



Bulgarian SPA designation and protection

Update on Natura 2000 site designation issues and continuing degradation of internationally important areas

Nearly three years after joining the European Union, Bulgaria has still not completed its network of Special Protection Areas (SPAs). The area identified for SPA designation is insufficient and the national processes for designating individual SPAs have yet to be finalised and continue to allow irreversible damage to happen.

Background

In September 2007 BSPB submitted a complaint (2007/4850) to the Commission concerning both the inadequate designation and protection of SPAs in Bulgaria generally under the EU Birds Directive. This included information about the damage occurring in many of the SPAs. In early 2008 the Commission separated the issue of inadequate protection of SPAs into a new case (2008/4461) which it started to investigate. In February 2008, BSPB submitted a complaint (2008/4260) on the specific case of Kaliakra potential SPA, which was supported by 12 other Bulgarian nature conservation NGOs. In late May 2008 we provided further detailed information about the damage that has already taken place to Kaliakra and the further damage likely by developments in progress. In December 2008 BSPB provided information to the Commission on a new case related to Kamchia Complex SPA. Further information was submitted on this case in early October 2009.

As a result the European Commission has opened two infringement procedures against Bulgaria. On 5 June 2008 a first warning letter was sent to Bulgaria concerning insufficient designation of SPAs, in particular 6 sites, where the proposed SPAs are significantly reduced compared to the relevant Important Bird Areas (IBAs): Kaliakra, Lomovete, Rila, Pirin, Central Balkan and Western Rhodopes. On 27 November 2008 the EC sent Bulgaria a first warning letter concerning inadequate protection of Kaliakra IBA. The Commission is still investigating case 2008/4461 on inadequate protection of SPAs, and is considering opening an additional case on the protection of the Kamchia Complex SPA.

Summary of the updates

Insufficient designation of SPAs (infringement No. 2007/4850)

- On 28 August 2009 designation orders for two more SPAs, Kaliakra and Emine SPA have been issued.
- Still 24 approved SPAs are not designated according to Bulgarian law.
- Still 6 IBAs are not fully designated as SPA.

Inadequate protection of Kaliakra SPA/proposed SPA (infringement No. 2007/4260)

- On 28 August 2009 designation order for Kaliakra SPA was issued by the Government. In BSPB opinion the designation order will not prevent damage done by already approved projects.
- There are 110 new investment projects planned in the Kaliakra SPA, 56 of which are in the designated SPA, the rest in IBA Kaliakra not designated as SPA.
- On 6 October 2009 the new Prime Minister Boiko Borisov attended the official opening of the AES windfarm, which is a clear sign that the official position of the Government is in support of damaging developments in Kaliakra SPA.
- On 8 October 2009 during a meeting with NGOs, the Minister expressed her opinion that with designation of Kaliakra as an SPA, the problems with the area are solved to a significant extent. BSPB does not agree with this conclusion (see appendix for detailed shortcomings not solved by the designation order and ongoing threats to the site).

Case of inadequate protection of SPAs (infringement No. 2008/4461)

- Damage done due inadequate system of protection of SPAs is occurring in at least 55 SPA sites right across Bulgaria. Pressure on the approved SPAs from proposed investment projects continues to

increase. In most of the cases the investment projects are related to building of summer villages, hotels, golf-courses, ski-runs, extraction of sand, gravel and stones, wind farm and micro-hydropower station construction.

- BSPB already provided a short update of examples of the most threatened SPAs in June 2008 to the European Commission and it is prepared provide more details if needed.

Inadequate protection of Kamchia Complex SPA (information for the complaint submitted on 5th October 2009)

- BSPB provided more information and evidence about the infringements of EU law in Kamchia Complex – site threatened by a project to build a big resort between the coastal flooded forest and sand dunes in the SPA on 5 October 2009.

For more detailed updated information about the complaint sites, please see the attached Appendix.

BSPB continues to be extremely concerned about the situation in Bulgaria, and feels that unless the Commission takes further urgent action to progress the above cases, irretrievable destruction of protected habitats for which Bulgaria has a European obligation will continue. It appears that the welcome actions by the Commission so far have not encouraged the Bulgarian Government to put in place sufficient measures to stop this degradation. It also continues to be the case that at the current rate of designation, many sites will have been seriously damaged before they are protected.

COMMISSION ACTION NEEDED: the Commission should make it very clear to the new Bulgarian authorities:

- That the sites should be designated and properly protected as soon as possible;
- That the Commission will expect Bulgaria to compensate for damage caused to sites after 1 January 2007 at which time Bulgaria should have been complying with EC nature laws; and
- That the Commission may withhold EU funds from Bulgaria if compliance with the nature directives is not adequate.
- That the Commission will ask the EBRD to review their funding of the AES windfarm project, especially in the light of the recently completed monitoring report which shows potential adverse impacts on red-breasted goose, an Annex I species.

We continue to urge the Commission to:

- **Send a Reasoned Opinion to Bulgaria concerning the insufficient SPA designation.**
- **Send a Reasoned Opinion to Bulgaria concerning Kaliakra as a matter of urgency and progress towards referring the case to the ECJ and applying for Interim Measures as soon as possible.**
- **Prioritise the horizontal SPA protection case and send a Letter of Formal Notice to Bulgaria at the earliest opportunity (with examples of bad practice from Krumovica SPA, Shabla lake Complex SPA, Durakulak lake SPA, Sakar and Western Strandza SPAs).**
- **Prioritise the Kamchia SPA protection case and send a Letter of Formal Notice to Bulgaria at the earliest opportunity,**

We believe that these actions are essential to prevent further damage to the sites that should be designated and protected under the Birds Directive.

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1. Infringement on insufficient designation of SPAs (infringement No. 2007/4850)

- To date the Bulgarian government has not taken any steps to designate the whole areas of Kaliakra, Lomovete, Rila, Pirin, Central Balkan and Western Rhodopes IBAs as SPAs. The procedure to do this will have to include a new hearing of the National Biodiversity Council and a new approval decision of the Council of Ministers, but none of those steps have been taken or are planned within the next two months.
- In May 2009 there was a meeting between the Commission and the Bulgarian Government on the case, but BSPB was not informed about the details. Following this meeting, we understand that at the end of July 2009 the Bulgarian Government submitted additional information to the Commission concerning the case – the ornithological data on SPAs agreed in a special expert working group in January 2008. This information should include the data about the reduced SPAs as they are approved by the Council of Ministers. BSPB has no information about the details of the data provided to the Commission. This data should be assessed by DG Environment.
- BSPB has no information about the results of the previous assessments made by the Commission on the information provided by the Government in August 2008.
- On 28 August 2009 designation orders for two more SPAs, Kaliakra and Emine SPA have been issued.
- So far 24 approved SPAs are still not designated – those that were approved much later (4/12/2007) because of the reconsidering of their boundaries by the National Biodiversity Council. All of these sites, which include Kamchia Complex, are severely threatened by different types of development. Public consultations on the designation orders of 4 of the sites (Shabla lake Complex, Durakulak lake, Rupite, Mesta, Derventski heights) were undertaken in February 2009, but the designation orders were not issued yet. The designation order of Kaliakra issued in August 2009 (see further details below) includes the reduced area of the site as it was approved by the Government on 2/12/2007, but not the whole IBA.

2. Infringement on inadequate protection of Kaliakra SPA/proposed SPA (infringement No. 2007/4260)

- To date (October 2009), in addition to the 458¹ investment projects in Kaliakra IBA (both in the designated SPA and non-designated area) about which the Commission already has information; there are 110 new investment projects, 56 of which are in the designated SPA.
- On 27 August 2009 an order for designation of Kaliakra SPA was issued with the following restrictions in relation to investment projects:
 - a) A ban on enlargement of the area of existing quarries, **except those for which a procedure for approval was already initiated;**
 - b) A ban on changing of the land-use of pastures, meadows, marshes, wetland, water courses and rocky shore, **except for oil extraction, construction of water purification stations, waste treatment infrastructure, roads and other infrastructure, preventing land-slides, as well as realisation of plans and projects for which there is a finalised EIA or Appropriate assessment (ie: those that are approved) before 27 August 2009.**
 - c) A ban on construction of windfarms and solar farms in areas different from those mentioned above, **except the realisation of projects for which there is finalised procedure on EIA or Appropriate assessment (ie: they are approved) before 27 August 2009.**
- a. **This designation order relates only to plans and projects within the designated SPA, but not to the area of the IBA proposed but not approved as SPA.** This means that all the 174 projects either approved or planned in that area will not be stopped nor will the process of further approval of new projects be stopped by this order. The biggest of these projects is the windfarm of AES-Geopower (see below).

¹ 94 investment projects initiated before 1 January 2007 and 364 projects initiated after 1 January 2007. See the information provided to the European Commission in May 2008.

- b. **The designation order does not stop the harmful development at Kaliakra in terms of the nearly 400 projects in the SPA BirdLife and BSPB will send updated tables and maps summarising status of individual projects to the Commission on 19 October.**
- c. **The designation order stops only new projects, only in the habitats mentioned above but not in the arable land.** At the same time it allows even steppe habitats to be destroyed by roads, infrastructure, purification and waste treatment facilities.
 - There are full restrictions only for new windfarms and solar farms in all the territory. But it allows all the already approved windfarms (see below) to be constructed and operational.
 - It allows the only project initiated for enlargement of a quarry for open extraction on the priority steppe habitat (so far the EIA procedure is not finalised) to be approved and realised (an area of 28 ha).
 - It has definitely stopped 3 projects - one windfarm project (see below), one urbanisation project with investor (Intersel Ltd), and one project for a motorway. All of these were placed on steppe habitats with a total area of 367 ha.
 - **It definitely does not stop 223 investment projects with a total area more than 770 ha,** that were approved before the date of designation of the SPA. Forty eight of these projects (in total 434 ha) were initiated before 1 January 2007. The majority of the projects - 175 projects with a total area of at least 367 ha - were approved since 1 January 2007 when the designation of the SPA was likely. **The 2 years and 8 months of delay of the SPA designation will cause significant damage to the SPA, which will still be allowed by this designation order.**
 - About 140 investment projects localised in the SPA, with a total area of at least 390 ha are at different stages of the approval procedure and there is no clear evidence for their approval. It seems that they could be stopped due to the designation order, but in fact some of them are situated in land classified as “arable land” and the restrictions will not tackle them. Because of the insufficient transparency of procedures and information it could appear that many of these projects were approved already before the designation.
 - **Overall, despite issuing this designation order the Bulgarian Government has still failed to comply with the EU Nature Directives. Some of the most problematic projects are mentioned below in particular.**
- **To date (October 2009) 223 turbines of different Bulgarian private companies have been approved or are under the procedure of approval within the boundaries of Kaliakra IBA.** Forty five of these are operational, fifty three are erected but not still operational and twenty six are under construction (in total 55.6 % of the planned turbines).
 - The last new wind turbine was approved without EIA on **5 June 2009**. It is situated in Kaliakra IBA, in the area proposed for inclusion, but excluded from the SPA ie;- the area currently the subject of both the EC inadequate SPA designation infringement procedure and the EC Kaliakra infringement procedure.
 - The biggest project situated in the part of the IBA excluded from the SPA– Sveti Nikola Windfarm of AES Ltd – is financially supported by the EBRD despite our objections and the [statement of the European Commission against the windfarm. The Bulgarian government rejected our complaints that there were significant modifications of the project submitted to EBRD for funding in comparison with the EIA permission issued by the Regional Inspectorate of Environment and Water (RIEW) in Varna. All the 53 wind turbines are already erected and the windfarm is supposed to start operation in early spring 2010. BSPB has sent the European Commission its comments on the project officially provided to EBRD (August 2008), and informed the Commission about the opinion of the Ministry on the changed parameters of the windfarm (December 2008).
 - **On 6 October 2009 the new Prime Minister Boiko Borisov attended the official opening of the AES windfarm, which is a clear sign that the official position of the Government is in support of damaging developments in Kaliakra SPA,** despite of the infringement procedure.
 - The second biggest windfarm project approved on the steppe habitats in the SPA – that of Universum Energy Ltd (now owned by EVN Ltd) started to be constructed in

Autumn 2008 – the steppe habitats were damaged – new roads were created and fundamentals of the wind turbines were constructed. At the beginning of February 2009, the RIEW temporarily stopped the construction of the windfarm, not allowing the pylons to be erected. The construction works are stopped for now, but the project is approved and the designation order for Kaliakra SPA allows it to be constructed in principle.

- The steppe habitat has also been damaged by the other big windfarm in the area, owned by INOS1/Mitsubishi Heavy Industry, which is very badly situated. In September 2008 one White Pelican (*Pelecanus onocrotalus*) was killed by the operational wind turbines. BSPB has observed that the turbines do not stop operating when migrating storks try to pass through the area. The monitoring implemented for this project is not transparent and public. Thus BSPB has serious doubts about the monitoring results presented by the company on 19 June 2009 at a meeting organized by local municipality, which claimed to show no bird collision events. An on-site visit in September 2009 confirmed large scale destruction of the priority steppic habitat there.
- The windfarm of Bulgarian Windfarms Ltd was not approved by RIEW Varna in spring 2008 because of a low quality EIA. The developer recently [May 2009] submitted an Assessment according to Article 6(3) of the Habitats Directive for the project to RIEW-Varna which is again of very poor quality and recommends that the investment be given consent.
- Since the last update provided to the European Commission (from the beginning of May 2008 until December 2008), thirty two new non-windfarm projects were initiated within Kaliakra IBA (both the approved SPA and non approved area), and twenty eight of them have been approved – all of them without EIA. The order issued on 2 December 2008 by the Minister of Environment to ban further construction development in the pSCI Kaliakra Complex did not stop development in both the Kaliakra SPA and the area proposed for SPA designation because the pSCI only partially overlaps with the SPA and covers only the steppe habitat and coastal cliffs. At least thirty seven new projects were initiated in Kaliakra SPA (as proposed for designation) since the beginning of 2009. Twenty four of these were approved before the designation of the SPA on 27 August 2009.
- The MoE order does not stop any of the projects, initiated before 2 December 2008 – which includes all the projects that are subject of complaint 2008/4260 and that will cause significant damage to the site. In spring 2009 one investment project for a summer village on priority steppe habitat was approved by RIEW Varna despite a strong objection by BPSB and a recommendation by BSPB that the procedures required by Article 6 of the Habitat Directive should be followed strictly.
- In January 2008 the Municipality Council of Kavarna took nearly eighty decisions to change the purpose of projects approved without EIA within Kaliakra SPA from “house construction” to “solar energy parks”. Almost all of these individual projects are situated next each to other and are owned by a single investor – “Vineyards” LTD (mentioned in our report to the Commission of May 2008). It is also a clear case of cutting a big project into smaller pieces in order to avoid EIA. It is not clear if the new designation order will stop this project.
- In late July 2009, the new Minister of the Environment Nona Karadjova, during her first press conference in Sofia, stated that the infringement related to Kaliakra case will be one of the priorities for solution by the new Government of Bulgaria.
- On 8 October 2009 during a meeting with NGOs, the Minister expressed her opinion that with designation of Kaliakra as an SPA, the problems with the area are solved to a significant extent. BSPB does not agree with this conclusion. Bearing in mind the short analysis mentioned above, as well as the fact that the designation order covers only two thirds of the total proposed area, we are sure that this is not the case and asked the Minister for a meeting to co-ordinate our further steps. The meeting is planned for 14 October 2009.
- NGO Coalition For the nature initiated a study on the changes of criteria habitats due to ongoing developments in Kaliakra and Kamchia Natura 2000 sites. The study will be ready by the end of October 2009 and will be provided to the Commission.

3. Case of inadequate protection of SPAs (infringement No. 2008/4461)

- BSPB provided to the European Commission a short update of examples of the most threatened SPAs in June 2008.
- BSPB was asked by the Commission to provide if possible maps with the investment projects in the threatened SPAs. BSPB has provided two maps – for Shabla Lake Complex and Durankulak Lake. BSPB continues to have difficulties in producing such maps, because the information published officially by the authorities does not allow the exact location of investment projects to be identified. The problems in Shabla and Durankulak lakes have become more severe, as now some of the companies have started to construct their hotels, In September 2009 BSPB submitted to the MOEW a warning for one such case and the case is under investigation. The General Spatial Plan of Shabla Municipality is under an approval procedure at the moment with very high pressure for windfarm and golf course development as well as urbanisation projects.
- The government provided the European Commission with further information related to projects within SPAs at the end of 2008.
- Development in the threatened sites continues. Belite skali SPA is already significantly damaged by golf course and hotel construction. New investment projects continue to be initiated in Batova SPA, where approximately 1000 individual projects related to construction of houses and hotels are approved. Open sand and stone extraction continues to be the biggest issue for the Chelopechene SPA and Bessaparski Hills SPA. New plans for an open coal extraction site in Palakariyata SPA have appeared.
- Permissions for windfarm development continue to be issued in very vulnerable sites such as Sakar SPA, Krumovitsa SPA, Zlatiyata SPA, Western Balkan SPA, etc.
 - The biggest windfarm in Bulgaria (150 turbines) was approved in Zlatiyata SPA** with a non-transparent EIA procedure, which has formal documentation of approval. However, real public information and discussion was never held and BSPB was kept uninformed all of the time.
 - On 28 July 2008, permissions for the building of two wind parks in **Sakar and Western Strandza SPAs** was issued without any assessment. In Sakar SPA the closet turbine will be **486 meters from an active nest of the globally threatened Imperial Eagle (*Aquila heliaca*)** . In Western Strandza the closest turbine will be 1345 metras from active Imperial Eagle (*Aquila heliaca*) .
 - In April 2009 permission for building a wind park on the border of the Krumovitza and Arda bridge SPA** was issued despite the negative opinion of three NGOs and the National Natural History Museum. A BSPB representative took part in the expert council evaluating the EIA, but the regional Environmental Inspectorate refused to give a copy of the answer of the EIA expert to BSPB criticism or a copy of the decision accepting the EIA and approving the building of the turbines.
 - In May, June and August 2009 three permissions for building three wind parks in Krumovica SPA were issued. The turbines threaten breeding globally endangered Egyptian Vulture (*Neophron percnopterus*) and other raptors including Griffon and Black vultures. BSPB has received “silent refusal” on its requests BSPB expert to take part in the expert council that evaluated EIA. At the moment the constriction works are not started because of ongoing court case incited by Green Balkans NGO.
- However, the problems are not restricted to these sites. Similar damage is occurring in at least 55 SPAs right across Bulgaria. Pressure on the approved SPAs from proposed investment projects continues to increase. In most of the cases the investment projects are related to building of summer villages, hotels, golf-courses, ski-runs, extraction of sand, gravel and stones, wind farm and micro-hydropower station construction. BSPB could provide more detailed if needed.

4. Possible complaint on inadequate protection of Kamchia Complex SPA

- The European Commission sent a letter to BSPB in February 2009 asking it to provide more information and evidence about the infringements of EU law in Kamchia Complex, threatened by a project to build a big resort between the coastal flooded forest and sand dunes in the SPA.
- The Ministry of Environment did not answer BSPB enquiries and did not provide the requested public information and documents. So BSPB failed to obtain some of the key documents asked by the Commission.

- At the beginning of August 2009 the Commission again asked BSPB to provide evidence within two months, in order for the EC to decide whether to open a separate infringement procedure. On 5 October this information has been provided to the Commission.
- The investment project for construction of the resort has been approved without EIA and Appropriate assessment and already has all the permissions (we do not have confirmation about the validity of all of them). It could start to be implemented immediately. However, at present, there are no construction works in place.