REPUBLIC OF BULGARIA

**MINISTRY OF ENVIRONMENT AND WATER**

**DECISION**

**No. 181/29.06.2012**

**The proceeding is under Art. 81-98 of the Administrative Procedure Code (APC).**

It is instituted by appeals of the Bulgarian Society for Protection of Birds (BSPB) and Association “Green Balkans” against Decision on the environment impact assessment (EIA) No. VA-7/2012 (BA-7/2012) of the director of RIEW (Regional Inspectorate of Environment and Water) – Varna, by which is approved the investment proposal (IP) implementation of Consortium Wind Energy for the construction of wind power farm consisting of 95 pieces of wind turbines and two substations, located on the territory of Shabla Municipality and General Toshevo Municipality, District Dobrich.

To clarify the legal and factual circumstances are reviewed the administrative correspondence/file on the issuance of the contested decision, statements of the RIEW - Varna and competent specialized Directorates of MoEW (Ministry of Environment and Water). By letter Ref. No. 48-00-602/29.05.2012 a statement of Consortium Wind Energy was requested, but such has not been received.

The appeals of the parties interested are lodged within the period specified under Art. 84, Para.1 of the APC and are procedurally admissible. Considered upon merits the appeals are justified due to the following:

According to the submitted to the MoEW documentation, the proceeding on the issuance of the contested Decision has started with the submission by the contracting authority to RIEW – Varna of Notification Ref. No. 26-00-6095/18.12.2009 for the construction of wind power farm on the territory of the villages Smin, Vaklino, Chernomortsi, Zahari Stoyanovo, Granichar, Staevtsi and Bezhanovo, Shabla Municipality.

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1. **Violation of Art. 18, Para. 1, items 2-4 of the EIA Ordinance (Environment Impact Assessment (EIA) Ordinance)** – according to the aforesaid provisions, the competent authority shall take decision on EIA on the grounds of:
* the documentation and statements required and/or submitted in the course of the procedure inclusive the supplements under Art. 17, Para. 6 and supplementations under Art. 17, Para.7;
* the statements of other expert individuals, authorities, organizations and structures who have powers under normative act in the area of components and factors of the environment, human health and cultural heritage;
* the results of the public discussion, inclusive the statement of the contracting authority pursuant to Art.17, Para. 5.

In this case statements of BSPB, Association Green Balkans, NMNHS (National Museum of Natural History Sofia), BAS (Bulgarian Academy of Sciences) and National Nature Protection Service Directorate have been submitted to RIEW – Varna, which are motivated in detail and negative with respect to the approval of the IP at this stage (or at all). These statements (and their nature) are specified on p.5 and 6 of the contested Decision, but it is not clear from the said whether the director of the inspectorate has taken them into account when rendering the act and if he did – why he has considered that the objections specified in them are unfounded.

With respect to the above, I do consider that administrative authority should have used the opportunity provided by Art. 17, Para.7 of the EIA Ordinance and instruct the contracting authority to take actions under Art. 39, Para 10 of the Ordinance on the compatibility of plans, programs, projects and investment proposals with the object and purposes of the preservation of the protected areas (Ordinance on CA/compatibility assessment), i.e. to further analyze the data available (including the data submitted by the BSPB) in accordance with the statement of the National Nature Protection Service Directorate dated 27.02.2012.

1. **Violation of Art. 24, Para. 5 of the Ordinance on CA** – the administrative authority wrongly has given positive assessment of the Environment Impact Assessment (EIA) Report quality of the IP. This conclusion was drawn from the following:
2. A motive in the appeals specifies that indicated in the EIA Report distances of the IP to the nearest located protected areas are incorrect. This is proved also by the MoEW database, according to which, the nearest located wind turbine is at a distance of about 80 km away from the boundaries of the birds’ protected area BG0002050 “Durankulashko ezero” and about 5 km away from the Black sea coast line, as three of the wind turbines are located between the two “sleeves” of the area. The nearest wind turbines are located at a distance slightly more than 5 km away from the boundaries of the protected birds’ area BG 0000156 “Shablenski ezeren complex”.
3. According to another motive in the appeals the cumulative impact assessment is incorrect. According to the EIA Report the total number of wind turbines (WTs) in the Municipalities of Kavarna, General Toshevo and Shabla is 246 pieces. Thus presented total number according to which the cumulative effect is defined is incorrect. According to the MoEW database, the total number of WTs in the municipalities specified is around 1318 pcs (realized, passed the procedures, in process of the relevant procedures or approved). To this number should be added also 150 pcs of WTs of the wind energy farm “General Toshevo”, located on the territory of General Toshevo Municipality with contracting authority Wind Energy 3000. Thus the number of WTs within the territory of the three aforecited municipalities as of the present moment is about 1460 pieces. In view of the significant discrepancy between the information provided in the EIA Report and the information available in MoEW it is appropriate the cumulative impact assessment to be further explored and analyzed which in turn can lead to signing of corresponding measures. The EIA Report authors have not reported also the fact that on an area of around 50 thousand hectares engineering equipment concentration is obtained which may have a barrier effect on the daily food fly between land and water (the two lakes Shablensko and Durankulashko) of water fowl birds as their average flight height is between 110 and 230 m (within the sweep of the blades of the WTs).

In view of the discrepancy between the number of the wind turbines assessed in the EIA Report and their real number (as per the data of MoEW), I do consider that the authors of the report have not evaluated the reduction of the area of suitable foraging habitats and restriction of the access to them in an area with heavy migration, wintering and resting of birds (geese mainly) and reducing the size of the population of the breeding birds.

Also EIA Report does not contain any assessment of the IP implementation impact on the coherence of the protected areas BG0000130 “Kraimorska Dobrudzha”, BG0000154 “Ezero Durankulak”, BG0000621 “Ezero Shabla-Ezerets”.

Appeals focus also on the parameters for the cumulative effect calculation. For example, the evaluation of the air space loss is calculated based on 246 pcs WTs located on the territory of the municipalities Kavarna, General Toshevo and Shabla and inferred loss is only 0,016%. In this case the effect is not reported on the realization of all 1460 pieces of WTs (realized, passed the procedures, in process of the relevant procedures or approved), within the territory of the three municipalities, which shows lack of reliability/accuracy of the conclusions drawn.

The appellants draw attention also to the fact that the cumulative impact assessment is carried out taking into account the estimated parameters of the WTs about which in the contested Decision is clearly specified that “at this stage the contracting authority is in negotiations for supply and installation of wind turbines XE93-2000 with the following technical parameters: power 2 MW; rotor diameter 93,5 m; tower height 100 m”. There is no guarantee that exactly these parameters will be met with the installation of the wind turbines, which in turn compromises the calculations made and the conclusions drawn out about absence of cumulative effect from the IP implementation.

The appeals indicate also the evaluation of risk of collision, which “has not been carried out in detail”, even more that the WTs parameters are not defined with certainty. As the authors of the EIA Report state, in the airspace between 100 and 200 m height fly 25.59% of the birds. This means that for great part of the birds there is a real risk of collision which is not reported in the report and the figures are given only as a finding.

1. The next motive addresses the lack of reliable assessment of the impact on all bird species, subject of protection in the nearby located protected areas and in particular on the red-breasted goose. The impact assessment is presented in a table where by “yes” and “no” is defined whether a “negative impact is expected” during nesting, wintering, spring and autumn migration. Lack of quantified measurement of the assessment criteria does not give a clear picture of the extent of the impact on the species. In particular, about the red-breasted goose in the table with “yes” is marked only that “impact is expected during the period of wintering” which by no means do define the extent of the impact on this species during this period of time.
2. The appeals contest the methodology used to carry out the field investigation and more specifically that the selection of monitoring point does not correspond to the size of the IP and the territory it occupies. For the spring migrations monitoring the authors of the EIA Report have chosen one point, located in the central part of the wind power farm proposed. The same is the situation with the autumn migration monitoring, again only one point has been chosen. Having in mind that the territory on which it is envisaged to locate the wind power farm is with length around 12 km and width around 7 km it is not realistic to expect that only one monitoring point will cover the entire perimeter. It is not to be neglected also that the set coordinates of monitoring fall as altitude lower from the part of the territory of the wind turbines. Having in mind that these represent autumn and spring migration monitoring points it is right their choice to comply with the need to cover the entire perimeter of the wind power farm.

Upon thus cited circumstances, I do consider that the contested Decision should be repealed and the procedure under EIA shall be returned to the stage: supplementation of the EIA Report. Further studies and analysis shall be conducted and the aforementioned omissions and notes including the comments received during the procedure shall be considered, as well as the currently available information on the number and scope of IP shall be assessed.

In addition to the above, in continuation of the procedure the omission specified in item 1 of this Decision should be removed, namely when pronouncing the final act (decision on EIA) the competent authority should take into consideration the negative statements (if any) and if it considers them groundless – should motivate that.

In view of the aforesaid, pursuant to Art. 97, Para. 1 of the APC

**I HAVE DECIDED:**

**REPEAL** the Decision on EIA No. VA-7/2012 of the director of RIEW – Varna

 and

**RETURN** the file to the administrative authority for new pronouncement with consideration of the new motives of the present decision.

**Pursuant to Art. 145, Para. 2 , with respect to Art.98, Para.1, first sentence of the APC, this decision shall be final.**

**MINISTER: (**signature)

 **NONA KARADZHOVA**

**(**stamp)