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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November - 4 December 2020

Specific Sites - Files open

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

- REPORT BY THE COMPLAINANT -

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

For more than 15 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.

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).

In the following review we provide a short summary of our comments on the Governmental report to Bern Convention on case file Wind farms in Balchik and Kaliakra–ViaPontica-T-PVS/Files(2020)6 in regard to Recommendation 200(2018):

On recommendation points 1&2

We would like to notice that for the last year the Bulgarian government reported only on points 1 and 2 of the Recommendation 200(2018), as these are the most urgent ones.

Having in mind that the ToR for the assessments were not consulted with us and agreed, as we mentioned in our previous report, we still state that these recommendation points were not properly implemented. The results of the assessment and methodology, presented as part of the current report confirm that in a way the Government assess impacts by the windfarms in Kaliakra area we will never get fully independent and appropriate assessment. We presented our position, including our critics also in front of the Government and the stakeholders during the meeting on discussion of the both the assessment and the methodology report. During this discussion the experts responsible for monitoring recognized the needs of improvement of their methodology, as it is suggested by the independent expert and thus they confirm that for the last 10 years their monitoring methodology had serious weaknesses.

After we reviewed the final versions of the both documents we could conclude the following:

1. The outcomes of the study very much depend on the ToR of the contract, and even very professional experts, cannot make their job properly if they are restricted by the ToR. The fact that ToR and methodology of study was not agreed in advance cannot be changed anymore, but it reflects on the quality of the work and its outcomes.
2. The study of the impact was restricted only to the published papers and reports and **vast amount of the unpublished raw data remain again out of the scope of the analysis of the impacts of wind farms on birds in the area**. In fact, the analysis is another interpretation of the published data, which were examined many times so far, including by the European Court of Justice.
3. The study of the impacts did not provide assessment of the suitability of the methodologies applied so far (presented in the examined publications) for the proper assessment of the impacts on birds and how the strengths or weaknesses of these methodology reflects on the results and conclusions

of the impacts. We are aware about numerous gaps of the methodologies, applied by the studies financed by the investors, which prevent to get into justified conclusions. **The lack of assessment of the methodologies of the studies so far and reliability of data gathered through them, makes the current analysis of the impact also weak to a significant extent.**

4. Taking into account the conclusions above, as well as that already 16 years pass since the problem with windfarms in Kaliakara area appeared and all the assessments done by various experts, including European Court of Justice, we conclude that no proper assessment of the real impacts on birds due to wind farms development could be done, thus we could accept that **in the area of Kaliakra there are serious impacts on birds and their habitats due to wind farms development, but the scale and magnitude of all the impacts (except displacement) will remain insufficiently studied, because of weaknesses of different field study methodologies, difference collection data effort and lack of analysis and assessment of all data.**
5. In addition, we accept that all the impacts on birds and deterioration of habitats due to windfarms development are result of: insufficient and improper studies; lack of proper EIA assessment on that issue; approval of the projects by the government despite the weaknesses of preconstruction studies and EIA; as well as insufficient and improper monitoring for the last 10 years since wind farms operate.
6. **Necessity of robust monitoring and publicity and transparency of both the data and analyses is not under question and even more important now.** It should be also done by experts that are not financially dependent by the investors.
7. **The Government fail to ensure proper protection of birds and their habitats in the area of Kaliakra, as it is required by the Bern Convention, thus it needs to implement specific measures to remove the risks for birds and restore the value of the area for them, and this process should be followed by the Bern Convention until the wind farms operate there.**

On recommendation point 3

The Government did not report on implementation of this point. We also do not have information about any new activities in this direction. There are also no results published by for the project on restoration of steppe habitats, about which we informed the Convention last year. There is no progress on elaboration of Kavarna Municipality Spatial Plan which have to ensure sufficient habitats for birds as part of territorial planning of the municipality.

Recommendation 4

The Government did not report on this point and we do not see any action taken on the ground. At the same time the Government do not provide any plans for removal of wind farms, but as long as it continues to state that all the options are exhausted, the removal remains the only option.

Recommendation 5

The Government did not report on this point. Prohibition of wind energy developments in sensitive locations is a government political policy decision. Therefore, even if a new plan and SEA has not yet been formulated, it is still perfectly possible for the Government to state that the new plan will continue the existing policy position into the new period, and in light of the CJEU judgement against them, it would seem more than sensible for them to do so.

However, there is real risk that the ban on new wind farm development could stop to be implemented soon. There are no any public consultations so far on the new action plan for renewables, despite that the current plan is valid until 2020. During the last year wind farm sector starts to active with new project proposals expecting that the ban will expire soon. The government should implement appropriate measures that now new wind farm development will be allowed in the areas which are subject of moratorium now, until new plan is adopted.

Recommendation 6

Nevertheless, of the detailed explanation of the Government under point 6 of the Recommendation, some important aspects, set in the Recommendation 130(2007) are not fulfilled yet, as the ex-ante evaluation and preventive protection procedure (EIA, AA and SEA) does not work properly in Bulgaria. In addition, there is a real threat recently to weaken the legislation by making amendments in the Biodiversity Act, which will cause much less legal protection not biodiversity than in present. We propose that the Convention continue to ask this recommendation point to be implemented.

Recommendation 7

The Government did not report on this point and we confirm that required documents, produced by the Bern convention are not yet available for the public in Bulgaria in Bulgarian language. As far as the official language in the country is Bulgarian all these documents should be translated in Bulgarian. In addition, we should not that the placement of document on internet is not enough to state that it is sufficiently promoted. The Government should take active measures in this direction and should report on them.

Recommendation 8

The Government did not report on this point. We do not have information about any steps taken by the Government to implement this point

Recommendation 9

The Government did not report on this point. Since Autumn 2019 the Government initiated two calls for granting the implementation urgent measures under of the Red-breasted Goose Action Plan, but so far there is no selected implementor of the plan. During the last year BSPB continue to implement measures upon this plan, that related to control on hunting and also lobby for continuation of application of agri-environmental measures during the next period of EU funding for agriculture.

Recommendation 10

The Government did not report on this point and we do not have information on the progress of implementation of this point.

In conclusion we could state that the implementation of Recommendation 200(2018) could be considered as it is started, but far from being fully and effectively implemented.

We recommend to the Bern Convention Standing Committee to continue to follow the case until all the recommendations are fully and sustainably implemented; values for the site for migratory birds is restored and migratory corridor via Kaliakra area is safe for migratory birds.