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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November - 4 December 2020

APPLICATION OF THE CONVENTION

- Summary of case files and complaints -

- COMPLAINTS ON STAND-BY -

NOVEMBER/DECEMBER 2020

*Secretariat memorandum prepared by
the Directorate of Democratic Participation*

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Date submitted	01 December 2017
Submitted by (Complainant)	Mr Gunnlaugur Pétursson, Iceland Nature Conservation Association and Fuglavernd BirdLife Iceland
Respondent State (Respondent)	Iceland
Specie/s or habitat/s affected	Birch forests in Breiðafjörður Nature Reserve's
Background to complaint	<ul style="list-style-type: none"> ➤ The complaint alleges a possible breach of the Convention by Iceland due to the development of new road infrastructure. ➤ According to the complaint, a new road to pass through the Breiðafjörður Nature Reserve and more specifically the Teigsskógur birch woods is being planned by the Icelandic Road Administration. The complainants specifically mention that the area is of extremely important value for biodiversity and could qualify as an Emerald Network site under the Bern Convention. ➤ The initial plans for the road date back to 2004-2005, when the chosen options were rejected due to their high environmental impact. This decision of the National Planning Agency was confirmed also by the Supreme Court of Iceland. ➤ A new environment impact assessment was undergone in the period 2016-2017 based on new alternatives for the road, including a so called "leið D2" tunnel alternative and a new "leið Þ-H" road option still going through the Teigsskógur wood and passing over fjords. The complainants consider that the "leið Þ-H" route option is in practice the same as the "leið B" option rejected back in 2004-2005 due to its extensive environment impact. ➤ It is also reported that a number of consulted national institutions during the environmental assessments consider the old "leið B" and the new "leið Þ-H" as the worst of the alternatives. These institutions are the Marine & Freshwater Research Institute, the Icelandic Institute of Natural History, the Environment Agency of Iceland, the Cultural Heritage Agency of Iceland, and the Icelandic Forest Service. ➤ A report was requested to the authorities regarding the status of the planned road infrastructure and further steps in its development, the status and conclusions of the Environment Impact assessments implemented in 2016-2017 for the planned road and the way the cumulative impact of all existing, planned and pending roads through the Breiðafjörður Nature Reserve are considered.
Authorities' report May 2018	<ul style="list-style-type: none"> ➤ A proposal for a revised route through the Teigsskógur woodland (called route Þ-H) went through Environmental Impact Assessment (EIA) in the years 2015-2017. Following the EIA process, the municipality decided to amend its municipal plan. In a consultation draft planning proposal presented by the municipality in the autumn of 2017, two alternative routes for the road were

presented, a tunnel alternative (route D) and route P-H. The planning process is not yet concluded. The local council did decide earlier this year to choose route P-H and that a planning proposal with route P-H should be put out for formal public consultation. The local council has, however, since decided to postpone that, and has instead decided to seek independent road engineering appraisal of the two alternative routes.

- A development permit cannot be issued by the local authority for the road (regardless which route is chosen by the local council) until the municipal plan has been amended. The municipal plan amendment is subject to adoption by the local council and approval by the National Planning Agency, following a public consultation period.
- Furthermore, it should also be added that a legislative bill has been submitted in Parliament by five members of Parliament, who represent the Northwest constituency. The Act, if passed by Parliament, would give development permit to the Icelandic Road Administration (IRA) for the road according to route P-H, overriding the local authority's role according to the Planning Act to issue the development permit. The bill waits its first reading in Parliament. If the bill would be passed, the aforementioned amendment of the municipal plan would still need to be adopted and approved by the local council and the National Planning Agency.
- The planned road has undergone Environmental Impact Assessment (EIA), i.e. both with an EIA process in the years 2003-2007 and with a second EIA process 2015-2017. NPA's conclusion was made on March 28th 2017
- The NPA's concluded that route D2 best fulfills the objectives of the EIA Act on minimizing as possible the negative impacts of a project on the environment. Furthermore it is the view of the NPA that there remains uncertainty about the effect of the fjords' crossing on physical aspects of the sea and its littoral and marine life, which requires further research, before decisions are taken on the project. With regard to the known impacts of the proposed project on birch woodland, wetlands, mudflats og salt marshes, species under protection, cultural relics and landscape it is the conclusion of the NPA that routes A1, I and P-H are likely to have significant adverse environmental impacts that cannot adequately be prevented or mitigated.
- The Breiðafjörður nature reserve is under the Breiðafjörður committee. The committee has not assessed, in its plan for the area, the cumulative impacts of existing, planned or pending road construction. No other plans have addressed cumulative impacts of road projects in the Breiðafjörður nature reserve. However, in the IRA's Environment Assessment Report (EIR) for Vestfjarðavegur (Bjarkalundur-Skálanes) and in the NPA's EIA conclusion, cumulative impacts of that road project along with existing roads are addressed.
- The IRA's EIR contains a chapter on cumulative impacts of their proposed project and other existing parts of the Vestfjarðavegur road along the north coast of Breiðafjörður. Uptil now, three fjords in northern Breiðafjörður have been crossed, i.e. Gilsfjörður, Kjálkafjörður and Mjóifjörður and other parts of the road have been built in the littoral environment, e.g. by Múklif in Kollafjörður, at the bottom of Vattarfjörður and by Hörgsnes in Vatnsfjörður. These road projects have to a varying degree disrupted the Breiðafjörður nature reserve. Furthermore, the IRA has recently started working on an EIR for a new crossing of Vatnsfjörður, the westernmost fjord on the northern coast of Breiðafjörður.

	<ul style="list-style-type: none"> ➤ The IRA's EIR considers the cumulative effects of the proposed project on mudflats and salt marshes in Breiðafjörður to be minimal. The IRA states that the proposed project is not in opposition with the conservation objectives of the Nature Conservation Act for habitat types, ecosystems and species and will not impact biological diversity in the area. ➤ In the NPA's conclusion on the EIA of Vestfjarðavegur (Bjarkalundur-Skálanes) the agency states that the IRA has not convincingly assessed impacts of existing roads on the marine flora and fauna in the fjords that have been crossed.
<p>Bureau September 2018</p>	<ul style="list-style-type: none"> ➤ The Bureau thanked the national authorities for the report submitted in relation to the recent complaint. ➤ After a deliberation on the case, the Bureau agreed that both the authorities and complainant should submit additional information, and possibly clearer maps, on the proposed routing of the new road infrastructure, on the natural values of the area, and to inform in detail on possible conflicts with currently existing protected areas in the country and possible Emerald network sites.
<p>Authorities' report January 2019</p>	<ul style="list-style-type: none"> ➤ The EIA was finished and the local authority has now accepted, under protest, the municipal plan proposal concerning route Þ-H. There is protest concerning that the IRA would not accept any other route than route Þ-H. The local authorities may challenge the IRA's decision but at this moment further development of this case is uncertain. ➤ The conclusion of the National Planning Agency, NPA, route D2 would best fulfill the objectives of the EIA Act according to NPA <p>THE PROPOSED ROUTING OF THE NEW ROAD INFRASTRUCTURE</p> <ul style="list-style-type: none"> ➤ Map 1 shows the fjord Breiðafjörður and the protected area of Breiðafjörður, green dotted line, and the EIA area, black dotted line. ➤ Map 2 shows clearly the route of the different road proposed in the EIA. It appears that a combination of alternative A1 and route D2 (preferred by the NPA in the EIA) would have least impact on the natural values of the area. ➤ Map 3 shows the protected area of Breiðafjörður and means that all areas are not inside protected area but Teigsskógur is registered under Article 61 of the Nature Conservation Act No 60/2013. Area under this article are not strictly protected because the protection can be overruled by local authorities through municipal planning if they show the necessity of the project and that other options are not available ➤ Map 4 and 5 show some of the areas in and around Breiðafjörður that are registered in the Icelandic Nature Conservation Register but have not the same level of protection. <p>ON THE NATURAL VALUES OF THE AREA:</p> <ul style="list-style-type: none"> ➤ All the routes presented in the EIA have significant negative impacts on the landscapes. Uncertainty remains about the effect of the fjords' crossing on physical aspects of the sea and its littoral and marine life, which requires further research, before decisions are taken on the project. With regard to the known impacts; the NPA concludes that routes A1, I and Þ-H are likely to have significant adverse environmental impacts that cannot adequately be prevented or mitigated.

	<ul style="list-style-type: none"> ➤ Concerning the cumulative effects of the proposed projects, the IRA's EIR considers these to be minimal and states that the proposed project is not in opposition with the conservation objectives of the Nature Conservation Act for habitat types, ecosystems and species and will not impact biological diversity in the area. But the NPA considers that the IRA has not convincingly assessed impacts of existing roads on the marine flora and fauna in the fjords that have been crossed. <p>TO INFORM IN DETAILS ON POSSIBLE CONFLICTS WITH CURRENTLY EXISTING PROTECTED AREAS IN THE COUNTRY AND POSSIBLE EMERALD NETWORK SITES:</p> <ul style="list-style-type: none"> ➤ There are proposed sites to the Ministry for the environment and Natural Resources and one of those sites is Breiðafjörður. The reason for the proposal is the conservation value of coastal habitat types in the fjord and the whole area of Breiðafjörður is considered an important bird area for several bird species (list of coastal habitat types and birds species is mentioned). ➤ A web map shows a description of each habitat type. ➤ In conclusion, both the IINH and the NPA's conclusion in the EIA agree that route D2 would have least impact on the nature conservation value of Breiðafjörður. As far as IINH knows no new research or monitoring is available neither for the cumulative effects nor for the impact of new different bridges. ➤ Breiðafjörður and its subzones or areas will most likely be suggested as tentative site(s) in Emerald Network both as coastal habitat types and important bird areas. ➤ Although the birch woodland around Breiðafjörður is not part of the protected area some of the birch woodland areas, including Teigsskógur, are on the Nature Conservation Register and some birch woodlands fall under special protection according to Article 61 of the Nature Conservation Act. Which birch woodlands have this status has not been defined but most likely Teigsskógur will have this status as it is already on the Nature Conservation Register. It is the responsibility of the Icelandic Forest Service to register birch woodlands under this article.
<p>Complainant's report February 2019</p>	<ul style="list-style-type: none"> ➤ The area where IRA plans to build "leið Þ-H" along the virgin birch wood and on causeways over the fjords is either protected by Icelandic law in various ways or "needs to be protected". ➤ Extremely rare and protected plants, such as <i>Paris quadrifolia</i>, have been found in this wood. The coast in this area is a part of "Verndarsvæði Breiðaffjarðar" (= Breiðafjörður bay Nature Reserve) which is also a designated Important Bird Area (IBA). The two fjords are important for many migrating bird species such as knot (<i>Calidris canutus</i>) and other species such as whooper swans (<i>Cygnus cygnus</i>) and are known for kelp growth. Route Þ-H is also very close to a white-tailed eagle nest (<i>Haliaeetus albicilla</i>), but this species is strictly protected in Iceland. Nominations of the Breiðafjörður Bay as Ramsar site, as well as UNESCO World Heritage Site are in progress. ➤ Other fjords have been impact by both previous and pending road construction in the Breiðafjörður Bay Nature Reserve. Some of which have already been strongly affected.

	<ul style="list-style-type: none"> ➤ The complainant also gives maps showing the area and the proposed routing of the different road proposed and the route P-H chosen by IRA's EIA. According to the maps: The road as the IRA suggests (the blue line) risks further the integrity of the Breiðafjörður Bay Nature Reserve, as an additional encroachment into a nature area of very high European and international value for birdlife, landscape and important natural woodland. The alternative suggested by the nature protection organisations (the red line with a tunnel under the Hjallaháls heath) saves the fjords and the woodland as well as it seems to be more obvious future road and even more secure in winter. <p>THE INDEPENDENT ROAD ENGINEERING APPRAISAL</p> <ul style="list-style-type: none"> ➤ The local council decided to seek independent road engineering appraisal of the two alternative routes. These proposed a new alternative route R (reports linked). According to both company, route P-H is the far worst of all the proposed routes from the environmental point of view. <p>ADDITIONAL INFORMATION</p> <ul style="list-style-type: none"> ➤ The planned road (route P-H) with three new fjord crossings would be harmful for large areas of important intertidal areas of importance to arctic migratory waders and other bird life in the nature reserve of Breiðafjörður. ➤ The density of the birch in the forest is unique and the route P-H has a significant negative impact on the birch fields in the area due to the high disturbance of the "Teigsskógur" forest which has a great ecological importance. ➤ Breiðafjörður bay has an international nature conservation value and the Icelandic government has proposed that the site will be placed on the UNESCO World Heritage List. In the Biological Protection Agreement diversity, that Iceland is a member of, says that the protection of ecosystems and natural habitats should be promoted and the maintenance of viable species in their natural environment. ➤ The white-tailed eagle (<i>Haliaeetus albicilla</i>) enjoys special protection according to Art. Act no. 64/1994. The eagle is also on the red list of The Icelandic Institute of Natural History and also on the IUCN International Conservation Association list. Breiðafjörður is on the list of important bird areas in Europe and on a list of coastal areas of the Nordic Region that is important to protect.
<p>Bureau meeting March 2019</p>	<ul style="list-style-type: none"> ➤ The Bureau thanked the national authorities and complainant for their detailed reports. ➤ It expressed its strong concerns that this important site is compromised, also in view of its potential Emerald Network designation in the future and in view of the World Heritage application. The choice of the new road infrastructure routing appears to be compromising the area and is recognised as a non-optimal routing solution in the presence of alternatives less harmful for the environment. ➤ The Bureau instructed the Secretariat to request a new progress report to the national authorities for its second annual meeting in September 2019 on:

	<ul style="list-style-type: none"> - who is in charge of the choice and approval of the road alternative selection and how the opinion of the main agencies and institutes of the country are taken into account; - updated information on the status of the road construction; - progress in the setting-up of the Emerald network, namely, information on planned calendar for the submission of proposed sites database. <ul style="list-style-type: none"> ➤ Eventually, the Bureau stressed that the lack of any progress in the setting-up of the Emerald Network in Iceland, in the past 20 years, is compromising many high value biodiversity areas such as the one of concern in this file. ➤ In this respect, the Bureau decided to place the file in the category on stand-by and to make a decision on moving it further for consideration by the Standing Committee in its next meeting.
Authorities' report August 2019	<ul style="list-style-type: none"> ➤
Bureau meeting 9-10 September 2019	<ul style="list-style-type: none"> ➤ The Bureau thanked both the complainant and the authorities for their reports. ➤ The Bureau reminded again of the importance of the area for biodiversity conservation and the existence of a least harmful alternative for the road infrastructure planned. ➤ The Bureau instructed the Secretariat to request a new updated report by the complainant, as soon as new information is available and at the latest for its upcoming meeting in March 2020. The authorities are also requested to submit an updated report on progress in the selection of the alternative for the road, through the competent authorities with the overall coordination of the Focal point of the Convention. ➤ The Secretariat was also instructed to monitor the progress in the setting-up of the Emerald Network in the country, through the competent Group of Experts and the Standing Committee. ➤ The Bureau decided that it will consider a possible upgrade of this case as a “possible file” at its upcoming meeting in March 2020, which will automatically put the case on the agenda of the Standing Committee meeting.
Complainant's report February 2020	<ul style="list-style-type: none"> ➤ The complainant stressed again the information provided from its previous report. More recently, the municipality in the area, Reykhólahreppur, published a proposal for a new master plan “aðalskipulag” (in Icelandic). ➤ Unfortunately, the road shown there is practically unchanged from previous proposals, it will cross the two fjords, Guðufjörður and Djúpifjörður, and run along the Teigsskógur birch wood.

	<ul style="list-style-type: none"> ➤ Thus, there won't be a "possible" negative impact on the Breiðafjörður Nature Reserve, but a certain negative impact. The complainant calls for quick action to stop construction, and an environmentally and climatically better and cheaper alternative to be chosen.
<p>Authorities' report February 2020</p>	<ul style="list-style-type: none"> ➤ The latest development in the process in Reykhólahreppur is that the municipality has sent out for comments a draft construction permit for the road construction according to route Þ-H. The municipality and the National Planning Agency accepted the master plan for the route Þ-H on 22 November 2019 and published it on 26 November 2019. As far as the Icelandic Institute of Natural History knows, a construction permit will be issued in the near future. As the case stands now in Reykhólahreppur, there is no longer any alternative routes being considered in the selection progress. ➤ Concerning monitoring progress of the Emerald Network, the government refers back to its previous report of August 2019. An ecological network was proposed to the Ministry for the Environment and Natural Resources in 2018, and the sites are still in the evaluation process- it is taking far longer than the IINH expected.
<p>Bureau meeting 7-8 April 2020</p>	<ul style="list-style-type: none"> ➤ The Bureau thanked both the authorities and complainant for their short, timely reports. It strongly regretted that the road construction plan is going ahead with no alternatives being envisaged, despite the numerous calls for concern and recommendations of the Bern Convention to halt development. It was particularly regrettable given the importance and fragility of this Nature Reserve, which is qualified to be an Emerald Network site, as well as a possible Ramsar site and World Heritage Property. ➤ The Bureau strongly called on the Icelandic authorities to guarantee compensatory and mitigation measures during construction, should the development go ahead. ➤ The Bureau also noted with great concern the continuing slow progress in the general development of the Emerald Network in Iceland, and on the lack of mechanisms to prevent damage to possible Emerald sites. ➤ It mandated the Secretariat to write a letter to the Ministry for the Environment and Natural Resources expressing its grave concerns on the development of the road through Breiðafjörður Nature Reserve and requesting for a roadmap for the development of the Emerald Network. The letter should also call for the elaboration of a preventive mechanism to avoid replication of this situation in the future. ➤ The Ministry in coordination with the Icelandic Institute of Natural History would be asked to respond for its next meeting in September. The Bureau could then decide to upgrade the complaint on stand-by to a possible file thus bringing it to the 40th Standing Committee, depending on the information provided.
<p>Complainant's report July 2020</p>	<ul style="list-style-type: none"> ➤ The complainant stressed again the information provided from its previous reports.
<p>Respondent intermediate message August 2020</p>	<ul style="list-style-type: none"> ➤ IINH has been in contact with the Ministry for the Environment and Natural Resources of Iceland to obtain clear and timebound roadmap for the setting up of the Emerald Network etc. but a decision has not been taken on the matter.

	<ul style="list-style-type: none"> ➤ IINH has earlier explained to the Bureau the status of the work already done by IINH concerning mapping of habitat types and important bird areas etc. Based on that work the institute also proposed new protected areas in 2018 in relation to ecological network in context with Emerald Network. The proposals are still being processed according to the Nature Conservation Act. ➤ Concerning the formal status of the road project, regarding the complaint on Breiðafjörður, IINH refers also to its earlier answers on that subject where the institute has explained the process and the Planning Agency opinion on the matter e.g. in Environmental impact Assessment of the road project.
<p>Bureau meeting 15-16 September 2020</p>	<ul style="list-style-type: none"> ➤ The Bureau acknowledged the short communications of both parties, noting that the complainant had reiterated its previous report, and the respondent had requested more time to receive an adequate reply from the Ministry for the Environment and Natural Resources regarding the setting up of the Emerald Network. ➤ The Bureau took note that no updates had occurred regarding the construction of the road, and it was assumed that development would eventually go ahead. ➤ The Bureau, deeply concerned with the situation and lack of cooperation from the Icelandic Ministry as well as the lack of commitment towards the Emerald Network decided to exceptionally bring the complaint to the agenda of the Standing Committee, in order to give all Contracting Parties an opportunity to hear presentations of the situation from the Icelandic authorities and the complainant. The Standing Committee would be invited to take a position on the complaint and consider an on-the-spot-appraisal. ➤ Therefore, both Parties are urged to attend and make a short presentation at the 40th Standing Committee- the case remains on stand-by. ➤ Furthermore, due to the ongoing poor communication, the Bureau mandated the Secretariat to contact the Permanent Representation of Iceland to the CoE in order to discuss the communication issues.

2018/1: Ukraine: Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development	
Date submitted	30 March 2018
Submitted by (Complainant)	NGO ‘Ukrainian Nature Conservation Group’
Respondent State (Respondent)	Ukraine
Specie/s or habitat/s affected	A number of species and habitats protected in the adopted Emerald site
Background to complaint	<ul style="list-style-type: none"> ➤ According to the complaints, the breach of the Convention results from wind energy developments on the territory of the adopted Emerald Site ‘Polonina Borzhava’ (UA0000263), ➤ Although the wind power installation construction is going to have a negative impact in particular on bird and bat species protected through the Network in the “Polonina Borzhava” Emerald site, an EIA assessment was not developed ahead of its development. ➤ A report was requested to national authorities on the status of the Emerald sites ‘Polonina Borzhava’ (UA0000263), the state of development of the wind energy installations on Polonina Borzhava’ (UA0000263) and (5) any actions taken to start planning conservation measures for the areas and for the habitats and species for which they were designated.
Bureau September 2018	<ul style="list-style-type: none"> ➤ Bureau thanked the national authorities for the report submitted on the newly received complaint. ➤ The Bureau recalled that the designation of an Emerald site is not in conflict with wind energy developments. However, strict obligations are in place regarding the assessment of the impact these developments are going to have on the sites ahead of their implementation. In addition, a number of relevant guidance on the issue of wind energy development is produced by both the Bern Convention and the European Commission. ➤ The Bureau instructed the Secretariat to contact the complainant and request they provide more details and proof on the alleged impact the development will have on the site and how the law on EIA/SEA in the country is respected. ➤ The additional information should be provided for the next meeting of the Bureau, scheduled for March 2019.
Complainant’s report February 2019	<ul style="list-style-type: none"> ➤ In January 2019, the EIA report on the project of building the wind power plant has been published. ➤ After an analysis conducted by independent scientists and experts in different fields concerning the project, they have come to conclusions to support the complaint. The complainant is putting in parallel the EIA report’s results and independent’s results coming from ornithologists and volunteers. The differences between both are detailed in the complainant’s report. ➤ The complainant concludes to a violation of law of Ukraine «On Environmental Impact Assessment». In fact, most of comments and suggestions sent by the civil society were not taken into account in the Report of EIA. Moreover, the report does not contain

	<p>all necessary information. Due to this lack of information, it is impossible to evaluate the impact of the project on the Bern Convention's protected species of fauna and flora.</p> <ul style="list-style-type: none"> ➤ The complainant is asking the government in charge of the EIA conclusion to refuse to give a conclusion due to this lack of information. He also concludes to a violation of law during public hearings on report of EIA of the project and gives information about that breach. It concerns the public hearings' organization, the right to speak during these. ➤ He also argues for the necessity of starting and EIA of the project in trans-boundary context due to the international migration path of birds across the mountain, some of which are protected by national and international law. ➤ For the complainant, the EIA of the project has to be done in a trans-boundary context with the involvement of Poland, Belarus, Lithuania, Finland and Estonia as a Concerned Parties.
<p>Authorities' report February 2019</p>	<ul style="list-style-type: none"> ➤ The Ministry of Ecology and Natural Resources of Ukraine detailed the content of the EIA report on the project. ➤ The authorities called on many official experts to give their opinion on the assessment and they conclude to an objective absence of potential negative impact on birds and bats of «Borzhava» subalpine meadow (the area where the project will be conducted) ➤ The project was also to reduce to only 34 sites of WPU and not 41 as initially planned due to the identified features of the local flora (protected by the Red Book of Ukraine). ➤ Several options are planned to avoid the negative impact against the flock of birds like a buffer zone between the turbines and the high-mountain forest vegetation areas of «Borzhava» subalpine meadow. ➤ There are 2 protected flora species (<i>Campanula serrata</i> or <i>Campanula napuligera</i> and <i>Poa granitica</i>) and 1 protected fauna species (<i>Carabus hampei</i>) identified within the Emerald site of the Borzhava subalpine meadow. Their protection must be provided and the Ministry mentioned that research and monitoring programs are part of the requirement to the society TOV «ATLAS VOLOVETS ENERGY». ➤ According to the Law of Ukraine on EIA, the assessment report is subject to public discussion with public hearings and also with written comments and proposals. All proposals and comments are subject to mandatory review by the authorized territorial body. At the time of the report, this procedure is in progress
<p>Bureau meeting March 2019</p>	<ul style="list-style-type: none"> ➤ The Bureau thanked the national authorities and complainant for their detailed reports. ➤ It welcomed the Environment Impact Assessment realised according the Ukrainian law adopted in December 2017 and took note that its results are currently debated in public hearings. ➤ The Bureau encouraged the authorities to ensure fair and transparent consultations and to reflect the arguments and comments of layers of stakeholders. ➤ The Bureau also invited the authorities to refer to the guidelines developed by the Bern Convention in cooperation with Birdlife International “Wind farms and birds: an updated analysis of the effects of wind farms on birds, and best practice guidance on integrated planning and impact assessment” and those developed by the European Commission in the framework of Natura 2000 “Wind energy developments and Natura 2000”.

	<ul style="list-style-type: none"> ➤ The Bureau instructed the Secretariat to request a new report to the national authorities reflecting the results of the public consultations on the EIA and to invite the complainant to comment on it for its second annual meeting in September 2019. ➤ This complaint is moved to the category on stand-by.
<p>Complainant's report August 2019</p>	<ul style="list-style-type: none"> ➤ The EIA of the WPP construction has ended and 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 analysed and considered by the relevant authorities. The developer received a positive final EIA statement which enables the construction of the WPP on Polonina Borzhava. ➤ The EIA final statement is reasonless, illegal and violates the basic EIA principles, defined within the national legislation, nor was the procedure held properly. Scientific data regarding the species and habitats was also not considered. ➤ The EIA statement also did not assess the impact of the construction of the 110-kW power line on the site. ➤ The authorities report from February 2019 was also inaccurate; for example, while the total land area for the construction of the 34 wind turbines is near 30 ha, 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 closer to 50 ha. ➤ The statement 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” is also inaccurate. There is no proof that the construction won't impact protected areas. ➤ Although the construction will take place on the most elevated areas, lower lying areas will be directly and indirectly affected by erosion, hill wash, and fuel-oil pollution. ➤ The locations of rare and endangered species of flora/fauna should be mapped before the construction, and the impact assessment must be held before the construction. ➤ 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 stated that the main service road is not a subject for the EIA. We find this unacceptable as the road construction itself will alter vehicle accessibility of the area, which will definitively impact species and habitats of the territory. ➤ According to 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. ➤ At this time the Transcarpathian regional administrative court considers a complaint by the NGO “Ekosphera” 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

	<p>comments within the EIA procedure, which were not considered. 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.</p> <ul style="list-style-type: none"> ➤ 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. Aiming to raise awareness of mass-media and society on the Polonina Borzhava conservation issue, on 6 July 2019 a public campaign was held.
Bureau meeting 9-10 September 2019	<ul style="list-style-type: none"> ➤ The Bureau thanked the complainant for the report but noted the lack of an updated report from the authorities. ➤ The Bureau expressed its concern over the allegations of the complainant regarding the EIA. The Bureau however notes that it needs advice for the assessment of the EIA and how it respects the national standard. The Secretariat is instructed to search for an expert who can do an external independent review of the EIA. A possible on-the-spot assessment could be considered for the case. The necessary funding for the review and OSA should be included in the Programme of work of the Convention for 2020 and be confirmed by the Standing Committee. ➤ In the meantime, the Bureau recommends to the Ukrainian authorities to put the project on hold and to pay particular attention as the complaint is related to an Emerald Network site.
Government report September 2019	<ul style="list-style-type: none"> ➤
Complainant's report February 2020	<ul style="list-style-type: none"> ➤ The case of “Noosphera” against the Department of Ecology of Transcarpathian Regional State Administration in the regional administrative court is ongoing with the next trial planned for 27 February. Its purpose is to cancel the EIA conclusion statement issued by the Department allowing the development of the wind power plant within the Emerald site “Polonina Borzhava”. ➤ The Ministry of Energy and Environment is involved in the case as a third-party actor on the defendant's side, but has had low involvement. Ecologists stated that a transboundary EIA is needed due to the mass migration of common crane (<i>Grus grus</i>), observed above Polonina Borzhava in autumn 2018. Nevertheless, the Ministry has refused it. ➤ Following public hearings, the developer is putting pressure on activists and trying to refuse them access to hearings. ➤ Although the State Architectural and Construction Inspection of the Transcarpathian region refused to provide a building permit twice due to non-compliance, the developer appealed to the central office of the Inspection in Kyiv and received it contrary to the rules of the law on the division of powers of its structural subdivisions. The court case regarding the revocation of this permit was denied at first instance, but the complainant NGO “Noosphera” is preparing to appeal this decision in an appellate court. ➤ Justification for the establishment of the “Zelenytsia” local protected area (1028,5 ha) within the Mizhgirya district on Polonina Borzhava was refused by the land steward – General Directorate of the State Land Cadaster of the Transcarpathian region – twice thus a complaint has been lodged with the Ministry in order to assist in the establishment of this protected area. ➤ Public interest of the situation around Polonina Borzhava has not diminished as this area is an extremely popular tourist and recreational site. To draw more attention to the problem, the Scout organization of Ukraine brought The Peace Light of Bethlehem to one of the highest mountain tops of Borzhava range.

<p>Bureau meeting 7-8 April 2020</p>	<ul style="list-style-type: none"> ➤ The Bureau recalled that an on-the-spot appraisal had been suggested for this case, but that due to other priority visits and the ongoing Covid-19 pandemic, this visit would most likely take place in 2021. ➤ Furthermore, the Standing Committee would need to mandate such a visit, thus in its September meeting the Bureau would decide whether to bring this point to the agenda of the 40th Standing Committee. It could also decide if a more general on-the-spot appraisal visit should take place taking into account the numerous other complaints on Ukrainian Emerald Network sites. ➤ The Bureau instructed the Secretariat to continue communications with the Ukrainian authorities and to enquire if an independent evaluation of the relevant legislation on SEA in line with Recommendation No. 208 (2019) of the Standing Committee on detecting, reporting, assessing and responding to changes in the ecological character of Emerald Network sites exists. ➤ The Bureau further mandated the Secretariat to inform the complainant that the Bureau is looking into the situation and considering an on-the-spot appraisal.
<p>Complainant's report August 2020</p>	<ul style="list-style-type: none"> ➤ The case №260/771/19 in the Transcarpathian regional administrative court ended culminating in the decision to cancel the EIA conclusion statement issued by the Department of the ecology of Transcarpathian Regional State Administration, which had allowed the planned wind power plant to go ahead. ➤ Tybava village council appealed this court decision and the case will continue in the Eighth Administrative Court of Appeal in Lviv, which will also hold Case №260/1058/19 on cancelling the construction permit. ➤ The mass media reports that at the highest state level there is an idea of a project to build a huge ski resort on Polonina Borzhava, regardless that it is an Emerald network site. ➤ There has been no progress in creating new protected areas on Polonina Borzhava.
<p>Bureau meeting 15-16 September 2020</p>	<ul style="list-style-type: none"> ➤ The Bureau thanked the complainant for their report but noted again the lack of a report from the authorities. ➤ The Bureau welcomed the fact that the Environmental Impact Assessment conclusion statement favouring the development of the wind farm had been cancelled in court, while noting that the decision would go to an appeal. ➤ Very concerned with the ongoing lack of communication and progress of the authorities regarding this and several other Ukrainian Emerald Network related complaints, the Bureau decided to exceptionally bring this complaint to the 40th Standing Committee agenda. Both parties are urged to attend, and the authorities are asked to speak both about this case and more generally about the issues facing Emerald Network sites in Ukraine, and planned actions of the government. The Standing Committee would be invited to take a position on the complaint and consider mandating an on-the-spot-appraisal. ➤ Furthermore, due to the ongoing poor communication, the Bureau mandated the Secretariat to contact the Permanent Representation of Ukraine to the CoE in order to discuss the communication issues. ➤ The case remains on stand-by.
<p>Government report 25 November 2020</p>	<ul style="list-style-type: none"> ➤ The findings and environmental conditions of the EIA for the planned wind farms are reiterated (see report above from 2019).

	<ul style="list-style-type: none">➤ A public hearing to discuss the EIA Report was held and comments from 21 organizations were submitted. These comments were processed by the customer and partially considered, and represented in the Public Discussion Report. The conclusion of the EIA was published on March 12, 2019, and considered it feasible to carry out the planned activities.➤ 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.➤ The following environmental conditions are attached to the EIA:<ul style="list-style-type: none">- 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, including when laying underground cable lines;- discharge of pollutants into water bodies is prohibited;- adhere to 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 under the guidance of qualified and experienced ornithologists. According to the results of monitoring, implement adaptive management of windmills, such as stopping wind turbines during peak migration and high activities of birds and bats to reduce risk of collision or barotrauma;- adhere to the regime of land use of the nature reserve fund and other conservational nomination, health, recreational, historical and cultural purposes.➤ Furthermore, the company is responsible for preventing, avoiding, reducing (mitigating), eliminating, and limiting the impact of the planned activity on the environment, including:<ul style="list-style-type: none">- 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.➤ The post-design monitoring of the company, which must take place within 5 years from start of operation, will include:<ul style="list-style-type: none">- carry out an additional investigation of plants and animals listed in the Red Book of Ukraine and plant groups protected by Ukrainian legislation in the territory of the planned activity prior to the commencement of works;- develop and implement a program of monitoring surveys of species of animals and plants listed in the Red Book of Ukraine;
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	<ul style="list-style-type: none"> - 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; - monitor ornithological complexes and bats (wintering, spring and autumn migration, nesting) during the construction and operation of wind farms; - constantly monitor geological processes in accordance with the State Building Rules. <ul style="list-style-type: none"> ➤ if as a result of post-design monitoring there is a negative environmental impact of the activity, the company must take measures to mitigate or eliminate it at its own expense. Further, if negative impacts alter the results of the EIA, a judge must cancel the activity. ➤ On March 18, 2020, the Zakarpattia County Administrative Court agreed with the case of the NGO «Noosphere» to declare the conclusion illegal and revoke it. ➤ However on November 3, 2020, the Eighth Administrative Court of Appeal agreed with the appeal of the Volovets settlement council and reversed the ban of the EIA conclusion. ➤ Implementation of the wind farm project has not yet begun. ➤ Efforts are also underway to set up a nature reserve within this territory within the framework of national legislation, to cover part of the ridges and slopes of Borzhava massif, which coincides with part of the project territory.
<p>Governmental report of 25 November 2020 on general state of Emerald Network in Ukraine</p>	<ul style="list-style-type: none"> ➤ 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. ➤ In 2020, the Ministry together with the People’s Deputies of Ukraine and 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» which is being prepared for registration in the Verkhovna Rada Of Ukraine. ➤ The following measures have been taken to protect species of flora and fauna and types of natural habitats: <ul style="list-style-type: none"> - the issue of long-term conservation of natural habitats and species of wild fauna and flora being subject to special protection in Europe within the Emerald Network is considered during the relevant procedures for EIAs and SEAs; - by Order of the Ministry dated 02.03.2020 № 136, methodical recommendations for the development of an EIA report for the forestry sector was approved, which includes recommendations for impact assessment on 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 Emerald sites: 15 decrees of the President of Ukraine were prepared and signed in 2019, 8 such decrees 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;

	<ul style="list-style-type: none">- within the framework of the EU APENA project, the first management plan has been prepared for the Emerald site within the Pyriatynskyi National Nature Park. Based on this, guidelines will be elaborated 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, and local authorities.
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