collected in France for the implementation of the European Water Framework Directive.

Both countries reported 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) was 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 was clearly in line with the recommendation.

The Swiss authorities equally reported 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 informed 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 was being finalised as well, and the final reports were expected in late 2014.

The Swiss report concluded 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 were not being consulted by the Swiss authorities "at the time of designing the action plan" (as required by the recommendation), but that they would be only before the adoption of the action plan. He considers that the revised regulation of waters improved 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 deplored that the Swiss report was concentrating on the four French-Swiss thresholds and on the St.-Ursanne one, while it did not mention those from Bellefontaine and Moulin d'Ocourt. Eventually, with regard to the construction stopped at St.-Ursanne, the Swiss complainant pointed out that the conflict was not recent. NGOs were 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 intended to submit to the Swiss authorities a critical analysis of the national report after its extensive study. He also reserved the right to communicate again to the Bern Convention on the subject. The Swiss complainant concluded that the NGOs wished to be actively involved in the working groups, and planned to fund scientific support and provide additional information to the basic work done by the authorities.

The French complainant considered that the situation of the Doubs had 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 was attached. The complainant informed 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 pointed out that juveniles Rhone streber 0+ have never been observed, and therefore the mortality of this species could not be put into evidence when it occurred. A statement attached to the complainant's report denounced 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 considered that the specific conservation measures for the species Rhone streber were not taken into account in the drafting of the future water regulation. He therefore asked that the species' reproduction and growth phases were taken duly into account where updating the regulation. This would only be possible if a sufficient base flow was ensured by the managers of dams without possibility of unwatering of spawning grounds. In addition, the French complainant considered that the results pursued through the roadmaps of the Binational Group on water quality, would presumably arrive in a too long-term and would therefore be unsuitable for addressing the critical and urgent situation of the Rhône streber. He found that there was a gap between the French state's declaration that the situation was 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 regretted that his reports and observations on water flows and water quality were not taken into consideration by the authorities.

At its meeting in September 2014, the Bureau thanked the Parties and the complainants for their reports and acknowledged the serious commitment of the authorities to address the recommendations of the Standing Committee. In order to improve the cooperation with the NGOs for the sake of mutual interest, the Bureau encouraged the French and Swiss authorities to associate, where appropriate and whenever possible, the complainants to the discussions on the implementation of the recommended actions.

Finally, the Bureau decided to keep the complaint on stand-by and to re-assess it at its next meeting, in light of updated information to be submitted by the Parties and the complainant in due time.

Both Swiss and French authorities sent their second reports in February 2015. For most recommendations, the information was already provided in the previous reports. In addition, the reports highlight the progress made in 2014.

The two Swiss-French Binational Working Groups, on "flow management" and on "water quality" have continued their work.

The discussions between the operators, the authorities and the NGOs to revise the water regulation from 5 February 1969 have continued in 2014 and came to a successful conclusion. A new water regulation which settles the operating regime of the three hydroelectric plants (le Châtelot, Le Refrain, Le Goule) was defined and formalised; its entry into force is fixed on 1st December 2015. Some measures are already included in the intermediary water regulation that has been applied since 1st December 2014 through voluntary commitments of Swiss operators and a derogation of water regulation for the French operator. The implementation of the derogation will be followed-up in 2015.

In France, among the new developments, the report mentions the ongoing "Rhône streber" National Action Plan (2012-2016) which also identifies several works to level or to equip a number of dams in the Loue with fish ways adapted to the Rhône streber.

The contract of territory covering the water quality for the Haut-Doubs and the Haute-Loue was approved; it concerns the ponds where are located the populations of streber and upstream to them. This contract is consistent and complementary to the contract for the French-Swiss Doubs.

In Switzerland, a project of national plan for the Doubs was elaborated by the Federal Office for the Environment (OFEV); it includes the measures to restore in an acceptable state of conservation the streber population. The project was submitted for consultation to the Federal Office for energy (October 2014), to the cantons of Neuchâtel, Bern and Jura (December 2014 – January 2015) and then presented to the complainant NGOs which can react up to mid-April 2015.

The Swiss parliament has approved the modifications of the law on water protection to allow the Confederation to partially finance the measures to reduce the micro-pollutants in hundred STEPs which answer certain criteria.

The Swiss report mentions other ongoing or to be launched activities for almost all the recommendations. The authorities conclude that the works to improve the global quality of the Doubs and its aquatic ecosystems are ongoing and satisfactory and there has been significant progress since their previous report in July 2014.

The French and Swiss complainants have also submitted new reports.

According to the Swiss complainant, the intermediary water regulation improves the lock management but there is still room for amelioration; the complainant presents a list of remarks to be considered when elaborating the next regulation which enter into force on 1st December 2015. Complementing the work of the authorities, Pro Natura has attributed two scientific mandates for the period 2014-2016, to monitor the habitat of the Rhone streber and to analyse the water quality. The Swiss complainant welcomes the national plan for the Doubs and formulates a few suggestions to the Confederation.

Taking into account the absence of a unique management of the three hydroelectric plants, the French complainant draws the attention on the need of biological results as a *sine-qua non* condition versus the objectives of production. The complainant also points out the 40 last kilometres of channel of the Basse Loue, not compatible with the presence of the streber. On the other hand, the French complainant welcomes the general measures on the water quality taken for the French Doubs and the Loue.

Both complainants consider that there are still gaps in the implementation of the Recommendation 169 and some of the measures are still insufficient. However, they understand the difficulty to quickly remediate to the 40 years of damages and find that the authorities have shown their willingness to save the Rhone streber and the Doubs.

In this context, the Swiss complainant finds necessary to add the Recommendation 169 on the agenda of the next Sanding Committee meeting, in order to allow the Parties and the complainants to present their reports, as requested at item 10 of the recommendation.

- **2012/7: Presumed illegal killing of birds in Malta**

(IdA)

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 hutable 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 that 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.

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 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 2nd Conference on Illegal killing, trapping and trade of wild birds, as well as the 4th Meeting of the Group of Experts on the conservation of birds, and to report to the Group.

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. The Group decided however 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. 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 on stand-by. It further instructed the Secretariat to request more 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 Ornis Committee to the issues object of this complaint.

Furthermore, amendments to the legal regime on the conservation of wild birds had allowed for rendering the system of dealing with certain types of offences much more effective, and resulted into 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 (1st October 2013 – 31st January 2014) which contemplated 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 included 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 2020.

In its report submitted in March 2013, BirdLife Malta acknowledged the 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. The latter 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 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, BirdLife considered that some of the amendments to the legislation paradoxically weakened enforcement in return. On the latter issue, 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 10th to the 30th 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 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 are trying 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 implementation may not be always encouraging. The Bureau expressed again concern for poor enforcement, noted the worrying reports about still

widespread illegal killings 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 were 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 included considerations on the conservation status of the species concerned, which are taken into account 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 requested the Bureau to consider ascertain Malta's fulfilment with the requirements of the Bern Convention.

In its report, the complainant again recognised some commendable efforts from the authorities, but showed increased 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 had, in July 2014, led Malta issuing a legislation permitting the trapping of seven species of wild finches, all protected species, which would be justified by means of a further derogation for stated traditional purposes. Furthermore, BirdLife Malta denounced changes in the legislation over the past 10 months on which the authorities failed to report, and which could be considered as being in favour of increased hunting opportunities. More particularly, BirdLife contested any progress towards enforcement and bag limit verification and on combating illegal killing of protected species. The report listed the presumed failures of the authorities on this matter.

Moreover, the complainant considered 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 denounced the negative effects of the opening of the trapping season for Song thrush and Golden plover which, on their side, the authorities affirmed doing in the legal execution of the permitted derogations. The re-introduction of finch trapping practices by means of derogation was another matter of concern. The complainant called for immediate attention and intervention from both the Bern Convention and the European Union.

In its report, the European Union recalled 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 was in the process of assessing the last report submitted by the authorities and ensured of its commitment to continue the dialogue with the country.

After assessing the information above, the Bureau recognised again the strong commitment of the authorities towards eradicating illegal killing of birds and stressed that, after changes in policies and legislation, a certain time is needed before evaluating their impact and make sure of their adequacy to the purpose. The Bureau decided to reconsider this complaint as a complaint on stand-by at its first meeting in 2015.

Both the authorities and the NGO provided updated report in March 2015.

The national report gives a brief overview of the 2014–2015 autumn hunting season, the enforcement efforts deployed by the Maltese authorities, as well as the relevant enforcement statistics. The latter indicates that the substantial increase in the penalties for offences over the past 16 months has provided a substantial legal deterrent, whilst the doubling of enforcement effort on the ground ensured that those who break the law are apprehended and effectively prosecuted according to legislation. The report also describes some technology-driven improvements implemented for more efficient enforcement and governance.

Concerning the hunting licenses the authorities inform that their number remained relatively stable over the past 6 years.

On enforcement, the authorities reinforced the surveillance during the peak migration period, deploying over 95 enforcement officers on the field, complemented by another 55 agents until the end of the hunting season. These officers received specialised training on enforcement priorities and techniques. Moreover, the number of inspections doubled in comparison with 2013, and more than quadrupled in comparison with 2012. Night patrols were organized during special periods in areas where protected species were identified, and the controls were carried out combining different inspection's techniques.

The authorities highlight a clear trend for the decline in crime levels across virtually all categories of bird-related crime, particularly in relation to major offences. In the views of the authorities this success is to be ascribed to the increase in the legal deterrent against abuse, and is an evidence of the zero tolerance policy applied by Maltese authorities to achieve the ultimate goal of the eradication of illegal killing of birds.

In addition, Malta developed an electronic reporting system to enable real-time reporting and monitoring of game legally hunted, and implemented a geographic information system which enables field officers to instantly access location-specific regulatory data pertaining to individual licensees.

Future steps will concern an additional stage of the legal reform, whereby penalties for the most serious categories of offences involving protected birds will be raised to levels that would outweigh any hypothetical quantum of illegal gain that may arise out of such crimes. The

authorities conclude by requesting the Bureau to declare the compliance of Malta with the requirements of the Convention on the matters dealt by this complaint.

The report submitted by the NGO focusses on the current status of the derogations to the Birds' Directive, on illegal hunting and trapping of birds as well as on the enforcement regime adopted by Maltese authorities.

The NGO expresses serious doubts over the number of catches declared by legal hunters bearing in mind that the almost 11,000 hunters who were licensed to hunt declared a total catch of 2,486 Turtle Dove and 1,689 Quail. In BirdLife Malta's views, these low numbers would be used to push for a full spring hunting derogation season in the near future.

Moreover, while praising the suspension of the hunting season during the peak migration of birds of prey, as the latter had undoubtedly a positive effect on reducing the number of illegal hunting incidents, BirdLife Malta reiterates its request for the re-establishment of a 3 p.m. curfew as an additional and valid deterrent. In fact, the NGO notes that the current 7 p.m. curfew is ineffective for the protection of the vast majority of migrating birds.

On the trapping derogations of Golden plover, song thrush, and seven other species of finches, BirdLife Malta continues to denounce the opening of trapping seasons as a breach of the EU Directives. The NGO also inform that a Letter of Formal notice was addressed to the authorities in October 2014 for the reintroduction of finch trapping in the country. However, the government opened a trapping season for finches between October and December 2014.

The complainant also questions the effectiveness of the monitoring and field surveillance. The report concludes with considerations on the figures and statistics presented by the government which, for instance, only take into account those offences for which there has been a prosecution.

- 2012/11: Marsupella profunda threatened by a waste burn incinerator at Rostowrack Farm St Dennis, UK

(TSM)

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 had been 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 had 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 appeared 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. The reports 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 was again stated that the screening process in the Habitats Directive had not followed.

Furthermore, the complainant sent to the Secretariat copies of letters exchanged with the European Commission on the matter.

The UK government didn't provide updated information before the meeting of the Bureau in September 2014.

Taking into account the new information submitted by the complainant, the Bureau decided to keep the complaint under scrutiny as a complaint on stand-by. It further instructed the Secretariat to liaise with the European Union for information on the developments of the case presented before the European Commission, as well as with the UK authorities for updated information in view of the next Bureau meeting.

The report received from the European Commission by mid-February 2015 recalls that, in July 2014, the Commission informed the complainant of its intention to close the file for insufficient evidence to intervene. More particularly, the Commission underlined that the Habitats Directive does not make public consultation mandatory before a decision is taken by the authorities on whether an appropriate assessment is required or not. From the EC understanding, it would appear that the species might also be sensitive to air pollution, but based on the Natura 2000 data form for the SAC, the most immediate threat to its survival is an inappropriate or lack of management of the site. The Commission considered therefore that there was not sufficient evidence available for a decision resulting in damage to the SAC.

The complainant replied to this letter and objected to the conclusion. By a letter of 10 December 2014 the Commission maintained its position. It informed that the Commission does not have a decision making role in national planning decisions. The Commission subsequently closed the file. However, the complainant sent a new report on 23 February informing that Natural England confirmed with Cornwall Waste Forum St. Dennis Branch (CWFSDB), the Chair of which is the complainant, and with Cornwall Council that it is progressing with a project to increase the area of Breney Common, and Goss and Tregoss Moor SAC (registration No. 0030098). The larger area will be renamed as the Mid Cornwall Moors SAC, with the first step of the process starting in September 2015. According to the Habitats Directive this will require a review of all unfinished projects in the area and will include the Rostowrack Farm, St. Dennis incinerator.

Therefore the complainant would consider as sufficient to satisfy his complaint a favourable decision from Bern Convention to ensure the Habitats Directive is adhered to by Competent Authorities in relation to Natural England's SAC enlargement project; the Competent Authorities are Cornwall Council Planning Authority and the Environment Agency acting with guidance from Natural England.

In addition, the complainant submitted a "Technical note on appropriate assessment" by Cornwall CEC Planning Support. The document considers that the appropriate assessment process is framed by 'precautionary principle' and 'reasonable scientific evidence'. This means

that any development that cannot be proved not to have an adverse significant effect on the integrity of a Natura 2000 site, will need to be assessed in further stages if it is to progress.

The document also highlights that conducting an appropriate assessment will give the planning authority the detailed evidence base to inform and justify its decision on whether or not a significant adverse effect on site integrity is likely.

The Government informed by e-mail that it had no further information to add to that it had already provided.

- 2013/9: Presumed destruction of bird and bat habitats due to tourism developments in Ukrainian Natural Reserves (Ukraine)

(TSM)

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 be further noted that the Ukrainian authorities had submitted an application for the Karadag Nature Reserve to the award of the European Diploma for Protected Areas. During the on-the-spot appraisal in view of the possible award of 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 having initiated an investigation immediately after receiving the letter of 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.

Moreover, the authorities also recalled that visits of strict nature protected areas take place under very strict conditions and are allowed only for scientific and ecological purposes. Such visits take 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's conclusions, the Ministry issued some recommendations for the authorities of both reserves, in particular to enhance the already well-established protective measures by warden services, 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 for Protected Areas' monitoring mechanism, if the latter is granted 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 possible award of the European Diploma for Protected Areas to Karadag Nature Reserve was initially on the agenda of the Committee of Ministers on 17 June 2014, but the item had been postponed to a further session. By the meeting of the Bureau in September 2014, the item had not been scheduled.

The Bureau recalled that the report addressed by the Ukrainian authorities in April 2014 already informed about their prompt reaction, with a number of measures implemented to address the concerns expressed by the complainant. In light of the above, the Bureau decided to keep the complaint on stand-by and instructed the Secretariat to contact the complainant for updated information. In case no evidence of a breach would be brought to the attention of the Secretariat, the Bureau might decide to dismiss the complaint.

No updated report has been received by the preparation of this document.

- **2013/10: Impact of corn monoculture on the conservation status of protected species in Alsace, France**

(TSM)

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*) 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 was 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 km² of grassland disappeared between 1970 and 2000 (based on Datagreste source of the Ministry of Agriculture and Fisheries).

The report drew 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 was 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 mentioned 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 acknowledged that Alsace concentrates a large proportion of protected species, of which about 30 to 40% are listed as threatened and near-threatened species. This was, 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 have been listed as threatened species.

The French report further analysed the situation of the species listed in the complaint and developed 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 was, according to the authorities, absolutely exceptional and was undoubtedly a result of the enforcement of these measures.

The report pointed out that the decrease of the species object of the complaint was 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 listed 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 toad¹); 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 – scheduled to be approved by the end of 2014 - that would 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 informed 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 disproved the absence of nitrates analysis supposed by the complainant. It underlined 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 4th 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 was also shown by the fact that the Prefect of the Alsace Region signed on 2 June 2014 a Regional Order reinforcing the 5th programme of actions of the Nitrates Directive.

The Bureau appreciated at its meeting in September 2014 the information submitted by the French authorities and noted the efforts of the government in addressing the conservation of the viable species, as requested also under the CBD. Moreover, the Bureau noted that the complainant didn't submit scientific evidence suggesting that corn monoculture is the only driver to the declining of the species mentioned in the complaint.

However, the Bureau agreed that corn monoculture may have a negative impact on habitats and, while recalling that the Convention may not be the most adequate instrument for addressing issues occurring at the very local level, the Bureau decided to keep the complaint on stand-by at least until its next meeting.

The French authorities sent a letter on 19 February 2015 underlining that, as their previous report demonstrates, the corn monoculture may have a negative impact on the habitats of certain species but it could not be the only responsible for the decline of species mentioned in the complaint. The authorities had no additional information to add to what was already provided. They proposed, if the Bureau wishes, to take stock of the evolutions of corn acreage at the end of 2015 and to proceed to an update of the data on the preservation of the species on which the new data will have been collected in 2015.

The complainant sent in February 2015 a new report that refers to several articles or studies related to the corn monoculture and its influence on the soil, water quality and biodiversity. They are dated from 1989 to 2008. Almost always, Alsatian areas are mentioned.

A study from the report explains that the corn dominates the Alsatian landscape because it is the most profitable and requires the least working time. Waiting for a possible change of the economic and political conditions which would produce a more diversified crop rotation system, the study lists some proposals to be explored in order to make the corn monoculture more auspicious to the fauna: divide up the corn plots with strips of cultures favourable to the fauna;

¹ <http://www.alsace.developpement-durable.gouv.fr/plans-nationaux-d-actions-r94.html>

create micro-habitats favourable to the small rural fauna, with "islands" scattered in the landscape (isolated trees, grass strips); use of strip-till; rotate with other cultures (legumes); identify the nests of lapwings and other rare species; experiment varieties of dwarf corns; reduce pesticides in general and do not use the most harmful substances.

- [2006/1: France: Protection of the European Green Toad (*Bufo viridis*) in Alsace

1.4 On-the-spot appraisal

- File Open – 2012/9: Turkey: Presumed degradation of nesting beaches in Fethiye and Patara SPAs

(IdA)

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 that Recommendation on next Standing Committee meeting agenda.

At the 32nd 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 on the neutralisation and removal of the toxic waste as well as sea turtle conservation efforts in Kazanlı. MEDASSET further informed that a new complaint had 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 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 15th March asked for an extension of the deadline for submitting the information requested.

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 highlighted 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 put forward in the complaint referring to Patara SPA

focussed on large scale construction projects taking place within the protected area and failure of the 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 33rd Standing Committee meeting since there had 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 the conservation and management issues related to Fethiye and Patara SPA as interlinked and decided to address in conjunction.

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

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 fixes the conditions for land use and density of developments in the respective areas.

More specifically regarding Patara, the report informed about the legal status of the area, stressing that the zone where the villas are constructed is a 3rd Degree Archaeological Site (DAS). Moreover, the construction plans related to Patara 1st DAS had 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 at 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 that year, as well as the steps towards the removal of illegal or unauthorised constructions in both Fethiye and Patara SPAs. The deadline for the complementary information was set to 6th September 2013.

On 9th 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 33rd Standing Committee meeting 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 3rd 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 pavilions, 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 to 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 recognised the lack of a local management unit, as well as of physical points of entry/exits at Fethiye-Göcek SEPA. 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 on 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 but requested 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 future. It also requested 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 on time for the second Bureau meeting. In the meantime, the NGO submitted an updated report, mainly to question some of the assertions of the authorities.

A first contradiction concerned the location of the summer house developments, which the NGO considered to be more near the core nesting area than what affirmed by the authorities. 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 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.

The Bureau regretted the lack of updated information from Turkey and decided to keep the case-file open and to ask to the Standing Committee to ensure its follow-up, including by considering the possibility of an on-the-spot appraisal depending on the information submitted and provided there is agreement of the Party.

At last Standing Committee meeting the Delegate of Turkey made an oral statement reiterating that, in Patara, the construction of the villas is taking place outside the nesting beaches, in compliance with national legislation. As for Fethiye, he recognized some problems related to the management and control of the area, due to high tourism pressure.

He further provided information on the measures taken to improve awareness, as well as the results of the last nest conservation activities. He concluded by reaffirming the commitment of his authorities for solving the existing problems by making nature conservation compatible with human exploitation of the areas.

The Standing Committee emphasised again on the need for a positive response to the reporting requests of the Bureau and the Secretariat. The Committee also considered the report presented by the complainant, confirming that the management of the beaches is still inadequate, and informing about new construction and about further construction projects already planned.

At the proposal of the Chair, and following the agreement of the concerned Party, the Standing Committee, with the agreement of the Party, decided to keep the case-file open and to conduct an on-the-spot appraisal to the relevant sites in view of identifying a set of recommended actions to be submitted for consideration of the Committee at its next meeting.

Dr Paolo Casale, research fellow at the University of Rome “La Sapienza”, scientific coordinator of the sea turtle project carried out by WWF Italy and Member of the IUCN SSC Marine Turtle Specialist Group accepted to carry out the visit. The latter should take place in July. The Secretariat is in contact with the authorities and the complainants for setting the dates and finalising a draft programme.

- Possible file – 2013/1: Hydro power development within the territory of the Mavrovo National Park (“the former Yugoslav Republic of Macedonia”)

(10)

The complaint was submitted in March 2013 by the NGO “Eco-svest - 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 the 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* *balkanicus*, might be critically endangered if the projects are implemented.

The Secretariat addressed a reporting request to the government, stressing that according to 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 in 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 operating 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 Ministry of Environment and Physical Planning (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 did not submit a report for the September 2014 meeting of the Bureau, but informed via e-mail that the EIA report for HPP Lukovo Pole was expected for the end of December 2014. The authorities claimed that they didn’t receive the reporting request sent by the Secretariat. The complainant, who was copied in the letters addressed by the Secretariat to the authorities, had - on the contrary - submitted detailed information regarding both hydropower plants’ projects. Regarding the Boshkov Most HPP project, the complainant informed 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’s reports on Mavrovo HPP projects. In addition, the complainant claimed 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 other IUCN committees, as well as by Birdlife and national/international experts.

At its meeting in September 2014, the Bureau regretted the lack of information from the authorities of “the former Yugoslav Republic of Macedonia” and decided to forward the complaint as a possible file to the Standing Committee, inviting the national authorities to attend and to report in detail on the state of implementation of the projects, as well as on the pending lawsuits.

In December 2014, the Standing Committee took note of the latest updates presented by the delegate of “the former Yugoslav Republic of Macedonia” and the detailed presentation of the complainant. The Committee noted the importance of the area as key biodiversity hotspot, its status of National Park, and the concerns expressed by a number of international organisations and delegates over the negative impact of hydropower developments on the biodiversity of the area. The Committee further noted the pending adoption of a Management Plan for the Park, the pending lawsuit on the Environmental Impact Assessment for one of the hydro power plant's projects as well as the expected finalisation of the assessment for the second one.

The Committee decided to open a case file and instructed the Secretariat to seek the agreement of the Party for the organisation of an on-the-spot appraisal to the area in 2015, with the objective of collecting more information and data for the preparation of a draft recommendation to be submitted to the next Standing Committee meeting.

On 4 March 2015, the Minister of Environment and Physical Planning sent an official letter to the Secretariat confirming his agreement on the organisation of the on-the-spot appraisal. The period for the visit, end of June / beginning of July, was equally agreed. Both the European Union and IUCN informed that they are interested in taking part as Observers. The European Bank for Reconstruction and Development (EBRD), financing the project, will also be invited to take part in the visit, as they have been planning to implement a new bio-monitoring in the area since May 2014.

1.5 Mediation

- Possible file – 2013/5: Presumed impact of a construction of Overhead Power Line (OHL) in an environmentally sensitive area in the Lithuanian-Polish borderland

(IdA)

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. However the Standing Committee rejected this request.

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 considered that the EIA procedure was not transparent and that the EIA report (approved in January 2011), is of insufficient quality. It further highlighted 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 had a short deadline due to the 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 listed 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 was to be 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 had 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 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 on 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 would be built.

In the reply sent on 7 March 2013 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 reminded 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. The building contract included special clauses for a mandatory ecological supervision of the 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 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 concerns 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 confirmed 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 lasted two months, from 20th May to 20th July 2014, and was carried out by specialists of the Lithuanian Fund for Nature.

The survey concluded that the European pond turtle (*Emys orbicularis*) does not live and breed in the territories where the OHL was 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 sent by the authorities briefly described 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 survey, attached to the authorities' report, no European pond turtle was found there.

The authorities also informed 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 16th July, and by letter on 8th August, through which 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 stated that the Rudamina community didn't accept any of the proposals of cooperation.

The government also denounced that the complainant attempted to request the help of local people to collect evidence about the presence of the turtle, by encouraging people to take the turtles from the environment, something which is forbidden by national law when it comes to protected species. Finally, the report concluded 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 first denounced some 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 regretted the lack of genuine cooperation from the authorities with regards to the participation of the Rudamina community in the survey. In fact, the LFN had been also entrusted by the OHL construction company 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, as 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 considered the area object of the survey insufficient for giving a clear picture of the situation, particularly because the construction works had already started (April 2014) at the time of the survey. In addition, the complainant recalled that while the migration range of the pond turtle

is about 2 km, the area affected by the OHL is about 50 km². Concluding on the survey, the complainant noted 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 informed 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 recalled 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 informed that the cutting of the forest started already in April, i.e. well before the survey (and independently from it). He affirmed having found *Bombina bombina* in the area affected by the works, and provided pictures of egg shells 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 considered that the complaint is, on a preliminary basis, admissible for investigation.

Finally, in his report the complainant stressed that the construction works in the Polish side received important funds 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 highlighted that the European Commission is quoted among the co-founders also of the Lithuanian part of the project.

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

The Secretariat further received the reply of the European Union to a letter sent in April 2014, addressing an official reporting request on the Lithuanian part of the complaint.

The European Commission 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 was ongoing at the time of the reporting, and should finish at the end of 2014. The report stated 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 would verify whether the Action implementing the PCI is in compliance with EU environmental legislation.

Finally, the Secretariat of the Bern Convention received from the complainant some other information which, however, could not be verified before the Bureau meeting:

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.

The Bureau expressed concern for the celerity with which the construction works were progressing, regardless from the fact that the complaint was still under scrutiny. Considering that a possible impact of the construction works on species like the European pond turtle (*Emys orbicularis*), the common crane (*Grus grus*), the great white egret (*Egretta alba*), the European fire-bellied toad (*Bombina bombina*) and a number of bird species is not excluded, the Bureau decided to forward the complaint to the Standing Committee for its follow-up. The Standing Committee would also be requested to decide on the opportunity of associating Poland to the

current complaint. Finally, the Bureau requested the Secretariat to contact the European Union for information on the financing of the projects and the necessary ecological assessments.

At the last Standing Committee meeting the Delegates assessed the complaint after detailed presentations by the representatives of Lithuanian and Polish authorities, as well as by the complainant.

More particularly, the Committee thanked Poland for presenting a report without being asked to, and acknowledged the satisfaction of the representative of EUROBATS for the consideration given by the authorities to the specific needs of bats when planning the development project. It therefore decided not to associate Poland to the complaint.

Concerning the information presented by the authorities of Lithuania the Committee acknowledged the strategic importance of the project for the security of the country, but recalled the importance of robust, comprehensive, and scientifically sound EIAs prior to any development of infrastructures, so to ensure that these are built in sustainable conservation perspective.

The Committee also invited Parties to always look at alternative solutions which, even when more expensive, may be better able to preserve Europe's natural heritage. In the present case, for instance, the Committee would have appreciated receiving some consideration about the possibility of underground transmissions as an alternative to the OHL.

In conclusion, and considering the current state of development of the project whose construction had unfortunately already started, the Committee decided to keep the complaint as a possible file and, with the agreement of the authorities, to initiate a mediation procedure. The latter would be carried out in accordance with the Rules applicable to mediation adopted by the Standing Committee at its 32nd meeting. The purpose of mediation is to facilitate dialogue between the authorities and a complainant or interest groups concerning matters under the scope of the Convention, in view of fostering dialogue, facilitating discussions, identifying and clarifying conservation issues, and propose possible solutions that would satisfy the different parties. The mediator would be identified by the Secretariat in collaboration with the Bureau, and would be called to submit a report to the Standing Committee at its next meeting.

In January 2015 the Secretariat carried out some consultations also with colleagues from other biodiversity-related Conventions and recently identified four possible candidates for carrying out the mediation.

Concerning the ground of the complaint, the complainant continued submitting spontaneous updates including on the follow-up to the case submitted under the Aarhus Convention which should be examined last week of March 2015. Moreover, according to the complainant, the Regional nature protection department, in reply to a report submitted by the complainant, admitted a violation of the law by the OHL construction company contracted by LITGRID (the Lithuanian TSO in charge of the project) who illegally removed "713 m³ of the ground material". The complainant also forwarded the unofficial translation of a document transmitted by LitPol Link to the Lithuanian Parliament explaining why the alternative route proposed by the complainant and the local municipality could not be retained. From the unofficial translation, it seems that the alternative route - if chosen - would delay the project, thus preventing the Republic of Poland from benefitting of EU funding. Moreover, by changing the border crossing point, making the OHL route shorter and grouping it with the railways, the Polish municipalities "would lose large incomes in the municipal budgets received as taxes paid upon implementation of the project".

Finally, the complainant also informed that an EIA procedure for a new gas pipeline to be built along the constructed OHL is about to be finalised. According to the complainant, the gas pipeline project planning in the area concerned started already in 2012, although the valid Master plans originally foresaw the pipeline routes in a different location. In the views of the complainant, these further developments confirm the building up of a powerful infrastructural corridor across an important ecological area and are in contradiction with what previously stated by Lithuanian authorities in its communications to the Bureau.

The documents and reports received will be transmitted to the Mediator as soon as he/she is appointed.

Finally, the Secretariat would like to inform that LitPol Link applied with the OHL project to the “Good Practice of the Year Award”, an award launched by the Renewable Grid Initiative to support and promote attempts to make grid planning more transparent and participatory and to decrease possible negative impacts on the environment. The Secretary of the Bern Convention, appointed member of the Jury, had access to LitPol Link’s application and regretted to note that the Convention was expressly mentioned among the “stakeholders” supporting the project. The issue has been brought to the attention of the organisers of the Award, and it was made clear that the Convention is monitoring the situation in order to avoid a possible breach of the Treaty. The Bureau might wish to discuss the opportunity of addressing the competent authorities in order to avoid this kind of (repeated) misleading communications in future, also for the sake of the mediation procedure.

1.6 Other complaints

- 2014/1: Presumed risk of national extinction of badgers in Ireland

- (*IdA*)

In January 2014 the Secretariat received two complaints from the Irish Wildlife Trust denouncing a possible breach of the Bern Convention with regards to i) the increased culling of badgers in Ireland, with possible detrimental impact on the population size; ii) the failure of Irish authorities to submit biennial reports due under Article 9 of the Convention in case of exceptions made to the provisions of Articles 4 to 8 of the Convention. The files so submitted were registered as a single complaint.

The Secretariat recalls that last year the Bureau of the Standing Committee to the Bern Convention devoted specific attention to the issue of complaints submitted for presumed breaches of the Convention related to species listed in Annex III. In fact, most of these complaints concern the culling of badgers and many are not well-founded on the ground.

At its last meeting the Standing Committee agreed to disseminate a guidance document on the “Admissibility of complaints related to species listed in Appendix III: the Badger as a Model”. The latter has been prepared with the aim of clarifying - without prejudice to the provisions of the Convention - both the degree of protection offered by the Treaty to Appendix III species, and the reporting obligations of Parties according to Article 9.

In the complaints in object the Wildlife Trust denounced on the one hand a risk of local disappearance of the species due to the fact that the ceiling of 30% cumulative percentage of agricultural land under capture for badgers has been exceeded and that a review of the status of

the national badger population is lacking; on the other hand, the complainant considers that Ireland failed to comply with the reporting obligations set under Article 9 of the Convention.

On the latter, the Secretariat recalls that, as a general remark, if the species listed in Appendix III, it is not threatened in the territory of the Contracting Party, the population is not jeopardized by the exploitation's policy, the exploitation is monitored by the concerned authorities, and the Party has not make use of one of the prohibited means listed in Appendix IV, the Party can authorise a certain degree of exploitation without being obliged to report to the Standing Committee through the biennial reports.

However, as a follow-up to a previous complaint submitted in 2011 on the same issue, Irish authorities recognized a certain decline of the badger population in Ireland, but informed that the latter was under control and that it would not continue further. They also informed about some research programmes concerning oral and intramuscular vaccination of badgers as tools for potentially avoiding the culls (see document T-PVS/Files (2012) 3).

In the light of the above, and in order to enable the Bureau to take a decision on the follow-up to be given to the complaint, where appropriate, the Secretariat addressed a reporting request to Irish authorities on any relevant change in the population size on the national territory since 2012, as well as on the measures undertaken to monitor it; on the conservation status of the species; and on the results of the research on the vaccination as an alternative to the culls.

Unfortunately, the report requested by 6th March didn't reach the Secretariat.

- **2014/3: Presumed deliberate killing of birds in Serbia**

- (IdA)

This complaint was submitted in April 2014 by the Bird Protection and Study Society of Serbia, to denounce a presumed breach of the Convention by Serbia for failing to take adequate measures against illegal bird poisoning.

The Secretariat informed Serbian authorities already in May 2014 but these requested a delay in order to identify the Special Focal Point for illegal killing of birds to be appointed in the framework of the Tunis Action Plan 2020.

In the meantime, the Secretariat assessed the information submitted by the complainant, denouncing the poisoning of 122 birds listed in Appendix II of the Convention, including 26 White-tailed Eagles, over the period 2007-2014 (until March).

The complainant expressed concern for the negative impact of direct or indirect poisoning of raptors as this is already lowering breeding/non-breeding populations, thus decreasing the number of adults directly involved in the breeding process. As in most of the deaths the poison found out by the laboratory is carbofuran, the complainant also argued on the negative impact in terms of secondary poisoning of carcass-eating animals consuming dead poisoned ones.

It is interesting to note that almost all dead individuals of White-tailed Eagle were found on intensively managed agricultural land, close to floodplains of the rivers Danube, Sava, Tamiš and Begej or in the floodplains themselves. All individuals of Common Buzzard, Rough-legged Buzzard and Marsh Harrier were found on agricultural land.

The complainant ascribes the responsibility for the poisoning to the authorities, as they failed to adopt and enforce sufficiently strict administrative and legal measures to discourage poisoning of wild birds.

Following the nomination, in 2015, of a Special Focal Point for Serbia – the Secretariat requested more detailed information to both the authorities and the complainant. Namely the complainant was asked to better argue on the presumed inaction of the authorities and to provide information on the sources of the data presented on the reported deaths. Unfortunately the complainant didn't reply by the preparation of the present document.

Serbian authorities were requested to provide their views on the complaint, as well as to inform on the specific administrative and legal measures foreseen to prevent the killing of birds, including information on the prevention and prosecution, number of offences, and the level and type of penalties level of fines applied, the controls involved.

In their report, Serbian authorities informed that a dedicated meeting of all relevant authorities, at both Ministerial and local level, was organised in February in order to assess the situation, evaluate its gravity, and collect data to be transmitted to the Bureau.

The report confirms that in 2014 fourteen specimens of strictly protected birds were found dead, including White-tailed Sea eagles. The toxicological analyses carried out confirmed poisoning from food (seeds and carcasses of intentionally poisoned birds used as baits) treated with carbofuran as being the cause of the deaths. Most of the dead birds were found on agricultural lands. Following an inspection, it was possible to identify at least the renter of one of the parcels where the birds were found dead, and the person has been referred to the Office of the Public Prosecutor (scheduled for 17th April 2015). Other criminal charges have been lodged against non-identified offenders for the illegal killing of both nationally and internationally protected species.

The applicable legislation in these matters is the criminal one. The bodies involved are the Ministry of Agriculture and Environmental Protection, in cooperation with Ministry of Interior Affairs (MIP), the Environmental Inspection, the Institute for Nature Protection of Vojvodina Province, the local Police, and the NGOs.

These bodies recently agreed to establish cooperation with the Public Prosecutor in view of the submission of cases to the national Courts. The Police will be in charge of finding out evidence against this kind of offences. The authorities have the intention of putting in place proactive prevention measures through awareness on the prohibition of use and trade of carbofuran, as well as to ensure that the residual stocks of carbofuran from individual users are destroyed. However, the report does not provide more information on concrete plans in this sense, apart from the information on a public statement issued by the Ministry of Agriculture and Environment Protection concerning carbofuran remaining stocks.

In conclusions, the authorities reiterated their commitment to improve the monitoring system on wild-bird crimes, and ensure that they shall take all necessary measures to prevent further illegal killing of protected bird species, including through the legal prosecution of the offenders.

- **2014/6: Wind energy: Possible threats to an endangered natural habitat in Izmir (Turkey)**

- (IdA)

This complaint was submitted in July 2014 by a citizen of Çeşme, İzmir, to denounce the exponentially increasing number of wind energy installations (WEIs) which are rapidly developing into the Çeşme Peninsula. The latter is an endangered natural habitat, nurturing a biota of expansive biodiversity. The complainant stressed that the Turkish Energy market is the fastest growing in the world, with important economic benefits. However, a non-sustainable use

of renewable energy sources can make these environmentally, socially and economically unviable. The complainant denounces the negative impact of uncontrolled wind-energy developments on a number of protected habitats and species, in violation of Articles 4 and 6 of the Bern Convention.

Following a request for more specific information the complainant addressed some of the questions raised by the Secretariat.

Regarding the windfarm project in Izmir, counting with already 385 wind turbines, the complainant highlighted that the latter has not been subject to an EIA, which is compulsory for this kind of projects according to the national legislation. In fact, to avoid the EIA requirements, the project developers limited the scale of the initial project to the recommended capacity, with the intention of increasing it in future. This is demonstrated by the requests, already put forward by some companies, for additional capacity increase. For this reason, other windfarm development projects have already been brought before national Courts and there have been some rulings against these. For instance, very recently, the citizens of Karaburun won a case against the installation of additional 47 turbines in a nature reserve candidate for a biosphere status.

It is however important to note that Turkey is not subject to the obligations of the Aarhus Convention.

Concerning Çeşme town, the matter is pending before a Court, and concerns the confiscation of private lands; the intermediate rulings requested to suspend the further continuation of constructions but the private company is continuing implementing the construction project. The complainant is preparing a complaint for cumulative impacts of the windfarm project to be submitted to a National Court.

The Turkish authorities informed the Secretariat that they are collecting the necessary information for submission to the governing institutions of the Convention.

- **2014/8: Presumed large-scale exploitation and marketing of protected marine shelled molluscs in Greece**

-(EFG/IdA)

This complaint denounces the large-scale illegal exploitation and marketing of protected marine shelled molluscs in Greece, including species protected under the Bern convention, as well as under other regional or international conventions (including EU legislation).

A survey conducted between June 2009 and June 2011 on 219 seafood restaurants in 92 localities revealed that forty-two percent of the surveyed restaurants were serving at least one of the protected and hence illegally exploited species. Among these, the date mussel *Lithophaga lithophaga*, the common piddock *Pholas dactylus*, the giant tun *Tonna galea* are listed under Appendix II of the Convention.

Since the publication of the study the situation remained unchanged. The complainant stressed that the populations of all the Annex II species mentioned in the complaint are declining in the Mediterranean and in particular in Greek coastal areas. Protection through international agreements and European or national legislation was decided on the basis of a need to reduce mortality and to allow these populations to recover. Continuing intense exploitation for illegal trading in seafood restaurants will render the achievement of this goal unfeasible.

The Secretariat addressed a detailed reporting request to Greek authorities but unfortunately it didn't receive a reply by the preparation of this report.

- **2014/9 : Possible impact of haying performed in the steppe and forest-steppe reserves of Ukraine**

-(10)

In October 2014 the Secretariat received a complaint by the Kyiv Ecological and Cultural Center, alleging a presumed breach by Ukraine of Article 6 of the Convention, caused by the destruction of important habitats of bird and reptile species listed in the Convention's Appendices, due to haying practices. The complainant considers that the high number of haying permits annually issued by the Ministry of Ecology and Natural Resources of Ukraine is resulting in habitat destruction and great disturbance to a high number of species from Appendix II of the Convention. In addition, the complainant explains that most of the haying is conducted during the reproduction period of the species (May and June), using not adapted heavy machines.

The areas presumably affected are mainly steppe areas, - Nature Reserves and Natural Parks – such as the Askania-Nova, Luhanskiy, Kanivskiy, Dniprovsko-Orelskiy, Medobory, Mykhailivska Tsilyna, Yelanetskiy Steppe, Chornomorskiy, etc.

Most of these areas have been nominated as candidate Emerald sites for Ukraine and are awaiting a scientific evaluation prior to their full adoption as Emerald sites. Therefore, Recommendation No. 157 (2011) of the Standing Committee applies to the areas, in particular in its provisions recommending Parties to preserve their ecological values ahead of a full adoption as Emerald sites and the planning and implementation of appropriate management measures.

In January 2015, the Secretariat addressed a letter to the national authorities, requesting their position on the complaint, and more information on the regulations in place on the issuing of haying permits as well as any other measures adopted to ensure that the haying practices do not have a negative impact on the species listed under the Convention and their habitats in the areas concerned.

On 6 March 2015, the national authorities informed being in constant contact with the complainant regarding the dangers of haying for the conservation of species of flora and fauna in areas of strict protection. The Ministry stressed that the complainant fails to provide any specific proof of deaths of plants or animals in the protected areas. Regarding the regulation of haymaking, the authorities informed that this is carried out on the basis of territorial planning and included in the management plans of the relevant protected areas. They further argued that the haying aims at preventing fires, - which can cause significant loss of steppe biodiversity -, at facilitating foraging by wild ungulates and at conserving plant communities that have historically emerged in the areas.

Eventually, the authorities concluded by informing that the Ministry of Ecology and Natural Resources of Ukraine, in consultation with the complainant, prepared and sent a circulation letter to the authorities of the relevant protected areas, recommending to carry out haying only with scientifically-based approaches and after detailed surveys of steppe areas, after flowering of native plant species and breeding of animal species that are included into the Red Data Book of Ukraine and the annexes of the Bern Convention, and not to use heavy machinery.

On 11 March 2015 the Secretariat approached the complainant, requesting their position on the information provided by the authorities. No answer was received by the preparation of the present document.