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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

27th meeting
Strasbourg, 26-29 November 2007

**Windfarms in Balchik and Kaliakra – Via Pontica
(Bulgaria)**

REPORT BY THE NGO

*Document prepared by:
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INTRODUCTION

On 30 November 2006 the Bern Convention on European Wildlife and Natural Habitats ‘opened a new file’ on the case of wind farm development on the *Via Pontica* bird migration route along the Bulgarian Black Sea coast. There are currently plans for installing over 400¹ wind turbines in the Bulgarian Coastal Dobrudzha region including 166 turbines in the Kaliakra and Balchik proposed Natura 2000 sites. These Important Bird Areas are of special significance as bottlenecks in one of the two main migration routes of birds moving between Europe and Africa. In June 2007, BSPB/BirdLife Bulgaria, the Balkani Wildlife Society and the Society for wild flora and fauna participated in the Bern Convention mission to Bulgaria.

While the development of such renewable energy sources are generally to be welcomed in the face of climate change, these are among the least appropriate sites for wind farm development in Europe due to the risk of collision from thousands of birds, including most of the world population of White Pelican, half the European population of White stork and ten species threatened with global extinction.

This report provides an update of developments regarding the Balchik and Kaliakra cases for the period 1 September 2006 – 31 August 2007, following on from the previously submitted reports listed below:

- T-PVS/Files (2006) 11 Report by the NGOs on the Construction of the Kaliakra wind farm parks
- T-PVS/Files (2006) 8 Report by the NGO on the construction of the Kaliakra wind farm parks
- T-PVS/Files (2006) 9 Report by the NGOs on the follow-up to Recommendation No. 117 (2005) on the plan to set up a wind farm near the town of Balchik and other wind farm developments on the Via Pontica migration route (Bulgaria).

These reports focus on the proposed building of the first windfarm in Bulgaria, at Balchik on the Black Sea coast, and similar plans to build 156² wind turbines (in addition to 5 existing ones) 20 km away from Balchik, between the town of Kavarna and the Kaliakra Cape.

The report of the last Bern Convention Standing Committee (**T-PVS (2006) 24**, Strasbourg, 27 - 30 November 2006) includes the following recommendations made by BirdLife International and AEWa to the Bulgarian Government:

- Reconsider, in line with the recent Bulgarian Ministerial statement to the European Parliament, consents for wind farms at Kaliakra and Balchik;
- Suspend the construction of the wind farms pending new and adequate EIAs;
- Ensure approval of EIAs by technical experts as well as the Ministry of Environment’s legal department;
- Introduce a moratorium on consents for further wind farms in Natura 2000/Emerald Network sites pending ecological assessment of the national long-term programme for encouragement of renewable energy resources 2004-2015;

¹ This includes permissions given by RIEW-Varna (Regional Inspectorate for Environment and Water in Varna) for 372 turbines in Kavarna Municipality, 25 Turbines in Shabla Municipality and 21 turbines in Balchik Municipality. According to the available information we have (which may not be complete), the RIEW approved 21 turbines in 2003, 42 turbines in 2004, 194 turbines in 2005, 107 turbines in 2006 and 55 turbines by 23 June 2007. Some of turbines are already operational. This demonstrates the large scale of the constructed/planned wind farms in the Bulgarian Coastal Dobrudzha region and therefore the need for proper assessment of cumulative impacts.

² 148 of these turbines are within Kaliakra IBA (an additional three turbines are on the border of the IBA and a further three in the close vicinity of the IBA). Twenty-six of the turbines within the IBA have been approved as single of small wind farm projects not requiring EIAs. Seven of these turbines were granted consent after September 2006, significantly these include consent on 23 June 2007 (ie at the time of the Bern Convention mission to Bulgaria) for 3 turbines proposed by the developer Geopower one of which had previously been rejected by the RIEW as part of a larger (62 turbine) Geopower project (discussed further below).

➤ Advise that these wind farm developments may be a bad investment; if the European Court of Justice rules against them in these Natura 2000/Emerald network sites, they may have to be removed.

And request information about:

- The consequences of the expiry of the authorisation granted for Balchik;
- The date scheduled for the workshop on the ecological requirements to be fulfilled for building wind farms.

There has been no apparent progress towards fulfilment of ANY of these recommendations or requests.

GENERAL ASPECTS

On 2 March 2007 the Bulgarian Council of Ministers adopted a list of Special Protection Areas (SPAs) under the Bird Directive. The Kaliakra and Balchik IBAs were not included in this list, as the decision was taken to postpone their inclusion on the list, together with the inclusion of 24 other sites (mainly along the Black Sea Coast), until October 2007. The decision to postpone, was taken mainly for economic reasons and with the intention of changing the boundaries of the proposed SPAs to exclude land that is important for economic investment. With this decision the Bulgarian Government abdicated its responsibility to ensure adequate and effective protection of these valuable sites. Further, for all the sites on the adopted SPA list, the Bulgarian Government have not completed the legal process needed for their designation as SPAs to be finalised and legal protection provided.

As a result, no steps are being taken to avoid or stop any harmful activities in either the sites on the adopted list, or those like Kaliakra and Balchik whose inclusion on the list has been postponed, which could lead to their damage/deterioration before the SPA designation process is finalised, including from the construction of wind farms. On 8 May 2007 BSPB wrote to the Bulgarian Minister of Environment requesting that he use his powers under Article 19 of the Bulgarian Biodiversity Act³ to stop activities connected with habitat destruction and project investments in all the approved and the postponed SPAs. However to date BSPB have not received a response and no actions on this have been taken by the Minister.

In July 2007 the European Commission sent Bulgaria a first written warning over its failure to properly transpose the EU Birds and Habitats Directives into Bulgarian law. At the same time, WWF-Bulgaria together with six other Bulgarian NGOs submitted a complaint to the European Commission about the Bulgarian government's postponement of designation of Natura 2000 sites and the failure to comply with the requirements of the EU Habitats Directive relating to site identification/designation. BSPB are currently preparing a complaint concerning the failure of the Bulgarian Government to comply with the site designation and protection requirements of the Birds Directive and plan to submit this to the European Commission in September 2007.

To date the National Strategy on Energy Production (NSEP) from renewable sources has not been adopted. Nevertheless permissions continue to be given for construction of new windfarms (see below). The development of energy production from renewable sources is a priority in Bulgaria and is included in most of the operational programmes that will be funded by the EU during the period 2007-2013. The lack of a NSEP could mean that wind farm developments have significant negative impacts not only on Kaliakra and Balchik IBAs, but also on many other Bulgarian areas valuable for the biodiversity. This is a major concern.

Under Bulgarian law and EU law a Strategic Environmental Assessment (SEA) of the NSEP should be undertaken, but as the NSEP is not officially elaborated, the SEA has not taken place. Until the SEA is conducted, the precautionary principle should be applied in IBAs, which are recognised as being of international importance and also on the Black Sea coast flyway, also recognised as of international importance.

The large scale development of wind farms in the Bulgarian Coastal Dobrudzha region, means that assessment of the cumulative impacts of the wind farms on birds and other biodiversity is

³ This gives the Minister the power to stop damaging activities for a maximum of 2 years.

essential. The strategic level would be the most appropriate level to consider these impacts – which need to be looked at in the context of impacts in Bulgaria and on the whole Romania-Egypt (bottleneck) section of the Via Pontica flyway. However at present there is no strategic level assessment looking at these impacts and nor are they being properly considered when the Regional Inspectorate for Environment and Water (RIEW) is taking decisions on individual projects.

On 14 September 2006, representatives of the EU Parliament officially asked the Bulgarian Minister of Environment and Water about how the Bulgarian Government will ensure the conservation of migratory birds in Kaliakra and Balchik candidate SPAs in relation to the construction of windfarms. The Minister promised to take action to reconsider all the permissions for windfarm development in the light of EU legislation and adequate EIAs in order to prevent any damage. The Government has so far failed to take any action to put into practice this statement of the Minister in front of the EU Parliament regarding consents for wind farms at Kaliakra and Balchik.

Because of the severe nature of the threats facing Kaliakra and Balchik IBAs BSPB is also seeking international support from other international conventions (UNFCCC and CBD) (see the attached letters).

In June 2007, BSPB/BirdLife Bulgaria, the Balkani Wildlife Society and the Society for wild flora and fauna participated in the Bern Convention mission to Bulgaria. They participated in visits to the areas threatened by windfarm construction and took part in discussions.

KALIAKRA CASE

THE KALIAKRA WIND FARM PROJECTS

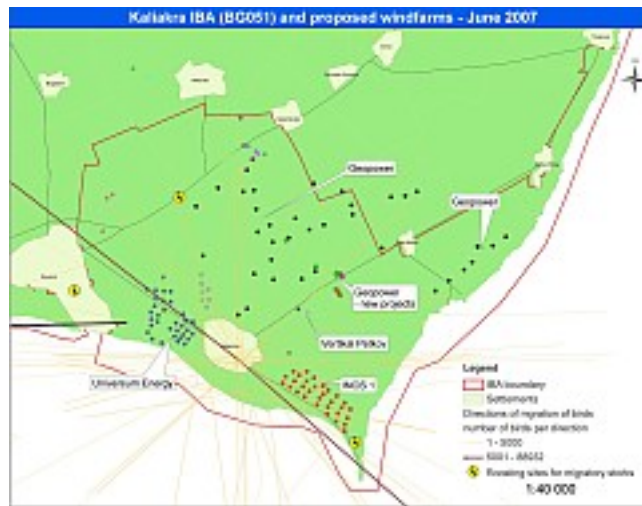
To date (August 2007) 148 turbines of different Bulgarian private companies have been approved within the boundaries of Kaliakra IBA, plus a further 3 turbines situated at the border of the IBA and 3 in the close vicinity of the IBA. The developer of all 6 of the turbines outside or close to the IBA is Geopower which is also the developer of two of the larger wind farm projects discussed below.

Twenty six of the turbines within the IBA were approved (as single turbine or small wind farm projects) without EIAs as under the Bulgaria Environmental Protection Act wind farms of capacity not exceeding 5MW do not require obligatory EIA, even if in sensitive areas. One of these turbines has already been constructed. Consent for seven of these turbines have been granted recently - 3 in September 2006 and 4 since 1 January 2007. Significantly, these include 3 turbines proposed by Geopower which were approved on 23 June 2007 (ie at the time of the Bern Convention mission to Bulgaria), one of which was in May 2007 rejected by RIEW as part of the large (62 turbine) Geopower project (see below).

Consent for the remaining 122⁴ turbines inside the IBA have been granted on the basis of inadequate EIAs with insufficient information about potential impacts on birds and other biodiversity. None of the EIAs included adequate preliminary studies on the migrating, breeding or wintering birds; nor did the EIA/decision-making processes take into account the data on migrating birds presented by BSPB during the public hearings on the EIAs:

⁴ This includes the 7-turbine Geopower project, 47 turbines of the 53 turbine Geopower windfarm (the other turbines are outside the IBA), the 32 turbine Universum project, the 35 turbine INOS-1 project and the 1 turbine Vertical-Petkov project.

Figure 1: Kaliakra IBA and the proposed sites of wind farms



Windfarms	k	Valentin Grozev	k	Energomontage Wind	k	Skladove transport and serviz	
Investor	k	Verikal Petkov	k	Enerik	k	Wind	
k	Elprom energy Ltd	k	Veslin Petrov	k	DEGREC-Cvetelina Ilieva	k	Windeck Bulgaria
k	Kamerton Ltd	k	Vinlain	k	PEVI	k	Universum Energy
k	3 E Ltd	k	Geopower	k	EKO New Energy	k	Worldwind
k	Anemos	k	Georgi Sketrov	k	Zhelyo Nenchev	k	Hristo Marinov
k	Anton Dimitrov	k	DISIB	k	INOS 1	k	Hristo Ivanov
k	Briz HGP	k	Dimitar Dimitrov	k	KI-Ekogroup	k	Yank 100
k	Vektor-Delta	k	Dushko Petrov	k	Bulgarian Windfarms		
k	Vind Energy	k	Eko Energy	k	Nik Buildng Prim		

- **Geopower Energy** (7 turbine project in the region of Sveti Nikola)
 - On 3 November 2006 the Bulgarian Supreme court judged in favor of Geopower concerning the change of the land use plan which could enable the project to be constructed. This is the final hurdle needed before construction however construction activities have not started yet, and BSPB does not have information about the construction timetable.
- **Geopower Energy** (project North of village of Balgarevo- application for 62 turbines, consent granted for 53)
 - 18 December 2006 – Public hearing on the EIA report. The EIA did not contain:
 - the information on potential impacts on birds requested by the Regional Inspectorate of Environment and Water (RIEW) in Varna;
 - information on potential cumulative effects of the project together with other projects in the Kavarna region
 - an assessment according to Article 6 of the Habitats Directive (nor was this carried out as a separate assessment).
 - adequate data – the data, presented in the EIA report differed considerably from those collected by BSPB for the period 2004 – 2006. For example according to the data presented in the EIA report fewer birds fly through the area and all of them pass above 200 m. BSPB submitted both to the investor and RIEW a statement on the inconsistency and incompleteness of the EIA report.

- 2 March 2007 – The Expert Council of the RIEW Varna⁵ discussed the EIA report and despite the arguments presented by BSPB and the expert from the RIEW, that the project cannot be realized following this incomplete EIA, and without taking into account the Bern Convention and EC provisions, the council took the decision to permit the construction of more than a half of the planned 62 turbines. BSPB voted against the decision and according to the procedure submitted a reasoned opinion to the RIEW. This reasoned opinion contained the arguments on the legal aspects and the quality of EIA, on the basis of which BSPB voted against the construction permission.
- 20 March 2007 - Second meeting of Expert Council of the RIEW Varna was held to take decision on the project implementation. Although there was no improvement of the EIA and the project therefore has not been evaluated properly, the Council again decided to permit development of 53 out of 62 turbines. (Some of the proposed turbines close to the Thracian Tombs cannot be constructed).
- BSPB appealed the decision of RIEW in front of the Minister of Environment in late June 2007. The Minister rejected the appeal of BSPB. In August, BSPB sent an appeal against the decision of RIEW to the Varna Administrative Court and are currently awaiting a response from the Court.
- **Universum Energy Ltd.** (32 turbine project between Kavarna town and Balgarevo village)
 - Consent of RIEW given in June 2005, the NGOs are currently appealing against this consent in the Regional court. The court case is at the stage of requesting an independent expert to consider the case. The independent expert from the Central Laboratory on General Ecology appointed has not yet looked at the papers of the court case.
- **INOS-1 Ltd** (35 turbines between Balgarevo village and the buffer zone of Cape Kaliakra nature reserve)
 - Consent of RIEW Varna was given in June 2005, the NGOs were appealing against this consent in the Regional court. The regional court decided to stop the court case, but BSPB appealed this decision to the Supreme Administrative Court. On 16 March 2007 the Supreme Administrative court judged in favor of BSPB and ordered the regional court to reconsider the court case. The next court hearing on this case was due for 15 June 2007 but it was postponed to 28 September 2007 because the court could not ensure an expert on the case.
 - **Despite the ongoing court case the developer has received a construction permission from the Ministry of Regional Development and Public Works and has started construction work.** BSPB appealed to the RIEW-Varna against the construction on the grounds of the ongoing court case and RIEW stopped the construction activities until 26 June 2007, promising to sanction the developer. This date corresponds to the restriction of the construction works during the breeding season, as set in the Decision of RIEW Varna. Construction is now continuing causing large scale destruction of steppe habitat (see attached pictures from the period June-August 2007). When BSPB did not receive a response to their letter concerning all SPAs (see above), on 23 July 2007 BSPB sent a letter to the Minister of Environment requesting that he apply art. 19 of the Biodiversity Act and stop harmful activities at Kaliakra potential SPA in relation to the INOS 1 project. To date there has been no answer or action taken by the MoEW in this respect.

⁵ According to the Environmental Act the Expert Council of the RIEW has the role of evaluating the consistency and quality of the EIA reports, and according to the content and conclusions of the EIA to propose to the Director of RIEW an expert decision as to whether the given project complies with legal ecological provisions and could be implemented or not. Members of the Expert Council are municipalities, forestry departments, RIEW, a representative of Bulgarian Academy of Science and an NGO representative. If some of the members of the Expert Council have reasoned opinions on the decision of the Council, he/she submits it to the Director and the Director organizes a second meeting of the Expert Council. The decision taken at the second meeting is final. On the basis of this, the Director of the RIEW issues a decision on implementation or not of the project. This act can be appealed against to the court.

- The developer has submitted a request to the UNFCCC for a Carbon Reduction certificate. In this regard the UNFCCC Secretariat has opened a public discussion on concerns about the potential environmental impacts of Bulgarian Joint Implementation project “Kaliakra Wind Power Project (KWPP)” – Ref. Nr. 0047. BSPB and BirdLife International officially submitted comments on the unsuitability of the area of Kaliakra IBA for the project. The project is currently subject to the UNFCCC verification process.
- On 19 March 2007 the Japan Bank for International Cooperation (JBIC) signed a loan agreement for up to 37 million euros for the Kaliakra Wind Power Project, with Kaliakra Wind Power AD (a special company established to undertake this project by INOS and Mitsubishi Heavy Industries Ltd in which INOS hold a 30% share and Mitsubishi the remainder), through co-financing with the Mizuho Corporate Bank. This is the first instance of JBIC financing for a wind power project in Bulgaria. It also will become Japan's first Joint Implementation project under the Kyoto Mechanisms, if the project is approved by the Bulgarian government. Carbon credits to be generated from the project will be purchased by Japan Carbon Finance (established by JBIC, Japanese companies and other organizations to develop greenhouse gas reduction projects and to purchase credits for the first commitment period, between 2008 and 2012). Revenues from carbon credits generated by the project will improve the economic viability of the project.
- As a general issue, BSPB is concerned about the need to ensure biodiversity considerations are properly considered in the UNFCCC Joint Implementation project approval process and in July BSPB sent detailed input on this issue to a planned UNFCCC technical workshop on Joint Implementation (Bonn, Germany, 15-16 October 2007) suggesting cooperation with the biodiversity-related conventions on this issue.
- **“Vertical-Petkov”** – (project to the north west of the INOS-1 wind turbine park – consent for 3 turbines, agreement reached to build 1 turbine)
 - Consent of RIEW Varna was given in June 2005. The NGOs appealed against this consent in the Regional court but recently the case was lost because of a compromise agreement signed between the parties (see below).
 - In May 2007 an agreement between the developer, RIEW Varna and BSPB was signed, stating that the investor will reduce the number of wind turbines from three to one and will carry out permanent monitoring in order to assess its impact and thus suitability for the area. BSPB agreed on this compromise agreement because of a lack of solid arguments that a single turbine will cause significant damage (if all the other windfarm projects are not realized within Kaliakra IBA). The agreement contains clear provision for removal of the wind turbine if it is risky for birds, based on the monitoring data.
 - Construction is not started yet.

BALCHIK CASE

Investor “Tessa Energy” (12 turbines approved by RIEW at Balchik IBA)

In 2007 BSPB together with Albena Resort Holding and local people appealed to Dobrich Regional Court against the approval of the territorial development plan of the town of Balchik, which allows the construction of the windfarm. There was only one court hearing and despite all the arguments against the windfarm the Court judged in favor of approval of the territorial development plan. At this stage there are no further legal procedures available to enable further appeals or stop the construction. The construction is not started yet. There is no official information about the timetable of the construction works.

ACTION RECOMMENDED

We invite the Steering Committee to recommend the following actions to the Bulgarian government:

1. Provide to the Bern Convention full information about the consents granted for windfarms in the Kaliakra and Balchik IBAs and more generally on the Bulgarian Black Sea coast (including a map of all the investment projects) so that the Standing Committee can consider the case in the light of full information.

2. As the original decisions to approve the projects were granted based on inadequate environmental information, the Bulgarian Government should revoke its decisions to approve all the windfarms at Kaliakra taking into account their potential impacts on wildlife, including as indicated by information, data, reports and views previously provided by scientific institutions and NGOs, eg the BSPB autumn migration surveys. According to Bulgarian law (Article 32, paragraph 1 of the Administrative Procedure Act which refers to Article 231 of the Civil Procedure Code), administrative or court decisions on EIAs can be revoked if new facts or evidence are found - such as the case here where the decisions have been made without proper consideration of all available data/information. The Bulgarian Government should ensure that construction of the wind farms is suspended pending reconsideration of the decisions. Bulgaria must also implement its obligation under the EU environmental law (Art. 6(3) of the Habitats Directive), transposed by the Biodiversity Act.

3. The Bulgarian Government should ensure that further studies are undertaken to enable the decisions on the wind farm developments at Kaliakra to be reconsidered on a properly informed basis. As the projects affect proposed SPAs, this reconsideration should be carried out by the joint working group of the Ministry of Environment and Water (MoEW), Ministry of Agriculture and Forests, and Ministry of Regional Development and Public Works under the process established by the Bulgarian Council of Ministers on 23 August 2006. The further studies should include:

- An assessment of alternative locations for the wind farms,
- An assessment of the cumulative effects of the current and planned wind farm projects and their associated infrastructure in the Varna region,
- Transboundary consultation with other countries on the Via Pontica flyway the bird populations of which may be affected by the proposed developments,
- Studies needed to give an exhaustive understanding of the sites flora, taking into account its heritage value and conservation status,
- a full inventory of the sites species of mammals, reptiles and amphibians,
- data on each species population sizes, a study of their ecology and biology whilst taking into account their use of surrounding areas,
- a study of the site's insects paying particular attention to any species listed in annexes II et IV of Directive 92/43/CEE concerning the conservation of Natural Habitats and the wild animals and plants they support,
- completion of the available data on the breeding birds,
- the numbers of birds wintering on the site and its surroundings paying attention to the different uses made of the site,
- the necessary information to obtain a complete view, qualitative as well as quantitative and future, of the bird migration, nocturnal as well as diurnal, during both spring and autumn migrations, paying special attention to those species passing close to the proposed wind farm construction site,
- possible use of the site by bats, whether during the breeding period or during migration, or at other times when bats may be active

- assessment of the potential impacts of the windfarm projects on the species and habitats subject of protection measures within the proposed Natura 2000 site as required by Art. 6(3) of the Habitats Directive.
4. As recommended in Recommendation No 117 (2005) on Balchik, the Bulgarian Government should ensure that future EIAs for wind farm developments include proper assessment of impacts on birds and other biodiversity. It should develop and use guidance on undertaking EIA screening and assessment including cumulative impacts, consideration of alternative locations, and post-construction monitoring, taking account of existing guidance such as CMS Resolution 7.5 and the Bern Convention Report T-PVS/Inf (2003) 12 prepared by BirdLife International. Also, involve and take into account the views, information, data and reports provided by scientific institutions and NGOs. In particular, assessments should include wildlife surveys with at least 12 months intensive fieldwork, with adequate methodology, detailed analysis and well-justified prognoses and conclusions. In addition, where wind farm developments are proposed in potentially sensitive areas, proper independent pre- and post construction monitoring schemes on the environmental impact; expert NGOs should be involved in this monitoring activity.
 5. As recommended in Recommendation No 117 (2005) on Balchik, the Bulgarian Government should as a matter of urgency develop a strategic planning process for wind power developments. This should be supported by strategic environmental assessment, which includes assessment of potential cumulative effects and identification of sensitive areas for birds – bird populations, their habitats, flyways and migration bottlenecks and an assessment of the plan's probable effects on these. Expert NGOs should have a substantial role in this. All stages of bird life cycles and the habitats and locations that support essential functions (including feeding, breeding, moulting, resting and non-breeding, including migration stopovers) need to be taken into account. Transboundary consultations should be carried out with other countries whose environments may be effected by energy developments in Bulgaria, eg on the Via Pontica flyway the bird populations of which may be affected by proposed wind farm developments on this flyway.
 6. The Bulgarian Government should ensure that all areas that qualify as sites in the Emerald/Natura 2000 network are adequately protected according to the requirements of the Birds and Habitat Directives to avoid any deterioration and to protect their natural values.
 7. The Bulgarian Government should provide the next and subsequent meetings of the Bern Convention Standing Committee with a detailed report of activities undertaken to implement actions 1-6 above.

ATTACHED TO THIS REPORT ARE:

Letter to UNFCCC

Letter to CBD

Pictures of construction work of INOS 1

Pictures from Bern Convention mission in Bulgaria



25 April 2007

To JACO CDM.,LTD (JACO)
Yoshihiro OTSUKA
ootsuka@jaco.co.jp

the UNFCCC Secretariat
secretariat@unfccc.int

the JI Supervisory Committee

Subject: Concerns about the potential environmental impacts of Bulgarian JI project “[Kaliakra Wind Power Project \(KWPP\)](#)” – Ref. Nr. 0047 according the procedure under paragraph 32 of the annex to decision 9/CMP.1

Dear Sir or Madam,

The Bulgarian Society for the Protection of Birds (BSPB), the Bulgarian Partner of BirdLife International, takes action for the preservation of wild birds in Bulgaria. We are writing to you to express our serious concerns about the potential biodiversity impacts of the above project and incomplete environmental information disclosed during the verification consultation process; because of the serious nature of these concerns we would urge you not to approve this project as qualifying for Emission Reduction Units through the JI mechanism.

We would like to stress that in principle, BSPB/BirdLife strongly support generation of energy from renewable sources. These offer an important contribution to combat the deleterious environmental changes due to climate change, which is widely recognised as posing the most serious threat to people and global biodiversity. However, as renewable energy generation is not without its own potentially damaging consequences for nature conservation, there is a need to balance the risks and benefits and to minimize any adverse environmental effects⁶. As a statement of our commitment to renewable energy resources we are working with the Association of Producers of Ecological Energy, a member of the World Wind Energy Association to identify locations where potential conflicts between wind farms and birds are small.

1. Incomplete disclosure of project information

Section F of the Project Design Document (PDD) - “Environment impacts” – contains insufficient information. The environmental issues associated with this project are not adequately addressed. There is only a short and general conclusion from the Environmental Impact Assessment (EIA) on which no comment can be based.

The quality deficiency of the section is reinforced by the fact that the EIA of the project is not made publicly available. EIA reports are one of the documents, which according to the Joint Implementation Guidelines shall not be considered as proprietary or confidential and therefore shall be disclosed to the public (paragraph 40).

The majority of the text in Section F relates to the “Guidelines for Confirmation of Environmental and Social Consideration” of the Japan Bank of International Cooperation (JBIC) according to which the project sponsor conducted the internal assessment on environment. It remains very unclear how those guidelines were applied to the project and which results have been reached. The PDD mentions that a “check sheet”, presumably with

⁶ BirdLife International position paper on wind farms and birds available from http://www.birdlife.org/action/change/europe/habitat_directive/windfarm_position_12_05.doc

details on this study, was submitted to the independent entity, but this is not made publicly available. Because this internal assessment on environment issues is used to support the project and forms part of the verification of the project, it should be available for a comment according to the same principle as applies to the EIA report.

Therefore, we are requesting appropriate actions to be undertaken to address the mentioned deficiencies of the PDD regarding “Environmental Impacts”, including disclosure of the missing documents as soon as possible.

2. Insufficient public consultation

As the PDD document is insufficient concerning potential environmental issues, there has not been an adequate opportunity for public consultation on the potential environmental impacts of the project. We would therefore request that the JI Supervisory Committee (JISC) allows a further period for public comments after the disclosure of the EIA and checklist documents.

3. Potential impacts on birds and their habitats

There is a strong consensus that the location selected for a wind farm is critically important in determining the likelihood of deleterious impacts on birds. Wind farms must be located, designed and managed so that there are no significant adverse impacts on birds of acknowledged national and international importance, or their habitats. Where a European project may impact a site of recognised high biodiversity value, the project planning process must comply with the requirements of European and International law concerning biodiversity protection. The location of this project is within a site of international importance for biodiversity and BSPB and BirdLife International have very serious concerns that the project planning process does not comply with the Bern Convention⁷ or European Union nature conservation law (EU Birds and Habitats Directives⁸). These concerns are shared by the Bern Convention and the European Commission who are looking at the project and are the subject of an ongoing court case in Bulgaria – see below for further information.

In light of this situation and the requirements of Article 4.1(f) of the UNFCCC, we do not believe that the project is suitable for approval through the JI mechanism.

Site of international biodiversity importance

⁷ Bern Convention on the Conservation of European Wildlife and Natural Habitats see http://www.coe.int/t/e/cultural_co-operation/environment/nature_and_biological_diversity/Nature_protection/

⁸ EU Directives on the Conservation of Wild Birds (79/409/EEC) (*Birds Directive*) and on the Conservation of Natural Habitats and of Wild Flora and Fauna (92/43/EEC) (*Habitats Directive*).

*The Bulgarian Black Sea coast areas participating in the JI project are on the second busiest bird migration route in Europe (known as Via Pontica) which is used by thousands of migratory birds, including 10 globally threatened species, more than 70% of the global population of White Stork and entire European population of White Pelican. The area of Kaliakra qualifies as an Important Bird Area (IBA) as it is a globally important bottleneck site (Kaliakra BG051) for migratory birds as more than 30 000 storks and pelicans and 3000 raptors pass every autumn⁹. Often they use the land to overnight or to overcome severe weather conditions. **The land area of the JI project Ref. Nr. 0047 is entirely covered by unique steppe habitat of western Pontic type. The last remnants of this habitat type are found in the area. The project investment area is neighboring the Cape Kaliakra reserve. Amongst the breeding birds strictly dependent on this habitat are the Pied Wheatear and Calandra Lark, having the biggest proportion of their national populations in Kaliakra region, including the investment area. Both species are threatened and thus are subject of national and international (EU Bird Directive and Bern Convention) legislation.***

We therefore strongly believe that this area is not a suitable location for wind farms. Bulgaria is under international responsibilities to protect the migration route on behalf of itself and other countries, as well as to avoid destruction and deterioration of habitats of such species, thus we strongly believe that that this project site is not suitable chosen in light of the biodiversity protection and requirements of Art 4.1(f) of the UNFCCC and the other international agreements.

Inadequate EIA

Although the EIA report was “approved” by the Bulgarian authorities, there are very serious concerns about its quality, which undoubtedly falls short of accepted international standards; which is one of the key reasons that the international Conventions are investigating the case further (see below).

For example, the EIA does not contain any preliminary research on autumn migration, or wintering birds. INOS-1 commissioned a study on breeding birds and spring migration, but this is inadequate as a basis for assessing potential impacts on birds, as it was not collected over a long enough period to provide reliable results and does not reflect the real situation both for day and night migrants. Further as it was not completed prior to the EIA it was not properly taken into account in the planning process. Also the EIA does not sufficiently consider the potential cumulative effects of the INOS windfarm in conjunction with the other wind farms proposed at Kaliakra. So far 167 wind power turbines have been allowed in the Kaliakra Important Bird Area (an area of 16172,3 ha). Inadequate treatment of the transboundary impacts by the EIA could be a serious problem having in mind that the area is situated on a migration route and thus birds affected on-route from and to other countries

Because of the lack of baseline data and relevant EIA team technical expertise, the EIA does not provide an adequate assessment of the potential threat from collisions of migratory birds with the wind turbines. Further, given the acknowledged high sensitivity of the proposed site from a nature conservation perspective, it is very surprising that the EIA does not evaluate any alternative locations for the wind farm project. Such consideration of alternatives is obligatory under Bulgarian law, which requires the EIA to assess at least two different locations for a project.

Moreover Bulgaria has not adopted its „National Longterm Programme for Encouraging Utilisation of Renewable Energy Sources (2005-2015). Therefore the lack of this strategic document for developing windpower producing sector has resulted in unrestricted issuing of licences.

Bern Convention case file

The Bern Convention considered wind farm projects at Kaliakra (including the MHI/INOS project) at its Standing Committee meeting in November 2006. Following discussion of the case, the Committee decided to open a new case file on the Kaliakra wind farms - the case file system is the Bern Convention’s mechanism for investigating infringements. For further information, see pages 14 and 15 of the formal report of the Standing Committee meeting¹⁰. As you will see from this, the European Commission and Eurobats (Agreement on the

⁹ More details on the value of the area and the expected impacts can be found in T-PVS/Files (2006) 8 T-PVS/Files (2006) 11 of the Bern Convention - Reports by NGO on the construction of the Kaliakra wind farm parks available from http://www.coe.int/t/e/cultural_co-operation/environment/nature_and_biological_diversity/nature_protection/sc26_files08_en.pdf and http://www.coe.int/t/e/cultural_co-operation/environment/nature_and_biological_diversity/nature_protection/sc26_files11_en.pdf.

¹⁰ Available from http://www.coe.int/t/e/cultural_co-operation/environment/nature_and_biological_diversity/nature_protection/meeting_26_en.pdf

Conservation of Populations of European Bats), and CMS (Convention on Migratory Species) also have serious concerns about the case. We understand that the Bern Convention has now agreed with the Bulgarian authorities that the Conventions will visit Bulgaria in late June to see Kaliakra and discuss the situation further.

European Commission concerns

EU law (Birds and Habitats and EIA Directives) are relevant as at the time of project planning Bulgaria was in the final stages of preparation for EU accession. One of the requirements of this is to align national law with EU law, including identification, designation and protection of areas that qualify as Special Protection Areas (SPAs) for Birds under the EU Birds Directive¹¹.

As Kaliakra IBA is a potential SPA the European Commission are concerned that the construction of wind farm projects in the area could damage the site in contravention with EU nature legislation. The European Commission has discussed the case with the Bulgarian Government and the Bulgarian Minister of Environment and Water (Mr Chakarov) was questioned about the case at a European Parliament Environment Committee meeting on 14 September 2006. At this meeting, the Minister stated that the government has committed itself to reconsidering the permits granted for wind farms at Kaliakra with a view to achieving biodiversity protection. However to date there is no evidence that this statement has been implemented or that the practice of granting consents for wind farm projects based on insufficient EIAs has stopped. Because of these concerns BSPB is considering making a complaint to the European Commission about the case. The Government has decided to delay the designation of Kaliakra as an SPA and generally the designation of Natura 2000 sites in Bulgaria is slow. As result, it is likely that the European Commission will take action against Bulgaria for its failure to implement the EU nature laws.

Ongoing Bulgarian court case

The letter from the Bulgarian Ministry of Environment and Water included in pages 56 and 57 of the PDD mentions the NGO court application. On 16 March 2007 the Supreme Administrative Court of Bulgaria ruled that the Regional Court had incorrectly dismissed the NGO's court case against the inadequate EIA decision of the MoEW in relation to the INOS/Mitsubishi project and that the Regional Court must reconsider the case. Hence, there is a very real risk that the Bulgarian courts will decide in favour of the NGOs.

We hope that you will take our comments into consideration. Please do not hesitate to contact us if you would like any further information.

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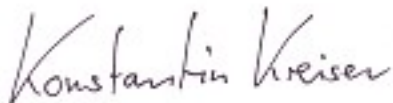
Yours faithfully,

Nada Tosheva

Executive Director
BSPB/BirdLife Bulgaria

and

Konstantin Kreiser



EU Policy Manager
BirdLife International – European Division Office

¹¹ Together with Special Areas of Conservation (SACs) designated under the EU Habitats Directive, SPAs make up the network of designated nature sites of European importance, known as Natura 2000.

INOS 1 windfarm under development

State of construction in April 2007



State of construction in late June 2007



State of construction in late July 2007



State of construction in late August 2007



Pictures from Bern Convention mission in Bulgaria

Bern Mission at Balchik IBA



Bern Mission at Kaliakra IBA

