

Strasbourg, 5 March 2015
[de08e_15.doc]

T-PVS/DE (2015) 8

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

GROUP OF SPECIALISTS ON THE EUROPEAN DIPLOMA FOR PROTECTED AREAS

13 March 2015
Strasbourg, Palais de l'Europe, Room 11

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**REPORT ON AN EXCEPTIONAL ON-THE-SPOT APPRAISAL VISIT TO
THE BAYERISCHER WALD NATIONAL PARK (GERMANY)
24 – 25 FEBRUARY 2015**

*Document prepared
by Olivier Biber (Switzerland)*

1. INTRODUCTION

1.1. Reason for the on-the-spot appraisal

In January 2015, the Secretariat of the Biodiversity Unit of the Directorate of democratic governance (Directorate General II) of the Council of Europe was alerted on the possible severe threats which may affect the outstanding biodiversity of the Bayerischer Wald National Park, holder of the European Diploma since 1986, as a result of the planned imminent construction of a large wind farm in the immediate vicinity of the Park. Taking into account the urgency of the situation, an exceptional on-the-spot appraisal visit was decided, applying Article 8 of the Revised Regulations for the European Diploma for Protected Areas, and received the agreement of the national authorities in Germany.

1.2. Bayerischer Wald National Park (NP)

Bayerischer Wald National Park has been awarded the European Diploma for Protected Areas in 1986.

2. THE WIND FARM PROJECT WAGENSONNRIEGEL

2.1. Background and history of the wind farm project

The wind farm project under consideration – Wagensonnriegel, an area of 1700 ha on a forested hill range culminating at 950 masl -- has originated in the German Concept for the promotion of renewable energies in the frame of the decided phasing out of the use of nuclear energy (Energiewende, Energiekonzept Ausstieg aus der Atomenergie). The Energy Concept for Bavaria was adopted on 24.05.2011. It has led to an act on wind energy (Windenergieerlass) in December 2011, which was followed by an updating of the regional plan chapter B III Wind Energy and parallel to this procedure a modification of the Ordinance on the Landscape Protection Area (Landschaftsschutzgebiet) “Bayerischer Wald” in May 2014. This has allowed the assessment of potential areas where wind energy could be promoted. In the course of a regional planning in the eastern part of Lower Bavaria by the Planning organisation of the Region Danube-Forest, three types of areas were identified and mapped: areas foreseen for the development of wind energy (and no other use) called Priority Areas (Vorranggebiete); optional areas for possible but not solely development of wind energy use (Optionsflächen Vorbehaltsgebiete); and areas where the use of wind energy was excluded (Ausschlussgebiete). During this process, there was a public consultation with two consequent hearings in September/October 2012 and in July/August 2013. The NP administration sent in their inputs (the two inputs were made available to the independent expert later after the visit). In November 2013, a decision was taken to put the regional planning into vigour. It was followed by a decision by the “District” (Beschluss Bezirk) on 13.05.2014, which allowed the Regional Plan (Regionalplan) to be put into vigour on 26.07.2014. As a result of this planning and decision process, the priority area of Wagensonnriegel was selected and mapped as Priority Area for wind energy use (Vorranggebiet 43 Frauenau).

At this point the association Friends of the National Park (Verein der Nationalpark-Freunde e. V.) has intervened, asking that the international award of the European Diploma should not be endangered by the deterioration of the landscape by a wind farm, that the Bayerischer Wald National Park, as the oldest and largest National Park in Germany, should be a positive example for other protected areas and should not threaten protected species and their habitats.

The competent authority of the Government of Germany had agreed an on-the-spot appraisal visit to be organised and had requested the authority of the National Park Bayerischer Wald to facilitate the visit. The Bavarian Ministry of Environment then commissioned the Government of Lower Bavaria to organise the visit. The list of stakeholders invited to participate in the visit is to be found in annex 1.

2.2. The visit

In the morning of 24 February we were taken on a field trip to two places along the edge of the National Park from where the chosen site for the construction of the wind farm should have been visible: near the villages of Althütte and Oberfrauenau. About 15 people from the NP authorities, the government of Lower Bavaria, the Regional Planning authorities and the civil society took part to the field trip. Representatives from the four groups provided information on the spot about the situation

and the potential aspect of the wind farm in case it would be developed, including photographic constructions (from computer simulation) with possible aspects of wind mills in the landscape. In fact, the visibility was very poor due to mist and snowfall, and a visit to the park itself was not possible because of high snow cover. In the early afternoon, we managed to have a little better view during another very quick visit to Althütte.

During the lunch break, we had another opportunity of informal talks with the participants. In the afternoon, around 40 people gathered from 13 until 17.30 in a meeting room of the glass museum in the village of Frauenau (Glasmuseum Frauenau) (list of participating groups and persons in annex 2). Amongst the groups not represented at the meeting, we noted particularly the District authorities, municipalities and the potential main investors.

First, representatives of the Planning Organisation Danube Forest and of the government of Lower Bavaria gave us a detailed picture of the whole process that has led to the choice of the area identified as a possible site for the development of a wind farm. After a controversial but very disciplined and courteous discussion, several representatives from the civil society expressed their point of view through prepared presentations and spontaneous interventions. The independent expert moderated the meeting. The Secretariat of the Bern Convention intervened whenever necessary.

2.3. Present situation and possible development of the wind farm project

The designed area where a wind farm is planned lies in the immediate vicinity of the National Park Bayerischer Wald, the closest distance to the border of the park being app. 3 km. It lies in the Landscape Protection Area (Landschaftsschutzgebiet) that is also part of a Nature Park (Naturpark Bayerischer Wald). Investors may now submit concrete projects for the construction of wind farms or single wind turbines to the local authorities. Each of such a project would have to undergo a mandatory approval process (Genehmigungsverfahren) in which species and habitat protection issues would have to be examined along a list of established criteria. During this process, the development of the wind farm project may be rejected totally or partially, and special measures (like minimal distances to particular habitat or landscape features or restrictions in the operation of single turbines, e.g. stop during night for bat protection) may be imposed. With regards to the legal conditions underlying the approval process, some questions and concerns could not be explained and settled in a satisfactory way. In particular, it is unclear what would happen in the case of a stepwise development of a larger wind farm project starting with applications for only single turbines or a small wind park (less than 20 turbines), bearing in mind that turbines of less than 50 m height and wind parks with less than 20 turbines require a lower level of conditions to receive the necessary permits than larger ones.

2.4. Findings and Analysis

2.4.1. Opinions, views and positions

During the visit and the meeting with the representatives of the government of Lower Bavaria, the Regional Planning authorities, the NP authorities and the civil society, we got aware of a strong opposition against the development of a wind farm in the vicinity of the national park from NGOs and the civil society, but also of a considerable civil society movement in favour of it, and some expressed their dilemma in wishing the development of wind energy and at the same time being worried about the possible damage to nature that could be the consequence of its development. The interpretation of the legal status of the present situation does not seem to be consistent: whilst it was assured from the government's and regional planning's side that the present situation leaves any further development open as to whether a wind farm will be constructed or not, the civil society – whether against or in favour of the project -- seem to understand that the development of the project has in fact been decided.

2.4.2. Findings regarding biodiversity

Impacts of wind turbines are expected to be strongest on resident birds, including a list of endangered species that are breeding or present in the area and particularly sensitive to disturbance and habitat loss through the implantation and construction of wind turbines and/or direct collision with the rotors in operation (annexes 4 and 5) as well as on resident bats, including endangered species (annex 3) and on the lynx. According to the act on wind energy, migratory birds are not considered

threatened by the wind turbines as no significant concentrations of migratory movements have been recorded in the area.

2.4.3. Findings regarding the landscape

It can only be anticipated from computer simulations how a park of wind turbines of up to 200 m high and in a number of up to more than 100, which is a probable scenario, would feature into the present forested landscape. Even in small numbers they would modify the landscape in a significant way.

2.5. Recommendations

R1: In the frame of the further development of the wind farm project, data on breeding birds potentially threatened by the impact of windmills on and around the area where the implantation of windmills has been identified as feasible (Vorranggebiet 43) should be collected during at least one year. Existing data should be included.

R2: Similarly, existing data on bats in the same area should be analysed and presented and new complementary data should be collected during at least one year.

R3: The existing data, including telemetry information, and other data on lynx showing breeding and resting sites of the animals in and around the national park should be analysed and presented in the frame of the further development of the wind farm project. As cliff habitats are of outstanding importance for the rearing of the young, special attention should be given to the use of these habitats in the surroundings of the NP.

R4: Given the importance of the landscape aspect, a landscape character assessment should be provided for the vicinity of the park, in particular the area where the wind farm is planned.

R5: Guidance should be sought in the Bern Convention's paper "Wind Farms and Birds: an updated analysis of the effects of wind farms on birds, and best practice guidance on integrated planning and impact assessment" (T-PVS/Inf (2013) 15).

3. CONCLUSIONS

Concerns about threats to single species, notably birds, bats and the lynx, are to be considered serious as most of these species and their populations cannot be regarded as restricted to the NP area but would suffer from direct kills, loss of habitats and/or disturbance in the vicinity of the NP thus influencing the status of some species inside the park. However, for many of the endangered species solid data have still to be gathered, especially in the surrounding area of the NP and in particular in the area where the wind farm is planned.

Landscape issues can be considered as less stringent, although the civil society is particularly worried about exactly these issues. Indeed, a direct damaging of the NP itself through the mere fact that there is a wind farm nearby cannot be argued easily, and the argument is not readily legally applicable any more, now that the Landscape Protection status has been changed and a zoning of priority areas for wind energy has been adopted. However, an indirect impact could be important, insofar as the aspect of the wind farm may deter visitors to the NP and thus weakening the socio-economic support of the public to the NP, which again could have a negative impact on the NP itself. The wind farm would be visible from the two mountains within the NP (Grosser Falkenstein, in a distance of ca. 10 - 15 km, and Großer Rachel, in a distance of ca. 5 - 12 km) as well as from other viewpoints inside the NP.

No other project of that kind in the vicinity of the NP has been mentioned.

Olivier Biber, 28 February 2015, 06.36 hours, revised on 4 March 2015 taking into account all feedbacks from the consultation of the National Park authorities and the Government of Lower Bavaria; version nette du 5 mars 2015 09 h40

Annex 1: List of stakeholders invited to participate in the visit and the meetings

Politicians

- Head of the district authority (Regen and Freyung-Grafenau)
- Mayors of the communities (Frauenau, Zwiesel, Rinchnach, Kirchdorf i. Wald, Eppenschlag and Spiegelau)
- Borough of Lower Bavaria
- Planning organization of the Region Danube-Forest

Authorities

- District authorities of Regen and Freyung-Grafenau
- Bavarian Ministry of Environment,
- National Park Authority Bayerischer Wald,
- Government of Lower Bavaria

Prospective Investor:

- Stadtwerke (Municipal works) Munich
- Bürgerenergie Freyung-Grafenau eG

Representatives (NGOs and the Public):

- Nature Park Bayerischer Wald
- Verein der Nationalpark-Freunde (Friends of the National Park)
- Bund Naturschutz (Organization for protecting nature)
- Landesbund für Vogelschutz (Organization for protecting birds)
- Wildlandstiftung (Organization for protecting birds and mammals)
- Tourist Association East Bavaria
- Ferienregion Nationalpark Bayerischer Wald GmbH (tourism)
- action group(s)
- media

Annex 2 : list of participants (to be completed with a presence list in the room).

angemeldete Teilnehmer Termin Europarat 24.02.2015				
Name	Organisation	vormittags		
Aigner	Bürger Spiegelau	x	aigner@arcor.de	
Beringer, Hans	Bürgerenergie eG FRG	x	?	
Bernreiter, Franz	BI Zwiesel-Frauenau	x	franz.bernreiter@t-online.de	
Bibelriether, Hans	Nationalparkfreunde	?		
Demmelbauer	Bürgerbewegung Schutz Bayerischer wald	?		
Döringer, Konrad	BI Spiegelau	x	konrad.doeringer@t-online.de	
Erhard, Josef	BI Spiegelau	?		
Fischer-Hüftle	Regensburg	?		
Fuchs, Margot	BI Zwiesel-Frauenau	0		
Fuchs-Begerl-Manuela	BI Zwiesel-Frauenau	x	manuela.fuchs-begerl@gmx.net	
Fuggenthaler Alois	BI Zwiesel-Frauenau	x	afuggenthaler@aol.com	
Haberzettl	BN PA	?		
Hannes, Amalie	Bürgerin	0		
Hannes, Stefan	BI Zwiesel-Frauenau	?		
Kappl, Franz	BI Zwiesel-Frauenau	x	franz.kappl@online.de	
Macht, Sabine	BI Spiegelau	0		
Madl-Deinhart	Bürgerenergie eG FRG	x	hmdeinhart@t-online.de	
Mayer	BN FRG	?		
Pongratz, Eva	Nationalparkfreunde	?		
Schlenz	Bayerwaldbote	?		
Schlüter	BN REG	?		
Schmid	BN	?		
Schwaiger, Markus	LBV	0		
Sigl, Thomas	BI Spiegelau	?		
Wenzl, Heidrun	BI Zwiesel-Frauenau	x	heidrun.wenzl@bayernpeople.de	
Wenzl, Regina	BI Zwiesel-Frauenau	x	heidrun.wenzl@bayernpeople.de	
Wolf, Armin	BI Spiegelau	?		

Annex 3: Species of bats threatened by collision (Kollisionsgefährdete Fledermausarten nach Windenergieerlass)

Wiss. Artname	Deutscher Name
<i>Nyctalus noctula</i>	Großer Abendsegler
<i>Nyctalus leisleri</i>	Kleiner Abendsegler
<i>Eptesicus serotinus</i>	Breitflügel fledermaus
<i>Eptesicus nilssonii</i>	Nordfledermaus
<i>Pipistrellus nathusii</i>	Rauhautfledermaus
<i>Pipistrellus pipistrellus</i>	Zwergfledermaus
<i>Pipistrellus pygmaeus</i>	Mückenfledermaus
<i>Vesperugo murinus</i>	Zweifarb fledermaus

Annex 4: Bird species threatened by collision (Kollisionsgefährdete Vogelarten nach Windenergieerlass)

Black Stork
White Stork
Osprey
Montague's Harrier
Marsh Harrier
Black Kite
Red Kite
White-tailed Eagle
Hobby
Peregrine Falcon
Honey Buzzard
Eagle Owl
Grey Heron
Purple Heron
Night Heron
Laridae
Sternidae

Annex 5: Species sensitive to disturbance (Störungsempfindliche Arten nach Windenergieerlass)

Lagopus mutus
Bonasia bonasia
Tetrao urogallus
Tetrao tetrix
Botaurus stellaris
Ixobrychus minutus
Crex crex