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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

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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)

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SUMMARY

This document provides a follow up update of the report submitted by NGOs to the Bern Convention Standing Committee in 2016 - T-PVS/Files (2016) 13.

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

After reviewing the ECJ judgment we state that the impacts on the site should be removed and the sites restored and we believe that the way to do that is to remove the wind turbines. If further independent studies need to be undertaken to study impact and review the present evidence, then these need to be done in a timely manner, and measures taken in the interim to avoid further deterioration of the sites. These actions are also in compliance of the requirements set in the Recommendation 130 (2007), especially points 3, 4 and 5.

Unfortunately until July 2017 (a year and a half after the ruling of the European Court of Justice) the Bulgarian Government did not take practical actions in order to comply with EU law. In its report to the Bern Convention since last autumn, T-PVS/Files (2016) 12, the Government declared to the Convention that it is carrying out further studies on impacts of the wind farms in Kaliakra on birds and promised to elaborate a management plan which will include the appropriate measures to solve the problem. Such a management plan was publically presented in July 2017, but public hearings at the beginning of August were frustrated by protests. Nevertheless it has become clear that the management plan consists of one measure related to wind turbines, which is not enough to avoid or minimize the impacts of wind turbines on birds and to implement the ruling of the European Court of Justice. It does not include any measures in order to implement Recommendation 130 (2007) of the Bern Convention, in particular points, which were not implemented at all so far (points 2, 3, 4 and 5) or partially implemented (points 8, 9 and 10).

Now, 10 years after the Bern Convention issued the Recommendation 130 (2007), it seems that the Bulgarian Government is not willing to take actions to fully implement this Recommendation. It openly stands on its position to save the operational wind farms in Kaliakra IBA and continues to pretend that there are no impacts on birds. The Government’s view is based on questionable studies at only one of the wind farms and refuse to organise a comprehensive, independent and quality assessment on the impacts of windfarm developments in the concerned area. It seems that the Government moves away from its obligations under art. 3(1), art. 4 and art. 6(b) of the Bern Convention in order to protect private business interests.

We will appreciate any further efforts by the Convention to investigate the case in order to give further guidance and clear signs to the Bulgarian Government to fully implement the Recommendation 130 (2007), and also to ensure that the Bern Convention is respected. Such efforts in our point of view are appropriate to include:

1. On-spot appraisal on the current status of the case
2. Request that the Birds Experts Group assists the Bern Convention to justify its position on the case by making a full scientific analysis of the evidence provided by the Government on the absence of impacts on birds and the other evidence, provided by NGOs and experts on the presence of significant impacts.
3. Monitor the actions taken both by the Government and the European Commission for implementation of the ruling of the European Court of Justice in regard to the Kaliakra case (C-141/14).

I. SUMMARY REVIEW OF THE WIND FARMS IN KALIAKRA AND COASTAL DOBRUDZHA THAT ARE ASSESSED AS MOST RISKY FOR MIGRATORY BIRDS ALONG VIA PONTICA MIGRATION ROUTE

1. "Kaliakra" wind farm

Located in Kaliakra IBA/SPA on strictly protected steppe habitats. Approved in 2005. Constructed in 2007-2008. Operational since 2009. No mechanism to prevent bird collision. Only one year post-construction monitoring.

Impacts identified by us for the period 2007 – 2015: destruction and deterioration of steppe habitats; documented bird collisions – white pelican, common crane, herring gull, eagle owl; barrier effect on flying migratory storks and raptors and wintering geese and raptors.

No attempts to be relocated at alternative locations. Subject of court case against Bulgaria in the European Court of Justice C-141/14.

In spring 2017 the investor applied for prolongation of its license for operation with 25 years, nevertheless that the existing license expires in 2024 (after 7 years). This action might be provoked by the ruling of the European Court of Justice. The State Commission of Regulation of Energy and Water Supply refuse prolongation of the license.

2. "St Nikola" wind farm

Located almost entirely in Kaliakra IBA/SPA on arable land for crops. Approved in 2007. Constructed in 2009 – 2010. Operational since 2010. Radar system for detecting flocks of birds and stop the wind turbines to prevent collision risk. Annual monitoring on migratory and wintering birds. Reports published, although we believe they are of unsatisfactory scientific quality. They serve as a ground for the Government to pretend that significant impacts on birds are missing.

Impacts identified by us for the period 2007 – 2015: large scale displacement of red-breasted goose from its foraging areas in Kaliakra IBA/SPA; documented bird collisions – griffon vulture; barrier effect on flying migratory storks and wintering geese.

No attempts to be relocated at alternative locations. Subject of court case against Bulgaria in the European Court of Justice C-141/14.

3. EVN wind farm

Located in Kaliakra IBA/SPA mainly on strictly protected steppe habitats. Approved in 2005, but the decision came into force in 2008 because of court case procedure. Constructed partially in 2009 and 2011-2012. Construction was stopped by the competent authority in 2009, but because of unknown reasons it was finalised in 2012. Operational since 2012. Radar system for monitoring of birds, but details are not available. There is information that surveys of impacts of wind turbines on birds are carried out in recent years but the full results have not been published. Some of the results of the radar surveys on flying wintering geese, done for this wind farm, were published in the draft management plan for Kaliakra iBA/SPA in order to demonstrate lack of barrier effect, because of most geese flying at a height of 150 m and do not avoid most of the wind turbines. Careful analysis of these results show that actually geese "do not avoid" the wind turbines in the area, which are significantly lower than 150 m, and clearly avoid the wind turbines which are 150 m high. Also the data provided by these radar surveys confirm our conclusions about barrier effect, because after the construction of the wind farm geese started to fly 3 times higher than before the construction (see Appendix 1 to this report).

Impacts identified by us for the period 2007 – 2015: destruction and deterioration of steppe habitats; barrier effect on flying wintering geese and raptors.

No attempts to be relocated at alternative locations. Subject of court case against Bulgaria in the European Court of Justice C-141/14.

4. Wind farms of Disib, Longman Investment and Vertikal Petkov

These wind farms, that contain a total of 7 turbines are subject of the court judgement against Bulgaria in the European Court of Justice C-141/14. They are located in arable lands. For them there are not any requirements for monitoring of mitigation measures and no studies on the impacts have been done, besides those of the BSPB on displacement and barrier effects on the Red-breasted goose carried out under the project LIFE09/NAT/BG 00230 "Conservation of the Wintering Population of the Globally Threatened Red-breasted Goose (*Branta ruficollis*) in Bulgaria".

Impacts identified by us for the period 2007 – 2015: large scale displacement of red-breasted goose from its foraging areas in Kaliakra IBA/SPA (on the basis of cumulative effects with other turbines); documented bird collisions – common buzzard; barrier effect on flying wintering geese and raptors. (on the basis of cumulative effects with other turbines)

No attempts to be relocated at alternative locations.

II. SUMMARY OF MAIN ACTIONS TAKEN SINCE NOVEMBER 2016

1. Implementation of the ruling of the European Court of Justice

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 Bulgarian Government did not take any concrete adequate measures from January 2016 until July 2017 in order to implement the ruling of the European Court of Justice. On 21 July 2017 the Ministry of Environment and Water published on its website information that the Bulgarian Government and the European Commission reached an agreement in relation to implementation of ECJ ruling on the case C-141/14 which includes; that the wind farms and golf course that are subject of the ruling are to be retained; a ban will be issued on activities impacting on Pontho-sarmatian steppe habitat; new developments will not be allowed in Kaliakra SPA and an integrated management plan will be adopted for three sites: Kaliakra SPA, Belite Skali SPA and Complex Kaliakra SCI, where all the measures for implementation of the court ruling will be described.

At the end of August DG Environment responded to our question about the above mentioned agreement, that: "**The Commission has not yet taken any decision on this matter. It is for the Bulgarian authorities to identify the appropriate measures to achieve compliance. Once the Bulgarian authorities decide on the exact measures, the Commission stands ready to consider if they are sufficient in view of the Court's ruling.**"

The judgement of the European Court of Justice requires actions to be taken by Bulgarian Government in order to comply with EU Law. The following actions of Recommendation 130(2007) of the Bern Convention are still relevant to the ruling and thus the Bureau should encourage the government to fully implement them:

2. Fully reconsider the development of approved wind farm projects in the Balchik and Kaliakra region situated within or nearby sites designated as important bird areas and special areas of conservation;

3. Investigate the possibility of relocating the windfarm projects already under construction as well as the single turbines (whose building is possible without EIA) in order to restore the integrity of sites to be considered as Natura 2000 sites, IBAs, or under other protection status;

4. Select alternative locations for future and not yet operating turbines based on appropriate data (including long-term monitoring of biodiversity) and assessments (e.g. using multicriteria-analysis); key bird areas, potential SPAs, IBAs, intensive bird migration corridors and sites regularly used by large flocks of roosting species such as storks and wintering geese must be avoided by windfarm development;

5. Assess the impact of the current operating turbines;

8. Respect the need to focus on the avoidance of the impacts coming from outside having negative effects on areas of recognised conservation importance;

If any further study or assessment should be conducted for the wind farms (according to point 5 above) it has to be executed by independent experts (most suitably appointed by the Bern Convention), all the collected raw data by the investors and other institutions should be provided, as well as the possibility for field studies to be conducted with full access to the territories and without intervention by the investors and their monitoring team or staff. Also such assessment and study should not be longer than one year. Such assessment should continue after removal of wind farms in order to document the level of restoration.

Because it is difficult to do an independent scientific review of the provided evidence on lack of significant impacts and presence of significant impacts within Bulgaria, external expertise is really needed. An appropriate solution is that this task be taken by the **Birds Experts Group, which assists the Bern Convention to justify its positions in terms of bird conservation. The group could make a full scientific analysis of the evidence provided by the Government on lack of impacts on birds and the other evidence, provided by NGOs and experts on the presence of significant impacts. The group could then come up with concrete conclusions and advice for further steps, that could be taken by the Bern Convention and by decision-makers – the Bulgarian Government and the European Commission.**

2. Actions proposed by Ministry of Environment and Water to implement the ruling of the European Court of Justice

As pointed out above, the Bulgarian Government suggested two actions for implementation of the ruling of the European court of Justice: A) **to ban any activities for a period of 2 years in the Pontho-sarmatian steppe habitats in Complex Kaliakra SCI; and B)** adopted integrated management plan for three sites: Kaliakra SPA, Belite Skali SPA and Complex Kaliakra SCI, where all the measures for implementation of the court ruling will be described. The information below refers on one hand on the measures that the Government announced to take for implementation of ECJ ruling C-141/14 on Kaliakra, and on the other hand the reactions on the actions taken by the Government, as follows:

a. The Minister of Environment issued an **order to ban any activities for a period of 2 years in the Pontho-sarmatian steppe habitats in Complex Kaliakra SCI**, which could lead to destruction or deterioration of habitat – construction works, ploughing for agriculture, etc. The order was wrongly presented in the media thus causing protests by the local community. It was rescinded by the Minister of Environment and then later re-instated. Now the order for preventive strict protection of steppe habitats is in power, but there are discrepancies between the actual location of the steppe habitats and the areas listed in the order. For example there are several patches of steppe habitats on the territory of the Thracian cliffs golf course which are not subject to the order. The order will be in power for two years or until the designation order for Complex Kaliakra SCI is issued.

b. The integrated management plan is still under discussions. On 4th August the public hearings were frustrated by protests which in our point of view were manipulated. Subsequently, it was agreed that the problematic issues are going to be discussed in four working groups: “Agriculture”, “Fisheries”, “Urbanisation” and “Energy”. The discussions in the working groups were blocked by the mayor of Kavarna (main municipality where the three Natura 2000 sites are located), and representatives of farmers and fishermen. We have undertaken a detailed overview of the Integrated management plan. **In our view the proposed management plan cannot ensure implementation of the ECJ ruling C-141/14 on Kaliakra, as well as the Recommendation 130(2007) of the Bern Convention. The management plan itself does not have goals and by its content cannot be treated as “integrated”. As long as the proposed measures are based on the basic information in the plan and on the formulated threats, these measures are insufficient, and some of them are inappropriate, especially in relation to SPAs.** The only measure which could contribute to implementation of the ECJ ruling on Kaliakra is establishment of an Early Warning System (EWS). Apart from the fact that the proposed EWS has several serious weaknesses, it is well known that it cannot minimize or prevent the impacts of the wind

farms on birds related to displacement and barrier effect. There are not any measures proposed in the plan which could address these problems, despite the fact that the ECJ specifically recognized that Red-breasted goose is displaced from the area because of the wind farms. There are also not any measures related to implementation of the Recommendation 130(2007) of the Bern Convention , in particular points, which were not implemented at all so far (points 2, 3, 4 and 5) or partially implemented (points 8, 9 and 10). Full statement of BSPB on the Integrated management plan is provided to the European Commission.

3. Bulgarian Society for the Protection of Birds (BSPB) position

BSPB still stands on its position that at least the following actions should be taken in order to comply with the ruling of the European Court of Justice:

- Remove windfarms that were subject of the rulling
  - Removeo *AES WF and Disib WF, based on p. 67, 77 and 78 of ruling, including also scientific data on reduction of foraging area for RBG within the whole region by 6% and that there are a lot of wind turbines approved outside the SPA already on arable land;*,
  - Remove *Mitsubishi and EVN WF, based on p 56, 58 and 59 of the ruling – giving as argument deterioration of steppe habitats, barrier effects, registered under RBG project as well as the result of the Mapping project of MoEW*
- Full independent scientific assessment of the damage that has been done to bird habitat on the site since accession
  - Restore steppe habitats used by SPAs birds that have been damaged
  - Assess scale of damage and restore habitats for birds in Belite skali SPA by all activities, including golf course and develop restoration measures
- Interim measures and an Article 260 case if further deterioration of bird habitat occurs on the site.

By taking these actions we believe that the Recommendation 130(2007) of the Bern Convention Standing Committee also will be sufficiently implemented. Thus we will appreciate any further efforts by the Convention to investigate the case in order to give further guidance and clear signs to the Bulgarian Government to fully implement the Recommendation 130 (2007), and also to ensure that the Bern Convention is respected. Such efforts in our point of view are appropriate to include:

1. On-spot appraisal on the current status of the case
2. Request to **the Birds Experts Group assists the Bern Convention to justify its position on the case by making a full scientific analysis of the evidence provided by the Government on the absence of impacts on birds and the other evidence, provided by NGOs and experts on presence of significant impacts.**
3. **Monitor the actions taken both by the Government and the European Commission for implementation of the ruling of the European Court of Justice** in regard to the Kaliakra case (C-141/14).

Appendix 1 Evidence for cumulative barrier effect on wintering geese, caused by wind farms in Kaliakra

a. Evidence provided in the Integrated management plan for Kaliakra SPA, Belite skali SPA and Complex Kaliakra SCI

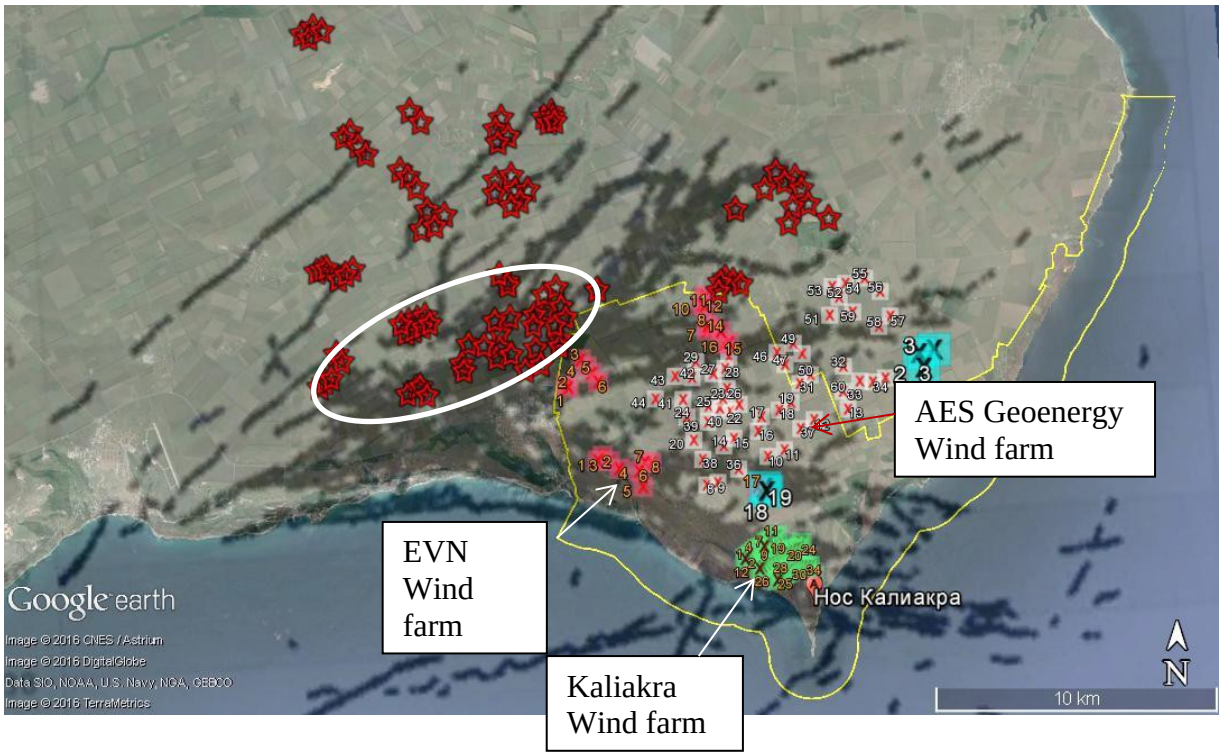


Figure 6.5.17 at page 252 of the draft management plan, which shows the lines of movement of the flying geese (dark grey lines) through the areas with wind farms in 2015. Based on this figure the authors of the plan state that geese do not avoid wind farms, thus there is no barrier effect. We analyse the height of the wind turbines in the area. The turbines marked with red-stars (circled by us with white line on the figure above) are predominantly with the height which does not exceed 80 m. Thus it is logical that according to the tracks gathered by the radar birds do not avoid them, having in mind that majority of birds fly at height between 110 and 160 m (see the figure below). At the same time it is well visible on the figure that at the area of AES Geoenergy wind farm, where the wind turbines are of 150 m height there are almost no lines of flying geese.

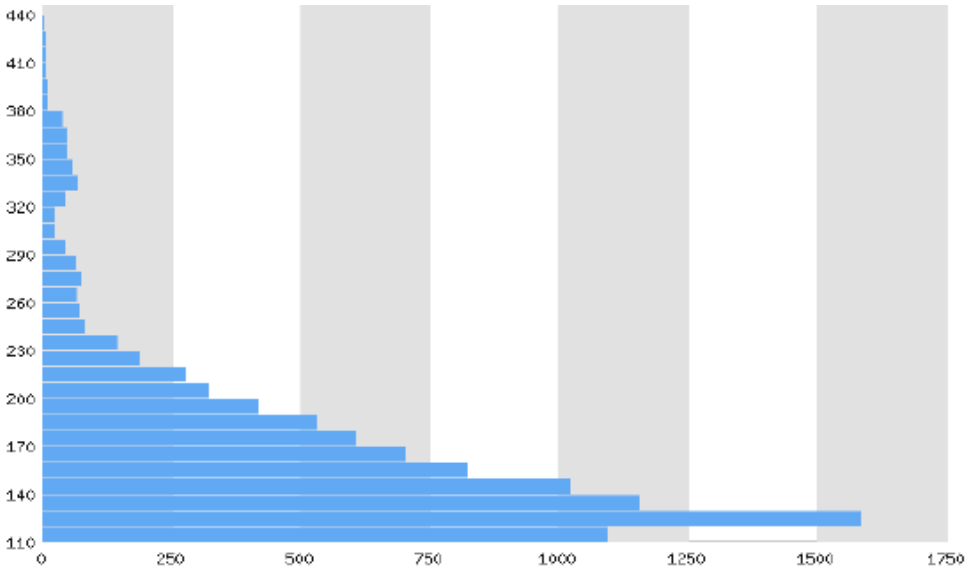


Figure 6.5.18 at page 253 of the draft management plan, which shows the height of flight of the wintering geese detected by the radar f EVN wind farm in the area of Kaliakra IBA/SPA in 2015. It clearly shows that the majority of geese fly at height between 110 and 160 m, thus authors of the draft management plan conclude lack of barrier effect that because they fly higher than the wind farms. In practice this figure confirms the conclusions for another study (see below), that after the construction of wind turbines geese started to fly much higher than before the construction.

b. Evidence for barrier effect at EVN wind farm, concluded in a thesis work of a student from Sofia University on a basis of the data gathered during the project LIFE09/NAT/BG 00230 "Conservation of the Wintering Population of the Globally Threatened Red-breasted Goose (Branta ruficollis) in Bulgaria"

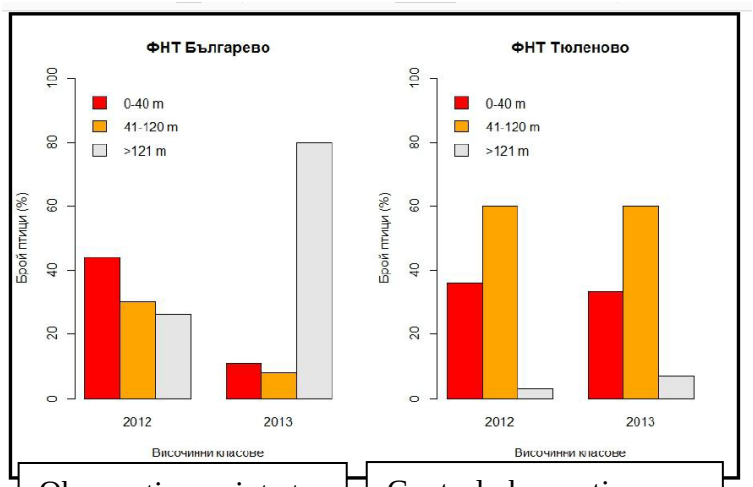


Figure 12 at page 41 of the Thesis work, that shows change of the height of flight before construction of EVN wind farm and after the construction – most of the birds start to fly at height greater than 120 m (three times higher than initial preferred height). At the same time no differences of the height of flights are registered at the control area, where there are no wind turbines.