



Strasbourg, 12 August 2019  
[files15e\_2019.docx]

**T-PVS/Files(2019)15**

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

39<sup>th</sup> meeting  
Strasbourg, 3-6 December 2019

---

**Complaints on stand-by**

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

**- REPORT BY THE COMPLAINANT -**

*Document prepared by  
the Ukrainian Nature Conservation Group (UNCG), Ukraine*

---

*This document will not be distributed at the meeting. Please bring this copy.  
Ce document ne sera plus distribué en réunion. Prière de vous munir de cet exemplaire.*

- August 2019 –



**CIVIC SOCIETY ORGANIZATION**  
**«UKRAINIAN NATURE**  
**CONSERVATION GROUP»**

40 Hoholya str., Vasylkiv, Kyiv oblast, 08600

(+38 097) 100-04-73

uncg.ua@gmail.com, www.uncg.org.ua

№ 317/ 2019 05.08.2019

Mrs. Iva OBRETENOVA  
Secretary of the Bern Convention

**Subject: new information on Complaint No. 2018/01: Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development (Ukraine)**

I. The Environmental Impact Assessment (EIA) of the wind power plant (WPP) construction has ended. Despite the fact that stakeholders provided numerous comments and raised a lot of concerns within the framework of the EIA procedure, none of them were analyzed and taken into account by the relevant authorities. The developer (TOV «Atlas Volovets Energy») received a positive final EIA statement, developed by the Department of Ecology of Transcarpathian Regional State Administration. This statement (307/02-02 by 07 March 2019) enables the construction of the WPP on Polonina Borzhava.

We think that this EIA final statement is reasonless, illegal and violates the basic EIA principles, defined within the national legislation (the Law “On the environmental impact assessment”). Specifically, the comments and concerns of the stakeholders were not taken into account without any reasonable justification. Moreover, the EIA procedure was not held properly, as the EIA statement is incomplete and lacks data, required by article 6 of the Law. The EIA statement has no data on the assessment of the impact on the Emerald Network site “Polonina Borzhava” (UA0000263). Such an assessment must base on the spatial data concerning the protected species and habitats abundance within the project territory, but such data is missing in the EIA statement. Therefore, a self-declared “low” or “absent” impact is based on the assumptions, but not the scientific data. The EIA statement has no quantitative data on the species populations and abundance, the same is true for habitats – no data on their area and localization is provided.

Moreover, the national Law “On the EIA” envisages the necessity of the EIA for construction of the 110 kW power line, which is planned in the project. Nevertheless, the EIA statement did not assess the impact of the power line construction on the Emerald Network site “Polonina Borzhava”. According to our data, this construction will be held within the protected habitats of the Emerald site, F4.2 habitat, in particular.

We also feel obligated to comment and contradict the information, provided within the letter of the Department of EcoNet and Protected Areas of the Ministry of Ecology and Natural Resources of Ukraine (later on – the Letter) by 15 February 2019.

The total land area for the construction of the 34 wind turbines is near 30 ha, but one should note, that this area does not include territories for service roads and underground power lines, as well as other objects of the WPP. The EIA statement notes, that the total area under construction is near 50 ha. Nevertheless, the assessment concerns only 30, not 50 ha, and, as mentioned above, is based on assumptions only. This is proved by the studies, which concerned only the 30 ha territory for the wind turbines. We also forecast that the project will impact much more than 50 ha.

We also strongly disagree with the statement from the EIA statement, also mentioned within the Letter, that “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)” and “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”. For today, no habitat mapping was held within the Emerald site “Polonina Borzhava”. Therefore, there is no evidence that the project will be implemented outside the protected habitats. Such statements are typical manipulations. One shall admit that the project is to be held on the most elevated areas of the Borzhava ridge, very narrow and thus having no present roads. Therefore, the absence of the roads within the most elevated areas determines that the protected habitats there are in the most natural condition. The project envisages shaving the aboveground and ground surfaces during the construction.

Moreover, as we informed you previously, the project (held at the most elevated areas of the ridge) will impact less elevated habitats due to erosion, hill wash, and fuel-oil pollution. Therefore, the relatively small area of the project must be viewed at a broader scale, considering possible direct and indirect impacts on the adjacent areas.

The Letter also states that “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». This is highly undesirable, as the locations of rare and endangered species of flora/fauna must be mapped before the construction, and the impact assessment must be held before the construction.

Moreover, as we mentioned before, the assessment of the impact on birds and bats was inadequate and insufficient for any impact statements, especially concerning the migration routes.

The developer also states, that the main service road (8 m breadth), planned to lay within the forest, is not a subject for assessment within the EIA procedure. We find it unacceptable and violating the basics of the EIA, as the road construction itself will alter vehicle accessibility of the area, which will definitively impact species and habitats of the territory. The road cannot be viewed in isolation from the other project activities, because it is aimed for transportation of the wind turbines and machinery to the Emerald Network site.

**II.** According to the national legislation, after the EIA conclusion statement, the developer must obtain a license for the construction. In May-June 2019 the State Architectural and Construction Inspection of the Transcarpathian region refused to provide a license twice, referring to the nonconformities of the project to the national legislation. The developer still tries to obtain the license.

**III.** At this time the Transcarpathian regional administrative court considers a complaint by the NGO “Ekosfera” to the Department of the ecology of Transcarpathian Regional State Administration. The complaint aims at cancelling the EIA conclusion statement (Court case №260/771/19). The case also involves several civil society representatives (as third-party actors), who provided the comments within the EIA procedure, which were not taken into account. The second preliminary court session is

planned on 19 September 2019. The developer is involved as a third-party actor on the side of the respondent party.

**IV.** We think that the conservation of Polonina Borzhava and its natural values in a long-term perspective is possible only after the establishment of the protected area/areas. One should admit that the forests, surrounding the site, mostly have protected status. In 2007 and later, the establishment of the “Zhdymyr” National Park was planned, including Polonina Borzhava territory, but the plans were not implemented. At the beginning of 2019 we provided a justification for the establishment of the “Zelenytsia” Nature Reserve (1028,5 ha) within the Mizhgirya district on Polonina Borzhava, but received negative responses from the land steward – General Directorate of the State Land Cadaster of the Transcarpathian region – twice. The reasoning was that they have no financial resources to develop necessary land documentation for the Reserve and to ensure its protection.

**V.** Aiming to raise awareness of mass-media and society on Polonina Borzhava conservation issue, on 6 July 2019 a public campaign was held (images are attached).

**In the view of the facts provided, we think that the EIA procedure concerning Polonina Borzhava must be repeated, eliminating the shortcuts identified (mentioned within this and previous letters) and providing spatial alternatives for the construction of a WPP outside of the Emerald Network site.**

All the best,

Chairman of the Board

CSO «Ukrainian Nature Conservation Group»



Olexii Vasyliuk

**Attachment:** images of the campaign for Polonina Borzhava





- February 2019 -



## NGO «UKRAINIAN NATURE CONSERVATION GROUP»

Gogol str. 40, Vasylkiv, Kyiv oblast, Ukraine, 08600

тел.: (+38 097) 100-04-73; (+38 097) 919-39-87

uncg.ua@gmail.com

---

To: Mrs. Iva OBRETENOVA  
Secretary of the Bern Convention  
Head of the Biodiversity Unit Directorate of  
Democratic Governance  
Directorate General II  
Council of Europe

### NEW INFORMATION ON THE CURRENT STATE OF THE PROJECT OF BUILDING THE WIND POWER PLANT SITUATED ON THE TERRITORY OF THE EMERALD NETWORK OF UKRAINE – “POLONINA BORZHAVA” (NUMBER UA0000263)

#### REGARDING THE QUALITY OF THE REPORT ON EIA

Dear Mrs. Iva OBRETENOVA,

On January 15, 2019 "ATLAS VOLOVETS ENERGY" LLC (hereinafter – “the Developer”) has published the Report on Environmental Impact Assessment on the project of building the wind power plant on the territory of the Emerald Network “Polonina Borzhava” (hereinafter – «project») in national Register of EIA cases: <http://eia.menr.gov.ua/places/view/1379> (case number 2018821379).

The Report on EIA of the WPP project contains 1792 pages. It has been carefully analysed by independent scientists and experts in fields of botany, zoology, geology, soil science, physics, environmental science etc.:

- Prof. Dr. Kateryna Derevska, University of "Kyiv-Mohyla Academy", PhD (Geology), Doctor of Geological Sciences
- Dr. Andriy Bokotej, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Zoology)
- Prof. Dr. Igor Kaprus, State Museum of Natural History, National Academy of Sciences of Ukraine, Lviv, Ukraine, Doctor of Biological Sciences
- Dr. Nataliia V. Dziubenko, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Zoology)
- Dr. Vlasta Loya, M.M. Gryshko National Botanical Garden, National Academy of Sciences of Ukraine, PhD (Botany)

- Prof. Dr. Lubov Felbaba-Klushina, Uzhhorod National University, PhD (Botany), Doctor of Biological Sciences
- Dr. Roman Kish, Uzhhorod National University, PhD (Botany)
- Dr. Habriel H. Hushtan Biological Sciences, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Kateryna Hushtan Biological Sciences, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Volodymyr Rizun, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Entomology)
- Dr. Oksana Stankewich-Volosyanchuk, NGO "Ecosphere", Ph.D. (Ecology)
- Hanna Kuzyo, Western Ukrainian Ornithological Society
- Dr. Julia Burlachenko, Save Borzhava Initiative, PhD (Physics)
- Dr. Tymur Bedernichek, M.M. Gryshko National Botanical Garden, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Kateryna Danylyuk, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Botany)
- Kateryna Borysenko, ecologist, public initiative «Emerald – Natura 2000 in Ukraine»
- Dr. Bohdan Prots, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Botany)
- Dr. Taras Yanytskyi, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Entomology)
- Dr. Oleg Orlov, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Taras Mykitchak, Institute of Ecology of the Carpathians, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Marina Ragulina, State Museum of Natural History, National Academy of Sciences of Ukraine, PhD (Ecology)
- Dr. Ihor Dyky, Ivan Franko National University of Lviv, PhD (Zoology)
- Oleksii Dubovyk, Bachelor student, Department of Zoology, Ivan Franko National University of Lviv
- Dr. Viktor Malitskyi, Ecological College LNAU Lviv, Ukraine, Ph.D (Biology)

They have come to the following conclusions on the Report on EIA of the WPP project:

**1. The report is of poor quality and it is artificially inflated. It contains:**

- many repetitions of the same pieces of text;
- a lot of general information not specific to the project;
- pieces of text copied from other EIA reports (for example there is information about a mink farm (!) and works on the water while it is not related to the territory of the planned activity and the project of WPP);
- a series of contradictory information about the parameters of the planned activity;
- a series of false information. For example: (1) authors state that there are no habitats types, listed in Resolution 4 of the Berne convention on the area of planned activity; (2) it is claimed that the area of planned activity is assigned as a buffer zone of the Regional ecological network (actually the main part of the area of planned activity is assigned as a core zone of the Regional ecological network) etc.
- Poor data on field research, performed on the territory of planned activity: limited areas and short terms of different kinds of research. For example, it is reported only 42 hours of monitoring during the autumn birds migration. The observations were performed in only two spots located 5 km from each other.

In July 2018 the researches of State Museum of Natural History, National Academy of Sciences of Ukraine (Lviv) and M.M. Gryshko National Botanical Garden, National Academy of Sciences of Ukraine (Kyiv) have performed a field research on Polonyna Borzhava with support of local community and authorities. The presence of habitats listed in Resolution 4 of the Berne convention was proved on the territory of the planned activity, as well as flora and fauna species listed in the Red book of Ukraine and Resolution 6 of the Berne convention. Many of them are located exactly within the land plots, leased for planned construction. The results of this research are available in the database “Biodiversity of Ukraine” (<http://dc.smnh.org/>).

During the autumn 2018 the independent ornithologists and volunteers have performed bird migration monitoring on Polonyna Borzhava during 55 days. The results are incomparable with those, obtained during three days of observations in autumn migration period 2017 given in the EIA Report of WPP Project. For example, during our monitoring more than 4000 Grus grus individuals were observed while the authors of the EIA Report give the number of 196 ones. The independent ornithologists have observed 6 species of birds from the Red Book of Ukraine while in the EIA Report there are only 2 of them.

The results of summer and autumn field researches are been preparing for the publications. In case of necessity we can provide them under request.

**1. Most of comments and suggestions** sent by the public after the Notification of Planned Activity was published (total 110 pages from citizens, academic organisations and NGOs) regarding sufficient amount of research and the level of detail of the information to be included in the EIA report of the project **where not taken into account in the Report of EIA without arguments**. This is a serious violation of Law of Ukraine «On Environmental Impact Assessment».

**2. The Report on EIA does not contain all necessary information**, required by the Law of Ukraine «On Environmental Impact Assessment» For example there is no data concerning following topics:

- Real territorial and technical alternatives of the project are not presented; the location of WPP on the territory of the Emerald Network “Polonina Borzhava” is presented as non-alternative, which is absurd.
- Many of the parameters of the planned activity are not clear or not presented in the Report. Among them
  - Technical parameters of roads to be constructed, such as their width and length, the way of construction, type of road cover, methods of drainage to be used, acceptable slopes and loads of the roads, the volume of earthworks and excavation during their construction and their location.
  - The location and the way of construction of power lines (110 kV and 35 kV) and communication lines, the volume of earthworks during their construction. According to the Law on EIA (Article 3), the activity of construction of electric lines of 110 kV is a subject of an EIA, so this information should be reflected in the Report on EIA of the project in detail or a separate procedure on EIA on building of power line 110 kV should be performed, which was not fulfilled.
  - The type of foundation for every wind turbine, their depth and the way of construction.
  - The procedure for dismantling of WPP, the amount of necessary earthworks and equipment; the impact of the dismantling process on the environment.
- The Report on EIA doesn't reflect the actual state of using the area of planned activity (tourism, winter sports, aviation sports etc.) and does not contain information about the influence of the project on the development of tourism, sport and recreation in this region. For example, there are marked touristic trails through all the Borzhava mountain range, visited every year by thousands of people coming from all over Ukraine and from abroad.



- The Report does not contain the detailed mapping of habitat types from Resolution 4 of the Berne convention. Therefore it is impossible to estimate the areas of habitats listed in Res. 4 of the Berne Convention, that will be destroyed during construction and after putting the WPP into operation.
- There is no quantification of the impact of the planned activity on rare species of plants (listed in Red Book of Ukraine and in Resolution 6 of the Berne convention), including their direct destruction during the planned construction.
- There is no quantification of the impact of the planned activity on rare species of animals (listed in Red Book of Ukraine and in resolution 6 of the Berne convention), including their direct killing during the planned construction.

In such a way, a lot of information necessary for the evaluation of the impact of the planned activity on the environment is missing in the EIA Report. Therefore it is impossible to make a conclusion about admissibility or inadmissibility of the planned activity. According to this **we believe that Department of ecology of Transcarpathian Regional State Administration (the governmental body, which is now responsible to give conclusion on EIA of this project) should refuse to give a conclusion on EIA of the project justifying it by the lack of necessary information in Report on EIA.**

#### **REGARDING VIOLATION OF LAW DURING PUBLIC HEARINGS ON REPORT OF EIA OF THE WPP PROJECT**

We attended four of the five public hearings regarding Report of EIA of the WPP Project – in villages of Volovets (January 30, 2019), Berezhnyky (January 30, 2019), Dusyno (January 31, 2019), and Nelipyno (January 31, 2019). All of them were not organized properly.

In Volovets, the biggest village, where public hearings were planned, more than 200 people came, but the room for hearings was too small to accommodate all of them. Proposal to move the hearings to a bigger hall was declined by the organizer of hearings (the organiser is the Department of ecology of Transcarpathian Regional State Administration). So, many people stayed in the corridor without being able to speak. The topic of hearings is very resonant in that region, so it was easy to predict the big number of people. The choice of room for 20-30 seats by the organiser looks strange.

A similar situation has been observed in all the hearings, which we have visited – too small rooms to accommodate all of the interested people. Moreover, in the village of Berezhnyky, public hearings were conducted in a cold and dark corridor (the only source of light there were spotlights of video cameras), please see photos below.



*Public hearings in Volovets, 30.01.2019*



*Public hearings in Volovets, 30.01.2019*



*Public hearings in Bereznyky, 30.01.2019*



*Public hearings in Bereznyky, 30.01.2019*

During all the hearings, all independent experts and scientists were discriminated. The word was given first of all to local people and to the authors of the Report while the opponents had lack of time to express their questions and comments. According to the Law on EIA, every interested person have the same right to speak during public hearings, so this law was violated.

Most of the important questions, expressed by public during the hearings, remained unanswered: the authors of the Report on EIA and the representatives of Developer answered with standard phrases from the Report on EIA without any specifics.

Written comments and questions regarding Report on EIA of the WPP project can be submitted by people and organizations by February 18, 2019. After that, the Department of ecology of Transcarpathian Regional State Administration (the governmental body, which is now responsible to give conclusion on EIA of this project) will have 25 working days to prepare the conclusion on EIA of the project or reject it (as it was described above).

Regardless the number of violations of Law on EIA and the poor quality of the EIA Report, the representatives of the investor (Turkish company “Gurish”) and the Developer are confident that the decision on the WPP project implementation to be made by the Department of ecology of Transcarpathian Regional State Administration WILL BE POSITIVE.

There were several appeals from different NGOs to the Ministry of Ecology and Natural Resources of Ukraine about the necessity to start the procedure of EIA of the WPP project in transboundary context. Unfortunately, the Ministry has declined all of them. Nevertheless we believe that the best solution for this situation is to start the procedure of EIA of the WPP project in transboundary context. This will forward the decision making on the EIA Report from the Department of ecology of Transcarpathian Regional State Administration to the Ministry of Ecology and Natural Resources of Ukraine. In such a way we hope that the quality of EIA procedure for this case could be improved.

#### **JUSTIFICATION OF THE NECESSITY OF STARTING THE EIA OF THE PROJECT IN TRANSBOUNDARY CONTEXT**

International migration path of a numerous birds runs across Borzhava mountain range. Among them there are rare species protected by national and international law. In particular

*Grus grus*  
*Ciconia nigra*  
*Circus cyaneus*  
*Circus aeruginosus*  
*Pandion haliaetus*  
*Milvus migrans*,  
*Clanga pomarina*  
*Clanga clanga*

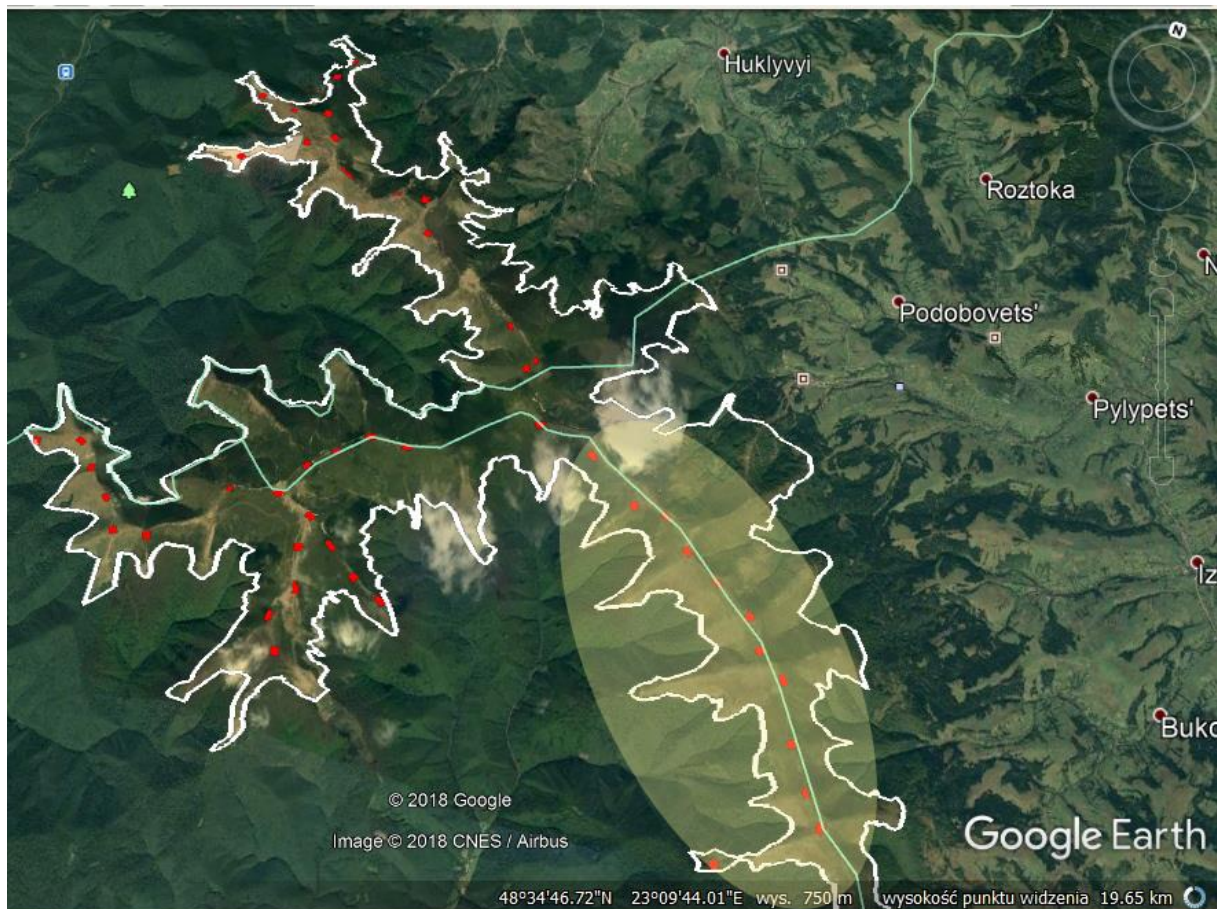
Borzhava is one of the highest mountain ranges in Ukraine. Placing wind turbines on the mountain tops significantly increases the risk of migrating birds' collisions with wind turbines, due to the lower heights of their flights over the relief in the mountains. Taking into account that the migrating birds additionally descend in the bad weather conditions the probability of mortal collisions with the blades of wind turbines is very high.

Migrating birds overpath Polonyna Borzhava twice a year. Since the populations of abovementioned species of birds are small the row of wind turbines situated on Borzhava range will create significant additional danger for the preservation of their nesting populations in a number of countries, in particular Poland, Belarus, Lithuania, Finland, Estonia.

Polonyna Borzhava is Emerald network site Nr UA0000263. According to the initial plan wind turbines of the planned power plant will cover the whole area of this object as it is shown on Fig. 1. Now the Developer claims that the area of planned activity is reduced as they take more powerful wind turbines (the area that is excluded from the project is marked by yellow color on the Fig.1) In the same time all the land plots from the initial project remain as “lands for placement, construction, operation and maintenance of buildings and structures of power generating enterprises, institutions and organizations» as it is seen from the public map of the state geocadaster of Ukraine. If those land plots are returned to the state it is not clear why they are still of the purpose of power generation. Indeed, initially those lands were of agricultural purpose and their purpose was changed for the WPP



construction project of LCC “Atlas Vlolovets Energy”. In such a way we suppose that in the case of successful finishing of EIA and getting the permission for the WPP construction the Developer will continue the project according to the initial plans.



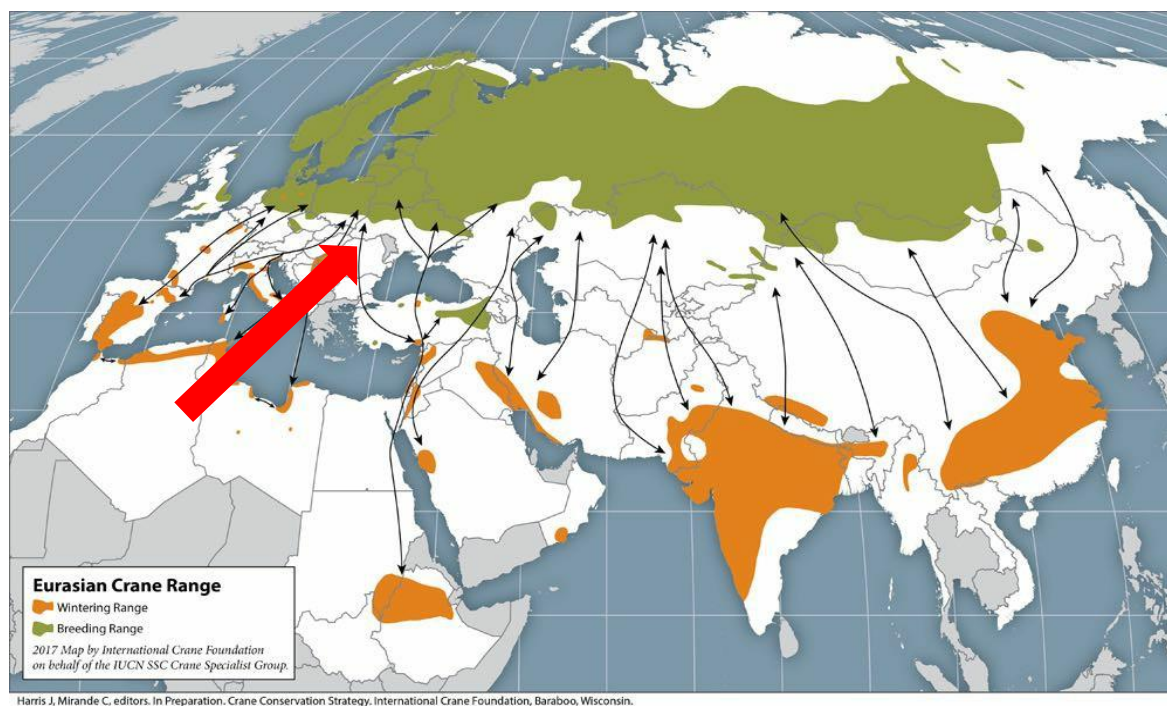
**Figure 1 - Map of the Emerald Network site “Polonina Borzhava” UA0000263 (white line) with leased land plots for building the WPP (red plots)**

The most massive migration over Borzhava range among the species protected by the Resolution 6 of Berne Convention is observed for *Grus grus*. The migration paths of this species is shown on Fig.2.

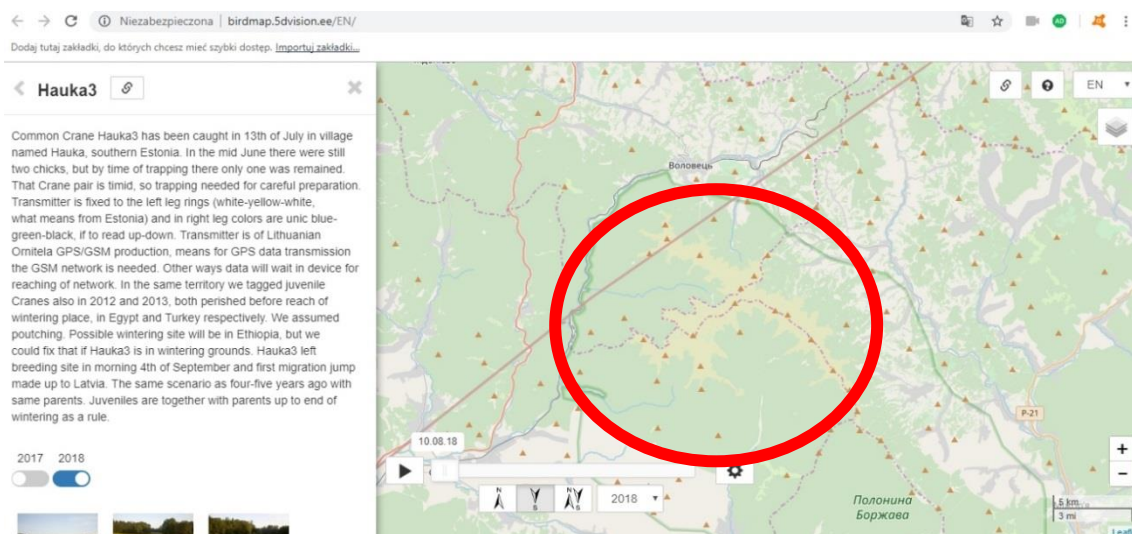
The fact of *Grus grus* migration through Polonyna Borzhava is proved by data of GPS-transmitters. For example the migration track of the *Grus grus* named Hauka3 is shown on the web page <http://birdmap.5dvision.ee/EN/2018/autumn/hauka3?line=1&track=0&speed=1>

The print-screen of this page is shown on Fig. 3. *Grus grus* Hauka3 has passed Polonyna Borzhava on 17.09.2018, the height of the fly was 100-300 meters over relief. Taking this information into account, considering, that *Grus grus* usually migrate in flocks which usually have at least several dozen individuals, and sometimes several hundred individuals, and that planned wind turbines will have about 180 m height, the risk of collision with wind turbines placed on the Polonyna Borzhava, will be very high for *Grus grus*.

On 25.09.2018 the massive flight of cranes going to wintering places was observed throughout the whole Europe in the frame of autumnal migration. Massive flight of *Grus grus* over Polonyna Borzhava was observed by Ukrainian ornithologists (Leonid Pokrytiuk and others) during this day as well: they has observed about 3000 cranes in more than 30 flocks.



**Figure 2 – Migration path of *Grus grus* that is protected by the Red Book of Ukraine and the Resolution 6 of Berne Convention. The red arrow shows the path running across Polonyna**



**Figure 3 – The track of migration of crane Hauka 3, passing Polonyna Borzhava in Ukraine, 17.09.2018.**

Source:

<http://birdmap.5dvision.ee/EN/2018/autumn/hauka3?line=1&track=0&speed=1>

Taking into account the above information, since the planned activity of wind power plant construction on Polonyna Borzhava meets the criteria of Annex III of the Espoo (EIA) Convention, we ask you to appeal to the Ministry of Ecology and Natural Resources of Ukraine on necessity of performing EIA on project of WPP construction at Polonyna Borzhava in a transboundary context, with the involvement of Poland, Belarus, Lithuania, Finland and Estonia as a Concerned Parties.

Kind regards,

Oleksii Vasyliuk, UNCG