

Strasbourg, 27<sup>th</sup> May 2021  
[files38e\_2021.docx]

**T-PVS/Files(2021)38**

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

41<sup>st</sup> meeting  
Strasbourg, 29 November - 3 December 2021

---

**Complaint on stand-by: 2018/01**

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

**- TERMS OF REFERENCE FOR A BERN CONVENTION  
ADVISORY MISSION -**

*Document prepared by  
the Directorate of Democratic Participation*

---

## 1. BACKGROUND OF THE CASE-FILE

The complaint, submitted in March 2018 by the NGO “Ukrainian Nature Conservation Group”, concerns an alleged breach of the Convention related to wind energy developments on the territory of the adopted Emerald Network Site ‘Polonina Borzhava’ (UA0000263). Although the installation is deemed to have a negative impact in particular on protected bird and bat species in the site, an Environmental Impact Assessment (EIA) was not yet developed. The authorities were requested to provide information on the state of development of the wind energy installations at Polonina Borzhava and any actions undertaken within the planning of conservation measures for the areas and for the habitats and species for which they were designated.

The Bureau in September 2018 acknowledged the response of the national authorities and recalled that the designation of an Emerald Network site is not necessarily 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 early 2019, an EIA report was published. The Complainant stressed that comments of civil society were not taken into account, and an independent analysis of the assessment came to different conclusions. They further believed that a trans-boundary process involving neighbouring countries was needed. The authorities detailed some mitigation measures which were being considered to negate possible effects on the species, and they confirmed that public hearings were taking place on the conclusions of the EIA.

The Bureau in March 2019 encouraged the authorities to ensure fair and transparent consultations and to reflect the arguments and comments of stakeholders. It also invited them to refer to the guidelines developed by the Bern Convention in cooperation with Birdlife International as well those developed by the European Commission. The complaint was moved to stand-by.

In September 2019, the Bureau only received a complainant update report, which contained worrying allegations such as illegality of the EIA procedure. According to them, public comments were not taken into account, scientific data regarding the species and habitats was not considered, nor were the impacts of the construction of power lines or access roads on the site assessed. The developers were in the process of applying for a construction permit despite having been twice rejected, and a case in court was ongoing regarding cancelling the EIA conclusion statement. The Bureau was concerned and considered that it needed advice for the assessment of the EIA and how it respects the national standard—thus it considered mandating a consultant to do an external independent review of the EIA. Meanwhile, the Bureau recommended 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.

The complainant reports received in 2020 confirmed the ongoing problems in the area, including the court case to cancel the EIA decision which eventually won a favourable decision although it goes to appeal; and the developers having gone outside of the normal procedures to obtain a building permit. This was now also the subject of a court case. No governmental reports were received during this time.

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 in September 2020 decided to exceptionally bring this complaint to the 40<sup>th</sup> Standing Committee agenda. The authorities were urged to attend and 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 (OSA).

The governmental report received ahead of the 40<sup>th</sup> Standing Committee confirmed the decision of the EIA, which had been reinstated following an appeal. The EIA contained several environmental conditions related to pollution and effects on biodiversity (especially birds and bats). These conditions included post-design monitoring, as well as the order to mitigate or cancel the activity if there are substantial negative effects on the environment. The project had not yet begun. Concerning the general state of the Emerald Network, there was a new Law “On the National Infrastructure of Geospatial Data”

(2020) which included the Emerald Network together with other protected areas in the sets of geospatial data. Furthermore a bill “On the Emerald Network” was in elaboration.

The 40<sup>th</sup> Standing Committee took note of the information of both parties and expressed its concern that the EIA, initially revoked in March, had been re-validated at an appeal court in November, with the support of the government. It also remarked that pressure from the Bern Convention complaint system was very important in the court case trials. The Committee mandated an OSA in 2021 which should also take into account other complaints in Ukraine related to Emerald Network sites, and could partially take place on-line because of Covid-19 restrictions. Following its results, the Bureau could take a decision on the possible upgrading of the complaint. In the meantime, the Standing Committee called on the Ukrainian authorities to not commence any works before the conclusions of the OSA have been released.

## 2. OBJECTIVES OF THE MISSION

On the basis of the instructions by the Bureau and Standing Committee, the information provided by the authorities and the complainant, the objectives of the mission are to:

### Concerning the complaint on the Presumed threat to Emerald site “Polonina Borzhava” (UA0000263) from wind energy development:

- **Part I – to be conducted online should travel restrictions related to the COVID-19 pandemic not allow an on-site visit:**
  1. **Conduct an external independent review of the environmental assessment procedures** (EIAs, SEAs, CIAs) grounded into the national legislation of Ukraine, and verify if they comply with international standards;
  2. **Review and assess the Environmental Impact Assessment procedure** carried out for this case, and evaluate if it was undertaken according to national law and to international standards;
  3. Review the process of **creating a nature reserve** within the territory of Polonina Borzhava in order to improve its conservation status;
  4. **Hold meetings** with relevant stakeholders, including competent authorities at national and local levels, NGOs, citizens’ groups, and relevant international organisations.
- **Part II – preferably to be conducted on-site but to be conducted online should travel restrictions related to the COVID-19 pandemic not allow an on-site visit:**
  5. **Assess the situation on the ground** at Emerald Network site Polonina Borzhava in particular possible impacts of the wind farm on bird and bat species, and clarify if any development has already begun;
  6. Assess the extent to which the **integrity of the ecological character** of the Emerald Network site Polonina Borzhava was considered in the development plans and how the authorities intend to preserve it;
  7. Should development of the wind farms go ahead, **identify mitigation measures** to ensure the protection of affected habitats and species, including a monitoring plan.

### Concerning overall progress in the implementation of the Emerald Network:

- **Part III – to be conducted online should travel restrictions related to the COVID-19 pandemic not allow an on-site visit:**
  9. **Assess the process to date of the setting-up of the Emerald Network** at national level, including consultations with the involved stakeholders, the legal obstacles such as harmonisation with national nature legislation;
  10. **Identify gaps** in the implementation of Recommendation No. 208 (2019) of the Standing Committee on detecting, reporting, assessing and responding to changes in the ecological character of Emerald Network sites;
  11. **Assess the challenges** faced by the authorities in establishing conservation objectives and in developing management plans for the designated Emerald Network sites;
  12. **Review the Law of Ukraine** “On the National Infrastructure of Geospatial Data” (2020) as well as the draft law “On the Emerald Network” being elaborated by a Working Group of the parliamentary Committee on Environmental Policy and Nature Use;
  13. Conduct research and hold meetings with relevant stakeholders related to **other Emerald Network sites** which are the subject of a complaint (to be decided).
- **Part V – preferably to be conducted on-site but to be conducted online should travel restrictions related to the COVID-19 pandemic not allow an on-site visit:**

14. Assess the on-the-ground situation of other Emerald Network sites which are the subject of a complaint (to be decided);

### **3. MISSION DELIVERABLES**

Based on its findings and discussions with national and other relevant authorities and stakeholders, the mission shall submit a written report of max. 20 pages, including proposed recommendations to the national authorities on:

- possible adjustments or improvements to the national legislation related to environmental assessment procedures, to prevent future problematic situations like this complaint;
- possible modification proposals to the EIA conclusion of March 2019;
- the process of setting up a nature reserve within the territory of Polonina Borzhava;
- (*should the project be deemed acceptable*) mitigation measures to ensure before, during and post-construction;
- the overall setting-up of the Emerald Network at national level for the protection and implementation of management measures for the Emerald Network sites in the country; these recommendations should be grounded on Recommendation No. 208 (2019) of the Standing Committee on detecting, reporting, assessing and responding to changes in the ecological character of Emerald Network sites. An action plan and timeline should be appended to these recommendations;

The draft recommendations could also include proposals for integrating renewable wind energy projects without sacrificing the value of nature.

The recommendations should also include provision for the overall setting up of the Emerald Network on Ukrainian territory, possibly including specific provisions for Emerald sites which are the subject of a complaint. The recommendations shall be accompanied with a monitoring plan and timeline for their implementation and include proposals for further support by the Bern Convention in their realisation.

### **4. MISSION TEAM PARTICIPANTS, NATIONAL AUTHORITIES AND OTHER STAKEHOLDERS TO BE INVOLVED**

#### **4.1. Mission team**

- International independent expert ideally with experience in wind energy, protected areas, and legal environmental assessments (e.g. EIAs)
- Bern Convention Secretariat
- Other relevant international organisations e.g. European Commission, UNESCO, Ramsar Convention (*to be confirmed*)

#### **4.2. National authorities**

- Ministry of Environmental Protection and Natural Resources of Ukraine
- Other relevant ministries/agencies/institutions, e.g. Ministry for European Integration, Department of Ecology and Natural Resources of the Zakarpattia Oblast State Administration, (*to be confirmed*)

#### **4.3. Other stakeholders**

- Ukrainian Nature Conservation Group (complainant)
- Regional and local authorities, when relevant

- TOV “Atlas Volovets Energy” (developer)
- Other relevant organisations / NGOs, e.g. PP NVF “EKOTOP” (EIA consultant), Bogdan Khmelnytsky State Pedagogical University of Melitopol, Biodiversity Research Institute of Terrestrial and Water Ecosystems of Ukraine, Azov-Black Sea Interdepartmental Ornithological Station of the Schmalhausen Institute of Zoology of National Academy of Sciences of Ukraine (*to be confirmed*)

## **5. FUNDING AND ORGANISATION OF THE MISSION**

The costs of the on-the-spot assessment mission will be borne by the Bern Convention and international logistical arrangements will be coordinated by the Bern Convention Secretariat. These include the hiring of experts, travel and subsistence.

The Environmental Protection and Natural Resources of Ukraine will be kindly asked to organise and provide local logistics, such as arranging meetings scheduled with all stakeholders, including meeting rooms and interpretation, as well as local transportation for the mission team.

Due to the ongoing consequences of the Covid-19 pandemic notably travel restrictions, a part of the mission can be organised online. The Bern Convention Secretariat will coordinate with the independent expert, national authorities, complainant, and other relevant stakeholders to organise virtual meetings and activities.

## **6. TENTATIVE DATES**

The virtual part of the mission could take place across several time slots during 2021, to be agreed between the organisers and relevant stakeholders.

The eventual on-the-spot part of the mission could last 2 days depending on the number of sites to be visited and take place as soon as the Covid-19 pandemic situation will allow for safe travel, hopefully during the second half of 2021. The situation will be continuously assessed during the year.