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**Wind farms in Balchik and Kaliakra
–Via Pontica (Bulgaria)**

- REPORT BY THE NGO -

*Document prepared by
the Bulgarian Society for the Protection of Birds / BirdLife Bulgaria)*

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WINDFARMS IN BALCHIK AND KALIAKRA – VIA PONTICA (BULGARIA)

Follow-up of the NGO`s report

SUMMARY

For more than 11 years the Kaliakra wind farm case has been followed by the Bern Convention Standing Committee because of the risk and impacts on migratory birds due to wind farm development in Kaliakra IBA.

On 14 January 2016 the European Court of Justice issued a ruling in regard to the Kaliakra case (C-141/14), where it found that Bulgaria failed to comply with EU nature conservation law, in particular the Birds Directive, Habitats Directive and EIA Directive. Bulgaria is under a legal obligation to take the necessary measures to comply with the judgment of the Court (art. 260 TFEU). The decision of the Court confirmed at the highest level, what was also set in the Recommendation 130 (2007) of the Bern Convention, in particular to inadequate protection of the Kaliakra IBA, because of construction of the wind turbines.

After reviewing the ECJ judgment we state that the impacts on the site should be removed and the sites restored and we believe that the way to do that is to remove the wind turbines. If further independent studies need to be undertaken to study impact and review the present evidence, then these need to be done in a timely manner, and measures taken in the interim to avoid further deterioration of the sites. These actions are also in compliance of the requirements set in the Recommendation 130 (2007), especially points 3, 4 and 5. Unfortunately until October 2018 the Bulgarian Government still did not take sufficient practical actions in order to comply with EU law.

Following its efforts to progress the case in a positive way the Bern Convention Standing Committee appointed an on-the-spot-appraisal to Kaliakra IBA in May 2018. This NGO`s Report gives a review of the new draft recommendation, proposed by the Bureau (T-PVS(2018)11) having in mind also the On-spot-appraisal Report (T-PVS/Files(2018)25) and the Governmental Report (T-PVS/Files(2018)45) related to Kaliakra case file.

In general we support the new recommendation with some minor remarks in regards to measures 3 and 6. We strongly believe that this recommendation should be adopted by the contracting parties in its full text, and that it should serve as independent expert reference on the sufficient measures that should be implemented by the Bulgarian Government in order to comply with the European Court of Justice issued a ruling in regard to the Kaliakra case (C-141/14).

I. SUMMARY OF THE STATUS OF THE WIND FARM DEVELOPMENT IN THE GEOGRAFICAL AREA OF DOBRUDZHA

In relation to the review below we would like to summarise the wind farm development in Dobrudzha by the end of 2017 as follows

- **Operational wind turbines– 330, including in Kaliakra IBA/SPA**
- Approved but not constructed wind turbines - 1329
- Wind turbines under EIA procedure - 599
- Wind turbines, temporary stopped by MoEW - 235
- Wind turbines with no longer valid permits– 626
- Wind turbines with unclear status – 31

II. SUMMARY REVIEW OF DRAFT RECOMMENDATION ON THE WINDFARMS PLANNED NEAR BALCHIK AND KALIAKRA, AND OTHER WIND FARM DEVELOPMENTS ON THE VIA PONTICA ROUTE (BULGARIA)

We admire the efforts of the Bern Convention to encourage the Bulgarian Government in finding an adequate solution in regards to the Kaliakra Windfarms case, which include justified, scientifically grounded and time-oriented actions, included in the new proposed draft recommendation (T-PVS(2018)11). The proposal is prepared by the Bureau, based on the On-spot-appraisal Report (T-PVS/Files(2018)25), elaborated by two independent credible experts, hired by the Convention. This approach ensures a high, scientifically based standard, objectivity and adequacy of the suggested measures in the new draft recommendation of the Bern Convention. Unfortunately we found out that the Bulgarian Government do not recognize the above facts and in its report (T-PVS/Files(2018)45) try to abolish every single proposed measure instead of contributing to all the efforts in a constructive way.

In the following review we provide a short summary analysis and justification of the proposed draft recommendation, and strongly believe that it would be fully adopted by the 38th Meeting of the Bern Convention Standing Committee meeting.

In addition we strongly recommend to the European Commission as party of the Convention with strong presence, to take the Draft recommendation Document (T-PVS(2018)11) as a reference when deciding on adequacy and sufficiency of the measures taken by the Bulgarian Government in order to comply with the European Court of Justice issued ruling in regard to the Kaliakra case (C-141/14).

Review of the proposed measures of the draft recommendations:

- 1. The comprehensive independent assessment of the impact of operational windfarms in the Kaliakra area which was recommended by the Bern Convention Standing Committee in 2015 (amplifying paragraph 5 of Recommendation No. 130 of 2007) should be undertaken without delay, according to scientifically appropriate methods to be agreed in advance. It should include information from the current collision mortality monitoring but should also address other impacts such as displacement, barrier effects, disturbance and habitat change; and it should arrange to draw on collaborative sharing of information between windfarm operators, regional authorities, NGOs, academic researchers and others. An interim report of the results should be transmitted to the Bern Convention Bureau before February 2019, and a final report before August 2019.***

This proposed measure is fully necessary and acceptable in the way it is formulated and clearly delineated by time deadlines – February and August 2019. It outlines precisely what action is missing at present in terms of the assessment of impacts. The key words there are “comprehensive”, “independent”, “without delay”, “scientifically appropriate methods”, “also address other impacts”, “agreed in advance”, “collaborative sharing of information ... NGOs, academic researchers...”.

The Bulgarian Government proposed in its report this measure not to be endorsed, providing three arguments.

The first argument addresses the Strategic Environmental assessment of the National Action Plan for Renewable Energy Sources 2011 – 2020, which was elaborated back in 2010. It was really “comprehensive”, “independent”, addressed also all types of impacts and it was accurate for the time it was made. In this period there were approvals and procedures for more than 5000 wind turbines in Bulgaria, where more than 3000 were concentrated in the geographical area of Dobrudzha, but in the same time very few of them were really operational. All the existing projects for windfarms in Kaliakra IBA were already approved, but still such big windfarms as “St Nikola” wind farm and “EVN”/“Universum” were not yet constructed and operational and “Mitsubisi” windfarm was just constructed and started to operate. In this respect it is important to note that the document, cited by the Government as argument in fact could not provide the sufficient comprehensive assessment of the real impact by the windfarms made since their operation, for example between 2010 and 2015 when the Bern Convention explicitly asked for such an assessment. Nevertheless the SEA report cited by the Government, very correctly predicted the expected impacts of the windfarms located in Kaliakra IBA,

which 6 years later were also recognised by the European Court of Justice in its ruling on the Kaliakra case. It is important to underline that the expert opinion in the SEA was that the windfarms located in the Kaliakra IBA should be removed and it stays as a specific measure in the SEA Report. Despite this expert opinion, stated in 2010, the Government did not include it in the SEA decision and to date did not take any measures to implement it. In terms of the procedure for development of the SEA, there are no possibilities for the “scientifically appropriate methods” to be “agreed in advance”, because there is no such requirement in the law and the procedure is too closed in this respect. Public participation in such procedures is ensured only at the final stage, which is not so strong and does not go in to the details which are important in terms of the Kaliakra case. In conclusion we suggest that this argument should not be used for not adopting the proposed measure, but the opposite – to support the relevance of the measure in the way it is formulated.

The second argument refers to an additional assessment and analysis of the projects that are the subject of the European Court of Justice Ruling on Kaliakra case, which is provided to the European Commission. As long as this assessment and analysis is not provided to the Bern Convention and is not made public it cannot be assessed as to whether it corresponds entirely to the key content of the proposed measure 1. At least it does not comply anyway with the key requirements of this measure in terms of “scientifically appropriate methods” to be “agreed in advance” and also “collaborative sharing of information ... NGOs, academic researchers...”. We suggest this argument not to be taken into account, but ask the Government to provide the analysis in question to the Bern Convention and make it public.

The third argument is related to elaboration of a new SEA for the new National Action Plan for Renewable Energy Sources which will be implemented after 2020. It sounds more like a promise to direct the process in a certain way, rather than to really take actions. In general there are not any guarantees by law that the procedure will be implemented in the way as it is described in the Governmental report. First of all the Government did not provide a clear timetable of the concrete decision making procedure, including the SEA elaboration. The Plan is still under elaboration and at present there is not any decision related to the opening of the SEA procedure for this Plan. Thus this analysis, even it happens in an adequate way, will not comply with the deadlines set in the measure 1, and the requirement “without delay”. Such procedures take a long time, usually more than 1,5 years and it is not expected to be finalised before the end of 2020. SEA procedures on national-scale plans also do not go into a detailed assessment of individual projects. How this assessment will be elaborated depends to certain extent on the Terms of reference for the SEA, but as it is mentioned above, there are no legal requirements for “scientifically appropriate methods” for the analysis to be “agreed in advance”. There is no guarantee that the assessment would be “comprehensive”, “independent”, “also address other impacts“, and “collaborative sharing of information ... NGOs, academic researchers...”. The only way to encourage such an approach at national level is to have the measure 1 set in the new Bern Convention Recommendation. In conclusion we advise that this argument of the government should not be used for not adopting the proposed measure, but to be used for further guidance to the government in terms of elaboration of the new assessment.

At the same time there are number of references, studies and analyses that show use of different scientific methods, different level of accuracy and different results. Ongoing studies at the wind farms so far are implemented by the investors only for one of the wind parks – St Nikola and recently including EVN windfarm. The reports of St Nikola windfarm are public, but there are a number of weaknesses in the applied methods and analyses, which were not communicated with other scientists and did not improve through the years – it is a rather closed and conservative approach taken by the investor. The EVN windfarms also implement monitoring studies but never published the results of it. The scientific methodologies were never agreed in advance and real collaboration with NGOs and other scientists never happened. NGOs provided more comprehensive studies at all windfarms, but still the results were not fully recognised by the investors and the Government. All this approach resulted in the assessment of the real impacts not being clear, comprehensive and independent so far with lack of agreements amongst the participating stakeholders. The proposed measure is very necessary in this respect in order to set the process in a correct way and by implementing it to ensure adequate grounds for all the following measures.

2. A broader regime for on-going monitoring and assessment of potential impacts of the Kaliakra area windfarms during their operation should be developed, ensuring that it inter alia:

- *follows scientifically appropriate methods agreed in advance;*
- *addresses all types of potential impacts, including collisions, disturbance, displacement, barrier effects and habitat changes;*
- *includes observations at both windfarm sites and comparable areas with no windfarm developments, so as to provide “control” comparisons;*
- *is coordinated across all the Kaliakra installations;*
- *is undertaken in conjunction with research by NGOs, supported by data-sharing agreements;*
- *takes the opportunity to undertake related research where it would be appropriate and cost-effective to associate this with the field efforts already being made on monitoring and assessment;*
- *makes information about the methods and systems used available in a form which would allow these to be replicated at other windfarm sites elsewhere;*
- *feeds results and insights (through the authorities) into national processes for planning and assessment of future developments.*

This proposed measure is fully necessary and acceptable in the way it is formulated and it clearly delineates the purpose and the scope of an adequate monitoring scheme which should be implemented in the Kaliakra IBA in order to identify the real scale of impacts of the operational wind farms at the area. It also corresponds adequately to the aim that the results of such monitoring should inform further decision making processes both at local and national level. The key words there are “scientifically appropriate methods”, “agreed in advance”, “all types of potential impacts”, “provide “control” comparisons”, “all the Kaliakra installations”, “in conjunction with research by NGOs”, “data-sharing agreements”, “associate this with the field efforts already being made”, “makes information about the methods and systems used available”, “national processes for planning”. It outlines precisely what action is missing at present in terms of the assessment of impacts. The only missing aspect is regular reporting of the results of the monitoring and making them publically available prior to them being used further in the decision-making processes. It would be valuable if this aspect is included as well in this measure.

Unfortunately the Bulgarian Government proposed in its report this measure not to be endorsed, providing four arguments in relation to the just developed Early Warning System (EWS), the elaborated draft integrated management plan for the area, as well as reference to the publications of the studies already done in the region. In general this position shows the lack of willingness of the Government to implement such a structured and open monitoring approach as it is suggested by the Convention and a lack of willingness to cooperate with civil society, in particular NGOs. In more specific terms:

It is very clear to everybody that EWS is one measure, which tackles only one of the impacts which the operational wind farms cause to migratory and residential birds – collision. On its own it should be an appropriate measure to tackle this problem, if organised properly. In the international practice it is agreed that EWS are not always successful, thus they need to follow some preliminary conditions and to be subject of careful and robust monitoring. In fact the EWS, presented in the governmental report, was created only by the investors again based almost entirely on the St Nikola Wind Farm EWS, including the weaknesses it has, without being consulted and agreed with the other stakeholders, especially NGOs and other scientific researchers. In fact the EWS started to operate in April 2018, thus it is too early to conclude about its efficiency. At the same time it is now very late for this system to be subject to open discussions and improvements in order to meet the requirements of the measure 2 of the proposed draft recommendation.

It needs to be noticed that similar actions were not taken so far to address the other types of impacts, which are as significant and important as collision. In this respect the proposed measure 2 is very important to be implemented in the way it is formulated with an additional request for regular reporting of the results. In conclusion we advise that the argument of the government related to presence of EWS should not be used for non-adoption of the measure 2, but rather to be used as additional argument to adopt the proposed measure.

In relation to the Integrated management plan for the three Natura 2000 sites, which include the area of Kaliakra IBA as well, it is very important to clarify that the process of finalization and adoption of this management plan was entirely blocked and stopped last autumn (2017) with no attempt to progress it since then. In this respect it has to be accepted that this effort of the Government failed and it cannot be used anymore as an argument for real implemented action. In general it does not mean that the Government should not make further efforts to elaborate such a plan, but it should not be used as argument for non-adoption of the proposed measure 2.

The arguments of the Government, related to specific references, support the previous attitude and statements on this topic, favouring the studies of investors and neglecting all the other studies, which could be summarized as a subjective approach. In fact it confirms the necessity of the monitoring approach, suggested by the Bureau in the measure 2 and thus it needs to be treated as argument in support of the adoption of such a measure.

Last but not least, the measure as it is formulated, including also the reporting aspect, would be very important for the Government to comply with the European Court of Justice ruling C-141/14.

3. Windfarm operators and other land owners, managers and authorities should explore options for creating conservation gains for migratory birds and habitats in or around the Kaliakra area (e.g. through habitat creation/restoration and management investments, designation of additional protected areas, etc), as a way of aiming partially to offset the risks and/or damage introduced by the completed windfarm developments, and/or in any event to contribute to agreed conservation priorities.

The proposed measure is well formulated in terms to provide further possibilities to “explore options” to mitigate and compensate impacts of the operational wind farms on migratory and residential bird species, before a decision is taken on removal of the turbines.

Although we are convinced that the wind turbines in Kaliakra IBA cause unacceptable impact and damages on migratory birds and their habitats and thus should be removed without delay, we accept this measure as good compromise solution, as long it does not prolong the process too much. In this respect it is important that the restoration and management measures, as well as creation of new protected areas as a measure should be measures that are over and above what the authorities and landowners should be doing anyway to maintain the conservation objectives of the sites. In particular, in relation to the ability to provide alternative habitats within that landscape which the geese would use safely, we would like to suggest that the upcoming winter could be treated as period for testing in reality if the management measure/new protected area was working in this time frame and not to delay further the process of taking real actions and further decisions.

In this respect it is also important to notice that the Bulgarian Government states in its report they have already made all the efforts which could be identified in relation to this proposed measure and in their point of view all the possibilities are exhausted.

Despite our opinion that implementation of real management and compensation measures to remove the present impacts are extremely limited and the actions taken so far by the Government are insufficient, we still believe that measure 3 is still valid and correct to implement. On the one hand under this measure in-depth analysis could be done on the efficiency and the sufficiency of the actions already taken by the Bulgarian Government, as these are described in the Governmental report, and to conclude to what extent these are relevant and sufficient to solve the case through applying them. On the other hand, implementation of this measure, if implemented as we suggested above, could give opportunity to assess if the impacts on birds in Kaliakra IBA could be solved in a way different than removal of turbines.

- 4. *The conservation impact achieved by measures undertaken in response to point (iii) above should be thoroughly evaluated, and if judged in any way to be less successful than hoped, or if the exploration of options itself has not advanced significantly within one year of the date of the present Recommendation, then alternative options for removal of existing operational wind turbines from Kaliakra should be investigated and implemented as appropriate.***

This proposed measure is fully necessary and acceptable in the way it is formulated as connected to measure 3. It is also clearly delineated by time deadlines – one year since adoption of this recommendation.

We understand the Governmental position, stated in its report, that this measure is irrelevant, because of the position expressed on measure 3. However, if the Government does not want to explore and evaluate further options, it needs to be ready to discuss seriously the topic of removal of turbines without further delay. As we do not see such an attitude at present in the Governmental position, we believe that measure 4 with relation to measure 3 needs to be implemented in a robust and transparent way without delay.

- 5. *The successor plan to the Bulgarian National Renewable Energy Action Plan 2011-2020 should re-confirm (and enhance where necessary) the latter's prohibition on wind energy developments in sensitive locations.***

Having in mind that: a/ the National Action Plan on Renewables, elaborated in 2003, even obligatory required by law, was not subject of SEA; b/ the SEA of the National Action Plan for Renewable Energy Sources 2011 – 2020 was guided to a large extent by the Recommendation 130(2007) of the Bern Convention Standing Committee; and c/ the moratorium for new wind farm development in Dobrudzha and some other areas in the country expired with the expiring of the recent plan and there are no guarantees that this approach will be followed, **we state that, this measure is absolutely necessary in the new recommendation.**

We are confused by the statement of the Government in its report to the Bern Convention, that they cannot accept the proposed measure, while under measure 1, they used the new plan and SEA as argument, noticing that they are going to do such an assessment. By the arguments of the Government it could be concluded that the Government plan to backslide with regards to ensuring adequate protection on flyways of birds passing through Bulgaria, especially the very sensitive Dobrudzha region, where there are still valid consents for construction of more than 2000 wind turbines and more than 600 are under procedure. It should be noted that not all the SPAs with sensitive species were included in the ban for wind farm construction, as well as the fact, that no areas around such sensitive sites are created to secure the species from the risks of impacts by wind farms.

The Sensitivity map for minimizing the risk for wild birds due wind farm development, clearly showed that there are enough areas out of the high-risk zones where wind energy production could be developed, but on one hand this is a guidance document and on the other hand so far the Government did not show clearly that it respects this document sufficiently. It needs to be integrated in the future SEA and comprehensive review to be done, as it is stated in the arguments of the Government, presented for rejection of measure 1.

- 6. *The Bulgarian authorities should provide the Bern Convention Bureau with a short report by March 2019 on the specific ways in which the legal provisions, policy requirements, standards, established practices or other aspects of environmental assessments (SEA/EIA/AA) in Bulgaria meet each of the individual points in paragraphs 1, 4, 8 and 9 of Recommendation No. 130 (2007) or will do so in future (with an indication of the expected timeframe), giving particular attention to the points in the Recommendation concerning cumulative assessment and peer review.***

Although the Government in its report provides a short report on implementation of this proposed measure, probably assuming avoidance of including it in the new recommendation, we strongly believe that this measure is still relevant to stay in the new recommendation with the proposed deadline. One of the reasons for our statement is that for example the Government try to convince the Convention that the “compulsory procedures for peer review” are ensured by the national EIA

legislation, but in fact there is no such procedure defined in reality. The explained process in the report cannot be classified as “peer review”, but as a simple consultation procedure which existed in the law before the recommendation 130(2007).

We suggest that this measure to stay in the new Recommendation and to give the possibility for the Government to make a more precise overview and preferably to ensure broader expert discussion of this report at national level, prior to submission to the Bern Convention. In such discussion it would be appropriate to include experts in law, science experts and experts from NGOs, in order to ensure that the aspects covered by the points of the 130(2007) Recommendation are correctly and adequately covered.

7. *The Bulgarian authorities should promote the dissemination (including translation where necessary) and use within the country of the guidance on windfarms and birds developed under the auspices of the Bern Convention (Gove et al. 2013), and the international standards and best practice guidance on EIA/SEA adopted under the Conventions on Biodiversity, Migratory Species and Wetlands, together with related materials produced by the International Association for Impact Assessment.*

This measure is acceptable and necessary in the way it is formulated. The argument and the information provided in the Government's report confirms that efforts so far are not sufficient in terms of communication and promotion of the guidelines of the Bern Convention and the standards of other international agreements. By checking the provided internet link we found the concrete decisions related to Kaliakra Natura 2000 sites, as well as the general texts of the conventions, but none of the guidelines. There are no guidelines of the Bern Convention on the issue (or other conventions), that are translated and promoted actively so far. We support that all these materials, mentioned under measure 7, should be translated and actively promoted, even through targeted trainings, and more active communication with different stakeholders.

8. Options should be explored for developing a proposal (which could be submitted to potential funders) for a project to build enhanced capacity in Bulgaria on knowledge exchange and best practices in the assessment and management of wind energy impacts on wildlife.

This measure is adequate and on-time to be included in the new recommendation of the Bern Convention in a period of new planning of the further development of the wind energy sector, in order to further facilitate the implementation of Recommendation 130(2007), especially the points which were not sufficiently implemented so far. We would like to notice that such efforts should be public, transparent and to ensure involvement of civil society.

9. The Conservation Action Plan for the Red Breasted Goose population in Bulgaria should be funded and implemented without delay, and periodic summary reports on its implementation should be transmitted to the Bern Convention Standing Committee, beginning with a first report in November 2018. Those responsible for the Plan should ensure that thorough and coordinated monitoring of the species' population status and trends receives sustained high priority attention.

This measure is adequate and on-time to be included in the new recommendation of the Bern Convention once the Action plan for the conservation of the Red-breasted Goose is adopted and needs to be implemented. The statement of the Government in its report we accept as taking responsibility to ensure implementation of this Action plan fully and adequately without delay.

10. The findings of the on-the-spot appraisal should be shared with the Secretariats of the AEW and Eurobats Agreements, the Convention on Migratory Species and the European Commission, given that all of these bodies have shared interests in the issues it covers.

This measure is adequate and on-time to be included in the new recommendation. We appreciate the willingness of the Government to cooperate on this issue.