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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November - 4 December 2020

Complaints on stand-by

**Presumed threat to Emerald site “Polonina
Borzhava” (UA0000263) from wind energy
development
(Ukraine)**

- REPORT BY THE GOVERNMENT -

*Document prepared by
the Ministry of Environmental Protection and Natural Resources of Ukraine*



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**Mrs Ursula STICKER,
Secretary of the Bern Convention
Directorate of Democratic Participation
Council of Europe**

Subject: complaint № 2018/01: Presumed threat to Emerald site «Polonina Borzhava» (UA0000263) from wind energy development (Ukraine)

Dear Mrs STICKER,

The Ministry of Environmental Protection and Natural Resources of Ukraine (hereinafter – the Ministry) presents its compliments to the Secretariat of the Bern Convention and in response to the letter dated on September, 30, 2020 with regard to complaint № 2018/01: Presumed threat to Emerald site «Polonina Borzhava» (UA0000263) from wind energy development (Ukraine) has the honour to inform the following.

According to paragraph 7 of the part 4 of the Article 3 of the Law of Ukraine «On Environmental Impact Assessment» (hereinafter the Law), wind parks, wind power plants which have two or more turbines or a height of 50 meters and more belong to the second category of types of planned activities and objects that can have a significant impact on the environment and are subjects to an assessment of the environmental impact.

On January 15, 2019, TOV «ATLAS VOLOVETS ENERGY» have published in the Environmental Impact Assessment Registry the Environmental Impact Assessment (EIA) Report on the construction of a 120 MW wind power plant on the territory of the Volovets settlement council of the Volovets district and of the Berezhnyakivska, Dusynska, Nelipynska and Tybavska rural councils (outside the settlements) of the Svalyava district of the Zakarpattya oblast (registration No. 2018821379/7554). The report is available at: <http://eia.menr.gov.ua/places/view/1379>.

According to the Report the construction of a wind power plant (WPP) with a total capacity of 120 MW with the necessary infrastructure (including access roads, underground cable line of 110 kW and underground cable power systems of 35 kW, distribution points and substation) is to be implemented on separate sites with the total area of 30.6041 hectares, the area under the wind power units (hereinafter – WPU) is 28.259 hectares. Construction is proposed to be built on the territory of the Emerald site UA0000263 «Polonyna Borzhava».

In the framework of the WPP construction with the necessary infrastructure, it is planned to install 34 modern WPU, electric substation – SS 35/110 kW «WPP Volovets», three distribution points (DP) containing indoor switch gear, and underground cable line with voltage of 35 kW and 110 kW. The total capacity of the WPP with the necessary infrastructure is 120 MW. The expected useful WPU life is 25 years (the service life may be extended depending on the technical characteristics of the selected type of main equipment of the WPP), and the WPP structures – from 60 to 100 years. The main equipment for this project is wind turbines.

Within the framework of the EIA, the Proper Assessment Report by the «Appropriate Assessments» method on the effects of the construction and operation of the WPP TOV «ATLAS VOLOVETS ENERGY» on the «Borzhava» subalpine meadow in the Zakarpattia oblast on the Emerald site UA0000263 «Polonyna Borzhava» was prepared.

The Report contains the following conclusions:

«in the database (<http://natura2000.eea.europa.eu/Emerald>) about valuable habitats on the territory of the «Borzhava» subalpine meadow, the total area of registered habitats are catalogued in the register is 4122.24 hectares – while the area of «Borzhava» subalpine meadow is 4520 hectares (i.e., officially, the total habitat area is to be protected totals 91.2% of the area of the Emerald site UA0000263 «Polonyna Borzhava»). 8.8% of the area of the «Borzhava» subalpine meadow is the territories where the most valuable habitats are not registered and not recorded. WPU will be partly situated mostly in this area (zones of local existing roads along the mountain ridge);

potentially 34 WPU of TOV «ATLAS VOLOVETS ENERGY» can affect only 4 types of habitats: «E1.71», «E4.3», «E5.5», «F4.2». The survey of WPU sites by land surveyors of local authorities during land acquisition for rent (and the accompanying inventory of green plantations that are absent in fact on the WPU sites) for the needs of the construction of the WPP of TOV «ATLAS VOLOVETS ENERGY» has not identified «E1.71», «E4.3», «E5.5», «F4.2» types of habitats, and also such plants as «4070» (*Campanula serrata* or *Campanula napuligera*), «2316» (*Poa granitica*) within the boundaries of land survey at the sites of the WPP on Emerald site UA0000263 «Polonyna Borzhava»;

as a whole, the sites allocated to 34 WPU under the established procedure occupy an area approx. $34 \text{ units} \times 0.7 \text{ ha} = 23.8$ hectares. That is, the area of the sites of the WPP-project under the requirements of placing all the WEU of WPP of the TOV «ATLAS VOLOVETS ENERGY» occupies less than 1% of the area of the «Borzhava» subalpine meadow (Emerald site UA0000263 «Polonyna Borzhava»), which correctly is 0.5% of area of this Emerald site;

in the database (<http://natura2000.eea.europa.eu/Emerald>) of valuable species on «Borzhava» subalpine meadow about 20 species were specified (14 bird species, 2 bat species, 1 species of mammals, 2 species of plants, 1 species of insect), which are protected under the Bern Convention, namely: (A223) *Aegolius funereus*, (A091) *Aquila chrysaetos*, (A089) *Aquila pomarina*, (1308) *Barbastella barbastellus*, (A104) *Tetrastes bonasia*, (4070) *Campanula serrata* or *Campanula napuligera*, (A224) *Caprimulgus europaeus*, (4012) *Carabus hampei*, (A080) *Circaetus gallicus*, (A239) *Dendrocopos leucotos*, (A236) *Dryocopus martius*, (A103) *Falco peregrinus*, (A272) *Luscinia svecica*, (1355) *Lutra lutra*, (1324) *Myotis myotis*, (A072) *Pernis apivorus*, (A241) *Picoides tridactylus*, (A234) *Picus canus*, (2316) *Poa granitica*, (A220) *Strix uralensis*. In the Proper Assessment Report, the potential impact of the WPU of WPP of TOV «ATLAS VOLOVETS ENERGY» was determined theoretically on the following: 1 insect species, 2 plant species, and 6 bird species. However, these theoretically possible impacts are denied by official scientific investigation

conducted by scientific organizations (Bohdan Khmelnytskyi State Pedagogical University of Melitopol, Biodiversity Research Institute of Terrestrial and Water Ecosystems of Ukraine, Azov-Black Sea Interdepartmental Ornithological Station of the Schmalhausen Institute of Zoology of National Academy of Sciences of Ukraine, TzVOV «Company «Center LTD», PP «NVF «ECOTOP») within the zones of construction of the WPP of TOV «ATLAS VOLOVETS ENERGY» on the «Borzhava» subalpine meadow («Polonyna Borzhava» - UA0000263);

as stated in the Report on the implementation of the research «Assessment of potential impact of territories of the projected construction of WPP Borzhava massif on rare species of plants of Ukraine, aquatic animals and their natural habitats» (PP NVF «EKOTOP», 2017-2018), research of rare species of plants of the Borzhava massif on sites planned for the WPP construction was conducted by experts using route survey (in general, the length of exploring transects was 45 kilometers). In total, 41 sites of WPU were investigated on the area planned for the WPP construction on the territory of the Borzhava massif by the PP NVF «EKOTOP». According to the discovery results of plants of the Red Book of Ukraine, TOV «ATLAS VOLOVETS ENERGY» has decided to set up only 34 WPU and to refuse 7 sites due to the identified features of the local flora. However, official surveys of the PP NVF «EKOTOP» did not reveal the species of flora protected by the Bern Convention on the «Borzhava» subalpine meadow («Polonyna Borzhava» - UA0000263), in particular – *Poa granitica*;

the objective absence of potential negative impact of WEU of WPP of TOV «ATLAS VOLOVETS ENERGY» on birds of «Borzhava» subalpine meadow (Emerald site UA0000263 «Polonyna Borzhava»), in particular, on 14 species from the List <http://natura2000.eea.europa.eu/Emerald>, was proved in the ornithological report on the monitoring carried out by the specialists of Bohdan Khmelnytsky State Pedagogical University of Melitopol, Biodiversity Research Institute of Terrestrial and Water Ecosystems of Ukraine, Azov-Black Sea Interdepartmental Ornithological Station of the Schmalhausen Institute of Zoology of National Academy of Sciences of Ukraine;

the objective absence of potential negative impact of WEU of WPP of TOV «ATLAS VOLOVETS ENERGY» on bats of «Borzhava» subalpine meadow («Polonyna Borzhava» - UA0000263), in particular, on 2 species from the List <http://natura2000.eea.europa.eu/Emerald>, was proved in the report on the chiropterans monitoring carried out by the specialists of Bohdan Khmelnytsky State Pedagogical University of Melitopol, Biodiversity Research Institute of Terrestrial and Water Ecosystems of Ukraine, Azov-Black Sea Interdepartmental Ornithological Station of the Schmalhausen Institute of Zoology of National Academy of Sciences of Ukraine;

actual conditions for the placement of 34 WPU provide a buffer zone between the turbines and the areas of high-mountain forest vegetation of «Borzhava» subalpine meadow, where flock of birds of the «Emerald Network» protected by the Bern Convention (6 species of birds) can be observed in forest habitats. The buffer zone between the turbines and the high-mountain forest vegetation areas of «Borzhava» subalpine meadow ensures absence of WPU impact on the habitats of birds within the forests;

2 species of flora, protected by the Bern Convention (but not protected by the Red Book of Ukraine) on «Borzhava» subalpine meadow («Polonyna Borzhava» - UA0000263), namely, *Campanula serrata* or *Campanula napuligera* and *Poa granitica*, are part of the communities of rock outcrops (cliffs (above 2 m high), small cliffs (1 to 2 m high), rock streams and separate boulders) and post-forest glades and fringes of Borzhava. Since either the rocky outcrops of the bedrock on the Borzhava massif or the WPU sites are confined to the high uplands (peaks and crest of ridge), they coincide in most cases. Individuals of protected species of such sites grow mainly in compact groups, which are clearly located within petrophyllous communities that are frequent on Borzhava, but take a small area. *Campanula serrata* (Kit ex. Schult.) Hedrych or *Campanula napuligera*, protected under the Annex of Resolution 6 of the Bern Convention, is the only one species of plants being noted on the tops of the mountains Stiy and Velykyi Verkh, and the crest of ridge between them on the WPP-construction area;

it is recommended to keep the natural ecological conditions of the identified habitats, at least, for 2 protected flora species (*Campanula serrata* or *Campanula napuligera* and *Poa granitica*) and the 1 protected fauna species (*Carabus hampei*) within the Emerald site of the Borzhava subalpine meadow: accordingly, the mode of insolation, humidification, aeration. However, the above-mentioned 2 species of plants and 1 of insect are not listed in the Red Book of Ukraine and are not subjects to special protection. In the case of planning of environmental measures in areas adjacent the WPU, it is necessary to carefully assess how such measures can affect the ecological conditions of *Carabus hampei* biotope and the rocky habitats of *Poa granitica* and *Campanula serrata* or *Campanula napuligera*. Financing and implementing of research/monitoring programs for flora/fauna during the WPP construction and for at least three years of WPP operation – is an essential environmental requirement to TOV «ATLAS VOLOVETS ENERGY». The process of monitoring of TOV «ATLAS VOLOVETS ENERGY» of rare and endangered species of flora/fauna within the wind field of WPP on the «Borzhava» subalpine meadow («Polonyna Borzhava» - UA0000263) provides the search for their habitats, their mapping, annual observation at certain specified dates, filling out the monitoring card. Supporting measures for populations of these species within the wind field of WPP will be developed further on the basis of the implemented monitoring of flora/fauna. The locations of rare and endangered species of flora/fauna will be identified during the WPP construction with infrastructure should be included in local topographical plans.

In accordance with the Law, the environmental impact assessment report is subject to public discussion as public hearings and as submitting written comments and proposals (including electronic form).

A public hearing to discuss the EIA Report was held in Volovets settlement council of the Volovets District and of the Bereznyaky, Dusyn, Nelipyn and Tybava rural councils of the Svalyava district of the Zakarpattia oblast.

Comments from 21 organizations were submitted to the EIA Report. These comments were processed by the customer and partially considered. Information on proposal or comment, considered or not, received during a public discussion were represented in the Public Discussion Report published on March 12, 2019 (<http://eia.menr.gov.ua/uploads/documents/1379/reports/444fcd1f6039c42930e184ef6e5908d0.pdf>).

On March 12, 2019 Department of Ecology and Natural Resources of the Zakarpattia Oblast State Administration has published a Conclusion on the EIA of the planned activities (<http://eia.menr.gov.ua/uploads/documents/1829/reports/b4b9bfd9e9d3b32a52c9e14b54e7e195.pdf>).

According to the Conclusion, the Department of Ecology and Natural Resources of the Zakarpattia Oblast State Administration considers it feasible to carry out the planned activity in view of the following:

Based on assessments of the probable impacts of environmental components (water and land resources, atmospheric air, soil, climatic factors, material objects, landscape and levels of noise and vibration pollution) are stated in the EIA Report, the combined impact of the planned activity under the standard implementation regime is environmentally admissible. According to the results of the analysis of the EIA report, the main impact of the activity is expected on soils and biological diversity. When the Environmental conditions established for the planned activity are adhered, these impacts on land resources, soils, biodiversity, landscape and aquatic environment can be characterized as permissible standards.

Conditions for the use of the territory and natural resources during the preparatory and construction activity and implementation of the planned activity are established. Including:

comply with the requirements of the Article 39 of the Law of Ukraine «On Fauna»: during the period of mass reproduction of wild animals, from 1 April

to 15 June it is prohibited to carry out preparatory and construction activities and measures that are a source of increased noise and disturbance;

prevent the alteration of the existing hydrological and hydrobiological regime of surface and ground water and erosion processes during the construction and operation of wind farms. When arranging the 110 kV underground cable line on the slopes with springs, work should be carried out in compliance with the requirements of the current environmental legislation. When laying underground cable lines at 20 site, to minimize surface degradation;

discharge of pollutants into water bodies is prohibited;

adhere the environmental protection measures provided by the relevant EIA Report statements and Technology Regulations;

ensure the implementation of an agreed program for birds and bats monitoring (the program should be developed and carried out under the guidance of qualified and experienced ornithologists. According to the results of monitoring, implement adaptive management of windmills, which in particular may predict (when justifying monitoring of bats) stopping wind turbines during peak migration of birds and bats;

to reduce the risk of collision or barotraumas, to ensure that wind turbines will be stopped during periods of bat high activities;

adhere the regime of land use of the nature reserve fund and other conservational nomination, health, recreational, historical and cultural purposes.

The company is responsible for preventing, avoiding, reducing (mitigating), eliminating, limiting the impact of the planned activity on the environment, including:

ensuring the maintenance of technological equipment and structures;

conservation of the biological diversity of the wind farm territory in accordance with the Law of Ukraine «On the Red Book of Ukraine» and the International Conventions. Providing wind farms with facilities for hazing birds and bats;

installation of wind turbine blades made of non-lustrous materials;

temporarily stop wind turbines when detecting high activity of bats at wind speed less than 6 m / s;

complying with the requirements of environmental safety, ensure the rational nature use of natural resources, compliance with the requirements of environmental legislation;

if, as a result of post-design monitoring, the environmental impact of the planned activity (including animals, birds and bats) is observed to be expected in the EIA Report, the customer take measures to mitigate or eliminate this negative impact at its own expense.

The company is responsible for the post-design monitoring, namely:

to carry out an additional investigation of plants and animals listed in the Red Book of Ukraine and plant groups protected by the Ukrainian legislation in the territory of the planned activity prior to the commencement of works;

to develop and implement a program of monitoring surveys of species of animals and plants listed in the Red Book of Ukraine at the territory of the planned activity (including during the «silent season»);

to monitor noise, vibration within the areas of wind farm impact and at the boundaries of the nearest settlement buildings, while all windmills operate and under different meteorological conditions;

to monitor ornithological complexes and bats (wintering, spring and autumn migration, nesting) during the construction and operation of wind farm;

constantly monitor geological processes in accordance with the State Building Rules.

Post-design monitoring should be carried out within 5 years from the start of operation of the wind farm (first and second stages).

If a significant negative impact of such activity on the life and health of the population or the environment will be detected during the implementation of the planned activity, and if such impact has not been assessed during the EIA and / or substantially alters the results of the EIA of the activity, the decision about such planned activity have to be cancelled by judge of court and the activity – interrupted.

On March 18, 2020, the Zakarpattia County Administrative Court, have been taking up in a public court the administrative case № 260/771/19 on the claim of the non-governmental organization «International Institute of Man and Global Studies «Noosphere» to declare the conclusion illegal and revoke it, has completely satisfied the claim of this organization.

On November 3, 2020, the Eighth Administrative Court of Appeal has satisfied by its ruling the appeal of the Volovets settlement council of the Volovets district of the Zakarpattia oblast, the Tybava rural council of the Svalyava district of the Zakarpattia oblast and TOV «ATLAS VOLOVETS ENERGY» and reverses the ban of the environmental impact assessment conclusion.

Currently, the implementation of the project of construction of a 120 MW wind farm on the territory of the Volovets settlement council of the Volovets district and of the Bereznyaky, Dusyn, Nelipyn and Tybava rural councils (outside the settlements) of the Svalyava district of the Zakarpattia oblast has not been started.

In order to protect the territory of the Emerald site UA 0000263 «Polonina Borzhava» efforts is underway to setting up a nature reserve with this territory within the framework of national legislation. Thus, the Ministry supported the petition of the non-governmental organization «UKRAINIAN NATURE CONSERVATION GROUP» dated 24.01.2019 № 32/2019 on creation a landscape reserve of local significance «Zelenytsya» (hereinafter – the Reserve) within the Mizhhirya district of Zakarpattia oblast, covering the part of the ridges and slopes of Borzhava massif and sent this petition for consideration to the Zakarpattia Oblast State Administration. Part of the territory of the projected Reserve coincides with the territory of the planned activity.

The following measures are being taken to ensure the conservation of the Emerald sites in Ukraine.

The Law of Ukraine «On the National Infrastructure of Geospatial Data» (2020) includes the Emerald Network together with other protected areas in the sets (types) of geospatial data.

According to the procedure for developing the river basin management plan approved by the Resolution of the Cabinet of Ministers of Ukraine dated 18.05.2017 № 336 the Emerald Network objects are referred to the zones (territories) being subject to protection.

In 2020, the Ministry together with the People's Deputies of Ukraine with the active participation of the public and scientists within the Working Group established under the Verkhovna Rada Committee on Environmental Policy and Nature Use, have worked out a bill «On the Emerald Network» is prepared for registration in the Verkhovna Rada Of Ukraine.

In the practical plane, the following measures have been taken to protect species of flora and fauna and types of natural habitats:

the issue of long-term conservation of natural habitats and species of wild fauna and flora being subjects to special protection in Europe within the Emerald Network is considered during the relevant procedures for environmental impact assessment and strategic environmental assessment (if necessary in accordance with the law);

by the Order of the Ministry dated 02.03.2020 № 136 Methodical recommendations for the development of the report on environmental impact assessment in the forestry was approved, which include recommendations for impact assessment on the Emerald sites;

data of the Emerald sites was published on the open cadastral map of Ukraine;

new territories and objects of the nature reserve fund are created both at the national and local levels within the Emerald sites: 15 decrees of the President of Ukraine were prepared and signed in 2019, 8 such decrees of the President of Ukraine were prepared in 2020;

a catalogue of biotopes of Ukraine (natural habitats) has been developed and published, which will allow for further measures to inventory and monitor biodiversity in accordance with European practices;

within the framework of the EU APENA project, the first management plan has been prepared for the Emerald site within the Pyryatynsky National Nature Park. Based on this work, guidelines will be worked out for the development of future management plans;

Management models for the maintenance, preservation and restoration of certain types of non-forest natural habitats (biotopes) has been prepared, published and distributed among the institutions of the nature reserve fund, scientific and non-governmental environmental organizations, local authorities.

The Ministry avails itself of this opportunity to renew the assurances of its highest consideration.

**Deputy Minister
for European Integration**

Iryna STAVCHUK