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Natura 2000: Bulgaria's Paper Park

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Author's declaration

No portion of the work referred to in this dissertation has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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ABSTRACT OF DISSERTATION submitted by:
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Natura 2000 derives from the Birds and Habitats Directives and is the centerpiece of the European Union's (EU) nature and biodiversity conservation policy. It creates a network of protected areas throughout the EU. Many Member States, however, have faced an inability to 'comply' or behave in a way that is consistent with the legislative objectives set forth in the two Directives. Unfortunately, there has been little academic research conducted on this final stage of the implementation, which is theorizing on why targets of EU policy do or do not behave in a way that is consistent with the objectives of the policy. This thesis sought to provide insight into this question through an in-depth case study analysis of Bulgaria and the deviant "Case of Wind Turbines in Coastal Dobruzha". It was conducted through semi-structured open-ended interviews with the key informants of this controversial case, which is currently in the European Court of Justice, and the analysis of primary and secondary source materials. From the analysis, two sets of conclusions were drawn.

The first set of conclusions highlighted the relationship between the state and the EU. The legal transposition of the two Directives in Bulgaria was largely due to the desire for European membership. During the pre-accession phase of EU integration, insufficient resources were allocated by the EU for the policy to be implemented effectively after membership. As a result, once the relationship between the EU and the state changed from one of conditionality to regulatory cooperation, **'massive resistance'** on a domestic level ensued due to the high domestic costs of compliance. Administrative officials in charge of implementing Natura 2000, as well as Bulgarian society as a whole, were relatively inexperienced with biodiversity conservation. At the same time, they were undergoing the **'wild east of legislative changes'** causing enormous constraints on administrative officials and high adaptation costs. One persistent failure on a European level is the assumption that they have a '**coalition of willing partners'** in Member States with regard to policy implementation. Therefore, preventative measures are not set up to subvert non-compliance, thus there is little the EU can do to try and obtain compliance after violations occur other than infringement proceedings. This research found that these proceedings could be largely ineffective in altering the behavior of the state. This is largely due to the length or infringement proceedings and the probability of detecting non-compliance by the Member States.

Counter to contemporary political theory, the research uncovered that over time the relationship between the EU and the state can develop into a '**de-constructivist**' learning process. Rather than learning new ideas and norms through European policy implementation, states can identify mechanisms to avoid costly policy mandates or illustrate policy implementation through **'pseudo compliance'**. This means that states can externally display compliance to minimize or delay the costs of detection by the European Commission while not intending to fully comply with legislative objectives. In addition, the multitude of EU

Directives sets up a market place of European objectives that states can choose to accept or reject based on whether they align with domestic priorities. In Bulgaria, the renewable energy targets of the EU aligned with domestic priorities, and '**mal-adaptation**' pursued as the state successfully achieved EU renewable energy targets at the expense of biodiversity conservation. European companies played a key role in capitalizing on, and exploiting, a weak state in transition to seek financial gain. This was only further exacerbated by the contradictory role European institutions played in seeking to achieve their inter-institutional priorities at the expense of the objectives of the Birds and Habitats Directive. The thesis also found that in Bulgaria administrative officials are strongly dependent on the political parties in power. Therefore, national, regional, and local administrative bodies oftentimes do not take procedurally neutral administrative decisions, but use their authority to implement decisions consistent with centralized political objectives. Therefore, the tools used for policy implementation are only as good as the intention of those that wield them.

The second set of conclusions relates to the impact of Europeanization on internal domestic politics. NGOs can become empowered by European Directives that align with their policy preferences and push the state to insert these objectives into their national agenda. The state authorities, however, can resist this agenda and develop sophisticated methods for law avoidance. In order to circumvent the state, NGOs can appeal to the European Commission by filing citizens' complaints, thus empowering the NGOs in this new political sphere of influence. Member States control financial, authoritative, organizational, and nodal tools, which can be deployed to carry out retaliatory measures against these NGOs in order to undermine their ability to effectively conduct their work.

The thesis concludes that Bulgaria, like all other Member States, has unique geographic, cultural, political, and economic circumstances that became dramatically transformed through the EU approximation process. The EU must develop a holistic approach to policy-making that will not only achieve concrete goals, but also change the policy environment to one that is more favorable to new policies. Only when this is achieved can we begin to see a European system where Member States work together with European institutions to overcome domestic barriers they face in order to meet strategic objectives of European importance.

Key terms: implementation, Europeanization, pseudo-compliance, mal-adaptation, de-constructivism, government duplicity, buying time, in-house rules, mass resistance, coalition of willing partners, wild east of legislative changes, Natura 2000, Birds Directive, Habitats Directive, legislative objectives, legislative loopholes, legislative ambiguity, political payback, forward-backward mapping, nodality, treasure, authority, organization, policy tools.

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List of Abbreviations

BSC – Bern Convention Standing Committee

BA – Biodiversity Act

BSC – Bern Convention Standing Committee

BEERECL – Bulgarian Energy Efficiency and Renewable Energy Credit Line

BEMAEC – Bulgarian Enterprise for Management of the Activities on Environment Conservation

BSPB – Bulgarian Society for the Protection of Birds

BWEA – Bulgarian Wind Energy Association

CEC – Commission for the European Communities

CEC – Central and Eastern Europe

DG Environment – Directorate-General Environment

EE – Eastern Europe

EIA – Environmental Impact Assessment

EPA – Environmental Protection Act

EC – European Commission

ECJ – European Court of Justice

EEA – European Environmental Agency

ERU – Emissions Reduction Targets

EU – European Union

IBA – Important Bird Area

IEA – Investment Encouragement Act

IUCN – International Union for the Conservation of Nature

JIP – Joint Implementation Programme

JISC – Joint Implementation Supervisory Committee

MAF – Ministry of Agriculture and Forests

MOA – Ministry of Agriculture

MOEW – Ministry of Environment and Water

MEET – Ministry of Energy, Economy, and Tourism

NREAP – National Renewable Energy Action Plan

pSCI – potential Site of Community Interest

PHARE – Poland and Hungary: Assistance for Restructuring their Economies

RAESBA – Alternative Energy Sources and Bio-fuels Act

RERBA – Renewable Energy Resources and Bio-fuels Act

RES – Renewable Energy Sources

RDF – Rural Development Fund

SAC – Special Area of Conservation

WWF – World Wildlife Fund

CHAPTER 1. INTRODUCTION

Bulgaria joined the European Union (EU) in January of 2007 after seven years of talks with the EU. This marked a historic time in Bulgaria's history. From the Ottoman Empire to Communism, from democracy to a democratic member nation of the EU, Bulgarian society has made dramatic changes over the past 130 years. These political and economic changes not only have had an effect on the Bulgarian people, but they have also had a substantial impact on the landscape and biodiversity conservation. However, some of the most dramatic changes are currently unfolding as Bulgaria continues the process of EU integration with regard to its nature and biodiversity conservation policy. This process is taking shape of creation, adoption, cohesion, implementation, protection, and management of the Natura 2000 network within Bulgaria.

Natura 2000 is the centerpiece of the EU's nature and biodiversity conservation policy that creates a network of protected areas throughout the EU member nations based on legally binding legislation: the Habitats Directive and the Birds Directive (Environment 2014). The Birds Directive is one of the oldest pieces of nature legislation in the EU that seeks to protect endangered and migratory bird species through a coherent set of Specially Protected Areas (SPA).[1] The Habitats Directive extended this protection to wild flora and fauna. Together they form the Network through a strict system of protected sites and species protection measures.[2]

[1]For more information on Specially Protected Areas, see URL: http://ec.Eurospa.eu/environment/nature/legislation/birdsdirective/index_en.htm [consulted 12 November 2014].

[2] For additional information on Natura 2000, see URL: http://ec.Eurospa.eu/environment/nature/legislation/habitatsdirective/index_en.htm [consulted 12 November 2014].

During the Communist period, from 1945 to 1989, the key policy driver for Bulgaria's communist leadership was "economic development above everything else", and biodiversity conservation was scarcely on the political agenda (Jancar-Webster 1998, 77). State centralization of industries, however, left large areas of land virtually 'untouched', with the unintended consequence of leaving the country rich in biodiversity. Before Bulgaria's accession to the EU, biodiversity conservation consisted mainly of the designation of nature parks and reserves. In contrast, as an EU member nation, Bulgaria is expected to implement the strict biodiversity policy through legal adoption of the EU Birds and Habitats Directives into their domestic laws.

However, Bulgaria is the poorest nation in the EU, and it is facing immense pressure to develop the economy and at the same time comply with other EU regulations that in some cases impede the achievement of the objectives set forth in the Directives. In addition, since 2007, the implementation of these Directives has not been entirely satisfactory, and Bulgaria has been plagued by designation delays, illegal development on potential sites as well as poor public awareness and participation throughout the Natura 2000 process (WWF 2008).

The importance of Bulgaria's compliance with these Directives is vital not only for the preservation of biodiversity within Bulgaria, but also for the EU's entire Natura 2000 network. According to Bulgaria's National Strategy for Eco-Tourism, Bulgaria supports some of the richest biodiversity in all of Europe (National Eco-tourism strategy for Bulgaria 2003). Over 80% of the bird species on the European continent can be found in Bulgaria. In addition, Bulgaria contains two UNESCO World and Cultural Heritage sites as well as five sites designated under the Ramsar Convention.

Furthermore, Bulgaria contains some of the last wilderness areas in Europe (National Eco-tourism strategy for Bulgaria 2003).

Many sites have been deleteriously impacted, however, by the Bulgaria's inability to 'comply' or behave in a way that is consistent with the legislative objectives set forth in the Birds and Habitats Directives (Weaver 2009). These objectives are to protect and manage habitats and the wild flora and fauna in EU Member States (Environment 2014). Moreover, additional sites will reach this level if compliance continues at its current rate. Compliance with EU acquis communautaire and integration into the international system is something that is vital for the efficient implementation of the biodiversity Directives. Therefore, an adequate look needs to be taken at how European, as well as domestic factors are playing a role in the ability of this transnational actor (European Union) to affect Bulgaria's compliance and integration into the international system.

1.1. Importance of Research

There has been ample literature written about why Member States adopt or fail to adopt EU law, but little research done on how European legislation produces the desired results in these countries (Glachant 2001). Moreover, there has been little research done on the final stage of the implementation of EU policy, which is understanding why targets of EU policy do or do not 'comply' or behave in a way that is consistent with the objectives of the policy (Weaver 2009). A multitude of policy tools have also been used by the European Union and various levels of governance in Bulgaria to induce compliance by domestic actors, such as awareness raising, capacity building, and punishments in the form of infringement proceedings. In many cases,

however, these instruments have been ineffective. This challenges the fundamental concepts on what instruments can be used to influence behavior of target groups and how they can lead to the desired results.

1.2. Research Aims and Objectives

The research focused on a targeted case study that clearly portrays non-compliance through the misapplication of the EU biodiversity Directives in Bulgaria. The in-depth case study research was conducted regarding the development of wind turbines on Coastal Dobruzha. This coast is of particular importance as it is part of the Via Pontica, which is the most important migratory bird route in Bulgaria and the second most important in Europe (Mitchev et. al. 2012). It is also home to the globally threatened red-breasted goose (*Branta ruficollis*). Eighty to ninety percent of the global population of these geese congregate on 5-10 roosting sites in Coastal Dobruzha (IUCN 2014). Unfortunately, thousands of wind turbines have been permitted in the region with little regard for their impact on biodiversity. As of October 17, 2013, the European Commission (EC) announced it would take Bulgaria to the European Court of Justice (ECJ) for failure to designate appropriate sites, failure to implement appropriate assessments on sites in Coastal Dobruzha, frequently issuing permits with inadequate or no Environmental Impact Assessment (EIA), failure to measure the cumulative impact of investments on Natura 2000 sites, and failure to protect globally threatened species, including the red-breasted goose. In the words of the European Commission press release, "Although Bulgaria is committed to increasing the protection of rare species and habitats in the region, the reverse appears to be happening" (European Commission press release 2013).

Therefore, it is of critical importance to understand why the biodiversity there has been significantly deteriorated in contrast to the legislative objectives of the Birds and Habitats Directives. Moreover, it is important to identify how the regional situation became so out of control that the European Commission took the Bulgarian government to the ECJ over this case (European Commission press release 2013).

1.3. Research Questions and Aims

The research gained invaluable insight into the barriers to implementation by obtaining data on the following questions:

1) What European and domestic factors influence the practical application and enforcement of the objectives set forth in the Birds and Habitats Directives in the Natura 2000 sites in Coastal Dobruzha?

2) What is the pathology of implementation of the Birds and Habitats Directives in Bulgaria? What disruptions in this pathology lead to significant deterioration of Natura 2000 sites in Coastal Dobruzha?

3) What were the key policy tools used by implementing agencies on each jurisdictional level to induce compliance by the targets of the policy? How were they utilized in the Natura 2000 sites in Coastal Dobruzha?

4) How did these policy tools interact with the target groups of the policy in the Natura 2000 sites in Coastal Dobruzha?

The proposition derived from the research questions was that the **degree of success depends primarily on domestic constraints/pressures and the ability of**

local, national and international governance structures to provide the necessary tools for implementing agencies to overcome these barriers.

The research aims to:

1) Develop an enhanced theoretical framework for analyzing the implementation of Natura 2000 in Bulgaria.

2) Develop an analytical framework to understand how tools available to induce compliance with the Birds and Habitats Directives by target groups were applied by administrative agents in the case of Coastal Dobruzha.

3) Understand how these key policy tools interacted with the target groups of the policy in the Natura 2000 sites in Coastal Dobruzha.

4) Understand how European and domestic factors influenced the practical application and enforcement of the objectives set forth in the Birds and Habitats Directives in the Natura 2000 sites of Coastal Dobruzha.

The objectives are to:

1) Trace the pathology of the implementation of Natura 2000 from the lowest jurisdictional levels up to the EU-level in order to categorize strengths and weakness in the logic of the implementation in the Natura 2000 sites in Coastal Dobruzha.

2) Identify the policy tools used to induce compliance with the Birds and Habitats Directives by administrative authorities on each level of governance.

3) Develop a better understanding of how these tools interacted with the targets of the policy.

4) Develop an explanatory narrative on how European and domestic factors influence the practical application and enforcement of the objectives set forth in the Birds and Habitats Directives in the Natura 2000 sites of Coastal Dobruzha.

Bulgaria made for a unique empirical laboratory due to its importance to the European Natura 2000 network and the relative newness of its implementation; thereby providing an opportunity for the thesis research to be practically applied by policy makers and policy implementers. In addition, negative developments related to the case have lead Bulgaria to be taken to the ECJ for violating the underlying objectives of the Directives, thus making the research obtained through this case study of critical importance for European policy makers and the court. Through interviews with key policy implementers, this thesis provided understanding of what went wrong, and policy suggestions were given on how to avoid such circumstances in the future.

1.4. Overview of the Chapters

The first chapter provided an overview of the research questions, as well as the aims and objectives of the thesis. It also illustrated the importance of the research and reasoning for selecting the deviant case study. Finally, concluding with a short summary and overview of thesis chapters.

Chapter 2 combines a literature review with my theoretical construction. It reviews the relevant literature useful for analyzing the case. This included literature on European integration theory, compliance theory, implementation theory, and policy tools. Through the analysis of the literature, the theoretical and analytical arguments of this thesis will be explained and flushed out in greater detail.

Chapter 3 outlines the methodology utilized in my research. More specifically, it elaborates in detail on the underlying reasons selecting the case study. It will illustrate the international importance of Coastal Dobruzha and the diversity of species found within it. The chapter will also highlight the data collection techniques used for the development of this thesis. These include the sampling methods used for semi-structured open-ended interview, as well as the relevant sources and methods for data collection. Moreover, an in-depth explanation will be given on my data analysis techniques as well as the theoretical and practical limitations of the research.

Chapter 4 provides the background necessary for the reader in order to understand and follow the case study chapters and contextualize their empirical findings. This is achieved by providing a historical background and context to nature protection in Bulgaria. It also provides a description of the social and economic context of Bulgaria's 'westernization' of their biodiversity policy. Finally, it concludes with a contextual explanation of Natura 2000 as a legal system, including its legislative requirements, important deadlines, and financial mechanisms available for its implementation.

Chapter 5 conducts a narrative analysis of the Case of Wind Turbines in Coastal Dobruzha: Transposition and Site Designation. It will illustrates the underlying reasons for transposition, as well as the success Bulgaria had achieved in the Biodiversity Act's (BA) legal passage. It will continue with a detailed analysis of the Natura 2000 site designation process highlighting the 'massive resistance' that took place domestically to the Network and its impact on sites in Coastal Dobruzha (Bardach 1980). It will also provide a detailed argument on why the infringement proceedings were a weak deterrent for the Bulgarian state and did little to change their strategic calculation. After each

narrative section has been laid out, a comprehensive analysis will be conducted using the theoretical and analytical framework identified in Chapter 2 as a guide.

Chapter 6 conducts a narrative analysis of the Case of Wind Turbines in Coastal Dobruzha: Protection and the Need for Adequate EIA's. This is done by analyzing the Kaliakra Wind Power project to illustrate key deficiencies in the process of implementing the Environmental Protection Law. It will also illustrate the importance of interacting legislation in ensuring adequate protection of Natura 2000 sites. The chapter highlights that wind turbine development was a centralized political decision stimulated by wind power investments deriving from the Renewable Electricity Directive (2001/77/EC) that was transposed into Bulgarian law. The state 'mal-adapted' to this Directive by actively pursuing the objective of renewable energy stimulation at the expense of biodiversity conservation in Coastal Dobruzha. Moreover, it highlights how a 'deconstructivist' learning process took place as the administrative units in charge of deploying the BA found sophisticated methods avoid costly restrictions in order to continue with the state's priority of renewable energy development. The chapter further elaborates on the 'pseudo compliance' techniques used by administrative agents to illustrate compliance to the European Commission in order to avoid or delay the costs of detection. These and other key implementation deficiencies will be identified and then analyzed using the theoretical and analytical framework identified in Chapter 2 as a guide.

Chapter 7 continues with the narrative analysis of the implementation deficiencies through the analysis of the Case of Wind Turbines in Coastal Dobruzha: Protection and the Lack of Appropriate Assessments, Evaluation of Cumulative Impacts, and Strategic Planning. This chapter will highlight additional 'pseudo compliance'

techniques used by the state to proceed with wind turbine investments at the expense of biodiversity. It will also illustrate how the Bulgarian government was going through the 'wild east of legislative changes' and seemed to be overwhelmed by the capital investments, which were moving faster than the legislative framework needed to protect the region from their deleterious effects on biodiversity. External limitations highlighted in the case include insufficient strategic planning, lack of coherence by EU institutions in dealing with Bulgaria, and the influence of powerful international companies on the Bulgarian state. These and other key implementation deficiencies will be identified and then analyzed using the theoretical and analytical framework identified in Chapter two as a guide.

Chapter 8 finalizes the narrative analysis of the implementation deficiencies by analyzing the Case of Wind Turbines in Coastal Dobruzha: Site Regimes, Conservation Measures and Management. This chapter will illustrate additional techniques used by the government to delay the implications of Natura 2000 sites on economic development such as procedural delays, implementing vague site regimes, and foregoing 'in house measures' such as management plans to counter potential restrictions to economic growth. It will also illustrate, however, that there are technical complications, such as identifying and mapping Natura 2000 sites, which further complicate the development of such plans. Finally, it will conclude by examining how the domestic interface between environmental NGOs and the national government became perverse through supra-national interactions between the European Commission, the State, and civil society. These and other key implementation deficiencies will then be identified and analyzed using the theoretical and analytical framework established in Chapter 2 as a guide.

Chapter 9 discusses the two main sets conclusions deriving from the thesis. Conclusion set one focuses on the interaction between the European Union and the State. Conclusion set two analyzes the impact Europeanization has on domestic politics. It then moves on to analyze the theoretical value of forward-backwards mapping and Hood's policy tools framework for EU integration and compliance theory. It then concludes with some policy recommendations for other scholars and policy makers as well as final thoughts.

CHAPTER 2. LITERATURE REVIEW AND THEORY

This chapter will provide a contextual background of the existing literature on EU integration and compliance theory in order to connect it to the empirical understanding needed to address policy failure in Bulgaria. Broad macro-approaches to European integration theory provide an important lens for the conceptualization of Bulgaria's transposition of the Birds and Habitats Directive. While useful in gaining insight into underlying reasons for their legal passage, they provide little insight into the nature of implementation and what happens when the policy objectives must be achieved. Therefore, a more nuanced approach was taken drawing from the literature field of top-down and bottom-up implementation theories. This was done in order to provide greater depth for understanding the external factors limiting compliance by 'street level bureaucrats' and other relevant actors engaged in policy implementation. Finally, literature was reviewed on policy tools and applied to the theoretical methodology used in this thesis.

2.1. Macro Approaches to EU Integration and EU Compliance

2.1.1. Rationalism

In EU integration theory oftentimes the State is viewed as a unitary actor in order to simplify its ability to theorize on why Member States comply or fail to comply with supranational laws enacted on a European level. This literature on EU integration and domestic compliance provides useful insight on how national regimes adapt to

transnational norms and laws. If the underlying reasons why states comply or fail to comply with EU legislation can be identified, policy tools can be suggested to circumvent non-compliance. From federalism to functionalism, all have tried to make sense of domestic integration into the EU; however, none of these theories has been more accepted in academia than the rationalist and constructivist theories (Daddow 2009).

Rationalism uses the optimality assumption to understand state actions. This assumption establishes a consequentialist logic of action and suggests that actors use means-end calculations in order to maximize their utility. Thus, when it comes do interdependent choices, actors will always behave strategically (Abell 1992). Therefore, the rationalist theory states that coercion, cost/benefit analysis, and material incentives are the means in which compliance can be achieved (Finnemore and Sikkink 2001, 913). This theory holds many interesting components that can give us insight into Bulgaria and its implementation of the EU Biodiversity Directives. Bulgaria has undertaken many significant steps to achieve the goal of becoming part of the EU. However, one can question the reasons for such partnership. The realists may see Bulgaria's accession as a means to an end for the government and its people. For rationalist theorists, Bulgaria may not agree neither with the fundamental principles that the Union was founded upon, nor with the Biodiversity Directives that they must implement, but do so in order to achieve the end goal of economic prosperity and state security. In 2008, the Eurobarometer did a survey in the EU's 27 member nations, and asked people to rank their top five environmental concerns out of the total of 15 possibilities. Only 21% of the Bulgarian survey participants ranked biodiversity loss as one of their top five priorities. Biodiversity loss was even outplaced by urban problems such as traffic jams and green space (2008). While Bulgarians may not be deeply concerned with biodiversity, the

investment required through European legislation is nothing short of substantial. Bulgaria holds the second largest territorial coverage of sites in the EU covering 33.89% of the country while the average European coverage is 17 % (Environment 2014). It would be natural to assume Bulgaria faces substantial political resistance to the Network.

Lynch (2000) calls it the 'deception gap' between what is actually said on paper and what is actually done in practice. Bulgaria's integration to the EU may be seen through this contextual lens as well. In 2004, the European Council recalled that all outstanding chapters of EU accession in Bulgaria had been closed and that negotiations had been successful (Council of the European Communities 2004). This indicates that the Bulgarian state effectively transposed the European legislation including the environmental chapter into their domestic legislation, but when it comes to the implementation of the Directives, it has been woefully inadequate. Since 2010, there have been 15 infringement procedures against Bulgaria in the environmental sphere. Seven or eight of these infringements are connected with poor nature protection or with the protected areas of Natura 2000. Most of them are concerned with the incorrect application of the Directives (Hristova 2012, 30).

Rationalist scholars, however, usually view the State as a rational and unitary actor. This model fails to recognize that countries are not unitary actors and there are many interest groups that influence the decisions of State actors based on varying constraints and opportunities with which they are presented. Additionally, the rationality of an actor reflects values, attitudes, and ideas of risk that differ from those of the policy maker (George and Bennett 2005).

2.1.2. Constructivism

While useful, this theory alone, however, does not answer why Bulgaria has not fully complied with the Directives. Therefore, this thesis will also use the conceptual lens of constructivism to try to make sense of why we have seen significant gaps in compliance. Constructivist theory is based on two assumptions: (1) the environment in which we take action is social as well as material; and (2) this setting can provide agents with an understanding of their interests (Checkel 1998, 325-327). The first assumption proposes that material structures are given meaning only through the social context through which they are interpreted. The second one addresses the basic nature of agents in relation to the broader institutional realms. Constructivists claim that policy instruments that emphasize arguing/deliberation and learning based on the dynamics of socialization are the means of achieving appropriate behavior (Risse and Borzel 2000). We can see Bulgaria's compliance with Natura 2000 from this standpoint as well. These implementation problems can be considered a 'vertical disintegration of policy' (O'Toole and Hanf 1998). Bulgaria is inexperienced in translating these biodiversity commitments into specific tasks and particularly in distinguishing costs and benefits of environmental compared to economic-oriented legislation. Therefore, constructivists may see Bulgaria's lackluster compliance with the Directives as a result of a learning process that will improve through EU policies that develop societal inclusion into the European Community, foster understanding of the EU Directives, and develop administrative capacities of policy actors given the responsibility of implementing the Directives.

Both theories shed some light on why we have seen poor compliance. Both approaches, however, look at integration from a holistic perspective portraying a

simplistic approach to international relations theory. Why some EU laws are adequately implemented in Bulgaria while others are not? Neither approach accounts for the micro-dynamics that interplay in relation to specific laws and their implementation and, more specifically, their practical application. Furthermore, neither approach seems to analyze comprehensively how these domestic factors play a role in relation to the international system. The complexities of compliance must be looked at from a more finite perspective and take into account specifically how these domestic variables interplay with the state and interact with the international system. In his 1995 article "Decision Making in the European Union: Towards a Framework for Analysis" Peterson states, "No single theory can explain EU governance at all levels of analysis. Broad 'macro approaches' to the issue of integration are particularly important for explaining the major history making decisions of the EU. When it comes to explaining the 'policy setting' or 'policy shaping' decisions macro theories tend to lose their explanatory power" (Peterson 1995, 84).

2.2. EU Implementation Theories

2.2.1. Misfit Theory and Veto Players

It was only in the 1980s that scholars studying EU law began to look away from large-scale theoretical analyses such as rationalism and constructivism to the actual domestic transposition of EU law. These early theorists suggested that implementation (transposition) was largely dependent on clear rules, efficient administrative bodies, as well as an effective and efficient legislative procedure at a national level (Ciavarini 1985 in Falkner et. al. 2005). There were also scholars in the field of EC implementation

suggesting that the inclusion of all relevant actors such as sub-national entities, NGOs, parliamentarian bureaucrats, and interest groups in the decision making process at EU level was an avenue for effective transposition of the Community Law (Ciavarini 1988 in Falkner et. al. 2005). In their view, including stakeholders into the decision-making process was a way to prevent making decisions that conflicted with realities facing bureaucrats. Bulgaria, however, was not a member of the EU when both the Birds Directive (promulgated in 1979) and the Habitats Directive (promulgated in 1992) were promulgated. Without participating in the analysis to determine the need for such a law, bureaucrats and other stakeholders may question the legitimacy of the Directives. Botcheva argues that, "an expertise-generation process that represents only a single group from the political spectrum lacks credibility in the eyes of excluded audiences. The message communicated is easily attributed to a set of strategic interests" (2001, 1). Regardless of this fact, Bulgaria remains a relatively good performer when it comes to transposition of EU Directives. In fact, Bulgaria was the first Member State to achieve a transposition deficit of 0 percent in 2008 regarding the internal market legislation (Internal Market and Services DG July 2008). One significant aspect not touched upon by either of these theories, however, is the actual domestic impact of European policies and programs.

Only in the 1990s, research began to take shape to explain the domestic impact of European policies through their national implementation. One theory that came to light during this time was the misfit theory. Misfit is defined as the degree of compatibility between European policy measures and pre-existing national traditions in Member States (adaptational costs) (Borzel 2000). In this theory, the degree of misfit between the national policy and the EU policy determines the ease of adaptability and implementation of the EU law (Borzel 2000). Bulgaria had significant difficulties in

reforming its administrative and legislative cultures before accession to the EU. So much so, that in 2004, when several Central and Eastern European countries joined the EU, Bulgaria's accession was postponed due to the necessity of further reforms. Since Bulgaria's communist elites held on to power much longer than in other Central and Eastern European (CEE) countries, democratic reforms were slow to materialize (Vachudova 2005, 38). This provided the groundwork for significant misfit between the EU policies and national legislation. Nevertheless, the accession was contingent on acceptance by domestic actors of the acquis communautaire in its entirety. If the benefits of EU membership were to be acquired, all EU Directives had to be transposed regardless of domestic resistance to specific legislation.

Another attempt at explaining ways in which domestic factors influence the subversion of EU legislation was the 'veto players' theory formulated by Tsebelis. According to the author, veto players are the individual or collective actors whose agreement is necessary to make change. In his theory the greater the number of veto players the greater the probability of non-compliance (Tsebelis 2002).

In 2005, Falkner et. al. developed a table in order to help visualize the stumbling blocks to the transposition of EU Directives (see Figure 2.1.). According to Tsebelis, veto players would fall under the category of intentional opposition to the Directive illustrated in Falkner's graph. The misfit could be interpreted as the domestic opposition to specific contents or effects of a Directive. This misfit may occur when a Member States might seek to oppose transposition to protect national institutional legacies or a nation's ideological position. Veto players theory can be visualized through opposition against national decisions or the transposition mode. Societal actors may be strongly

opposed to a specific Directive and pressure national policy makers to oppose its transposition.

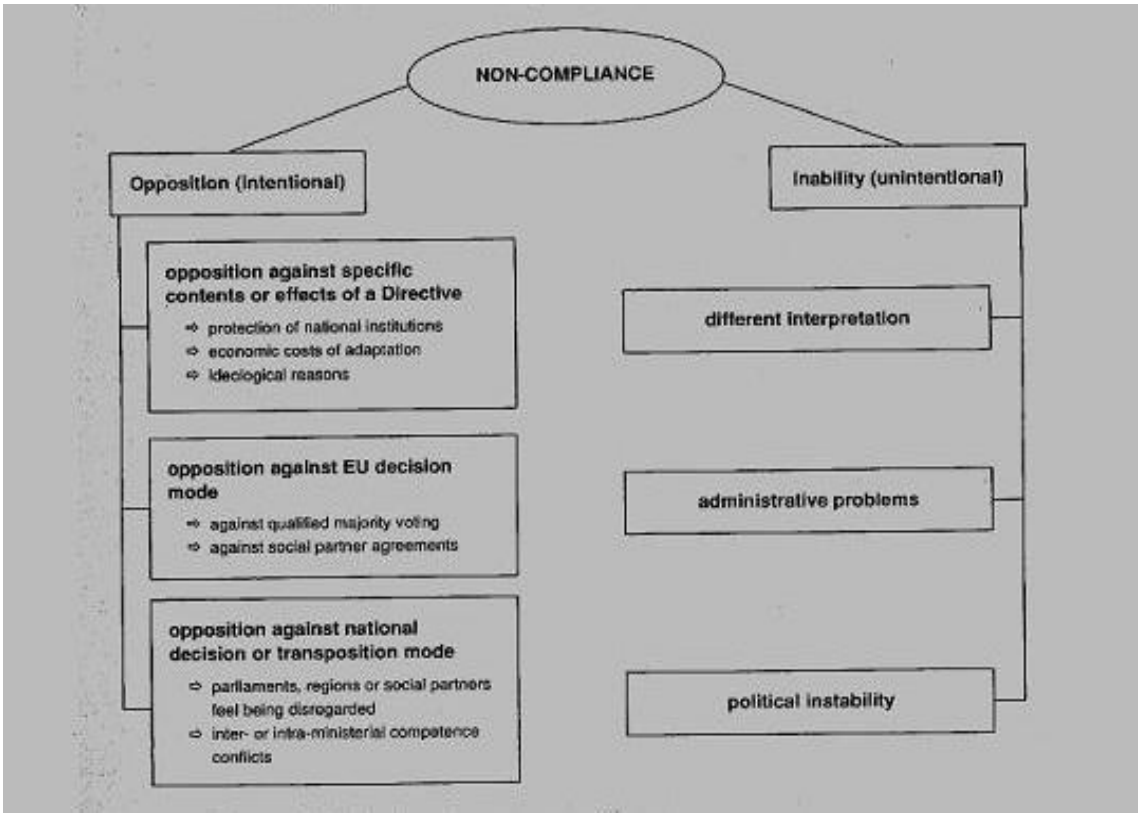


Figure 2.1. Motives for non-compliance. *Source*: Falkner et. al. 2005.

While this chart is useful in visualizing domestic challenges to the transposition of EU legislation, it does little to help explain the specific context of Bulgaria's failure to apply and enforce the Birds and Habitats Directives.

In 2007, Falkner found empirically, after analyzing 15 member states and 91 cases, that both the misfit theory as well as the veto player's theory showed a statistically weak influence in a Member States' performance in the transposition of EU law. Following her findings, she suggested three worlds of transposition compliance: world of law observance, world of domestic politics, and world of transposition neglect. In the world of law observance, the goal of compliance trumps the world of domestic concerns. Usually this world is seen in countries that have a culture of compliance with

the law. In this world, non-compliance only happens rarely when key domestic traditions or fundamental regulatory philosophy are being challenged. In the world of domestic politics, domestic concerns prevail over transposition based on cost/benefit analysis by the country. Finally, the world of transposition neglect is one where a country just may not care about the transposition of the law or have administrative inefficiencies that prevent it from implementing the law (Falkner 2007).

2.2.2. Forms of Compliance and Implementation of Community Law

In 2008, Falkner analyzed whether CEE countries represent a new world of compliance she coined as 'the world of dead letters'. In her view, adaptation (implementation) of EU laws has been encouraged in CEE through 'external incentive models' (basically, a rationalist framework) and the promise of membership by the EU to countries like Bulgaria upon the adaptation of the EU Directives and laws. Many researchers have found that without the promise of EU membership the legal implementation process in CEE countries would slow down or stop altogether (Schimmelfennig and Sedelmeir, 2005a, 226 in Falkner 2008). Therefore, she decided to analyze the transposition, enforcement, and application of EU labor legislation in Czech Republic, Hungary, Slovakia and Slovenia between 2005 and 2006. Her findings showed that all these countries were relatively good at the actual transposition of the EU laws, but the enforcement and application of those laws were severely hindered. In her view, CEE countries, therefore, are a new category of compliance she defines as the 'world of dead letters' (Falkner 2008). This means that CEE countries like Bulgaria in most cases transpose EU Directives, but then there is non-compliance at the latter stage of monitoring and enforcement (Falkner 2008). This indicates that Bulgaria's excellent

work in transposing the EU acquis may not be reflected in the achievement of the objectives and desired policy outcomes of Natura 2000 at a national, regional, and local level.

According to Jacoby, the EU approximation process in new Eastern European Member States creates "Janus-faced organizations in which one element works for the organization's domestic clients while the other is maintained for the purposes of pacifying the EU" (1999, 63 in Lynch 2000). Convergence between EU environmental legislation can happen when green States can impose their stricter standards as a prerequisite for market access. Many times this can end up being a competitive advantage for domestic producers. Therefore, the legislation can be supported by domestic interest groups. One flaw in this analysis however, is that it does not take into consideration the domestic forces that encourage new Member States to actually implement the legislation or 'deceive' the EU through post-accession deviation from the EU acquis communautaire or failure to apply and enforce the law.

Promise of EU membership in most cases induces good performance by potential Member States, and Bulgaria was no exception. This is because actions that do not align with the EU objectives may impede their ability to join the EU. Once they are members of the EU, however, their position often transforms and the state obtains much more power as it is no longer at the mercy of other Member States or the European Commission for membership. Thus, the relationship between the EU changes from one of conditionality to one of regulatory cooperation. In this case, the effectiveness of pre-accession policy alignment and post-accession transposition becomes inverse, especially when a State may not agree with the Directive in its entirety (Knill and Tosun 2009). Thomson argues that Member States that have policy preferences which may not align

with the provisions of a Directive or have a strategic incentive to oppose it may see post-accession transposition failures appearing not in the complete rejection of the Directive, but in the incorrect transposition of specific provisions (Thomson 2010). Therefore, non-compliance can take place as legislative gaps begin to materialize and the application and enforcement of the law takes shape.

While transposition failures can happen post-accession, the most frequent implementation failures result from the weak application and enforcement of the law. Bulgaria and Eastern European nations are not the only Member States, however, that face challenges in practical application of the Birds and Habitats Directives. Indeed, many Member States experience little difficulties in transposing the Directives, but when it comes to their actual application, many challenges arise regardless of a State's geographic location or governance structure. Countries as diverse as Poland[3] and France[4] all have experienced significant problems implementing Natura 2000. In fact, Northern European countries have lost more biodiversity than any of the new Member States (Schreurs 2005). Additionally, many Natura 2000 sites fail to be protected throughout the EU (Baker 2003, 31). The European Commission stated:

> "Both the Birds and Habitats Directives have given rise to considerable problems of implementation, and annually they generate a significant number of complaints to the Commission, the majority of which concern threats to individual sites, where the centralized enforcement mechanisms currently available face some difficulties" (In Baker CEC 1998A: 70).

As Kramer (Head of the Governance Unit of the DG Environment from 2001-2004) explains, "the transposition itself is only a formal legal act, whereas the protection of the environment begins when emissions are reduced, substances no longer put on the

[3] Grodzinska-Jurczak and Cent 2011.
[4] Slepcevic 2009.

market or (the equivalent) into the environment, habitats protected, and so on" (in Baker 2003, 377). He goes on to explain that the practical application of the environmental provisions is the most serious problem facing all levels of governance from the State to the European Union. For Kramer, "Even a piece of national legislation that copies a directive word for word will remain a mere piece of paper unless its applied" (in Baker 2003, 377).

Research done in 2005 by Ellen Mastenbroek reviewed 20 years of published compliance literature and found that there is growing consensus that domestic politics needs to be taken into the equation in a more explicit fashion when researching compliance. In her view, there is a need for researchers to research and theorize the role and effects that domestic politics and processes have on compliance. Nationally, there should be more research on the implementation deficit in terms of the application and enforcement of EU law. In the author's view, without such research compliance will remain a 'black hole' (Mastenbroek 2005). Schreurs further explains that problems with the implementation of environmental policy are not determined by the relative wealth of a nation but by a complex litany of factors such as public apathy, economic considerations, the quality of the legislation and political will, etc. (2005).

This research seeks to address these practical gaps by temporally analyzing Bulgaria's implementation of the Directives starting from their transposition through the Bulgarian Biodiversity Act (BA) to its practical application and enforcement. In 2002, Bulgaria promulgated the BA beginning their national implementation of the Birds and Habitats Directive. Sabatier states that implementation research has been relatively weak because the studies have focused on a 4-6 year timeframe. In order to account for policy-learning and to assess the degree to which policy instruments effect policy outcomes, he

suggests that implementation research should take place 10-20 years after a policy has been implemented (Sabatier 1986).

Bulgaria makes a ripe location for such research as ten years have passed since the Biodiversity Act has been implemented. There has been insufficient amount of work published on Bulgaria on the implementation of the Natura 2000 network, the bulk of which are master's theses (Duprey 2008 and Hristova 2012). Given that Bulgaria is one of the richest countries in the EU in terms of biodiversity, these failures must be sufficiently analyzed in order to adjust the way in which implementation is addressed on European as well as domestic level.

Paul Berman called this the 'missing link' between the development of a policy and the formulation of the statute to the policy output or the actual outcomes that the formulated policy seeks to achieve. Therefore, he defines implementation research as "the study of conditions under which authoritative decisions (such as laws, plans and policies) lead to the desired results" (Berman 1978, 1). Although the transposition of the EU legislation is a crucial measure for implementation and compliance, the primary purpose of a statute is to ensure that its goals and objectives are attained after passage. Without maintaining and restoring natural habitats and species of European importance, the BA in Bulgaria is of little tangible use.

2.2.3. Defining Implementation and Non-Compliance

The European Commission and the European Court of Justice tries to attain uniform implementation of Community law (Sverdrup in Graziano and Vink 2008).

Accordingly, the European Union deconstructs implementation by investigating non-compliance (violations of Community law) into five categories (Table 2.1.):

Table 2.1. Summary of Potential Means through Which Member States Can Violate EU Directives

1) Violations of Treaty provisions, regulations, and decisions by incorrectly applying and enforcing European obligations as well as not repealing national laws that conflict with EU legislation.
2) Non-transposition of Directives when the Directives have not been incorporated into national law.
3) Incorrect legal implementation of Directives, meaning that parts of the Directives have not been enacted or the national regulations diverge from the EU obligations
4) Improper application of Directives where the legal implementation of the Directives is correct and complete, but it is not practically applied. In this regard, non-compliance means taking measures on a national level that conflict with the Directives or passive failure to ensure that the obligations of the Directives are upheld
5) Non-compliance with European Court of Justice rulings.

Source: adapted from European University Institute 17 July 2009.

When the EU discovers any of the former forms of non-compliance, they then start with informal and formal procedures. The Commission begins with informal discussions with the Member States and may close proceedings based on their feedback and before any official procedures begin. The formal procedure is the infringement procedure that covers three steps[5] (Sverdrup in Graziano and Vink, 2008).

In order to draw out a more in depth definition of the transposition, application and enforcement of EU law, this thesis will use the following definitions defined by the Commission of the European Communities. Transposition means any legislative,

[5]The first step is the letter of formal notice (LFN) where the State gets the opportunity to present their view on the alleged infringement. The second is the reasoned opinion (RO) where is the commission still finds the State to be in breach of their obligation the State gets an order to comply with the decision of the commission. Finally is referral to the court (RTC) which occurs if the State fails to comply with the court decision within a specified period of time. The Court of Justice has the power to impose fines on Member States which do not comply with the rulings (Sverdrup in Graziano and Vink 2008).

regulatory or administrative measure taken by any competent authority of a Member State in order to incorporate into the national legal order the obligations, rights, and duties enshrined in Community Environmental Directives. The Commission defines the practical application of EU environmental law as "the incorporation of Community law by competent authorities into individual decisions, for instance when issuing a permit or executing a plan or a program […]. It also includes providing the infrastructure and provisions needed in order to enable competent authorities to perform their obligations under Community law and to take the appropriate decisions". Enforcement is defined as "all approaches of the competent authorities to encourage or compel others to comply with existing regulation (e.g. monitoring, on the spot controls, sanctions and compulsory corrective measures) in order to improve the performance of environmental policy with the final goal of improving the overall quality of the environment" (CEC 1996 in Glachant 2001).

Non-compliance can clearly been seen through six infringement proceedings that have been launched by the EU in the first 6 years alone primarily for the improper application of the Birds and Habitats Directives. As a direct result, it is of critical importance to understand the fundamental nature of how, why, and the process through which non-compliance is occurring with the misapplication of these Directives in Bulgaria. In Falkner's book "Complying with Europe", Falkner et. al. provide some explanation of this by developing a model of all the stages of an EU Directive's life to illustrate that the application of EU legislation depends on society that consists of multiple domestic actors at various governance levels within Member States.

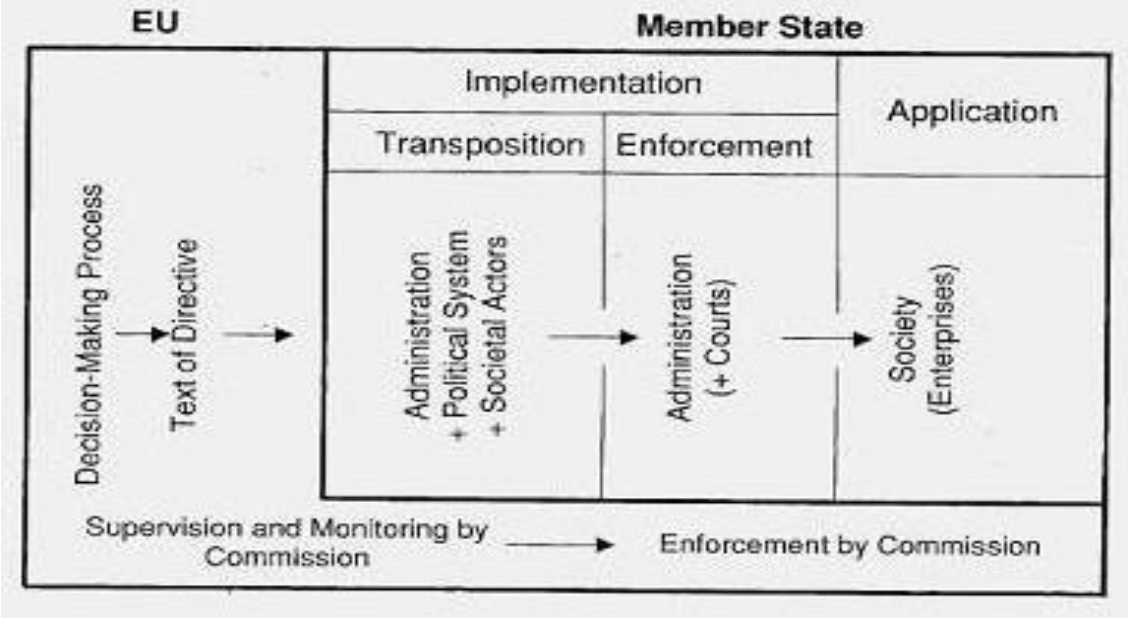


Figure 2.2. Directives in the European multi-level system. *Source:* Falkner et. al. 2005.

They go on to state that the drafting and negotiation of a Directive is important for the understanding of the Directives' content as well as for knowing implementation problems related to decision-making processes at an EU level. As mentioned above, Bulgaria was not a member of the EU when the Birds and Habitats Directives were promulgated. Therefore, the primary content of the legislation was formulated based on the perceived relevance to other Member States. The second phase is the implementation process, which consists of transposition into national law and enforcement at a national level. **The last step is the application of the law, which involves a diversity of individual and collective actors** (Faulkner et. al. 2005). Moreover, the application of the law is a decentralized process the Member States are responsible for overseeing it and are held responsible by the EU if there is non-compliance (Falkner et. al. 2005).

We can use this conceptual lens in order to contextualize the actors engaged in the implementation process post-transposition. Enforcement in Bulgaria largely belongs to the public administrative officials and administrative courts engaged in the

implementation process. Societal actors involved in the application of the law include environmental NGOs that implement projects on Natura 2000 sites or take administrative officials to court for failure to prevent deleterious activities from happening on protected sites. In contrast, international and local businesses, as well as landowners, may view the Network as too restrictive and lobby officials for the approval of projects on sites. What is lacking, however, is the ability of this chart to conceptualize the complexities of compliance or to explain the causal mechanisms that actually lead to the desired outcomes of an EU Directive.

2.3. Theoretical Frameworks for Implementation

2.3.1. Top-Down

This thesis seeks to identify these causal mechanisms in order to understand how to shape the desired outcomes of the Birds and Habitats Directives in Bulgaria. With this in mind, it is important to look at the theoretical frameworks of implementation that can help flush out this desired understanding. One such framework is the top-down analysis, which starts by analyzing the statute or law and its purpose. Afterwards, this framework follows the statute down each consecutive level of implementation until they finally arrive at the bottom. The primary purpose of the top-down field of research is to understand how to control the implementation process. It is also designed to provide practical advice on how to structure the implementation process from the top-down in order to achieve the statutory objectives (Elmore 1979-1980).

The Birds and Habitats Directives were formulated by EU bureaucrats at the 'top', while the policy transposition, application and enforcement are left to the

Bulgarian state. The state then has considerable discretionary power on how to control compliance down each level of governance. Top-down researchers make a clear distinction between the formulation of a policy and the actual implementation of a policy by placing most of its emphasis on control through policy outputs. Policy outputs are defined as actions that are taken to pursue a particular policy decision, and policy outcomes focus on the consequences of the policy to society after it has been implemented (Sabatier 1986). In this theory, implementing agencies from the EU and the national governance structures would then put into place the appropriate environmental policy instruments (or inputs) that would operationalize the policy down the administrative chain of implementation until arriving at the desired result.

2.3.2. Critiques of Top-Down

Knill and Lenschow provide critique the top-downers because the latter assume a causal link between the policy objectives, the instruments used to achieve those objectives, and the outcomes on the ground (2000). In their view, whether objectives are achieved or not depends on a litany of factors, such as social, economic, and political, as well as the use of policy instruments. Top-downers would assume that if SPA and SCI sites of natural habitats of species and wild flora and fauna maintain a favorable conservation status, then the policy instruments have indeed been effective. In their view, this fosters a flawed causal assumption between the policy instruments used and the outcome (2000, 12).

According to Hjern and Hull (1982), another flaw in the top-down models is that they start from the perspective of (central) decision-makers such as European Union policy makers. These central-level decision makers are seen by top-downers as

fundamental actors in the implementation process and in the periphery, which the central decision makers seek to influence, is everyone else. This leads top-downers to exclude policy subsystems like the Regional Inspectorates, interest groups, and the targets of the Directives. They also ignore various initiatives coming from the private sector, as well as local implementers and, as Lipsky coined, "street level bureaucrats" (Sabatier 1986). Secondly, they underestimate the ability of local bureaucrats and specific target groups to deceive, to maneuver strategically around the policy, or to manipulate the policy for their own purposes (Weatherly and Lipsky, 1977; Elmore, 1978; Berman, 1978 in Sabatier 1986).

2.3.3. Bottom-Up

Shortcomings of the top-down approach led to division amongst implementation researchers and the formulation of a new method of analysis called the bottom-up approach. The theory originates from Lipsky's article in 1980 titled "Street Level Bureaucracy". In this article he coined the popularly used term 'street-level bureaucrats', which he defined as "public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work" (1980, 3). In Bulgaria, these public service workers are the directors of the Regional Inspectorates, local mayors, and senior experts from the Departments of Tourism and Ecology etc. He focused on the freedom of choice these field workers have in delivering policies to citizens. In fact, decisions made by street-level bureaucrats and the strategies they develop to deal with the policies are so important that they effectively become the public policy itself (Lipsky 1980).

Bottom-up approach (or backward mapping) begins its analysis at the final stage of the implementation process where street-level bureaucratic action crosses private choices by citizens. At this level, they then identify the network of actors involved in the delivery of policy and ask them about their objectives, interests, strategies and contacts (i.e. other people that may participate in the delivery of the policy whom they may suggest to speak with). This allows the bottom-up researchers to develop a network of actors on all levels involved in policy implementation as well as its execution (Hjern and Hull 1987). Once this is done, bottom-up researchers then develop a statement of the specific behavior that generates the policy. After the behavior is identified, they then state an objective as a set of organizational operations and then a set of outcomes that will be the result of these operations. When the goal is set you then go through each level of governance and ask two questions: 1) what is the ability of this organization or individual to influence the behavior that is the target of the policy? and 2) what resources does it require to have an effect (Elmore 1979-1980)?

According to Hull and Hjern, this type of bottom-up network analysis generally shows that implementation structures are less hierarchal than formal ones, and they cross the organizational borders (Elmore 1979-1980). Moreover, Hjern found in his research that centralized programs are inadequately prepared to deal with local implementation problems and that implementation depends much more on skills of local people in implementation structures to adapt to local conditions than on central policies (1987).

Natura 2000 in Bulgaria is a network covering 34% of its territory. Most of the sites are in communities where biodiversity is high and urbanization is negligible. This puts the responsibility of goal attainment squarely in the hands of small localities inexperienced at nature conservation let alone European programs and policies. In 2006,

one third of all municipalities surveyed by the United Nations Development Program were poorly informed about structural funds, one third had no experience with pre-accession funds, one third were only able to co-finance projects with only up to 50,000 BGN per year, and one fourth could not fund project design (UNDP 2006). Thus, understanding how these 'street level bureaucrats' cope with the policy is vital for understanding what influences goal achievement in these sites.

Bottom up researchers pay attention to the needs of local actors and the way in which they perceive policy problems. In this way, effective implementation is more process driven rather than output- or outcome-based perspective (Knill and Lenschow 2000, 13). Here the main way to evaluate success is the extent to which a policy provided learning and capacity building in order to address problems in a decentralized way consistent with the interest of the actors involved (Knill and Lenschow 2000, 13).

2.3.4. Critiques of Bottom-Up Research

There are some weaknesses, however, in the bottom-up method when applied to the Bulgarian context. Researches can place too much emphasis on the ability of administrative officials in Bulgaria to counter initiatives and policy coming from the European Union and the national government. In addition, the focus on the goals and strategies of administrative officials can end up disregarding the European Union and the central government's ability to affect them through their power to influence the legislative setup in which these bureaucrats operate (Kiser and Ostrom 1982 in Sabatier 1986). Knill and Lenschow also explain that in terms of evaluating performance this method does not provide an adequate mechanism to measure the success of learning or

capacity building. Additionally, there is no way of linking EU policy with local problem solving or learning (2000).

Both approaches can shed an interesting light onto the policy implementation process in Bulgaria. Top-down approach focuses on what limitations central actors in the Bulgarian government face in the implementation process as well as the ways through which these limitations can be influenced by officials from the European Union. Bottom-up researchers are much more interested in mapping out the networks of actors at the bottom, which, in their view, play the critical role in the implementation of public policy, and how they deal with the policy problem.

While both approaches seem to add important understanding to implementation of the Birds and Habitats Directives in Bulgaria, they both lack the ability to holistically explain the implementation process. While the degree to which central policy makers in the EU and the national governments influence the decisions of street-level bureaucrats in Bulgaria can be debated, there is no doubt they do influence implementation. Moreover, while administrative staff in Bulgarian municipalities develop their own mechanisms to deal with the implementation of the Birds and Habitats Directives, there is no doubt that these centralized policies play a role in the decisions made on how to cope with them. Therefore, this thesis will adopt a theoretical framework developed by Elmore called forward and backward mapping (1983), which incorporates both concepts in order to use this theory to analyze the implementation of the Birds and Habitats Directives in Bulgaria.

2.3.5. A Synthesis: Forward-Backward Mapping

In the view of forward-backward mappers, it is not sufficient for policy makers only to evaluate policy options in terms of their expected outcome. The standard policy analysis specifies costs of implements as well as their likely effects. Once these are measured, policy decisions are made based on these evaluations. This approach, however, only develops a hypothetical cause-and-effect relationship between the implement/s and their expected results without taking into consideration the end beneficiary/s and implementing agencies and asking what options they face (Elmore 1983). In Elmore's view, this is a fractional approach to the development of policy. In order to complete the analysis, policy makers need to start at the choices confronting people at the outcome and reason backwards level by level until they arrive at the first choice (Elmore 1983).

This approach helps policy makers prepare for unexpected consequences of policy instruments and increases their ability to respond to them. Secondly, this type of analysis will in fact change the content of the policy options that are recommended. While the policy options are fixed in the case of the Directives, understanding the context of policy decisions from the ground up can be a useful way of identifying unexpected consequences of Natura 2000, the inputs used to control it, the policy outputs obtained by those inputs, and the end result for the health of the Network in Bulgaria. He sees this as important and rather straightforward logic that is seldom used by policy makers. In his view, people both at a political and administrative level see policy in terms of instruments that they control, without taking into consideration that the success of policy depends not only on the instruments themselves, but also on the relationships between the instruments and those at other levels. Therefore, the success

of the Birds and Habitats Directives is dependent on the ability to anticipate actions and responses of people at other levels. This in fact means a bargaining strategy must be developed to maximize the policy maker's interests, while anticipating the actions of others. Therefore, policies need to be flexible enough to allow for the difference between what should happen and what will happen (Elmore 1983).

Within his analysis, he develops a logical framework to better understand implementation problems with regard to multiple-jurisdictional and multiple–objective policies. It is logical to analyze the implementation of Natura 2000 from this perspective. The Birds Directive was passed in 1972 while the Habitats Directive was meant to incorporate the objectives of the Birds Directive and expand them to wild flora and fauna. Within the Habitats Directive, there are several objectives, which together are meant to achieve the goal of maintaining and managing migratory bird species and wild flora and fauna in the EU Member States. These Directives also lay the groundwork for the development of the Natura 2000 network. Moreover, the EU and the Bulgarian legislative system can be seen as multiple jurisdictions. The EU is a supranational institution where Directives are formulated through the European Commission and then passed by the EU Parliament. The transposition, application, and enforcement of those laws, however, are dependent on the Bulgarian government and its internal governance structure.

On the forward-mapping side of this analysis, policy instruments should translate into the organizational paths across jurisdictions that produce outcomes (Elmore 1983). There is nothing in this view, however, that shows how these policy instruments produce aggregate effects or how policy makers can influence them. Therefore, Elmore states that policy makers **"must ask what decision the policy needs to influence to have an**

effect, what the stakes of those decisions are for target groups and how to affect those stakes, which levels of governance have the closest proximity to those decisions, and how policy makers can maneuver through political jurisdictions into making trade-offs amongst objectives to produce results that are consistent with national objectives and local conditions" (Elmore 1985, 57). "The forward-mapping aspect is finding the set of decisions that influence policy and specifying how policy can tip those decisions to the desired direction" (Elmore 1985, 48). In summation, policy success depends on choosing the proper policy tools, as well as external conditions, which the policy makers minimally control or do not control at all. Therefore, **"policy makers have to calculate the consequences of their actions from the point of view of the decisions they are trying to influence"** (Elmore 1983, 58).

2.4. Analytical Framework

This thesis will use the forward-backward mapping concept by first approaching the analytical framework from the 'top' and then moving to the 'bottom'. First, as we learned, top-down researchers make a clear distinction between the formulation of a policy and the actual implementation of a policy by placing most of its emphasis on control through policy outputs. Policy outputs are the actions taken to pursue a particular policy decision. If these desired outputs are effectively achieved, then policy outcomes should be attained. Thus if significant policy failure is identified in the outputs, then, logically, the outcome of the policy will not be achieved. Therefore, this thesis will evaluate the key policy outputs of the Natura 2000 Network in the context of the 'Case of Wind Turbines in Coastal Dobruzha" in order to conceptually evaluate the interaction

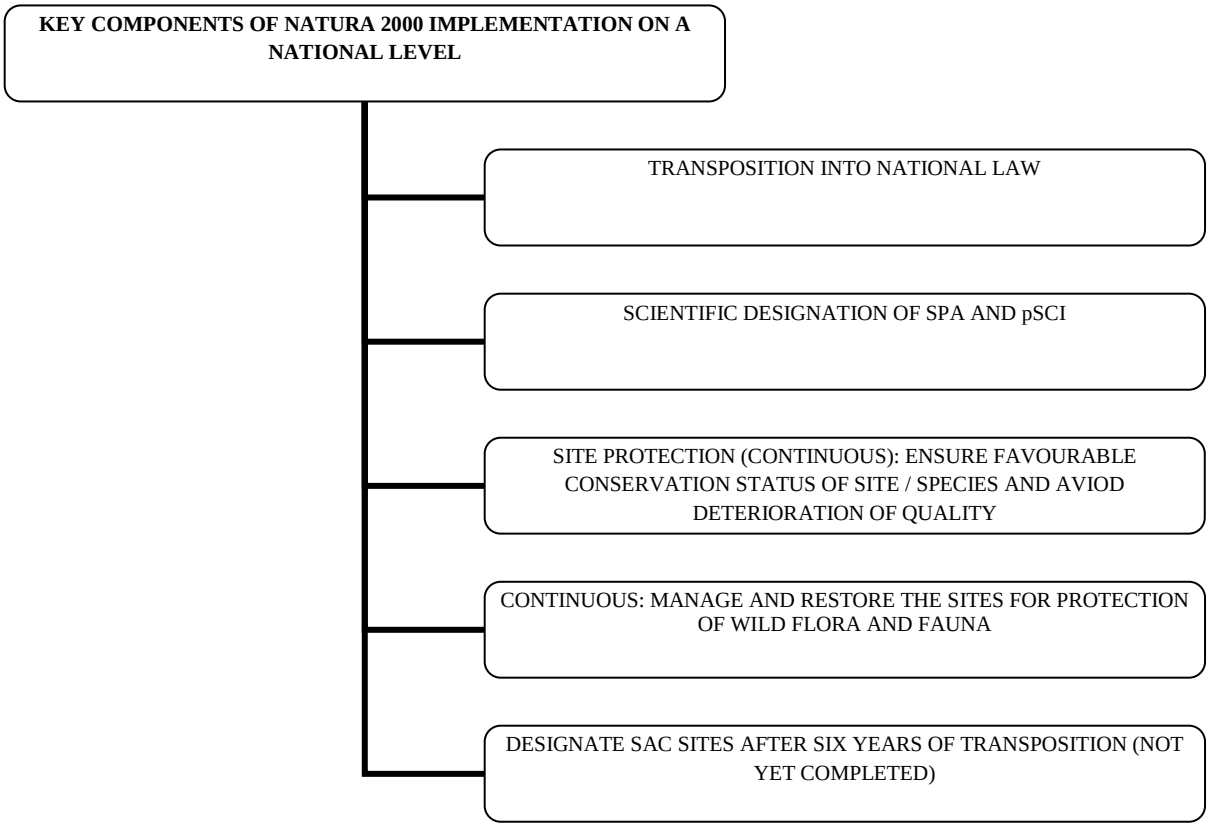
between the policy inputs on each governance level and their impact on the intended outcome.

It would not be technically feasible to evaluate each objective as there approximately 20 articles containing specific objectives for each Directive. Therefore, an analysis was made of the primary components of the Natura 2000 implementation process aimed towards transposition, site designation, protection, and management since these activities essentially represent, protect, and maintain the Network. They were broken up temporally in order to reflect the historical and contemporary context of Bulgaria's implementation of the Birds and Habitats Directive as reflected in Table 2.2. The analysis aimed at evaluating the process of Natura 2000 implementation rather than evaluating static objectives. This proved valuable for two reasons. Firstly, the case study was analyzed from a temporal perspective in order to identify the key implementation failures. Secondly, procedural delays and timing of governmental approvals seriously effects implementation, and evaluating it as a process can capture these variables more effectively. Since the Natura 2000 Network comprises both the Birds and Habitats Directives, its analysis was the main focus of this scientific inquiry. This also proved useful in dividing the thesis case study of implementation into a palatable format for the reader. By analyzing the key components of the process against the outputs obtained, we can foster a better understanding of the policy failures that have led to the current crisis in Bulgaria.

From the 'bottom', Elmore's framework was loosely applied in order to structure the interview questions asked at each level of governance starting from the 'bottom' (local administrative officials) and moving in the upwards direction (DG Environment). This was useful for two key reasons. The first reason is that it provided and empirical

framework to structure my research questions from the bottom-up in order to understand challenges faced by 'street level bureaucrats' as well as more centralized authorities. The second reason was that the questions enabled the socio-economic factors to be flushed out, which is unusual to traditional European implementation frames.

Table 2.2. Key Components of Natura 2000 Implementation



Source: Council Directive 92/43/EEC 1992 and Council Directive 79/409/EEC.

The primary questions of interest for this research were the following:

What inputs (instruments) were used? How do these instruments interact with their targets to produce or not produce the desired output? What limitations do implementing bodies face when implementing the policy? What factors are beyond the implementers' control? Finally, what are the gaps in the implementation process and how can they be addressed?

2.5. Policy Tools

Elmore provides a useful approach to the study of implementation of the Directives in Bulgaria; however, Elmore's framework is centered on the United States regulatory and institutional structure. As a direct result, the typology of policy tools identified by him cannot be translated directly into the specific structure and governance characteristics of the EU and the Bulgarian State. Unfortunately, there has been little research done identifying exactly what environmental policy tools are available and/or used on varying levels of governance for the implementation of Natura 2000 in Bulgaria.

An interview was conducted with the head of DG Environment: Legal Affairs and Cohesion Department. According to him, "There is no chart or table available which identifies the environmental policy instruments available on a European level for the implementation of the Birds and Habitats Directives" (DG 2). Moreover, there has not been an adequate analysis of the tools used at a national, regional, and local level in Bulgaria let alone a well-developed conceptual understanding of how they produce their aggregate effects on a temporal scale. In fact, policy tools are so important that Hood defines government as the "tools government uses at the point when it comes to contact with us the world outside" (Hood 1983, 2).

EU integration theories, such as rationalism and constructivism, have devised ways through which compliance can be achieved. Rationalist theory states that coercion, cost/benefit analysis, and material incentives are the means that can lead to achieving compliance (Finnemore and Sikkink 2001, 913). Constructivists claim that policy instruments that emphasize arguing/deliberation and learning based on the dynamics of socialization are the means of achieving appropriate behavior (Risse and Borzel 2000).

These theories tend to place emphasis on how the EU can induce compliance by Member States through different tools and mechanisms.

In the recent years, however, the principle of subsidiarity has been introduced in the EU Article 5(3) of the Treaty on the European Union. This principle determines that for issues that do not fall within its exclusive competence, the Union shall act only if the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can be better achieved at the Union level. This has given way to the introduction of new environmental policy tools that emphasize market-based instruments, such as taxes (including charges and levies), subsidies, tradable emission permits, and deposit-refund schemes (EEA 2005). This new approach sets a regulatory framework by which Member States must abide leaving the technical details up to the Member States (Jordan et. al. 2010).

While useful in determining the way in which the EU interacts with the state, they do not provide an operational framework that can be applied to the Bulgarian context. According to the bottom-up approach, we would consider providing more freedom to local governance structures to develop their own mechanisms and tools to cope with the policy from the ground up. If we take this approach and apply it to the Bulgarian context, we would find that for whatever freedom they may have had there has been significant failures in the implementation process on a local level. For example, construction permits were issued for thousands of wind turbine projects; the latter passed EIA procedures in Coastal Dobruzha, seemingly disregarding their impact on the underlying objectives of the Birds and Habitats Directives. This provides a strong argument that the analytical framework is not sufficient to explain these implementation

failures. Moreover, a more general framework must be applied to incorporate a broader number of compliance mechanisms that can be deemed as 'tools'.

Hood's approach provides a more useful framework for grouping and analyzing the policy tools for the purposes of this thesis. His approach focuses primarily on the mechanisms instead of the ends and is interested in what government does to society. These means of analysis are useful for three reasons. First, looking at any government this way allows us to make more sense of the complexity of implementation by grouping tools into categories for theoretically conceptualizing the interview data. Government copes with problems by repeatedly using the same set of tools. Therefore, such an analysis can provide a structured framework of what the government can do in various scenarios and the problems it faces when using them. Secondly, this approach can be useful for diagnostic purposes. If the goal of the Natura 2000 Network is to maintain and restore wild flora and fauna of community importance in EU Member States, then all levels of government must employ a wide array of tools in order to achieve that goal. Otherwise, this policy will remain a piece of paper without any substantial teeth. Finally, Natura 2000 is a huge political and social endeavor encompassing 27 countries, 25,000 sites, and 1/5 of Europe's landmass. The sheer size, and therefore cost, of the Network reflects a real need to identify and prioritize the most efficient mechanisms to use in order to meet its underlying goal.

One stumbling block, however, is that Hood's analysis focuses on the point at which 'they' governments meets 'them citizens'. The book provides no indication about the tools used within government to control and coordinate its own activities (Hood 1983, 10). Through an in-depth case study the objectives of Natura 2000 were analyzed along with the relevant tools (or inputs) used to achieve them. This was done in order to

grasp what role they have played in compliance. The European Union, as well as each level of governance in Bulgaria, has its own 'tool kit' used to meet the underlying goals of Natura 2000. Their relative effects, however, seem to have failed consistently throughout Bulgaria. Therefore, this research seeks to identify what role policy tools used by the European Union as well as national, regional, and local authorities played in compliance.

2.5.1. Analytical Framework for the Identification of Policy Tools

The framework was used to structure the interview questions asked to the implementing bodies on all levels of governance. This was done in order for the research to temporally and contextually draw out the key tools available in the case and the reasons for their abysmal performance. It is important to note that an 'evaluation' of these tools was not done in an empirical sense through establishing criteria that were then measured quantitatively. A more loose evaluation was done based on data collected during interviews and through data-triangulation techniques. The analytical framework was used merely to better structure, group, and analyze the data deriving from the interviews. The underlying reason for this analysis is to better understand policy failure, which in turn implies failure of the tools used to obtain compliance. Identifying and understanding this failure can provide us with additional insight into the implementation process (see Table 2.3).

Table 2.3.Illustration of the Grouped Policy Tools

Policy tools	**Influences**

Nodality: refers to being in the middle of a social network. It gives government a strategic position to dispense information and allows the government to attain information as a result of being in the center.	**Effectors:** tools the government can use to make an impact on the outside world	**Detectors**: are all instruments the government uses for taking information
Authority: The legal or official power to do something about something about something.		
Treasure: denotes the possession of not only money, but also anything that is fungible. This means something that can be freely exchanged for something else. The sole purpose of treasure is influencing outsiders or buying people off.		
Organization: Gives government the physical ability to act directly using its own people or materials. This can include buildings, equipment, and the collection of individuals and their skills within the government's direct possession.		

Source: adapted from Hood, C. 1983.

Forward backward mapping provided useful insight into the challenges confronting 'street-level bureaucrats' as well as regional, national, and European agents in charge of implementing Natura 2000 in Bulgaria. Implementation is not a rigid structure consisting of a strict vertical interaction from the top-down or from the bottom-up. Implementation is a complicated patchwork of socio-economic factors limiting the regulatory implementation of policies. The analytical frame suggested by Elmore provided this thesis with depth as well as breadth into the understanding of these factors. Moreover, Hood's categorization of policy tools provided means for grouping the tools critical to the implementation of the Birds and Habitats Directives in the case study location. Again, these tools were not 'categorized' as such, just clustered in the data analysis to qualitatively measure their importance and impact in relation to compliance in this case study. The next section provides the reader with the methodological

framework utilized in this thesis and the underlying reasons for selecting a deviant case study.

CHAPTER 3. METHODOLOGY

3.1. Description of the Case Study

This research focused on the specific and targeted case study that clearly deviated from the objectives of the Birds and Habitats Directives. There are other good cases illustrating compliance with Natura 2000 in Bulgaria, but this was not the objective of this research. The objective was to identify reasons for policy failure and the disconnect between the formulation of a policy and the achievement of its objectives. None of the cases exemplifies non-compliance with the application of the biodiversity Directives to such an extent as the case of wind turbines in Coastal Dobruzha does. It is of even greater concern as this region is vital for the ecological integrity of Natura 2000 not only in Bulgaria but also in the entire European continent.

Coastal Dobruzha is part of the one of the most important migratory bird routes in Bulgaria and the second most important in Europe called the Via Pontica (Mitchev et. al. 2012). Great numbers of soaring birds (raptors, pelicans etc.) use the Via Pontica during the migratory season of August to September, including 300,000 white storks (50% of the European population), 37,228 white pelicans (almost the entire European population), and 25,769 lesser spotted eagles. It has also been estimated that 5,000,000 migrating birds use this route on their way to Germany and Western Russia. Many globally threatened species also use this migration route including the imperial eagle, the spotted eagle and the Dalmatian pelican (Bern Standing Committee 2006).

Figure 3.1. Migration regions in the territory of Bulgaria with studied sites. *Source:* Mitchev et. al. 2012, 36.

One of the most important areas along the Via Pontica is the coastal region of Dobruzha in the Northeastern part of Bulgaria located 0-15 kilometers inland from the Black Sea coast. The municipalities of Shabla, Balchik, and Kavarna all contain land located within this coastal territory illustrated below.

Figure 3.2. Location of Coastal Dobruzha (indicated by an arrow).
Source: Google Maps.

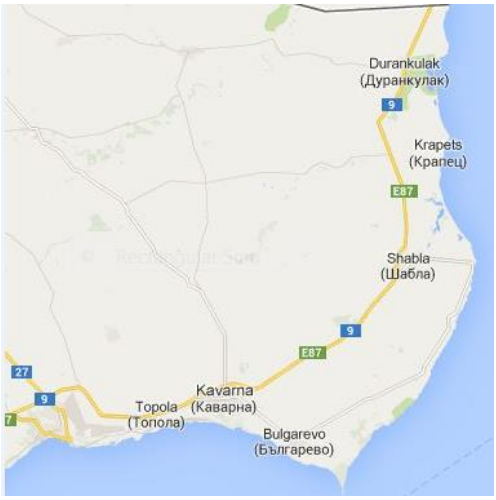


Figure 3.3. Coastal Dobruzha.
Source: Google Maps.

The importance of Dobruzha stems from the scientific data collected as a result of various studies on its role as an important part of the migratory bird route the Via Pontica, as well as the level of important habitats for several endangered bird species contained within it. An important study was implemented in the autumn of 2004 by the Bulgarian Society for the Protection of Birds (BSPB) with the financial support of the European Commission in order to identify important sites along the Black Sea coast for soaring bird populations. These sites would then be used as a proxy list for the selection by the Bulgarian government of SPA sites to be designated under the Bulgarian Biodiversity Act. Site designation upon EU membership is a strict legal requirement in the Habitats Directive. Therefore, extensive field research was done for the northeastern part of Bulgaria to ensure this ecological coherence of the Network for bird species. Within the context of this study, they were able to identify the migratory route of 35 soaring birds identified in Figure 3.4 below.

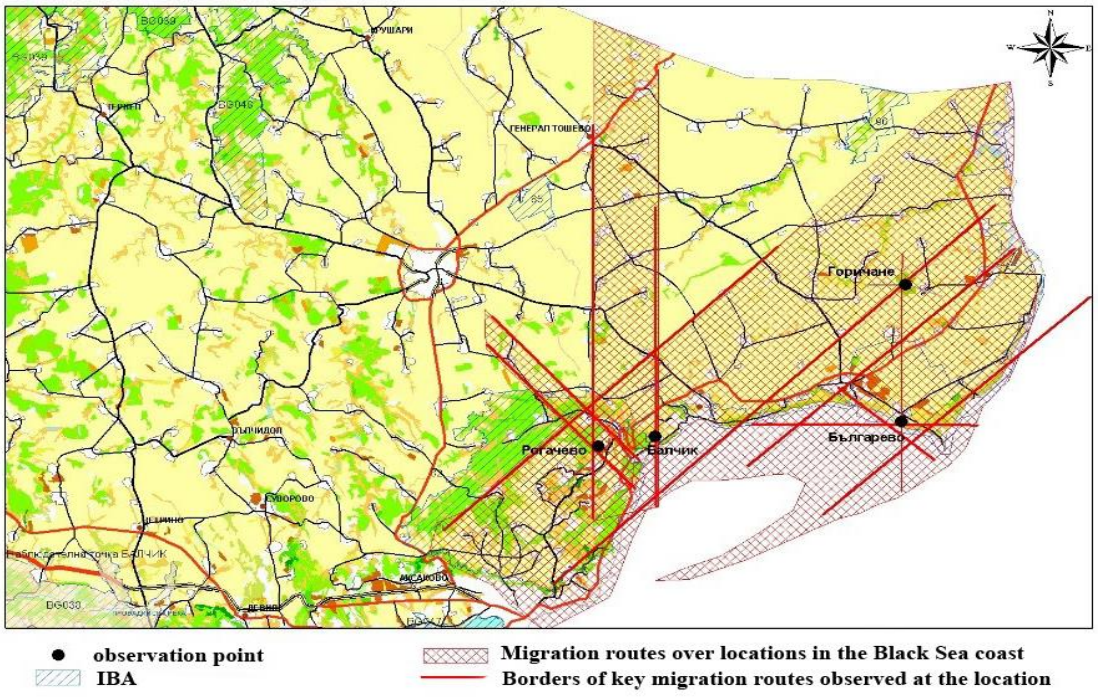


Figure 3.4. Migratory bird routes for soaring birds. *Source:* Kostadinova and Gramatikov 2007.

The study concluded that there is substantial importance in the region for the migratory soaring birds therefore qualifying it as a 'bottleneck site' for bird species[6].

Recent work by Mitchev also highlighted that hundreds of thousands of soaring birds fly through this region during the autumn migration season thus making it a vital place for the protection of biodiversity (2012).

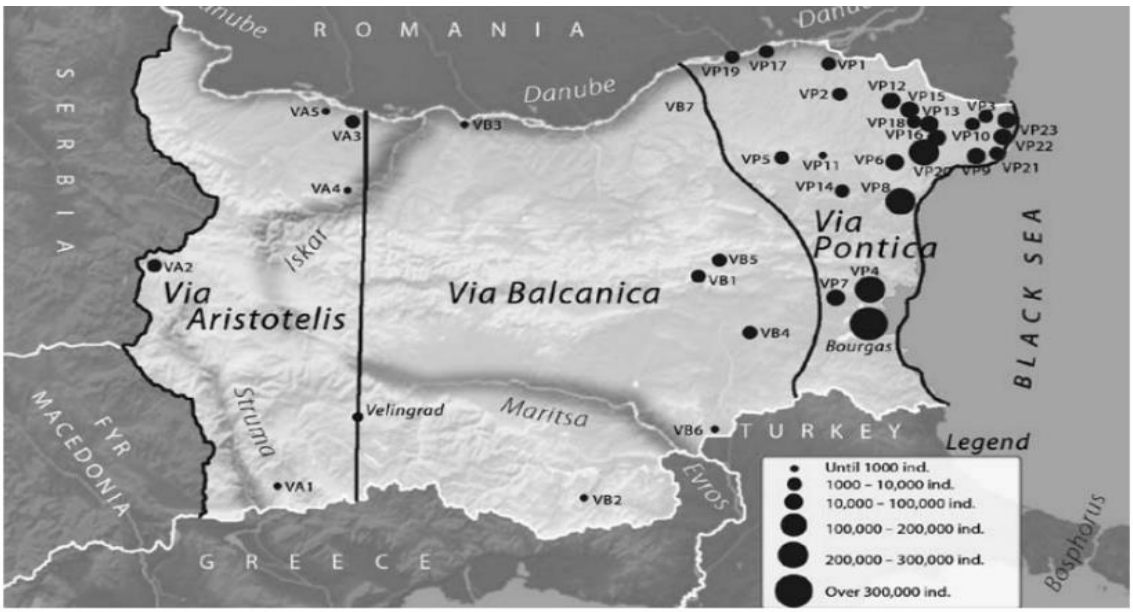


Figure 3.5. Total number of soaring autumn migrants in Bulgarian airspace over 35 sites during the period 2004-2012. *Source:* Mitchev et. al. 2011b in Mitchev et. al., 36.

Another aspect of Coastal Dobruzha's biological importance is that it is one of the only remaining wintering habitats for the globally threatened red-breasted goose (*Branta ruficollis*). Several scientific studies have monitored and identified approximately 88, 000 of these geese wintering in the area in the 1990s making up to 90% of the global flyway population (Dereliev and Georgiev, 2002, Kostadinova and Dereliev, 2007, Michev et. al., 2012 cited in Petkov et. al. n.d.). Eighty to ninety percent

[6] The designation as a 'global bottle neck' is only given when at least 20,000 storks (Ciconiidae), raptors (Accipitriformes and Falconiformes) or cranes (Gruidae) regularly pass during spring or autumn migration (Bird Life International 2013).

of the Geese congregate on 5-10 roosting sites around the lakes of Durankulak and Shabla, the bay of Balchik and Kavarna (IUCN 2013). Bulgaria and Romania contain 100% of the wintering population in the EU, thus have a special obligation under the EU Birds and Habitats Directives to protect this species (Cranswick et. al. 2010 in Petkov et. al. n.d.). The red-breasted goose population has been in decline mainly due to habitat loss from wind turbine construction and illegal hunting. Because of this habitat loss, the global population is now believed to be 38,500 birds (IUCN 2013). This dramatic population decline resulted in the species being designated by the IUCN as endangered, making it the most threatened goose species in the world (Petkov et. al. n.d).

The significance of Coastal Dobruzha has been clearly established for the red-breasted goose as well as other bird species. As a direct result, many sites on Coastal Dobruzha were designated as Important Bird Areas, which eventually played a role in their designation as SPA sites. Figure 3.6. below highlights the areas in Coastal Dobruzha, which were identified as IBAs.

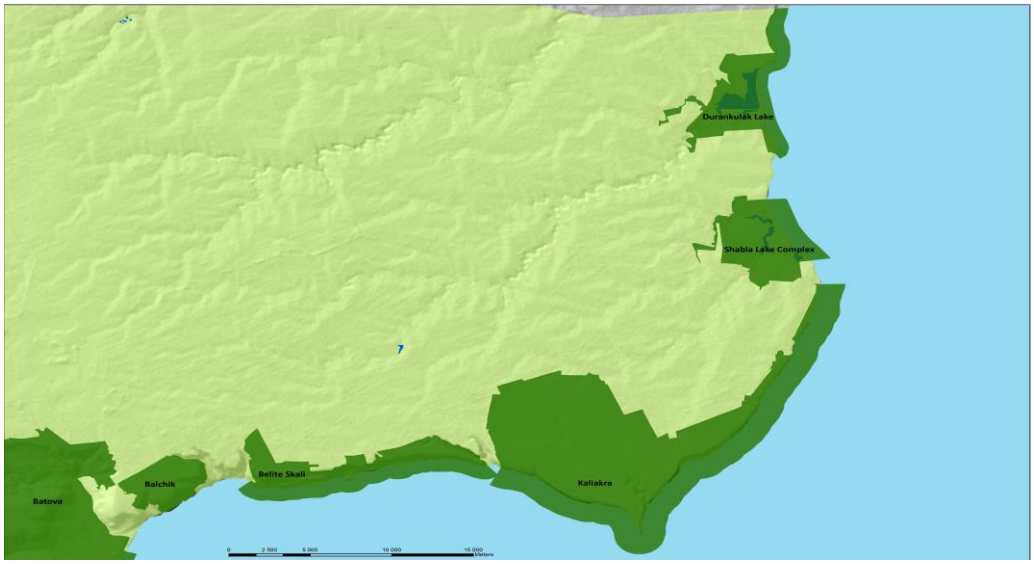


Figure 3.6. Identified IBA sites in Coastal Dobruzha. *Source:* Kostadinova and Gramatikov 2007.

3.1.1. Natura 2000 Sites in Coastal Dobruzha

In 2005, research was conducted by the Bulgarian Society for the Protection of Birds in order to define scientifically the borders of potential SPA sites. After extensive field visits and research, they published a book entitled "Ornithological Important Areas in Bulgaria and Natura 2000" (Kostantinova and Gramatikov 2007)[7]. Within the context of this research, several areas located on Coastal Dobruzha were identified as having superb biological value including the sites of Balchik, Shabla Lake Complex, Durankulak Lake, Cape Kaliakra, and Belite Skali. The scientific arguments for their protection would eventually provide the basis for the designation of those sites as SPA under the Birds Directive. Each site on Coastal Dobruzha and the key biological reasoning for its value has been identified by the report.

3.1.1.1. Kaliakra complete IBA/SPA (with excluded sites 51)

Figure 3.7. Kaliakra IBA/SPA. *Source:* Kostadinova and Gramatikov 2007.

[7] A more detailed explanation can be found on their website URL: http://bspb.org/ovm.php?chPage=1&menu_id=65 [consulted 14 November 2014].

The cape covers the eastern part of the Dobruzha Plateau; its coastline contains cliffs approximately one hundred meter high with caves and rock crevices. The soils are shallow and contain vast amounts of limestone rocks. The cape also contains one of the best, and last well-preserved steppe habitats in Bulgaria. Forty species of rare, endangered, and endemic species and subspecies of plants can be found in Kaliakra. Eight of them are threatened or rare in Europe, and 20 are included in the Red Book of Bulgaria. The Kaliakra IBA contains 310 bird species, one hundred of which have special conservation measures under the Biodiversity Act. There are also 95 species listed in Annex 1 of the Birds Directive, 106 species of European Conservation Concern, seventeen of them are included into SPEC 1 as globally threatened species, twenty one in SPEC 2, and sixty eight in SPEC 3. Almost the entire national population of the pied wheatear can be found in the steppe habitats in the area of Cape Kaliakra. From August to October, a great number of soaring birds use this cape, including more than 29,000 storks, pelicans and cranes, as well as over 3,000 raptors, including globally threatened species pallid, saker, and the imperial eagle. Kaliakra has constant winds, and birds use the air currents to gain altitude (Kostadinova and Gramatikov 2007).

3.1.1.2. Durankulak SPA (BG050)

Durankulak is a freshwater-brackish lake whose water balance is determined by underground aquifers and rainfall. The Lake itself is surrounded by reed beds and marshland making it good habitat for bird species.

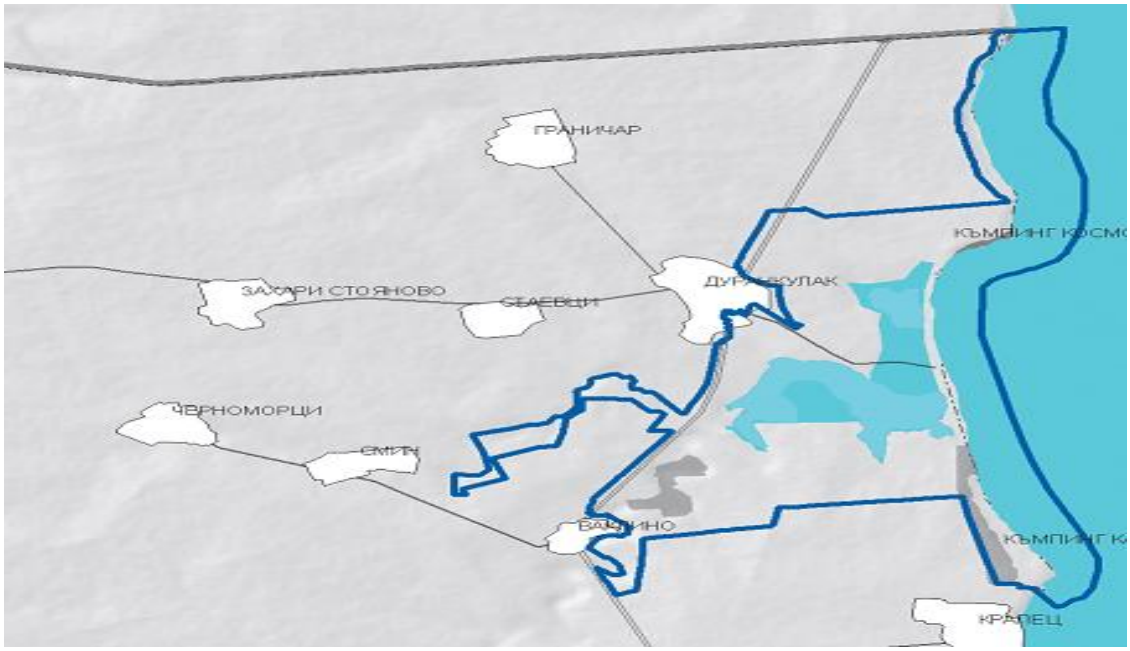


Figure 3.8. Durankulak SPA. *Source:* Kostadinova and Gramatikov 2007.

This lake supports 260 bird species with seventy-two of these species listed in the Bulgarian Red Data Book. One hundred and ten species are of European Conservation Concern, 14 are listed in category SPEC 1 as a globally threatened species, 27 as SPEC 2 and 69 as SPEC 3 species threatened in Europe. This lake is of global importance to wintering geese. The area provides habitat for 95 species included in Annex 2 of the Biodiversity Act and 91 species are listed in Annex 1 of the Birds Directive. The lake was designated as protected area in 1983 for the protection of threatened species of waterfowl. It covers about 13% of the territory of the proposed SPA (Kostadinova and Gramatikov 2007).

3.1.1.3. Shabla Lake Complex (BG049)

Shabla Lake Complex includes both Shabla Lake and Tuzla Lake, which are both connected by a canal. This complex is a brackish lagoon filled by ground water and separated by high sand dunes. The shores of the lake contain cane, fern leaf, broad leaf

cattail, and costal sedge. The reed beds however, are the main habitat of the lake. In the northern part of Shabla Lake can be found locust and American ash.

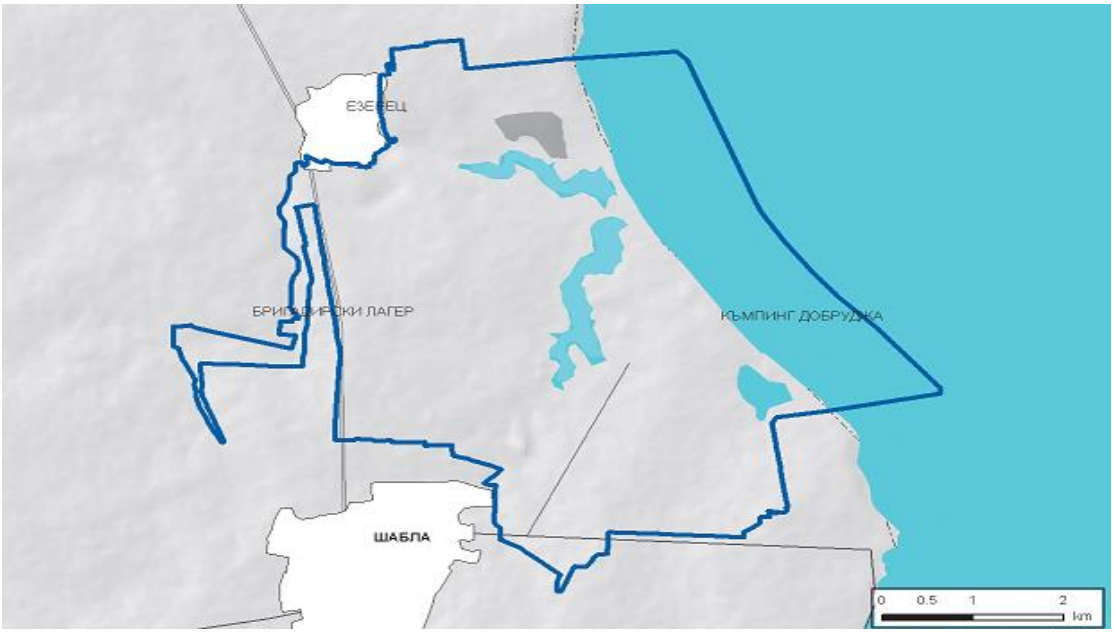


Figure 3.9. Shabla Lake Complex SPA. *Source:* Kostadinova and Gramatikov 2007.

There are 260 bird species that can be found on Shabla Lake Complex including 70 listed in the Bulgarian Red Book, 111 species are of European concern, 13 species are globally endangered SPEC 1 species, 26 are endangered in Europe SPEC 2 and 72 are of SPEC 3. It also contains habitat suitable for 90 species listed in Annex II of the BA that require special protection measures. Additionally, 86 of them are protected under Annex 1 of the Birds Directive. It is also critical for the red-breasted goose since its enitre worlds' population winters along Shabla and Durankulak lakes. Also present there is the greater white-fronted goose and the globally threatened lesser white-fronted goose. As a direct result, this lake complex is one of the most important in the entire world for wintering Geese (Kostadinova and Gramatikov 2007).

3.1.1.4. Belite Skali SPA

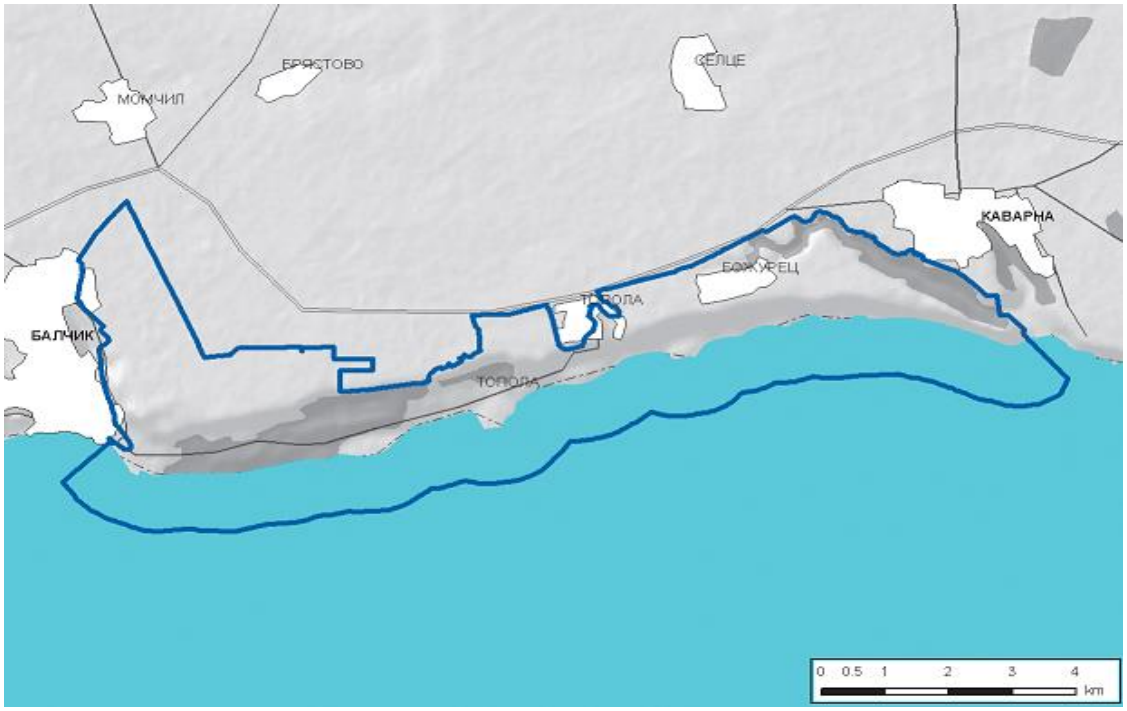


Figure 3.10. Belite Skali SPA. *Source:* Kostadinova and Gramatikov 2007.

Belite Skali contains a portion of the Dobruzha plateau cliffs and a shallow marine area. These cliff areas contain many rare plant species. Most of the coverage in this area is grass steppe vegetation. The lower terraces are covered by steppic communities of Artemisia lerchiana, Agropyron pectiniforme and Bromus riparii. The lower terraces are covered by mesoxerothermal communitites of Pao bulbosa, Lolium perenne and Cynodon dactylon. The sediment is primarily Saramatian limestones and marls. In other parts it contains many shrubs and decidous forests. There are 91 species of birds at Belite Skali, 27 of which are included into the Bulgarian Red Book. There are also 48 species of European Conservation Concern. There are 4 species which are listed in SPEC 1 as a global conservation concern, 16 species listed as SPEC 2 and 28 species as SPEC 3. The SPA also provides habitat for 40 species listed in Annex 2 of the Biodiversity Act which require special protection measures. Thirty nine are also listed in

Annex 1 of the Birds Directive. Belite Skali is a bottleneck for the migration of soaring birds and is one of the most important places in the country and the EU for the protection of breeding grounds of tawny pipit, greater short lark, barred warbler, and pied wheatear (Kostadinova and Gramatikov 2007).

3.1.2. Deviant Case Study and the Current Conservation Status of Coastal Dobruzha

If we evaluate the impact the Natura 2000 legislation has had on the biological integrity of these sites in Coastal Dobruzha, the results are resoundingly poor. Other European programmes and legislation have given strong economic incentives to foreign and domestic investors to invest in wind turbines along the coast of Dobruzha. Thousands of wind turbine projects have been approved by the Regional Inspectorate for the Environment and Water (RIEW)-Varna with little if any evaluation of their impact. On Figure 3.11 below, highlighted in yellow, is Coastal Dobruzha, the place globally important to migratory bird species of all types, as well as the globally endangered red-breasted goose. The IBA sites listed in the above text can all be found on the map below. The environmental impact of investments can be clearly seen. The current development trend poses a significant threat to bird species and is in direct violation of the EU Birds and Habitats Directives. As of October 17, 2013, the European Commission announced it would take Bulgaria to the European Court of Justice for failure to designate appropriate sites, failure to implement appropriate assessments on sites in Coastal Dobruzha, frequently issuing permits with inadequate or no Environmental Impact Assessment, failure to measure the cumulative impact of investments on Natura 2000 sites, and failure to protect globally threatened species including the red-breasted goose.

In the words of the European Commission press release, "Although Bulgaria is committed to increasing the protection of rare species and habitats in the region, the reverse appears to be happening" (European Commission 2013). Therefore, the region makes for a unique empirical testing ground for the study of implementation due to the deviant nature of the case.

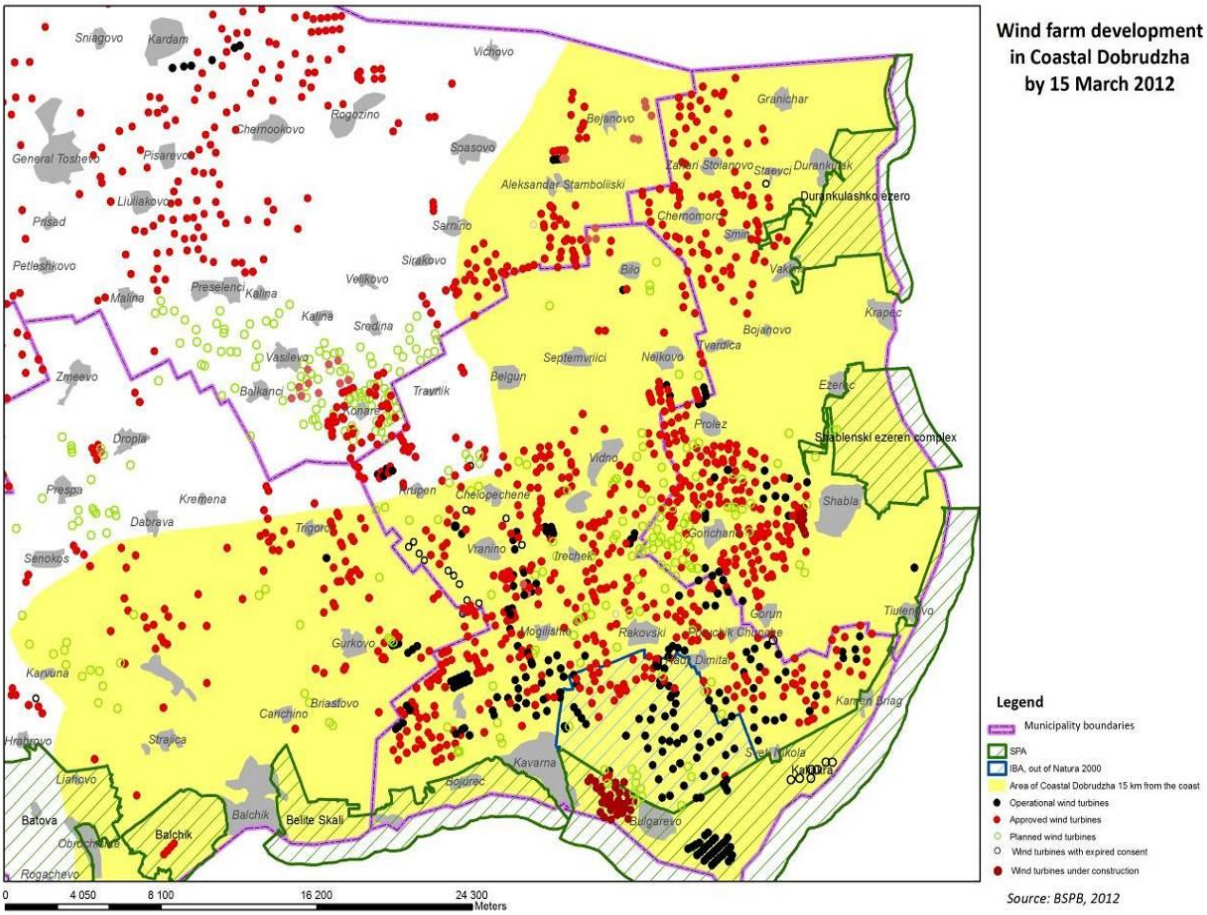


Figure 3.11. Wind farm developments in Coastal Dobruzha. *Source:* Bern Standing Committee 2012a.

The goal of this single case study analysis was to find out the conditions under which the current outcome of deteriorated SPA and pSCI sites has happened. Additionally, it meant to identify which measures have been used by which implementing bodies, and how these measures interact with the targets of the policy. An

in-depth look at the case of wind farms in Coastal Dobruzha will assist in identifying the unexpected aspects of the process through which site deterioration has occurred (George and Bennett 2005). According to George and Bennett, case studies that show deviant or outlier behavior have the power to identify new variables that may not be seen in standards cases. In their view, statistical methods have the power to identify deviant cases that can lead to new hypothesis, but lack the means to identify new hypothesis (2005). Yin postulates that using a single case study is good when there is an extreme or unique case that can provide context for why some phenomenon occurred. Moreover, single case studies can be useful for longitudinal studies when one examines the same case at two or more points in time. In this case, theory would show how certain conditions change over time, and the times selected would draw out these changes (2003).

Quantitative analysis may provide generalizability (breadth) but does not provide depth in terms of understanding the complexity of particular cases. Case study research is a multi-perspective means for analysis meaning, cases do not study only the individual actors and their beliefs, but also the relevant groups of actors and the interactions between them (Feagin, Orum, and Sjoberg 1991). Moreover, as Yin explains, case studies are appropriate when the boundaries between phenomenon and context are not easily explained (1994). The implementation of EU biodiversity policy in Bulgaria officially began in 2002 with the legal transposition of the biodiversity Directives; however, the actual submission of Natura 2000 sites did not occur until their accession to the EU in 2007. Consequently, within this relatively small timeframe, there are only a limited number of cases that provide an opportunity to critically analyze to what degree and how domestic factors and the policy tools used to deal with those factors influence the achievement of the objectives of the Birds and Habitats Directives in Bulgaria.

Another logical reason for this is that, unlike other environmental issues, biodiversity is relatively fragile: once habitats are destroyed, regeneration of biodiversity to the levels before the impact is rarely achieved. As a direct result, it is vital to understand what is influencing the ability of European, national, and regional administrative units to effectively implement the policy in order to rectify such problems in the future.

The intent of this thesis, however, is to generalize the data gathered in relation to other cases and to identify variables that could potentially be transferred to less extreme cases (George and Bennett 2005). Both George and Bennett agree that no-variance research designs can be useful for the development of theory and testing by using multiple observations for a single case, especially in deviant cases (2005).

3.2. Sampling Method

This thesis used non-probability sampling techniques of purposeful and double-ended snowball sampling. My unit of analysis for the semi-structured open-ended interviews was officials directly participating in the implementation of the Birds and Habitat Directives, NGOs actively involved in the legislative requirements of the Directives, journalists reporting on Natura 2000, and consultants working on reports regarding the implementation of Natura 2000. Participants were purposefully sampled in order to select the most relevant interviewees for the case study.

The research also used the technique of double-ended snowball sampling by asking the participants who were purposefully selected to indicate other relevant individuals to interview concerning the case. Through this method the researcher identified the network of actors who were directly involved in the policy decisions regarding Natura 2000 in the region. This technique allowed me to pick a near-perfect

target group and saved time and money by avoiding huge sample sizes which are needed to make deductive statements about a population (Yin 1994). Conversely, the research was only able to infer to my targeted case and was not able to make deductive statements about the population as a whole (Yin 1994).

3.2.1. Interviews

It was a substantial achievement of the researcher to obtain interviews with key informants in this controversial case currently being disputed in the ECJ. Trust was gained by utilizing Bulgarian language in interviews with governmental officials on a local, regional and national level and by recording the interviews on a laptop rather than the traditional method of a tape recorder. While all participants were notified about being recorded, not having a tape recorder in front of them put them at relative ease. Additionally, the researcher had connections within the country, thus through informal contacts the researcher was able to gain additional trust.

Thirty-eight interviews were conducted with 33 individuals. Some of the participants were interviewed more than once due to their value as informants and the relevant data provided by their participation. Four interviews were conducted with the DG Environment in Brussels, four interviews – with representatives from the Ministry of Environment and Water in Bulgaria, four interviews with the RIEW-Varna, eight interviews with representatives from the municipal governments, three interviews with consultants, two interviews with journalists, two interviews with municipal citizens, and eleven with representatives from the NGO community. While each level of governance may have different sample sizes, this was inevitable as my selection criteria was their relevance to the case. The goal of these interviews was to obtain an in-depth understanding of the application process and to obtain a higher level of validity in my

results. Moreover, by selecting targeted individuals with influence over the implementation process, the researcher was able to obtain representativeness in the study research. The research was conducted in Bulgaria over the span of 2.5 years and the researcher traveled there on five occasions as new developments emerged in the case. Each interview ranged from a minimum of 1 hour and 10 minutes to up to 2 hours depending on the engagement of the participants during the interview process.

The selection of the interview questions was a two-step process. First, data was gathered using primary and secondary source materials in order to gain further insight into the legal procedures of the BA, as well as specificities of the case. Once a better grasp on the fundamentals was obtained, Elmore's implementation framework of forward-backward mapping was used in order to loosely structure the interview questions. The questions were conducted at each level of governance starting from the 'bottom' (local administrative officials) – up (DG Environment).

Table 3.1. Forward-Backward Mapping

Forward Mapping	**Backward Mapping**
Implements: What implements does the implementing agency have to affect the objective?	**Target:** What decisions have the most immediate effect on the policy?
Parameters: What external factors influence the implements?	**Outcome:** What outcome would the implementing agency want to follow from these decisions?
Implementing Agencies: What agencies are responsible and what actions are required?	**Parameters:** What external conditions influence this outcome?
Targets: To whom are the implements addressed?	**Implementing Agencies**: What must implementing agencies do to affect those outcomes and minimize its effects on their internal operations?
Outcome: With what expected outcome?	**Implements**: What implements are

	available to the policy makers to affect policy?

Source: adapted from Elmore 1983.

Moreover, in order to further flush out the instruments used for compliance, Hood's policy tools framework was used in order to better structure the 'implements' described in Elmore's framework. The 'implements' were not grouped in order to apply a quantitative evaluation of their effectiveness but merely to better structure, categorize, and analyze the data deriving from the interviews. The framework below was used for their categorization during the coding procedure. The structure was not meant to be used in the analysis section of the case study merely to flush out the most relevant 'tools' utilized in the case in order to conceptualize reasons for their lack of effectiveness in this particular case.

Table 3.2. Policy Tools

Policy tools	**Influences**	
Nodality: refers to being in the middle of a social network. It gives government a strategic position to dispense information and allows the government to attain information as a result of being in the center.	**Effectors:** tools the government can use to make an impact on the outside world	**Detectors**: are all instruments the government uses for taking information
Authority: The legal or official power to do something about something.		
Treasure: denotes the possession of not only money, but also anything fungible. This means something that can be freely exchanged for something else. The sole purpose of treasure is influencing outsiders or buying people off.		

Organization: Gives government the physical ability to act directly using its own people or materials. This can include buildings, equipment, and the collection of individuals and their skills within the government's direct possession.		

Source: adapted from Hood 1983.

All interviews were recorded and afterwards they were transcribed and coded using the grounded theory technique described in latter data analysis section of the methodology chapter.

Ethics

The case analyzed is extremely controversial since the Bulgarian government has been taken to the ECJ over infringements of the Birds and Habitats Directives in Coastal Dobruzha. Therefore, it was with great difficulties and trust that interviews were conducted with the informants. Many of them are at risk of losing their jobs if identified as the researchers 'informant' or could face retaliation by the government or development firms. Consequently, all informants have been promised strict anonymity by the researcher and their names were kept strictly confidential. When referring to informants in the case, only governance level or general position is mentioned without names or specific position. This ensures the safety of the informants and protection from any form of persecution or retribution by opposing camps.

3.3. Data Analysis

3.3.1. Thematic Analysis

This thesis used a mixed-methods approach. A set of questions were asked based on loose theory, and I built upon it based on the data I collected. An improved theory was constructed based on the proposition and concepts emerging from the data. The research also drew from some concepts of 'grounded theory' such as data saturation and categorization through a three-part process.

The first part was conducting a thematic analysis with 'open codes' by working with all data sources. This was done in order to identify the main themes and categories that seemed relevant and interesting to pursue. While developing open codes, data and categories that did not seem relevant to the original research question were identified and categorized in order to prevent some pre-conceived bias from entering the data and allow the data to speak for itself (Esterberg 2002). Data and themes were collected and categorized to the point of "theoretical saturation" (Glasser and Strauss 1967, 111). This meant that first incidences were coded and split into categories or themes. Once those incidences were discovered several times for each category/theme, anytime they are discovered afterwards, they were discarded. When new incidences pointed to a new aspect not yet uncovered, it was coded and compared. The objective of this approach was not for two researchers to use the same method and to come to the same result, but to allow for some flexibility for the generation of theory. Since no proof was involved, this approach only required the data to be saturated and not to consider all data available.

Once data saturation was reached, 'axial coding' was conducted by comparing properties and categories with one another using inductive and deductive techniques.

These categories were compared with one another looking primarily for causal relationships. This method of continuously designing and re-designing theoretical concepts as the material was reviewed is what Glasser and Strauss call the 'constant comparative analysis' (Glasser and Strauss 1967, 101). The final step undertaken was 'selective coding' where related categories were merged with one another in order to generate a broader theoretical understanding of the case of wind turbines in Coastal Dobruzha. Moreover, key policy tools identified during the theory building were categorized into the groups of nodality, treasure, and authority identified in Hood's policy tools framework. Theoretical saturation was applied to all data including interviews, observations, and documents to the point of saturation in order to generate 'developmental theory' (Glasser and Strauss 1967, 114).

By using 'grounded theory' this thesis used both coding and analysis to develop theory in a more systematic way than traditional approaches. Using this method allowed me to develop theory that was closer to the data (Glasser and Strauss 1967).

3.3.2. Narrative Analysis

With the data collected, a narrative story was drawn out to understand how the implementation of the Birds and Habitats Directives in Coastal Dobruzha has been so poor. Moreover, the research developed a narrative through the case study illustrations for providing an understanding of how the environmental policy tools used to control behavior of the target groups were affected by European as well as domestic variables and specific characteristics of the target groups. Close attention was paid to the language used to describe events and experiences in order to structure the story around implementation. The analysis drew out the logic and structure embedded in the data,

and particular attention was paid to the story itself along with the temporal and social context of the story. This enabled the researcher to understand the context beyond the narrative theme or my research perspective (Esterberg 2002).

3.3.3. Primary and Secondary Source Material

In order to obtain validity to the proposition, I used data triangulation to increase the overall quality of my research (Yin 1994). This was done through the gathering of theoretical literature, archival records, formal and informal documentation, as well as semi-structured open-ended interviews. In addition to increasing the validity of the research, triangulation provided explanatory richness to the analysis (Yin 1994). Primary source material obtained was comprised of official documents analyzed, including development permits issued by the Ministry of Environment and Water, approved and rejected EIAs, official responses to Bern Convention complaints by the government and NGO sources, and court decisions regarding issued development permits. Other primary source material included semi-structured open-ended interviews, on-the-ground observations, infringement proceedings documentation, and official letters.

Secondary source material included formal in-country progress reports by the international environmental organizations, the scientific community, and the EU, which were used to obtain a clearer picture of the implementation realities on the ground. Further information for the case study was obtained through websites of environmental organizations and development companies, official websites of the Ministry of Environment and Water, and the EU.

3.4. Limitations

One limitation of using the single case study research was that, while researching wind turbines in Coastal Dobruzha, there was a possibility to present the case in a way that was not representative of the case. To limit this potential problem, a careful investigation was conducted in order reduce the possibility of misrepresenting the case and collect all the necessary data (Yin 2003). Additionally, non-probability sampling techniques, such as purposeful and snowball sampling, were used. Such techniques allowed me to pick a near-perfect target group of relevant implementing agents and saved time and money by avoiding huge sample sizes that were needed to make deductive statements about a population. Conversely, the research can only infer to the targeted case and will not provide grounds for concrete deductive statements about the population as a whole without further empirical research by others scholars. This is one of the fundamental problems with the single case study research design as the research was able to provide 'depth', but was limited in its ability to provide 'breadth' (Ragin 2000).

Another major limitation was to determine to what degree the interaction between the different governance levels and tools applied in this case are a direct cause-and-effect result of one another. This is an important problem with no clear solution, but one way this was minimized was through data triangulation with the use of multiple data sources, such as questionnaires, interviews, as well as primary and secondary source data. Additionally, the objective of the research was not to make a clear quantitative link between governance levels, policy tools, and outcomes, but to move forward a better conceptual understanding of how these tools interact with the targets of the policy. This

provided a framework that could assist future researchers in building more refined and quantitative analysis.

According to Mickwitz's analysis of policy tools, they should be only used conceptually to broaden the minds of policy makers about the "implementation of instruments, their design, the design of new instruments, and the general policy debate on environmental issues" (2003, 430). Evaluations should not be used alone when views and perceptions are formed, but combined with other information sources. Therefore, the conclusions drawn from this thesis should be understood as a general theoretical and knowledge base. Policy makers can then use this knowledge base to develop their views and opinions on the problems facing the implementation of the Birds and Habitats Directives in Bulgaria and their solutions (Weiss 1998).

This chapter provided a comprehensive explanation of the reasons for selecting the case and its crucial importance to the Natura 2000 network both in Bulgaria and for the European continent. It also gave a comprehensive analysis of the methods used for data collection and analysis. The following chapter will provide insight into the historical context of environmental protection in Bulgaria. It will also present the basic information needed for the reader to understand Natura 2000 as a network and its regulatory requirements.

CHAPTER 4. ENVIRONMENTAL CONSERVATION IN BULGARIA: FROM COMMUNISM TO EUROPEAN INTEGRATION AND THE Natura 2000 NETWORK

4.1. History and Culture of Environmental Conservation

Environmental conservation in Bulgaria has taken various shapes, carrying the effects of past legacies from forced collectivization to decentralization. These historical legacies are in part reflected in the current status of nature protection in Bulgaria. Without having a grasp on this historical context it will be difficult to understand the nature of implementation of the Biodiversity Act. This chapter seeks to explore the historical context of Bulgaria and nature conservation in the country. It will also illustrate that nature conservation has historically been an issue in Bulgaria. Biodiversity conservation is a relatively new concept, however, externally driven and primarily supported by international donors and the European Integration process.

The chapter will also provide information on the legal, procedural, and financial framework of the EU biodiversity policy in Bulgaria. It will include an examination of Natura 2000 as a concept and as a legislative act. This overview is vital in order to accurately access of Bulgaria's responsibilities under the law. Finally, a summary of the main funding mechanisms of Natura 2000 will be given along with an explanation of how these funds have been utilized in Bulgaria. This analysis will illustrate how insufficient funding and corruption further complicate sufficient implementation of the Directives in Bulgaria.

4.1.1. History and Culture of Environmental Conservation

Contrary to popular belief, the environmental movement in Bulgaria did not start in the town of Ruse in 1988 when mothers began to protest against the horrendous air quality of the city. In fact, environmental conservation has a rich history dating back to the 19th century. The first organization created to concentrate on national environmental issues was the Bulgarian Nature Research Society, established in 1896. Thirty-two years later, 10 nature protection societies and organizations came together to form the Union for the Protection of Nature. This Union worked on nature conservation issues, like the designation of nature reserves. With the help of its members, in 1933 the government established two nature reserves, and a year later the nation's first national park Vitosha (Cellarius 2004). Bulgaria's participation in environmental protection coincided with similar movements in both the United States and Western Europe. Environmentalism was riding high on agenda of Western governments due to the deplorable environmental conditions urban towns were facing as a result of the industrialization movement. Bulgaria seemed to be in line with Western European countries with respect to their concern for the harmful effects of industrialization on the environment.

4.1.2. The Environment under Communist Rule

While environmentalism in Bulgaria seemed to be on the rise, a fundamental shift in the nation's conservation trajectory would take place in 1946, when the Communist party seized control of power and formed the People's Republic of Bulgaria. One central aspect of Communism was the complete destruction of civil society and

institutions. Shared environmental values of these organizations were eliminated and replaced with the ideology of Marxism and the political priorities of the Communist government (Giatzidis 2002). The result was that many of the environmental organizations which were formulated lost their autonomy and either were disbanded or incorporated into state-controlled organizations (Cellarius 2004). This was further exacerbated by the fact that during Communist rule the Soviet Union dominated Bulgaria's politics both economically and politically. As a result, the country's economic growth during this time paralleled the Soviet model. This included a heavy industrial sector, collectivization of agricultural lands, rapid urbanization, and depopulation of the countryside. In fact, before Communism 75% of the country's population lived in the countryside. By 1989, less than half that number still remained there (Paskaleva et. al. 1998). Private ownership was prohibited and was replaced by public ownership. By 1989, 99% of Bulgarian farmland was held cooperatively or was state-controlled (Miller 2003).

Centralized planning in the eyes of the government became the key to economic growth. It encouraged the waste of natural resources and inefficient use of energy in production processes. Soil was extensively tilled, over-fertilized, and over-chemicalized in order to match crop yields of the West and consumer demand. Industrial and economic development gave priority over long-term sustainable use of natural resources. Furthermore, in the last years of Communism, emphasis was put on low-quality energy resources, such as coal and lignite, which caused acid rain, poor air quality, and deforestation (DeBardeleben 1991).

During this period there was little action taken by the government for the nature protection. On paper however, Bulgaria passed a series of laws setting strict

environmental standards comparable to those in Western countries (Paskaleva et. al. 1998). These laws, however, were rarely enforced. One of the few successes during Communism was in 1962, when the government established the Pirin National Park. During this timeframe, parks were designated, but many of them were small, lacked management plans, and their oversight was scattered across many different government bodies such as municipalities and forestry departments (Mihova 1998).

4.1.3. The Fall of Communism

Public consciousness regarding the environment was low until 1988, when cross-border chlorine pollution coming from chemical plants in Romania became intolerable to the local population in the village of Ruse. The chlorine had caused lung pollution and morbidity to increase by 2,000 percent in 15 years (Giatzidis 2002). Therefore, the Independent Committee for Environmental Protection of the City of Ruse was formed to address this issue with the government. Similar groups then began to form, protesting environmental degradation, and in April 1989, the well-known Association of Ecoglasnost was created. Subsequent protests by like-minded organizations would eventually lead to the fall of Communism. Then, in November 1989, additional public pressure lead to the fall of their Communist leader Todor Zhivkov (Giatzidis 2002 & Paskaleva et. al. 1998). These organizations not only cared about environmental degradation, but also used environmental issues as a means to criticize the government (Koulov 1998, 159 in Giatzidis 2002).

In 1990, Bulgaria held its first democratic election. The green party Ekoglasnost and UDF ran as a coalition during this election, but failed to transfer public support for

the environment into political support. After the votes were counted, the coalition obtained only 15 seats out of 400 seats in the Bulgarian Assembly. The Bulgarian Socialist party, however, was able to win the majority of the seats with 47. This means that Bulgaria was one of the only countries in Eastern Europe where Communists won in democratically held elections (Zankina 2000). First of the two potential reasons for this was that the Soviet influence in Bulgaria was less resented than in other nations allowing the Communist networks to persist in most forms of government. The second reason was that democratic reforms in Bulgaria began within the Communist Party making it more resistant to opposition attempts to label the Communists as 'undemocratic' or 'illegitimate'. The period starting from the fall of Zhivkov to the re-election of the Communists in Bulgaria is considered the "Quiet Revolution" (Steel et. al. 2007). According to Steel, this revolution was short lived and failed to translate into longer forms of civic engagement (2007).

Further exacerbating the problem was the great economic collapse that occurred in the early 1990s. Compared to 1989, by 1994 the GDP decreased by 24.4%, industrial production by 49.3%, construction by 72%, agriculture production by 30%, and unemployment was at a staggering 20.5% (Kalinova et. al, 291 in Zankina 2000). In this context, public concern became more about basic necessities for survival, such as jobs, food, and clothing, not about the environmental conservation. One report by the UN states:

> In the conditions of a grave economic, political and cultural crisis, environmental protection and reproduction have been relegated to the outskirts of public interest. The state environmental policy is being formed and implemented practically outside the range of vision even of the citizens who take an active part of public life. The arguments in favor of or against nuclear power stations, the unequivocal demands for closing down hazardous metallurgy and chemical productions that happened

> every day in the early 1990s, are but a memory today. Compared to the daily concerns of making a living and job preservation environmental issues become a luxury that can well be ignored. The environmental movements, which used to be among the motive forces of social changes, have gradually lost their wide public support. This does not mean that environmental issues have been forgotten. On the contrary, they are widely believed to be a major problem facing the country, being even more important than national security and inter-ethnic relations. But in late 1996 by their intensity as matter of public concern, they lag far behind inflation and crime. (UNDP 1997, 69 in Giatzidis 2002)

Regardless of the constraints existing for environmental protection on a national and local level, some progress was made in 1992 with the passage of the National Environmental Action Plan. This plan focused on giving financial support to research institutions, companies, and municipalities for the development of a national environmental policy. One early phenomenon with regards to environmental policy from 1990-92 was ambitious and unrealistic strategies that were not related to legal and institutional changes needed for environmental improvements (Vari and Tamas 1993).

The same year, the Law for the Reinstatement of Expropriated properties was enacted. Its purpose was to reinstate lands to their rightful owners who had lost them during the collectivization process in the 1940's. This was an arduous process requiring various forms of documentation, such as land deeds, that many people had lost during Communism. As a result, in 1992 lawmakers stated that because of the difficulties in providing proof of ownership after so many years, it would cause chaos to permit all of the properties seized by the state to be eligible for restitution (Miller 2003). Therefore, many individuals who lost their land during Communism did not receive compensation, and many who did, had to fight long and hard for what was rightfully theirs. This struggle for land took on an additional layer in Bulgaria because it is a traditional agrarian society and land ownership is deeply personal. Any attempt by the state to control land is deeply resented due to this historical legacy. Forced collectivization of

private lands under the Communist regime was something that greatly affected Bulgarian people. In this context, Natura 2000 site designation process reignited past legacies of economic takings by the State subjecting landowners to costly restrictions of economic activities on private lands.

In addition, this land redistribution and privatization allowed for many Communist leaders and managers to control large swaths of land and newly privatized industries. These individuals, due to their access to information and funds, were able to exploit their contacts and become part of the new economic elite (Giatzidis 2002). Many of the new 'elites' were brought up in the old nomenclature that saw development above all else, causing the environment to take the back seat to economic prosperity (Jancar-Webster 1998). Additionally, the decentralization of the government allowed public officials to exploit their positions for private gain, creating corrupt ties between private businesses and the state (Gaitzidis 2002, 64).

The Center for the Study of Democracy discovered that these connections persist in Bulgaria even today. Their research uncovered disturbing correlations between the country's business sector and the government. It found the use of existing laws and regulations to justify government official's actions, as well as the deliberate use of the regulatory framework to benefit private interests close to those in power. Moreover, the research illustrated that the political will to favor certain private interests has been unambiguously expressed, as well as their will to resist civil society and the EU (Center for the Study of Democracy 2009). All these historical legacies play out in the upcoming chapter when wind turbine projects begin to be developed in Coastal Dobruzha.

4.1.4. Transition to Democracy and EU Membership

Bulgaria began its progression towards EU accession in 1990 when the Trade and Cooperation Deal was signed, all the while becoming a member of the Polish and Hungarian Assistance for the Restructuring of Europe program. This program set out to provide financial assistance for Central and Eastern European countries who were suffering from historical legacies of Communism. Then, in 1993, there was a meeting by the European Council in Copenhagen. During this meeting, the decision was made to expand the Union eastward and to define a set of criteria for membership. The requirements were both political and economic, including democracy, stable institutions, respect for human rights, a functioning market economy, ability to withstand competition, and adoption of acquis communautaire. As a direct result, in 1993 Bulgaria signed the Association Agreement with the EU, which set up a framework for Bulgaria's eventual absorption into the EU. In December of 1995, Bulgaria then officially applied for EU membership.

At this time, biodiversity also was becoming a global priority, and EU states were particularly concerned with the way in which exploitation of natural resources played an increasing role in post-socialist economic development (Cellarius 2004). Most of the concern about the environment was externally driven through the EU integration process, as well as financial support coming from Western interest groups concerned with nature conservation. These donors began to shift their financial support in Bulgaria to projects working on biodiversity conservation. The result was that these efforts became an import from the 'West' (World Bank 1994 in Cellarius 2004). Cellarius explained that in Western European biodiversity conservation challenges were structurally different from those of Eastern Europe. Nature conservation was embedded

into the larger context of great social, economic, and political transformations. This included land redistribution, changes in agricultural, forestry and land use patterns, all of which were scarcely backed up by financial resources for nature protection (2004). Therefore, biodiversity conservation 'Western' style was never really picked up as grass roots domestic issue.

Nevertheless, nature protection and other environmental concerns were on the agenda of the EU acquis in Chapter 27: The Environment. If Bulgaria wanted to join the EU and NATO in order to obtain economic and social security, then Chapter 27 of the acquis had to be implemented along with all other 30 chapters. The Environmental Chapter contained 200 legal acts consisting of everything from management of waste to nature protection (European Commission 1997). Economic costs for implementing the EU requirements were high, while environmental priorities remained low (Jancar-Webster 1998).

The European Commission monitored Bulgaria's progress on Chapter 27 and published annual reports on their national approximation status. A report from 1997 found that Bulgaria's environmental legislation had undergone revisions, and that the new legislation tended to adopt the European standards, but in many areas, the approximation remained low including nature protection. By 1999, Bulgaria developed strategic plans for the implementation and enforcement of environmental law, but at that time, they were not made operational. There was also significant concern about the number of staff working for the Ministry of the Environment, the level of incorporating environmental concerns in other sectoral policies, and the lack of financial investments. In 2000, Bulgaria also developed a national biodiversity conservation strategy (European Commission 2000, 71). By that time, Bulgaria had also identified 140 sites, covering

12% of Bulgarian territory, as special protected areas although the requirements of the Birds and Habitats Directives had not been fully integrated into Bulgarian legislation (European Commission 2000).

Then in August 2002, in what was a major stepping-stone for the protection of nature in Bulgaria, the Law on Biological Diversity was adopted by the Parliament. This Law fully transposed the Birds and Habitats Directives into national legislation thus legally enshrining biodiversity conservation into the national legislative agenda (European Commission 2004). January 1, 2007, marked one of the most historic periods in recent history for Bulgaria when it officially became a member of the European Union. Then, after substantial delays, the government designated SPA and pSCI sites for their inclusion into Natura 2000. Seven years later, 33.8% of the Bulgarian territory is part of the Network. This gives them one of the largest percentages of territorial land covered under Natura 2000 in all of the 28 EU Member States (Marin 2007). The progress cannot be overstated and is a huge step to ensuring adequate protection of habitats for migratory birds and wild flora and fauna. While sites are designated, however, the protection and management of these sites have been facing significant challenges.

4.2. The Natura 2000 Network

4.2.1. What is Natura 2000?

The Natura 2000 network is derived from the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) held in 1979. The Convention was signed by 46 Member States of the Council of Europe, along

with the EU and several non-EU nations. The Bern convention aims to conserve wild flora and fauna and their Natural habitats, promote cooperation between countries, monitor and control endangered and threatened species, and assist in the provision of legal and scientific issues (Council of Europe 2013).

As a direct result of the Convention, the European Community passed the Directive 79/409/EEC on the Conservation of Wild Birds (Birds Directive) in 1979 and in 1992 passed the Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora. These two Directives combined led to the creation of the Natura 2000 network that aims to stop the loss of European biodiversity on land, at the coast, and in the sea, due to human impacts (Joint Nature Conservation Committee 2013).

Natura 2000 is the main component of the European Union's nature and biodiversity policy. This program creates a network of nature protection areas throughout the EU. It was founded based on two legally binding pieces of legislation: the Birds Directive and the Habitats Directive. Currently the Network consists of over 26,400 protected areas covering a total surface area of 986.000 km², and represents more than 18% of the total EU territory. Natura 2000 is the largest coherent network of protected areas in the world (European Commission-Environment 2014).

4.2.1.1. Birds Directive (79/409/EEC)

The Birds Directive was passed as law in 1979 laying down the framework for the nature protection policy of the EU. The Directive seeks to protect, manage, and regulate all bird species naturally living in the wild within the European territory of the Member States. This includes the eggs of these birds, their nests, and their habitats. Furthermore, Member States must conserve, maintain, or restore the bird habitats by

creating protection zones, maintaining the habitats, restoring destroyed biotopes, and creating biotopes. The Directive also requires the Member States to "classify the most suitable territories" as specially protected areas (SPAs) in order "to ensure the survival and reproduction" of the bird species mentioned in Annex I of the Directive. This protection also covers migratory bird species under Article 4.2 of the Directive. SPA is the main mechanism in the Birds Directive (79/409/EEC) contributing to formation of Natura 2000. Table 4.1 features a few of the important Articles in the Directive.

Table 4.1. Important Articles of the Birds Directive

Article 2: Ensures the maintenance of the favorable conservation status of all wild bird species across their distributional range.
Article 3(a): Requires the creation of protected areas.
Article 5: Create the general plan for the protection of wild birds.

Source: Birds Directive 79/409/EEC.

4.2.1.2. Criteria for Selection of SPA sites

There are no specific criteria for evaluating importance of these sites listed within the Directive. Bird Life International, however, developed an explicit set of criteria for identifying Important Bird Areas (IBA) in order to satisfy this legislative gap. Since the development of these criteria, a European network of scientists and volunteers has produced an inventory of IBAs in all EU Member States, including Bulgaria. There is no legal requirement that these sites automatically become SPA sites when the Directive comes into force on a national level. Although the European Court of Justice has made several court rulings confirming the scientific validity of the IBA designation in helping guide Member States decisions on SPA designation (The Royal Society for the Protection of Birds 2005). In C/396 Commission v. Netherlands, the court ruled that

the Member States discretion in choosing sites does not concern the appropriateness of classifying sites that seem most suitable for the conservation of the species. Therefore, when assessing the extent that Member States have complied with the obligation within the Birds Directive, the court uses Important Bird Areas as a reference (European Court of Justice 1998).

4.2.1.3. Habitats Directive (92/43/EEC)

The Habitats Directive was adopted in 1992 with the aim of promoting biodiversity by the means of conservation of natural habitats and the maintenance of wild flora and fauna. The measure takes into account the social, cultural and regional requirements in order to assure sustainable development. The Directive also recognizes that in some cases the maintenance of these areas requires human activities. Requirements for the Directive are grouped into two distinct chapters. The first is titled "The Conservation of Natural Habitats and Habitats of Species" and includes Articles 3-11; the second is "The Protection of Species" and includes Articles 12-16.

The Directive orders the designation of special areas of conservation (SAC) in order to create a coherent European ecological network according to a specified timetable (see Figure 4.2). The Directive also incorporates all the requirements and species defined under the Birds Directive. As a result, both the SPA and SAC work together to maintain the Natura 2000 network.

4.2.1.4. Key articles of the Directive

Table 4.2 provides a list of important articles in the Habitats Directive that were developed on the 'top' European level and then downloaded into Bulgaria's national legislation. It is important to note that these objectives or 'outputs' implemented in their

entirety are meant to achieve the overall goal of the protection and maintenance of migratory birds species and wild flora and fauna in EU Member States.

Table 4.2: Important Articles of the Habitats Directive

Article 3

(1) Create the Natura 2000 network consisting of SAC and SPA, which must be maintained and where appropriate restored to favorable conservation status.

(2) Contribute to the creation of Natura 2000 in proportion to the representation within its territory of the Natural habitat types and the habitats of species.

(3) Member States must maintain and develop the landscape of these sites (also article 10 and article 6(1)).

Article 4

(1) Propose a list of sites based purely on scientific data indicating which natural habitat types in Annex I[8] and which species in Annex II that are native to its territory the sites host.

Article 6

(1) Member States should manage SAC and develop management plans of the sites, integration into other development plans, and appropriate statutory, administrative, and contractual measures that correspond with the ecological requirements of the Directive.

(2) Member States must take appropriate measures to avoid deterioration of these sites and make an appropriate assessment of projects to avoid the deterioration of the sites habitats or species.

(3) Requires that actions be taken to avoid any adverse impact or the deterioration of pSCI or SPA sites (precautionary principle). Therefore, all sites that may eventually become SAC may not be developed, and all precautionary measures should be taken to maintain the quality of these sites until designation.

(4) A project or activity may occur on these sites only if there is **an overriding public interest** of social or economic nature.

Article 8

(1) Member States need to provide co-financing for protection of these sites.

Article 18

Member States should encourage the research and scientific work necessary to Directive maintain or restore, at favorable conservation status, Natural habitats and species of wild fauna and flora of Community interest

[8] Annex I covers habitats.

Article 22 (c) Promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and Natural habitats

Source: Habitats Directive 92/43/EEC.

4.2.2. What are SPAs and SACs, and What Is the Process?

Both SPAs and SACs combined create the Natura 2000 network. As stated above, SPA requires Member States to "classify the most suitable territories" as SPAs in order "to ensure the survival and reproduction" of the bird species mentioned in Annex I of the Directive. Measures also must be applied to migratory species not mentioned in Annex I. Furthermore, special attention must be given to wetlands and wetlands of international importance. When SACs are designated, the protection then includes birds as well as wild flora and fauna. The designation of SAC sites is a long process and starts with the Member State drawing up a list of Proposed Sites of Community Interest (pSCI). Each state must submit a list of sites taking into account the different bio-geographical regions as well the specific features of these sites[9].

Furthermore, a complete list of habitats and species found on those sites must be included in the form. Sites are selected according to very specific criteria, which include importance of the site at a national level for the conservation of species and habitats mentioned in the Annexes or for the conservation status of the site. This process is typically done by national state administrations and sometimes is assisted by NGOs (Papp and Toth 2007). Each Member State must submit a list of pSCI to the European

[9] Bio-geographic regions in Bulgaria are Alpine, Black Sea, Continental.

Commission by the date of accession.[10] This list is then edited and revised by the European Topic Centre on Biodiversity and sent back to the Ministry for changes.

These preliminary lists are then brought per bio-geographical region to bio-geographical seminars, which are facilitated by the Directorate-General for the Environment of the European Commission. The technical and scientific part of the program is facilitated by the European Topic Center for Biological Diversity. During these seminars, the pSCI are discussed and agreed upon by the European Commission, NGOs, national governments, land users, and independent experts. Oftentimes, countries present inadequate lists so NGOs often prepare "shadow lists", or sites not on the governmental list, to be included as sites. After the pSCI is agreed upon between the Commission and the Member States, the Member State adopts the pSCI as SAC. The designation of SACs must be based on purely scientific information. Moreover, these areas should provide an ecological network to reduce habitat fragmentation to ensure biological connectivity (CEEWEB 2007).

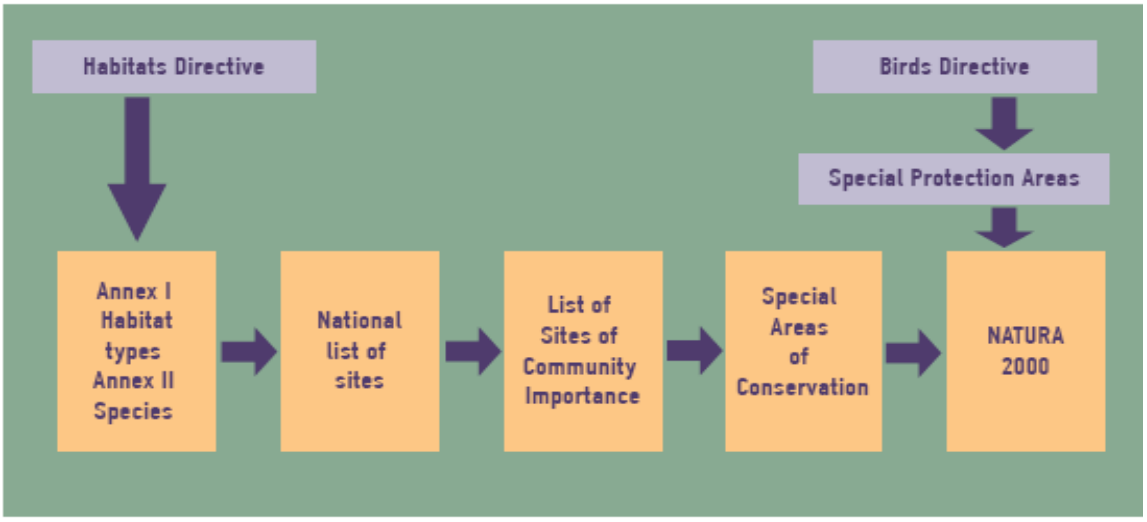


Figure 4.1. Structure of Natura 2000. *Source:* CEEWEB 2007.

[10] Bulgaria was required to do this and became an official member of the EU as of January 1, 2007.

4.2.3. Timing of Implementation of Natura 2000

The Habitats Directive and the Birds Directive must be transposed into national law by the time of accession, for Bulgaria this meant January of 2007. Bulgaria accomplished this through the passage of the Bulgarian Biodiversity Act in August 2002. All SPAs under the Birds Directive had to be designated by accession. In addition, the pSCIs had to be designated by the time of accession. Bulgaria postponed its official submission of the list and sent an incomplete list to the European Commission. Unfortunately, this was not in compliance with requirements of the Birds and Habitats Directives, as well as the Bulgarian Biodiversity Act and is still the subject of debate between the national government and the European Commission. In 2016, an official SAC must be designated in Bulgaria (see Figure 4.2 for the timing of Natura 2000).

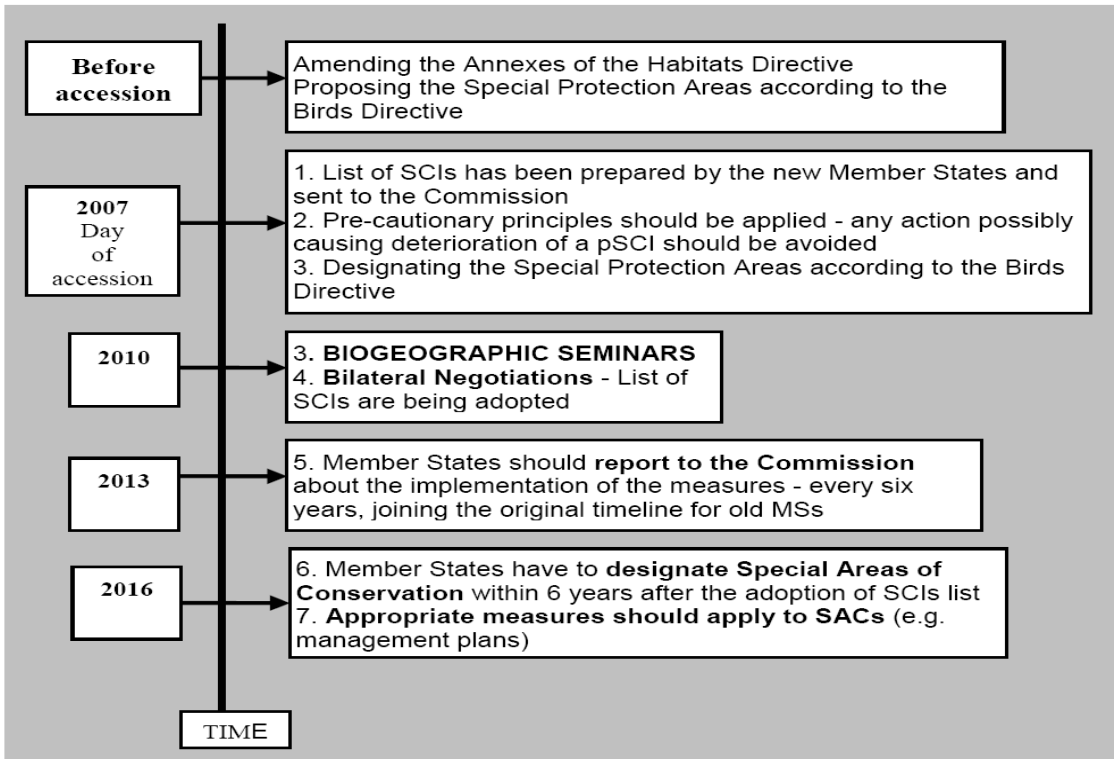


Figure 4.2. Timing of the Natura 2000 establishment process. *Source:* CEEWEB 2007.

4.2.4. Funding Mechanisms for the Network

4.2.4.1. Pre-accession funds

Environmental protection is a vital aspect of a country's accession to the EU. As a direct result, the EU set up several funding mechanisms in order to help Bulgaria comply with the Directives before its accession in 2007. Table 4.3 shows the funds that were available for Bulgaria before 2007 to help prepare the country for the Network.

Table 4.3. European Financial Support Mechanisms for Natura 2000 before Accession.

Poland and Hungary: Assistance for Restructuring their Economies (PHARE)
This program helps candidate countries bring their industries and infrastructure up to Community standards by giving funds for investment in several sectors including the environment. It also contributes funds in order for candidate countries to successfully comply with Community acquis. This includes projects that help administrative and regulatory bodies familiarize themselves with Community procedures and goals.
Instrument for Structural Policies for Pre-accession (ISPA)
Provides funds for candidate countries to catch up to EU environmental standards.
Special Accession Program for Agriculture and Rural Development (SAPARD)
A structural mechanism set up to help with rural development and agriculture.

Source: adapted from CEEWEB 2007.

One major impediment for Bulgaria in absorbing these funds was a policy culture that was shaped by corruption. Corruption is defined most often as the misuse of public office for private gain and has historically been a problem in the newly formed democratic institutions in Balkan states (Kostadinova 2012). This holds true for Bulgaria as well. A 2008 report prepared by the Commission for the European Communities analyzed Bulgaria's progress in addressing pre-accession problems and what has occurred over the one-year period, in 2007. The commission pointed to ongoing corruption, lack of an efficient judiciary system, and the lack of legal enforcement with

regards to organized crime as ongoing impediments to EU integration. The report further stated that adequate administrative capacity and effective control of conflict of interest, fraud and financial irregularities is a necessary condition for Bulgaria to benefit fully from EU pre-accession and structural funds. Finally, it stated that Bulgaria needs substantial results in investigating, prosecuting and judging cases of high-level corruption and organized crime. As a direct result, in 2008 the Commission withheld 250 million euros worth of funding, a portion of which could have been allocated for Natura 2000 (Commission of European Communities 2008).

This report illustrates how the EU funds meant for biodiversity conservation are misappropriated by public actors who extract economic rents for their own personal gain at the expense of the public welfare. Furthermore, corruption can give unfair influence to private actors in public affairs. Measures that are supposed to be taken in the public welfare are transferred to private actors who financially or politically support public officials involved in the decision-making process. Czarnota argues that Eastern European nations are characterized by inefficient administration, corruption, and political capitalism, by which he means the use of public position to extract economic rents. He notes that this blurred border between the public and private sphere, connected with the extraction of public funds to private pockets, is one of the obstacles to efficiency of the economy from the point of view of citizens (2004).

4.2.4.2. Member State Funding Mechanisms

Once Bulgaria became a member of the EU, the funding mechanisms shifted from pre-accession funds to Member State funds. Currently, there are several European sources for funding Natura 2000 site preservation and management (see Table 4.4.).

Table 4.4. European Financial Support Mechanisms for Natura 2000 Post-Accession.

LIFE + Nature - Funds projects that help with the implementation of the EU Birds and Habitats Directives, including the Natura 2000 network of sites.

LIFE+ Biodiversity - The biodiversity component funds projects that assist in the Communities' goals of halting biodiversity loss by 2010.

LIFE+ Environment Policy & Good Governance - Co-finances projects that contribute to the implementation of Community Environmental Policy and environmental monitoring.

LIFE+ Information & Communication - Co-finances public education and awareness campaigns for nature protection of biodiversity conservation.

European Agricultural Fund for Rural Development - Sets out to improve the environment and countryside by supporting land management as well as improving the quality of life in rural areas by diversifying economic activities. This fund is the main mechanism for compensation for landowners.

European Regional Development Fund (ERDF) - Provides funds for economic and social cohesion as well as environmentally sound growth.

European Fisheries Fund (EFF) - Provides funding for sustainable development and improvement of the quality of life in areas with an active fishing industry as well as sustainable use of the fisheries resources.

Cohesion Fund - Provides financial assistance for the Trans-European Transport Network and the environment within priorities set out by the Community environmental protection policy. This program can fund projects related to sustainable development, renewable energy, and energy efficiency.

Research Framework Programme (FP7) -Provides funds for research and technological development in many areas, including the environment.

*Source: a*dapted from CEEWEB 2007.

While the diversity of funding mechanisms coming from the EU are rich, Bulgaria has utilized very few of these funding programs. The major source of funding for biodiversity conservation in Bulgaria has been the Operational Program the Environment 2007-2013, which derives from the European Structural Funds. Unfortunately, the Life+ Program, which is one of the key funding mechanisms for Natura 2000 financing, was insufficiently utilized. The total budget from the 2007-2015 fiscal periods is 103 million euros, 85% of which comes from the European Regional

Development Fund and 15% from the national budget. This makes the national contribution over an eight-year period approximately 1.93 million per year. According to Stefan Avramav, this Program was the only significant source for biodiversity conservation in Bulgaria (CEEWEB 2012). The funds were used to determine the conservation status of species, and to prepare and realize management plans in some national parks.

Additionally, the Enterprise for Management for Environmental Protection Activities has traditionally been a source of funding for biodiversity conservation in Bulgaria (even before the EU accession). Its funds come from water taxes, which are then allocated through different programs in the MOEW. One eighth of the revenue (250,000 euros) was used for biodiversity conservation purposes like the establishment of the Bulgarian Natura 2000 Network, the development of the new edition of the Bulgarian Red Data Book, and development of some management plans in national parks (CEEWEB 2012).

The sum of 103 million euros may seem like a substantial contribution for biodiversity conservation, however, the amount is negligible if we analyze the estimated costs of managing and maintaining this network each year. In 2010, there was a study done by the Institute for European Environmental Policy analyzing the costs of Natura 2000 Network for each EU Member State. The annual costs of Natura 2000 management and protection were estimated at 40.8 euros per hectare (ha) in Bulgaria. Considering the fact that Bulgaria has approximately 3,861,300 ha of territorial land within Natura 2000, the total annual costs are 157,541,040 euros (see Table 4.5). Even if we just consider the re-occurring costs for management and monitoring, this amounts to 97,459,212 euros. As mentioned, the total sum provided for biodiversity conservation from 2007-2015 was

103 million euros from the Operational Program the Environment and 250,000 euros from national water taxes. According to these figures, total contribution to biodiversity conservation over an eight-year period in Bulgaria was 103,250,000 euros. This calculates to approximately 12,906,000 euros per year. As you can clearly see, there are significant gaps in funding for the Natura 2000 network in Bulgaria.

Table 4.5: Funding Gaps in Bulgaria for Natura 2000 Site Protection and Management.

Bulgaria: total estimated costs of Natura 2000 (annual in Euros/ha)		
One off costs	Re occurring costs	Total
Management: 8.8 euros	Management Planning: 17.4 million euros	----------
Land Purchases: 5.91 euros	Habitat Management and monitoring: 7.84 million euros	---------
Infrastructure: .13 million euros	----------	
Total: 14.84	Total: 25.24	Total Sum: 40.8 euros/ha x 3,861,300 ha in Bulgaria under Natura 2000= 157,541,040 million euros

Source: adapted from Institute for European Environmental Policy 2010.

There is a whole host of protection and management activities on Natura 2000 that incur costs. Creating, protecting, and managing a Network of this size takes significant work including management planning for almost 4 million hectares of land, providing compensation benefits to landowners, mapping sites, monitoring their status, and substantially more activities which can be seen in Figure 4.3.

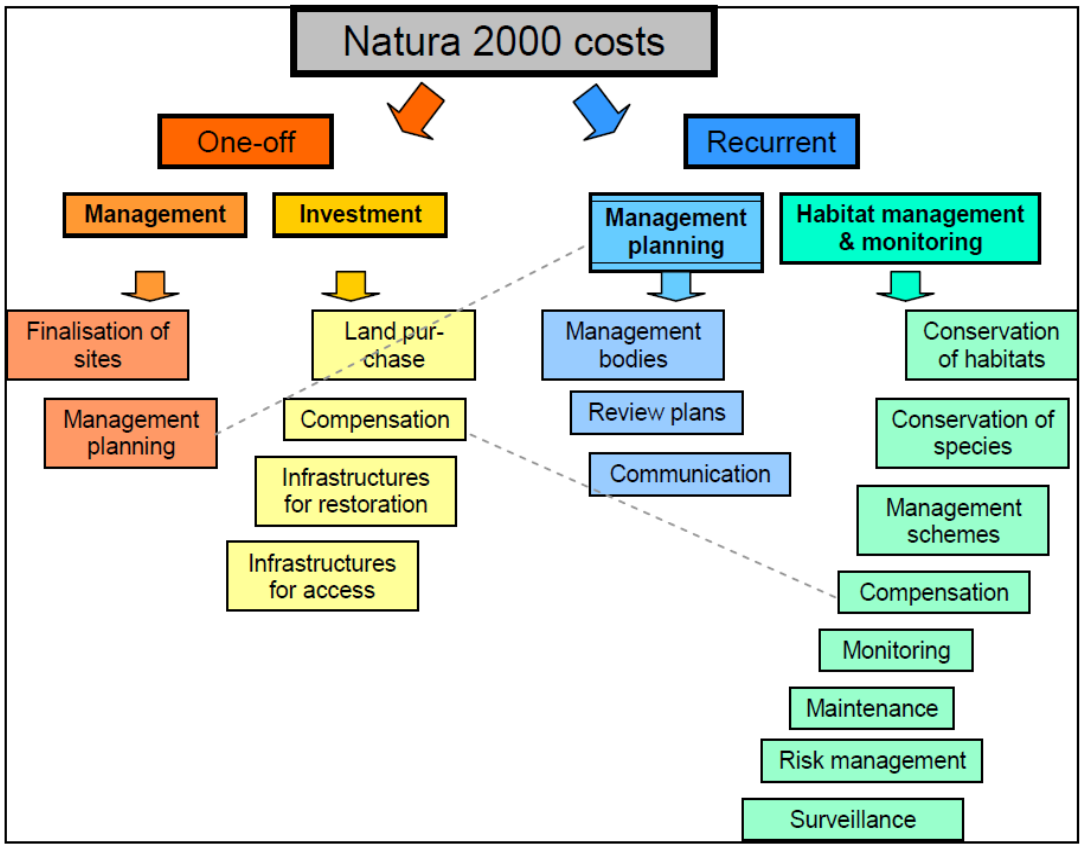


Figure 4.3. Costs incurred by Member States related to implementing Natura 2000. *Source:* Institute for European Environmental Policy 2010.

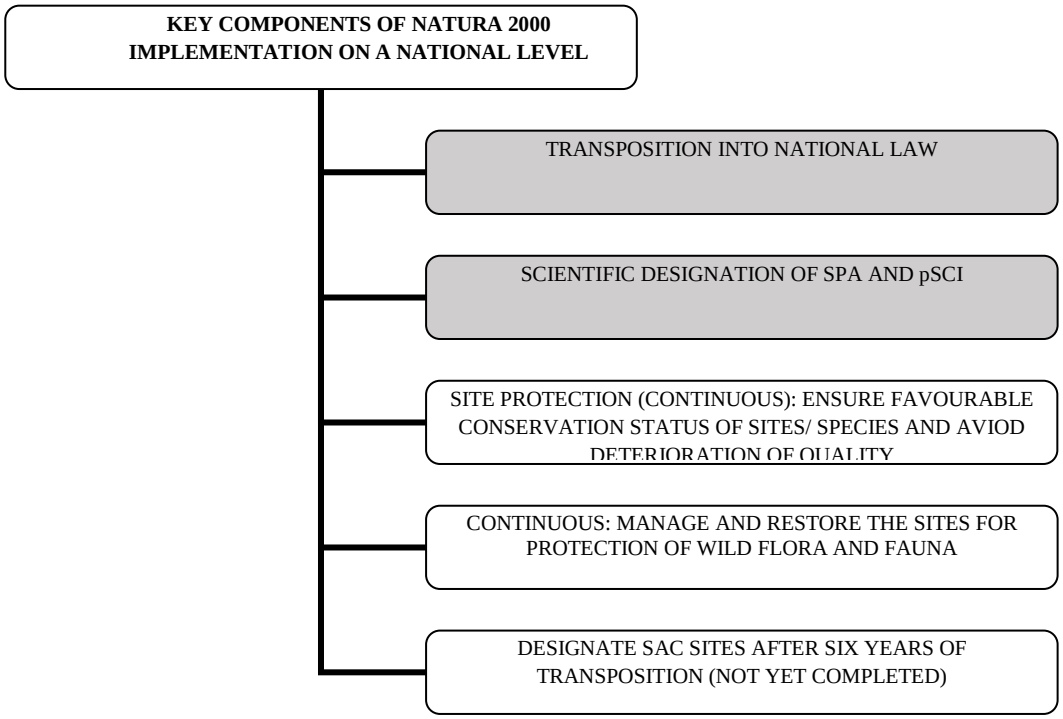
4.3. Conclusions

Historical legacies provide the contextual framework necessary for looking at the contemporary challenges facing nature conservation in Bulgaria. Nature conservation traditions and practices are hard to change thus making adaptation to Natura 2000 a challenging task for the EU, the Bulgarian government, and its people. The legislative, procedural, and financial framework was also illustrated in order to give the reader context to upcoming case study of wind turbines in Coastal Dobruzha. This chapter highlighted that financial resources are allocated by the EU for the protection and management of Natura 2000 sites in Bulgaria. Rampant corruption and insufficient utilization of funding, however, has left the Network with little financial support. In

addition, national legislation on biodiversity conservation was predominately an import from the West, which did not reflect the historical and political context of environmental conservation in Bulgaria. The next chapter will illustrate how the above-mentioned factors played out during the transposition and site designation process. After a detailed description of the case is given, an in-depth analysis of implementation from the forward-backward mapping perspective will be conducted. All data given in the upcoming analysis was obtained through primary and secondary source materials including extensive interviews with key case study 'informants'.

CHAPTER 5. THE CASE OF WIND TURBINES IN COASTAL DOBRUZHA: TRANSPOSITION AND SITE DESIGNATION

Table 5.1. Key Components of Natura 2000 Implementation



Source: Council Directive 92/43/EEC 1992 and Council Directive 79/409/EEC.

Transposition is an important component of implementation. It develops the basis for both the structural and administrative procedures necessary to ensure the effective implementation of the Birds and Habitats Directives on a national level. Transposition is defined as "the process whereby European Directives are incorporated into national law in order to make their objectives, requirements, and deadlines directly applicable" (European Policy Center 2006). After downloading the biodiversity Directives through transposition, and upon membership to the European Union, it is the responsibility of the state to designate land to be covered under the Network based solely on scientific criteria. Site designation is defined as "the identification and

submission of a comprehensive list of SPA and pSCI sites based purely on scientific information to the European Commission upon entrance into the European Union" (European Policy Center 2006).

This chapter will provide a narrative analysis of exactly how transposition and site designation was conducted in Bulgaria. It presents a powerful case, arguing that the key driver for the transposition of the European biodiversity Directives was membership to the European Union. Once membership was obtained, the relationship between the European Union and state actors turned from one of conditionality to regulatory cooperation. After this occurred, domestic considerations trumped regulatory compliance, and 'massive resistance' on a political level proceeded through a series of state actions. Key policy measures were not taken by the European institutions before Bulgaria's accession that could have ensured more effective domestic implementation. Once accession was obtained the 'carrot' of EU membership was no longer an instrument to entice the state to comply. Then the historically weak enforcement mechanisms of the EU had to be deployed and there was little the EU could do from the 'top' to secure compliance by the Bulgarian authorities. The following section will illustrate these findings through empirical data followed by an analysis.

5.1. Transposition of the Birds and Habitats Directive

5.1.1. Overview of Transposition

The efforts to obtain policy convergence with international as well as European biodiversity legislation began in March 1993 during a workshop in Sveti Vrach, Bulgaria. More than 75 NGO representatives, government officials, and scientists came

together to discuss the fate of Bulgaria's biodiversity after the fall of Communism. At the meeting, biodiversity goals, recommendations, and next steps were proposed to conserve Bulgaria's rich biodiversity. The outcome of this workshop was the passage of the 1998 National Biological Diversity and Conservation Strategy. Given that the discourse surrounding biodiversity conservation was internationally driven, and considering the lack of national financial resources available, the project was funded by the Bureau for Europe and New Independent States of the US Agency for International Development (MOEW 1998). The Strategy identified insufficient legislative gaps and recommended that, "new and revised national laws, and the ratification and implementation of international agreements, are needed to ensure the protection and sustainable use of biodiversity in Bulgaria" (MOEW 1998). An early warning sign of upcoming challenges with implementation was the 1999 critique by the Commission that there was an absence of a strategy on how the EU requirements were to be implemented in practice. They also found that Bulgaria did not even have a financial plan on how these new regulations would be funded (European Commission 1999). An informant from the Ministry stated, *"When it comes to implementing environmental legislation, unfortunately, resources are never enough, especially when the laws are Directives passed down from the European Union for us to implement" (MOEW 1).*

One way the European Commission sought to ensure compliance was to carefully monitor Bulgaria's transposition of Agenda 21 into their domestic legislation. Since 1998, each year the European Commission published an annual monitoring report identifying key successes and failures experienced in the process of transposition (Tsachevsky 2010). According to an informant from the Directorate-General (DG) for the Environment, developing the necessary benchmarks was a way to pressure Bulgaria

to pass appropriate amendments to laws in order to close any legislative gaps that may exist (EU 2). The Commission also made it clear that failure to transpose any of the accession chapters in their entirety would result in rejection of membership status.

The annual reports exerted immense pressure on the government to closely align its national legislation with the EU Directives. The result was that in April 2000 there were amendments to the Law on Protected Areas and the identification of 140 sites, covering 12% of Bulgarian territory, as special protected areas. The Commission stated however, that requirements of the Birds and Habitats Directives had not been fully integrated into Bulgarian legislation (European Commission 2000).

In response to the critique by the Commission, and being well aware of the repercussions of non-transposition, Bulgaria passed their most significant piece of legislation for the protection of biodiversity with the enactment of the 2002 Law on Biological Diversity. This Law fully transposed the Birds and Habitats Directives into national legislation, thus legally enshrining biodiversity conservation into the national agenda. In 2004, activities relating to the preparation of the Natura 2000 network continued in Bulgaria. Additional staff were hired on a national and regional level for the Executive Environment Agency and for the National Parks Directorates. According to one NGO source, trainings and other public awareness measures on the legal implications of the Directives were organized for administrative staff. The funding for these came through international projects implemented by NGOs, albeit according to several NGO sources Ministerial staff were less than enthusiastic to participate and, in their view, did not take the trainings seriously (NGO 2). Due to the progress made in transposing the EU environmental legislation, in 2004, the European Commission officially closed the Environmental chapter (Chapter 27) of the acquis (European

Commission 2004b). While the chapter has been closed, there were five amendments to the Law on Biological Diversity leading up to Bulgaria's accession to the EU in January 2006 (Law for the Biological Diversity 2007).

5.1.2. Analysis: Looking at Transposition from the Backward Mapping Perspective

An EU Barometer survey taken in 2006 showed that approximately 55% of Bulgarians supported their entrance into the European Union (European Commission 2006a). The support stemmed primarily from the perception that with EU Membership would come a wide array of social and economic benefits. A survey taken one year before Bulgaria's membership into the EU asked what the perceived future benefit of the EU was for Bulgarian citizens. Not surprisingly, greater security (79%), economic development (69%), and increased employment (59%) scored highest on the list. Biodiversity conservation was neither a driving motive for EU Membership nor on their political agenda (European Commission 2006a). In order to receive the desired effects of EU Membership, however, national politicians had to effectively transpose the Biodiversity Act. Biodiversity protection was a relevant issue on the national agenda, but to a lesser degree than other environmental problems.

In 2008, Bulgarians ranked their top five environmental priorities from a list that included issues such climate change, depletion of natural resources, air pollution, biodiversity loss, among others. Only 21% of those surveys ranked biodiversity loss as one of their top five priorities. It was even outplaced by urban problems such as traffic jams and green spaces; which ranked among the top five concerns of 26% of the participants (Eurobarometer 2008). This lack of prioritization was reflected at

governmental level as well. In 2005, the Georgi Pirinski, the Chairmen of the National Assembly of the Republic of Bulgaria, spoke during a celebration for the Bulgaria's National Day of Unification holiday. He stated that the priorities of the national government were judicial reform, economic development and investments, development of social services for all Bulgarians to increase their quality of life, integration of minorities into society, and ensuring fair democratic elections (National Assembly of the Republic of Bulgaria 2005). Not surprisingly, nowhere in his speech was environmental protection mentioned.

The Bulgarian government and its citizens simply did not see biodiversity conservation as a state priority. Their willingness for state security, economic development, and job creation trumped any skepticism or resistance to the legal transposition of biodiversity Directives. From the bottom-up, local and regional actors played a role in influencing the decision of the state to proceed with the EU approximation process, but they had little control over which laws would be transposed.

5.1.3. Analysis: Looking at Transposition from the Forward Mapping Perspective

Before Bulgaria's accession into the EU, the Commission wielded a powerful tool to entice the government to enact the correct legal transposition of the Birds and Habitats Directives into the national legislative framework: the EU Membership. Organizational resources were allocated from the EU legal department of the DG Environment, and Bulgarian politicians worked to implement the legal approximation required by the EU (EU 2). Information was also published by the Commission annually

to identify Bulgaria's progress with the transposition of the Directives in order to identify weaknesses.

The legal transposition seemed to be effective, but data collected from informants indicated that only a small number of internationally funded initiatives were implemented, primarily by Bulgarian NGOs, to train officials from the MOEW on the rightful interpretation of legal requirements found within the BA. According to the project managers of a few of these capacity building projects, participants of these trainings seemed to not take them serious and did not seem engaged in the trainings (NGO 2 & NGO 4).

While the EU enacted a series of measures aimed at the precise implementation of the Birds and Habitats Directives into Bulgaria's domestic legislation, practically no account was taken of the understanding required for implementing agents from the central authorities to carry out these legislative acts. Additionally, there seemed to be little concern by the administrative officials in charge of implementing the Directives because the underlying objectives were not a priority for the government or its people. If the correct implementation of the law was desired by the European Commission, greater organizational resources should have been directed towards capacity-building programs for administrative officials who would be in charge of rolling out the Network.

Natura 2000 was to be the 'cornerstone' of Europe's biodiversity policy in Bulgaria, therefore, greater emphasis needed to be placed on channeling the message and importance of biodiversity conservation to governmental officials. Since security, economic development, and employment were the primary reasons for EU accession, then the 'message' of the EU needed to focus on how biodiversity conservation would contribute to these underlying reasons of accession. Additionally, a broader societal

consensus and understanding of the Directives needed to be constructed to strengthen the government's resolve to achieve their core objectives.

5.1.4. Summary

Transposition had been accomplished with little fanfare, and Bulgaria did remarkably well. Conditionality seemed to be an effective measure for the transposition of the Birds and Habitats Directives into their domestic legislation. Post-conditionality, Natura 2000 site designation was to be next step for the Bulgarian government. The ability and intention of the state to submit a comprehensive list of sites based 'purely on scientific information' would pose a greater challenge for the European Community and Bulgaria, as we will see in the next section.

5.2. Site Designation

5.2.1. Designation Overview

Bulgaria's legislation may have passed the litmus tests of the European Commission for accession into the European Union, however, the real show of commitment to the goals of the Directives would come to pass when Bulgaria was required to submit a national list of sites to be included into the Natura 2000 upon its date of accession into the European Union. The requirement fell under Article 4 (1) of Directive 92/43/EEC, which stipulated that Bulgaria must submit a full list of potential Sites of Community Importance (pSCI) and Specially Protected Areas (SPA) based entirely on 'scientific information' without taking into account economic activities upon

accession (Council Directive 92/43/EEC 1992). This requirement was included in article 10 (5) of BA stating that "The decisions under paragraph 2 and 4 shall be grounded 'only on the scientific information' in the documentation under article 8 paragraph 1" (*Law for the Biological Diversity* 2007).

5.2.1.1. NGO's Take the Lead

This assessment process began not by any government initiative or by the passage of the BA (2003), but as a result of a research project initiated by the Birdlife International and the Bulgarian Society for the Protection of Birds (BSPB) to designate Important Bird Areas (IBA) in Bulgaria. The first national assessment for the IBAs was done in 1997 and identified 50 IBA sites that met the international requirements for their designation. At that time, IBA sites had no legal status, however, "*They [referring to BSPB employees] knew that a Directive for the birds existed in the EU, that Bulgaria wanted to become a member of the EU, and that in one moment the IBA sites will automatically become SPA. Until 2000, nobody took these regions seriously, even people from the Ministries. These places were without any legal status. People thought that those places are created by us, and we define some territories and they are just for ourselves. It wasn't until 2005 when the last book on IBAs was completed by us, that Natura 2000 began to come under big tension because the state, the politicians, and the economic interests realized that the process of announcing these ecological places is final" (NGO 2).*

Unaware that the research done by BSPB would be used as a proxy list for SPA areas, in 2003 the MOEW began to mobilize resources in preparation for the rollout of the Network. The first step the Ministry needed to undertake was to identify and prepare a list of sites to submit to the Council of Ministers for their review. The identification

and preparation of the list of SPA and pSCI sites is a lengthy process. It requires governments to do field inventories, establish national figures for habitat coverage and size, and to analyze and compile existing data from protected areas (Green Balkans 2009a). This work requires an in-depth understanding of complex scientific methods, as well as, significant financial and administrative resources.

The government, whether due to pre-occupation with other tasks, or its insufficient capacity, allocated an incredibly small number of personnel to do the job. In fact, when implementation of projects for site assessments began, the MOEW had no staff exclusively for Natura 2000 except for one junior expert in the National Nature Protection Service (NNPS) (WWF 2008). According to one consultant, the Ministry did not have experts to do field work to designate sites. *"You know, these people from the Ministry, they graduate from college, they go into the office, and they never do field work. While these people from the NGOs, there are always in the field. From this point of view, it makes sense to hire them" (Consultant 1).*

Not only were there shortages of qualified administrative staff to work on the assessment, but also there were meager financial resources on a national level to carry them out. *"The whole process required a lot of funds in the period of 2003-2006 when it was impossible to use significant sums of money from the national budget, and we had to use what money we had for other important projects. The easiest way was, of course, if those projects were executed by NGOs" (MOEW 2).*

Due to these constraints, the MOEW cooperated with two well-known Bulgarian NGOs working in the field of biodiversity conservation to make a list of potential Natura 2000 sites. Green Balkans (GB), one of the first and most established NGOs in Bulgaria working in the field of biodiversity conservation was selected by the Ministry to assess

the potential Sites of Community Interest (pSCI) that would fall under the Habitats Directive[11]. The BSPB, one of the first and most experienced NGOs working in the field of ornithology, was selected to identify a list of sites to be covered under the under the Birds Directive[12].

A substantial amount of the work was to be completed through the project "Conservation of Species and Habitats in Bulgaria: EU Approximation" funded by the Danish Environmental Assistance to Eastern Europe Program (DANCEE) and sub-financed by the MOEW. With little enthusiasm from the government, the two-year project was carried out at a total cost of roughly 530,000 euros (Green Balkans, confidential 2009). One informant stated that the government was more than willing to cooperate with the NGOs not only for the production of the list, but also to shield themselves from future criticism. "*If the sites were not considered appropriate, they (the Council of Ministers) could always take them out in the official proposal and label the NGOs which developed the list as the culprits" (NGO 3).*

Not only were the NGOs a good source to blame if any problems arose, they were also well versed in the European methodology for the identification of biodiversity and motivated to do the job of the Ministry. *"They [referring the MOEW] didn't want to do anything for the implementation of Natura 2000 but they were pushed by the EU Commission, and they decided that somebody should do something – so they decided to give this job to the NGOs. They just didn't want to do it by themselves because it was too much work. The second problem is that they thought they are strong enough to exclude*

[11] Green Balkans has fundraised over 3.5 million euros for projects over the years depending primarily on international sources for their funding for their work.
[12] The BSPB is a national NGO that also has strong ties to Birdlife International and receives the bulk of its funding through internationally funded projects.

sites from the proposal presented by us" (NGO 1). Even with the absence of political will, the project went ahead as planned in 2003.

During the site assessment process the team designated over 140 potential SPA sites under the Birds Directive and 150 pSCIs under the Habitats Directive. Further work was to be completed the following year (2005) to enlarge the list of SPA sites through the identification of additional IBAs by the BSBP under the project "Important Bird Areas and Natura 2000 in Bulgaria". The financial support for the research again came primarily though international donors including the Dutch Ministry of Agriculture, BirdLife International, the Danish Ornithological Society, and others (Kostadinova and Gramatikov 2007). After the two projects were completed, the final list of SPA sites proposed by the NGOs to the Ministry was essentially the list of IBAs produced by the BSPB in 1997 and in 2005. It consisted of 114 sites, 26,021 square kilometers of area, corresponding to 23% of the country's land area (Tonchev 2007). One informant from the BSPB involved in the process said that not only did they make the assessments, they also *"physically filled in the official record forms for EU on behalf of the Bulgarian government" (NGO 6).* The officials from the MOEW, *"They didn't know what they were doing. If they knew what they were doing they will never accept our proposals because they accepted our proposals one hundred percent" (NGO 6).* The NGO recommendations were then submitted by the MOEW to the Biodiversity Council[13] for their approval.

The total size proposed to be part of the Network was 34% of Bulgaria's territory, which is remarkably large considering the fact that the average size of sites in EU member nations is between 14% and 15% (Brunwasser 2007). This is double the

[13] The Council is the body which submits the final proposal of sites to the Council of Ministers for approval

size of what most average EU member nations have designated under the Network in their respective countries. According to the Directives, however, all proposed sites must be based solely on scientific data; potentially conflicting economic, social, and other factors cannot be taken into account during the designation process[14]. Since Bulgaria contains some of the richest biodiversity in all of Europe, it had to include more land under the Network than in most EU member nations. The map in Figure 5.1 below shows the final list of sites proposed by the Bulgarian NGOs. The red-striped areas are SPA sites under the Birds Directive, and the green areas are under the Habitats Directive, the pSCI and SPA sites sometimes overlap. As illustrated in the map below, significant portions of the Black Sea coast, including several sites in Coastal Dobruzha, were included into the proposal presented by the experts.

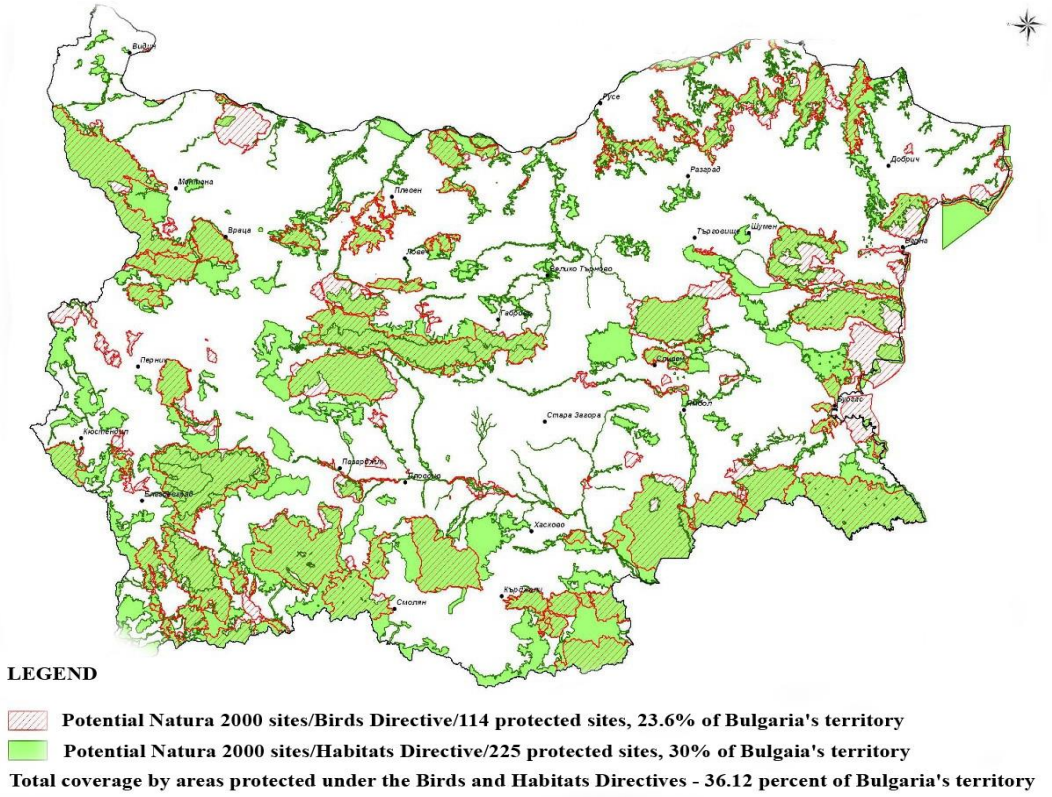


Figure 5.1. List of the proposed Natura 2000 sites by the Bulgarian NGOs. *Source:* Natura 2000 Bulgaria 2007.

[14] Article 10 (5) of the Biodiversity Act and Art. 4 (1) of the Habitats Directive.

Taking into account the large territory defined by the NGOs, the MOEW and political officials continued with their confident tone about the Network. *"From the government, they were very relaxed and said 'Natura 2000 will not be more than 10-15% of the country'. They said this at the beginning and they said this after our assessment. They were sure that they would cut the list. So we were prepared to fight on the EU level against cutting the list"* (NGO 1). Due to the clear signals from the national government that proper procedures were not being followed, in November 2006, the BSPB lobbied the Bern Committee[15] to open a case file against the government for a huge number of wind turbine projects either approved or expected to be approved in the region of Cape Kaliakra. The objective was to exert more international pressure on the government. They also wanted to send a clear signal that they could face penalties by the international community if these sites were excluded from Natura 2000 or its regulations were ignored. This region would be utilized by the NGO community as an illustrative case of what was occurring in the rest of the country. The cape is also one of the most fragile and important habitats for bird species in Bulgaria so it was considered by the BSPB as a good place to allocate their financial and administrative resources (NGO 7).

[15] The Standing Committee is the governing body of the Bern Convention (Convention on the Conservation of European Wildlife and Natural Habitats, 1979). It includes all contracting parties as well as observer states and organizations, both governmental and non-governmental, at the national and international level. According to its Rules of Procedure adopted in 1999, and amended in 2009, the Standing Committee monitors the implementation of the Convention and provides guidance on its implementation and further development. It adopts recommendations and resolutions on measures that need to be taken to achieve the Convention's objectives and improve its effectiveness. It also takes decisions on complaints and case files regarding possible breaches of the Bern Convention.

5.2.1.2. Pressures for Delay

The EU required Bulgaria to designate Specially Protected Areas by January 1, 2007 when it officially became member of the European Union. However, municipal business interests, as well as landowners who opposed the size of the Network, pressed the Bulgarian government to delay the submission. A business interest group called Natura 2000 for the Benefit of Municipalities Coalition, lobbied the government for a submission delay and made media statements stating the lack of consensus over the borders of the Network (Sofia News Agency 2007). In support of the delay, National Ombudsman Ginyo Ganev accused the MOEW and the Agriculture and Forests Ministry of giving insufficient information and lacking transparency when addressing Natura 2000 issues. He claimed that the Ministries had ignored local authorities when deciding on zones to be included in the environmental Network. He called for amendments to the BA to allow landowners to question the ministerial order declaring certain areas as protected (Grancharova 2007).

There was also substantial media coverage about Natura 2000 and its impact to the booming real estate and renewable energy market. The NGO community, however, tried to rally Bulgarian citizens to protect important sites for Bulgarian nature. On December 20, 2006, a petition with 50,000 signatures appealed to save Bulgarian nature and the Black Sea coast. It contained a number of demands aimed at establishing a real conservation policy, but the government, prioritizing the interests of the investors, paid little attention to the public concern (Divneva 2008). Many people from the NGO community also foresaw the consequences of the delay in site designation. According to Andre Kovatchev, *"This decision is very dangerous because it will give people the opportunity to destroy these zones before their borders are more precisely defined,*

which creates the risk that the European Commission could impose sanctions, because Bulgaria is obliged to submit these territories and to start protecting them before January 1st" (Grancharova 2006) .

After an analysis of the proposed list presented by NGOs, and while taking into account business opposition, the Biodiversity Council approved 112 SPA sites and another three with reduced territories, including Kaliakra IBA. At the same time, the Biodiversity Council was lobbied with an alternative proposal to significantly reduce the Network, made by the National Forestry Service under the Ministry of Agriculture and Forestry (MAF). The reasoning of the MAF for the reduction were the economic consequences of accepting the NGO recommendations (Tonchev 2007). For them, the Network would have significant impact on economic investments for ski tourism in the high mountainous regions and foreign investments on the Black Sea coast for hotels and wind turbines. Another indication of the MAF's lack of understanding of the BA was the unsubstantiated argument they made that there were too many forests included and the borders of the zones should be more precisely defined (Kovatchev in Grancharova 2006). According to their proposal, five sites should have been excluded from the SPA list and another five significantly reduced in size (NGO 3).

Fearing political repercussions, the Biodiversity Council decided to submit not one, but several lists of sites to the Council of Ministers in order for them to make the final decision on the size of the Network. They submitted three proposals, one was from dissenting opinion by the NGO representative of the Council (in favor of the whole network of 114 SPAs), another from the head of the National Nature Protection Service under the MOEW (in favor of an SPA network of 109 sites), and one list developed by the Biodiversity Council itself. This was done in order for the Council of Ministers to

select which of the proposals they found appropriate without offering a decision themselves as to why or how the proposals were different (Tonchev 2007). An informant from the Ministry explained the delay by saying, *"It [the map of sites] was created in a very short period based on scientific criteria. There was not enough time to debate with the concerned parties and not enough time for the administration to analyze the documents in detail" (MOEW 2).*

Regardless of whether the list was submitted to the Council of Ministers before accession, Bulgaria's entrance into the EU came into force with no list of sites submitted to the Commission. This was in direct violation of national law and the Directives. According to one source, the MOEW and the Bulgarian Academy of Sciences (BAS) began to analyze the list and this was when all the problems started. *"Due to business pressures (the Bulgarian government at that time, Troina Coalitia) tried to escape and cut sites from the list, but it was useless: the research was already done and the Directives were very clear" (NGO 6*). In fact, one more month went by before the Council of Ministers submitted a proposal to the EC. According to several informants from the NGO community, this was done in order to allow for development permits to be attained before the implementation of site restrictions (NGO 1; NGO 4; NGO 7 NGO; 12).

After much debate and a two-month delay, the final list was submitted by the Council of Ministers in March of 2007[16]. The list submitted to the EC included only 180 pSCIs covering 13.4% of the territory. This was 17.4% less territory than presented by the Bulgarian NGOs. Of the 114 SPA sites listed in the NGO proposal, only 88 IBAs were designated as SPAs under the Birds Directive and five others were significantly reduced in size. There was also a decision to postpone 26 other proposed sites to review

[16] This happened in Decision No. 122 of 03.02.2007.

their significance and boundaries by the Bulgarian Academy of Sciences. The deadline for finalization of the new assessment was set for October 2007.

Of the 26 IBAs excluded from the government proposal, half were situated along the Black Sea coast, including sites in Coastal Dobruzha such as Shabla Lake Complex, Durankulak Lake, and Kaliakra (Tonchev 2007). These sites, included into the original NGO proposal but not presented in the official list, had no legal mechanisms for protection. Most of the excluded sites were areas of high investor interest for wind turbines or tourism development (Marin et. al. 2007). The delay of the submission was not allowed in the Biodiversity Act as well as the Habitats Directive, and put the EC in a complex situation: either wait for the government to submit the completed list or restart the procedure for the adoption of sites (Marin et. al. 2007). A representative from the MOEW stated that *"many projects were approved during this period of delay before the final borders were defined when they were trying to exclude territories from Natura. Many people thought that they can quickly come out with development plans so that the territories will fall outside of Natura, and this corrupted the idea of the whole project" (MOEW 2).*

There was also a ruling by the Bulgarian government which stated that all territories submitted that had approved master and detailed spatial development plans (i.e. areas designated for construction), as well as territories approved for extraction of ores and minerals, would be excluded when the borders of the special areas of conservation (SAC) were finally determined (Marin et. al. 2007). An informant from the Ministry of Environment stated, *"The Council of Ministers concluded that all those parts which have a common development plan, such as industrial zones, should not be*

part of Natura because there is nothing to protect. However, this was not accepted by the European Commission" (MOEW 2).

This decision violated Article 10 (5) of the BA, which states that the analysis and site designation must be grounded purely on scientific data. The legislation was in fact reversed by this decision: the sites would be designated only if they do not endanger or disturb construction plans (Marin et. al. 2007). Then investors began to rush with the approval of investment proposals and launching construction on the delayed territories including a significant number of wind turbine proposals in Coastal Dobruzha. Kaliakra IBA was one of the first victims of wind turbine investments and 48 wind turbines were approved for construction within this two-month timeframe between January 1 and March 15, 2007 (Tonchev 2008). The site designation decision was not taken by the Biodiversity Council while its expertise recommended a much more detailed and comprehensive list of sites. In fact, the decision to postpone and reduce many sites was taken on a political level by the Council of Ministers providing further evidence of the political resistance to the Network.

The map in Figure 5.2 below shows the sites submitted to the EC by the Bulgarian Council of Ministers after a two-month delay. The green areas are the pSCI sites under the Habitats Directive, and the red-striped sites are those designated as SPA under the Birds Directive; in some cases, these sites overlap.

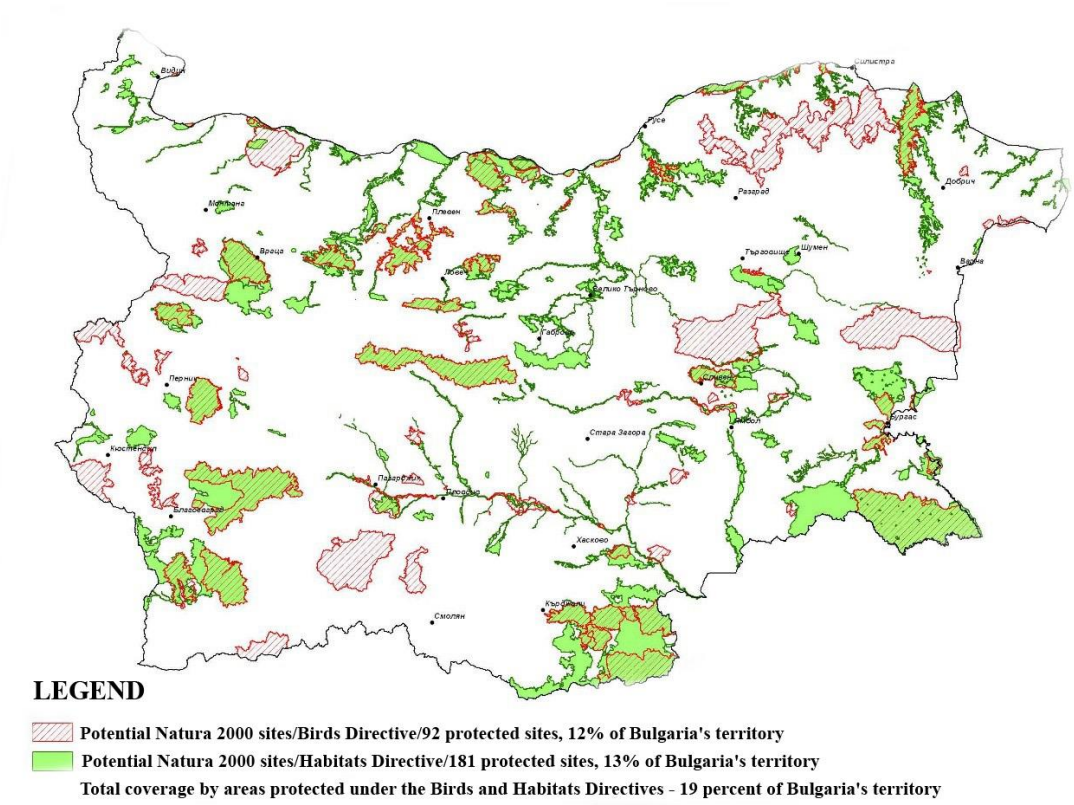


Figure 5.2. Final Natura 2000 proposal submitted by the Council of Ministers to the European Commission on March 2007. *Source:* Natura 2000 Bulgaria 2007.

5.2.1.3. NGO Activism

The Green Balkans, along with several other NGOs, filed formal complaints to the EC for breaches of both the Birds and Habitats Directives. Some of the NGOs listed as submitters of the formal complaints were the same ones that were in charge of the original biodiversity assessment that took place, including Green Balkans and BSPB (Marin et. al. 2007).

Taking into account information received from the Bulgarian NGOs through formal citizens' complaints, the government began to face serious pressure from the EU to re-include the sites. This pressure took the shape of direct communication between the DG Environment, the EC, and the Bulgarian government. The EC made it clear that they could eventually face a European Court of Justice procedure, if this was not done.

Unsatisfied by the government's response, the EC sent its first written warning to Bulgaria for failure transpose the EU Birds and Habitats Directives into their national legislation through insufficiency in defining sites, habitats and species. In addition, the Commission noted that they failed to develop proper procedures for assessing adequately the potential impact, and compensation measures in case of development projects on yet-to–be-determined sites. The Commission concluded that Bulgaria had failed to comply with a number of aspects of the Birds Directive, particularly the requirement on information and research for key conservation issues and appropriate site designation (European Commission 2007). Meanwhile, the fears the NGOs had on the implications that the delay of sites would have on biodiversity came into fruition. Additional development permits for wind turbine construction were issued, as well as general construction permits for economic development.

5.2.1.4. Increased International Scrutiny

To ramp up the pressure on the government, in October 2007, a team of experts came back to report to the Bern Convention on their findings from an on-the-spot appraisal of Kaliakra and Balchik, which was initiated after the case file was opened by the Standing Committee in November 2006 due to the complaint by the BSPB. They came back 'disturbed' with the level of wind turbine developments in the region, and they developed a set of strong recommendations accepted by the Standing Committee. Therefore, the Standing Committee began to communicate this complex wind turbine case to the competent EU authorities, carefully explaining how the developments contradicted the protection of these valuable sites. The Committee suggested revoking existing permits and the development of a strict moratorium on further turbines and wind turbine projects in the coastal areas of Bulgaria until the finalization of the site

designation process that was in their view deliberately postponed. Moreover, they explained that the list of recognized important sites, such as IBAs and Ramsar wetlands, was a sound basis for establishment of SPA and pSCI sites. Therefore, the government should immediately provide for the designation of additional since the delay of site designations enabled investors to begin with developments (Bern Standing Committee 2007).

Additionally, the European Green Party lobbied the EU to increase pressure on the Bulgarian government to re-include the sites (News.bg 2007). Before the Council made the final decision, NGOs presented a list of sites to the Biodiversity Council, but the Council excluded sites in Coastal Dobruzha where wind turbines were planned before submission to the Council of Ministers (NGO 7). This was supported by the recommendations made by the Bulgarian Academy of Sciences to exclude these areas.

Another problem was that the Biodiversity Council consisted not of biodiversity experts, but civil servants from different Ministries. *"It's an expert council without experts. Additionally, the representative from the Bulgarian Academy of Sciences Mr. Valko Biserkov said we should leave a place for the wind turbines to develop. That was his argument, and they know that they should not make economic arguments when they decide on the list of Natura 2000. It was enough for all those people who don't know anything about Natura 2000 and don't care, and just wait for the meeting to end to get a coffee to agree with him. I'm sure he received money for this; they said we will approve everything you suggest but you should leave the site Kaliakra" (NGO 7).*

The Council of Ministers finally submitted a new list of sites to the European Commission. The resubmitted list contained almost all the sites covered in the NGO proposal; however, several sites were smaller in size (Tonchev 2008). The map in Figure

5.3 below presents the list submitted by the Bulgarian government in November 2007, nearly 10 months after the deadline for the submission of sites. The territory covered was 33.8% of the country. There was 20.3% of the country designated as SPA under the Birds Directive and 29.5% designated as pSCI under the Habitats Directive. The red sites are the SPA sites designated under the Birds Directive, and the green sites are the pSCI sites designated under the Habitats Directives, the pSCI and SPA sites sometimes overlap.

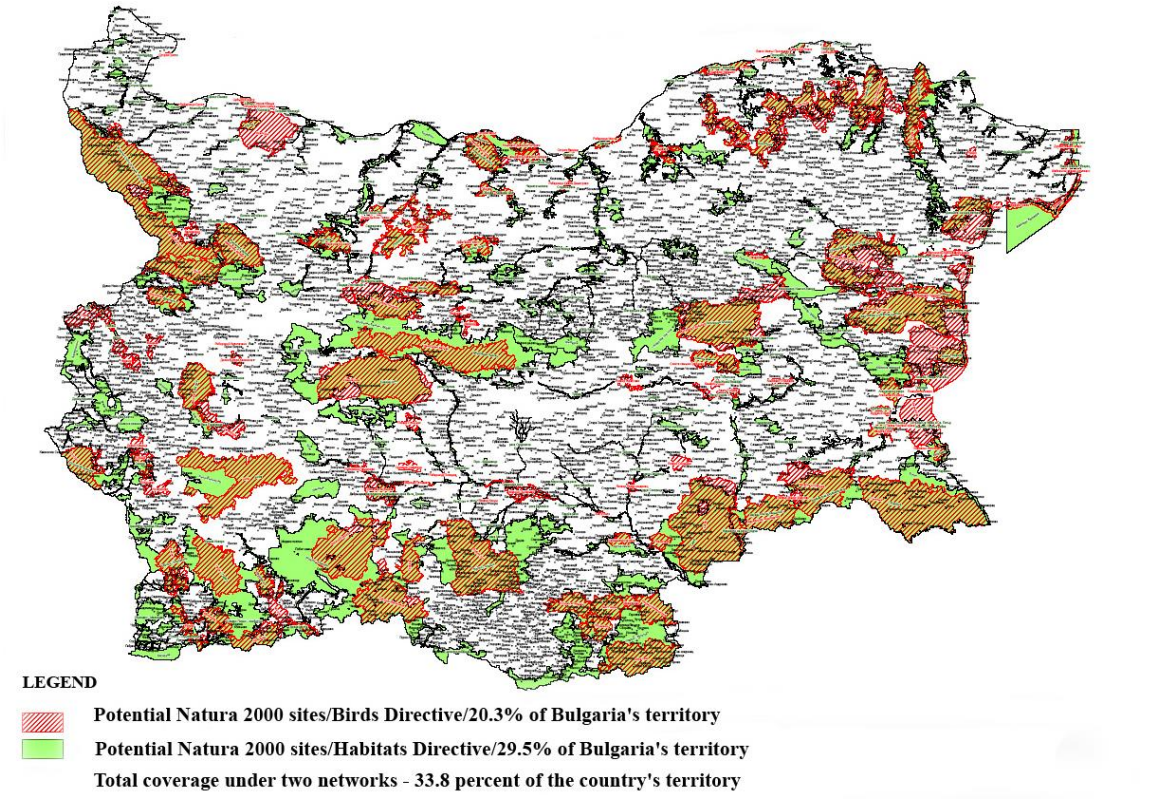


Figure 5.3. Official Natura 2000 sites proposed in November 2007 by the Bulgarian Council of Ministers to the EC. *Source*: Natura 2000 Bulgaria 2007.

Six of the sites re-included into this list, however, were significantly reduced in size. The Kaliakra candidate SPA was decreased by 5286 ha (33% of the total area of the

Kaliakra Important Bird Area (IBA)[17], and the arable land with wind-farm development projects were excluded. In fact, development of wind turbines proceeded as planned on the sites in both the Kaliakra SPA and the Kaliakra IBA, which were not designated. In a year's time after accession, 256 development permits for wind turbines in the region of Kaliakra had been issued by the RIEW-Varna (Bern Standing Committee 2012b).

Despite the compromise from the Bulgarian government, the EC was still dissatisfied with the proposal as it excluded several important bird zones, including Kaliakra. Also, in the view of the Commission, the government was not taking proper actions to prevent deleterious developments on Natura 2000 sites. Consequently, it sent a separate written warning regarding Kaliakra to the Bulgarian government stating that they failed to identify the most suitable areas in both number and size of SPA sites under the Birds Directive. The EC stated that although they designated 114 sites as proposed by the scientific analysis, six sites were significantly smaller than the corresponding Important Bird Areas (IBA)[18] (European Commission 2008), including the Kaliakra IBA (EC infringement 2008/4260).

The Commission assessed whether Bulgaria had complied with its obligations by using the best available ornithological information. Naturally, the best data available to the Commission was the national inventories of the IBAs compiled by the BSBP. Designating IBAs as SPA sites was not legally binding, however, the IBA inventory is traditionally used as a proxy for SPA sites due to its internationally standardized methodology. The ECJ had also acknowledged its scientific value, and in cases where no

[17] Important Bird Areas (IBAs) are identified by BirdLife International based on standard criteria and have been accepted by the ECJ as the scientific basis for the designation of SPAs.

[18] IBA is an identification system created by BirdLife International to designate conservation priorities for globally threatened bird species (Birdlife International 2009). The European Court of Justice has ruled that when adequate data is not available the IBAs done by these organizations are not legally binding, but should and can be used to understand important bird habitats under the Birds Directive (Europa Rapid Press Releases 2008).

equivalent scientific evidence is available, the IBA inventory is used as a reference in assessing whether Member States have classified a sufficient number and size of territories as SPAs (European Court Reports 1998). The research done in 1997 and in 2005 by the BSPB was, therefore, used for their analysis.

Wind turbine developments continued to occur in both the Kaliakra SPA and IBA sites, and by August 2009, 223 turbines of various private companies were approved or were under the procedure of approval within its boundaries, 45 of which were operational and 79 were under construction (Bern Standing Committee 2009). Attempting to gain control of the rapidly deteriorating situation in Cape Kaliakra, the Commission opened a 'horizontal' infringement against Bulgaria for the incorrect application of the Directives though systematic failure to protect its Natura 2000 sites stating that there was uncontrolled development of wind turbines on many sites (EC infringement 2009/4423).

5.2.1.5. EC and Bulgaria: A Game of Cat and Mouse

Responding to the concerns of the Commission, the Bulgarian government made additional concessions and included some of the IBA sites back into the list, but again excluded the Kaliakra IBA. The territory covered was now to be 34.3% of the country. There was 22.3% of the country designated as SPA under the Birds Directive and 30% designated as pSCI under the Habitats Directive. The red sites are the SPA sites designated under the Birds Directive, and the green sites are the pSCI sites designated under the Habitats Directives, the pSCI and SPA sites sometimes overlap.

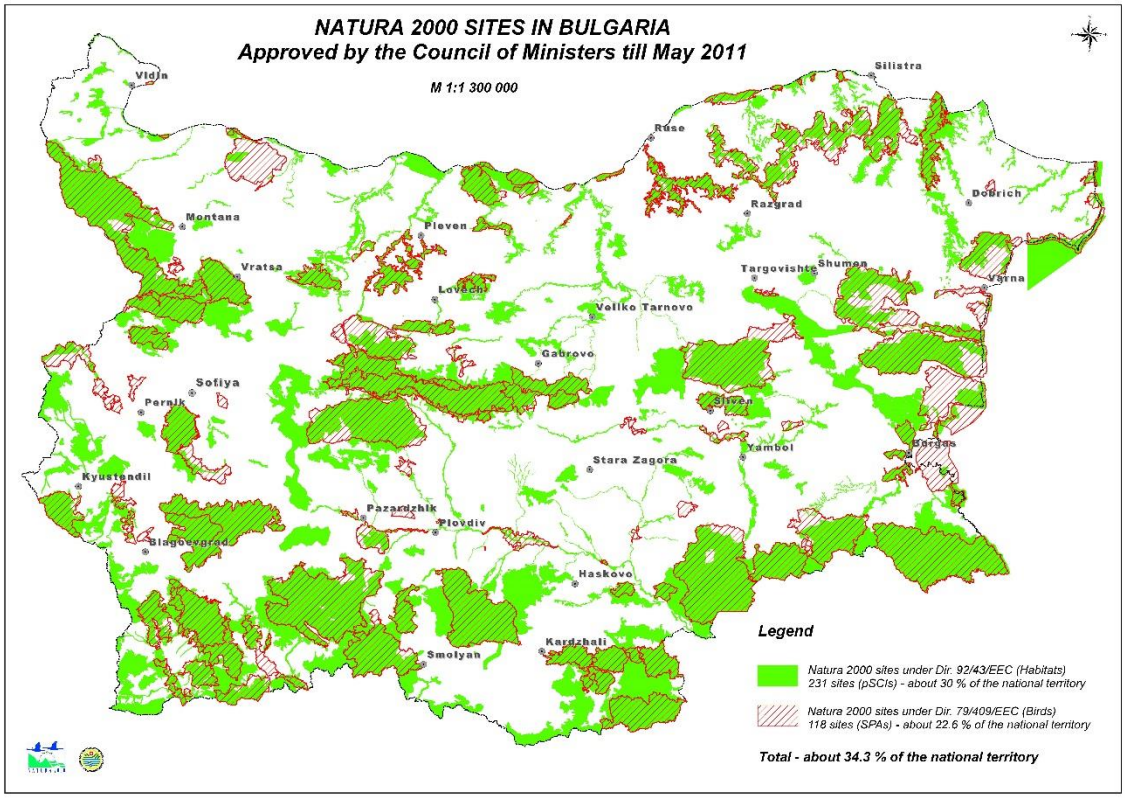


Figure 5.4. Official Natura 2000 sites proposed in May 2011 by the Bulgarian Council of Ministers to the EC. *Source:* MOEW 2011.

Four years after accession and due to the 'efforts' by the government to come up with a comprehensive list of Natura 2000 sites, the Commission decided to drop the original 2007 infringement case of incorrect transposition of the Directives. With little movement by the Bulgarian government on rectifying the situation in Kaliakra, however, in September 2011, the European Commission merged the infringement of 2008 (inadequate designation of IBAs, especially in Kaliakra) and the infringement of 2009 (failure to access the impact of wind turbine developments in Coastal Dobruzha through proper EIA procedures) into one new infringement procedure (Bern Standing Committee 2013). While Bulgaria stated its commitment in continuing dialogue with the European Commission, there was little proof in terms of its actions. Wind turbine developments continued to persist, and by the end of 2011, there were 158 new wind turbines approved

by the RIEW-Varna despite the new proceeding initiated by the Commission (Bern Standing Committee 2013). Construction was also initiated for 25 wind turbines in the Kaliakra SPA by EVN LTD Company (Bern Standing Committee. 2012a).

In June 2012, the Commission made a difficult decision and decided to proceed with a reasoned opinion against the Bulgarian government for failure to designate an adequate area for the SPA network in the region surrounding Kaliakra and for inadequate protection due to the high number of economic investments that has resulted from this decision. The Commission pointed out not only that this has happened, but also that, in fact, the Bulgarian government was continuing to do so despite their assurances that these practice would cease. According to the European Commission, these activities had left Bulgaria in breach of three Directives (Birds Directive, Habitats Directive, Environmental Impact Assessment Directive) (European Commission 2012). The government's response was to implement measures aimed at appeasing the EU. One of them was the preparation of an order for enlargement of Kaliakra SPA to include all of the Kaliakra IBA as part of Natura 2000 site (Bern Standing Committee. 2012b). Despite these promises, on August 25, construction of wind turbines by the German company EVN Ltd. began in the Kaliakra IBA showing a discord between the promise of the government and the actions on the ground.

Then in October 17, 2013, after roughly seven years of collecting evidence from both sides, the European Commission decided they could meet the burden of proof in court and decided to take Bulgaria to the European Court of Justice for their failure to comply with the Directives (European Commission 2013). The court could potentially ask for interim measures as well as the removal of wind turbine projects or serious penalties. The government swiftly reacted to the news and began a procedure for

expanding Kaliakra SPA to the border of the Important Bird Area. Additional territory would also be designated in Coastal Dobruzha through a ministerial order, including Bilo SPA. On October 8, 2013, the National Biodiversity Council approved the proposals for extension of the Kaliakra SPA and declaration of the Bilo SPA, to be approved by the Council of Ministers at any time. (Bern Standing Committee 2013).

Unfortunately, according to the government report, approximately 2,062 wind turbines have been approved within the region surrounding or in Coastal Dobruzha. Of those, only 374 were approved before January 1, 2007 (accession into the EU), and 1,688 were approved after this date (Bern Standing Committee 2013). While the sites may have finally been designated, the damage may have already been done as several wind turbines have been constructed and many others have obtained the permits to build them in the future.

5.2.2. Analysis: Looking at Site Designation from the Backward Mapping Perspective

Site designation is a centralized decision within the legal obligation of the Council of Ministers to determine the final borders of Natura 2000. This decision, however, has sweeping implications for a broad range of domestic actors including landowners, real estate developers, and businesses. Regardless of the domestic implications, the scientific assessment of sites was undertaken by two environmental NGOs. *The decision of the Ministry to permit these NGOs to determine the sites* had immense implications on the perceived validity of the entire Network. One determining factor in the ability of domestic law to be considered legitimate is the participation of diverse stakeholders in the decision-making process. Botcheva states in "Expertise in International Governance: Eastern Europe and the Adoption of European Union

Legislation" that to serve a basis for cooperation, assessments need to be engaged to facilitate a dialogue between experts and relevant political actors. Furthermore, this creates and enhances the credibility, adequacy, and legitimacy of technical information and thus its policy relevance and effectiveness in international environmental governance (2001).

One informant from the Ministry stated, *"There was a bit of bias in their assessment so too many sites were put into the Network" (Government 2)*. This further validates the perception of bias that government officials had of the site designation work implemented by NGOs. Botcheva's article further explains that, "an expertise-generation process that represents only a single group from the political spectrum lacks credibility in the eyes of excluded audiences. The message communicated is easily attributed to a set of strategic interests. An assessment report by the Global Climate Coalition or by Greenpeace, for example, will be credible to actors who hold similar preferences but will be mistrusted by excluded interests. Such a report is unlikely to serve as a basis for common understanding and policy action" (2001, 1). The more skewed the representation of political views toward a single end of the political spectrum, the less informative and acceptable the communicated knowledge will be. One ministerial official pointed out, *"There was not enough time to debate with the concerned parties and not enough time for the administration to analyze the documents in detail. Now in Natura falls everything, including urbanized territories, waste depots, basically, parts which do not need protection because there is nothing valuable to protect there. The initial idea was to have only valuable territories*" *(MOEW 1).*

Part of the problem was that the siting process required a level of *technical proficiency that few other stakeholders had other than field-experienced NGOs,* which

had been working on biodiversity conservation for years. One informant stated that the governmental officials lacked the scientific capability to understand and implement the work (NGO 6). During a 2001 PHARE project, the BSPB developed three draft proposals for SPA sites in order to involve officials into the process and raise their awareness on the procedure of site designation. In their view, it seemed that the participants did not have the needed data or knowledge required to participate and to give scientifically grounded conclusions on designating sites (NGO 2). The sites, however, had to be identified based only on the technically complex scientific criteria. Critics of how much (and which land) was placed in the original assessment for Natura 2000 sites, however, lacked the scientific knowledge to contest the NGOs action. Instead, they claimed that the NGOs were biased toward an international environmental agenda (Botcheva 2001). The result was strong resistance to the NGO proposal from businesses, property owners, and even the National Ombudsman. All of these groups argued that the methods used for site designation were unclear and that there was a lack of consensus about the borders of the Network. Key stakeholder groups were not consulted when the assessments began and sites were designated (Journalist 2).

The alleged political bias of the NGOs undermined their credibility as third party or 'technical' assessors of the Network. Their perceived bias undermined the policy relevance of the initial siting recommendations since opponents were able to cast doubt on the objectivity of the information gathered. This example illustrates that lack of sensitivity to the concerns of stakeholders can undermine the legitimacy and relevance of science-based assessments. The credibility and the legitimacy of the advice are vital in building acceptance by political and public actors (Botcheva 2001).

A study published by Botcheva in 2001 on EU air emissions standards in EE illustrates the importance of including diverse stakeholders in environmental assessments. She examined Bulgaria's implementation of the EU air emissions standards. She argued that the transposition and implementation of the EU law was not adequately accomplished because the assessments made by international donors and organizations lacked input from the energy sector. Like the Natura 2000 site designation, the assessments made by Bulgarian domestic groups regarding emissions standards represented the input of only one domestic interest group, with little involvement from actors with different interests. The relevance of environmental assessments is enhanced by an institutional structure that allows for input from key constituents. Participatory and transparent assessments generate trust amongst relevant actors and increase the likelihood of reaching a common understanding of the problem and a cooperative solution (Botcheva 2001).

In the case of Natura 2000, a 2006 report by WWF stated that *municipalities, businesses, and other organizations were not consulted during the assessment process*. This created opposition and confusion about the Natura 2000 network (WWF 2006). Additionally, there was no clear means or attempt to open the site designation process to the public and not enough time to debate with the concerned parties. Even the Ministry only had a few months to analyze the documents given by the NGOs in detail (MOEW 2). The result was strong domestic resistance that countered the strong support of the EU for the assessment done by the environmental NGOs. From the EU's perspective, the NGOs site assessment was technically valid and objective because it used the internationally recognized standard for site designation. Although this is correct, it ignored the political context of the siting process.

One of the reasons that the siting process appeared to be so excluding and secretive was that there was practically *no public awareness campaign* for Natura 2000 in Bulgaria. According to a report by the World Wildlife Fund, the Bulgarian MOEW did not see public awareness as a high priority for Natura 2000 preparation (2006). There was a last-minute effort by the Bulgarian lawmakers in 2005 when they passed amendments to the BA that required the MOEW and the Ministry of Agriculture and Forests (MAF) to start an intensive campaign to reach out to stakeholders and the public. This was done to a minimal extent, however, and too late in the game (WWF 2006). Consequently, stakeholders did not understand what it meant to have their land included in the Natura 2000 network, and they did not feel aware or represented when the decision was made.

A former head of Natura 2000 department in Bulgaria stated in an interview that, *"The government did not want to execute a public campaign in order to allow businesses to continue developing on potential sites without the public to be aware of their rights. Due to this fact, the public did not realize that economic activities can still continue on these lands. They thought Natura 2000 was like strict nature reserves developed during Communism" (MOEW 3).* In 2005, Bulgaria had 10 nature parks and 3 national parks consisting of 4.1 % of its territory. It also claimed to have the greatest network of strict nature reserves in Europe where 60% of the parks consist of these reserves (Cellarius 2007). This historical context created concern amongst opponents that designated sites would be like strict nature reserves (Journalist 3).

This can also be seen as a key factor on why there was public resistance to the site designation process. People needed to understand what it meant to have their land incorporated into the Network, and that it did not mean non-use. An assessment report

done by Green Balkans states that one of the major challenges with the implementation of the Directives in Bulgaria is to have good communication with stakeholders concerned with the establishment of Natura 2000. Furthermore, it suggests that they need to be provided with accurate information about the consequences and benefits arising from Natura 2000 along with financial opportunities available through EU funds (Green Balkans 2003). Lack of public lack of public education about Natura 2000 caused many problems in the implementation of Natura 2000 in Bulgaria (WWF 2005). One informant from a Municipality in Coastal Dobruzha stated:

"There were a lot of controversies about Natura. The people knew nothing about it and didn't want to accept it. The Ministry has a big fault because it should have organized an information campaign for the citizens to let them know that a number of NGOs are preparing the documentation and the approval of Natura zones. Instead, the Ministry did not say anything until the very last moment. When everything was ready, they simply came with orders and announced that these zones will be Natura. The people had no idea what was going on and this was the reason for the negative reaction. Natura is a very good idea but, unfortunately, it was vitiated here. The people simply did not have any prior information "(Local 3).

The *legal stipulation of the Habitats Directive that requires sites to be designated 'purely on scientific and technical information'*[19] also did not allow for the regional and local context of site designation to be considered. NGOs seeking to capitalize on their embedded professional interests and expertise identified 34% of the territory as potential Natura 2000 sites. As a result, everything fell under Natura, including urbanized territories and waste depots parts, which representatives from the Ministry believe not to be in need of protection because there is nothing valuable to protect (MOEW 1 & 2). For the government, the initial idea of Natura 2000 was to have only valuable territories included into the national list. In the government's eyes, too much land was included since it was originally foreseen by them to have 10-15% of the

[19] Article 4(1) Habitats Directive.

national territory included. This diluted the significance and biological value of the proposed sites. A representative from the DG Environment explained, *"The whole process was done in a rush. The government was thinking, 'It is two years before the accession, and we have a list of sites that we have to submit etc.' I am pretty sure that with another look at those sites there could be less coverage. I am pretty sure that in the Network there are things that probably shouldn't be in the Network" (DG 1).*

The legislative requirements identified in the Habitats Directive ensure that sites are designated purely on scientific information. The 'one size fits all' approach based on uniform standards does not take into account the cost effectiveness of site designation. By including so many sites, priority areas that were rich in biodiversity, like Coastal Dobruzha, were essentially given the same status as the designated urbanized territories. Clearly, there was more value to protecting Coastal Dobruzha over urbanized areas such as Malko Turnovo; however, the Directives did not provide an opportunity to distinguish between the costs versus benefits.

The unintended consequence was that the size of the Network made it harder to the DG Environment to argue that excluded sites like Coastal Dobruzha should be re-included. Before accession, the burden of proof was on Bulgaria to prove it was not in violation of the Birds and Habitats Directives. After accession, the burden of proof was on the Commission to prove in the ECJ that Bulgaria was in violation. Therefore, the DG Environment needed to collect a lot of data and information to make its case in the Court on why Bulgaria was in violation of the Birds Directive even though so many sites were included into the national list (EU 1). The result was that it took seven years for the DG Environment to collect all the evidence and exhaust all national remedies to finally take Bulgaria to court.

The case study also illustrates the *influence the private sector can exert on the government* and the counterweight of this power to the EU. Due to intense pressure from the business industry, the Bulgarian government decided to evade EU law in order to give economic and municipal interests some leeway for development. Pressure from environmental groups as well as the EU, however, made them backtrack and implement a more complete list. In short, the Bulgarian government found itself in a difficult predicament. They could satisfy the demands from municipalities and business owners and face penalties from the European Union. Conversely, they could satisfy the demands of the EU and environmental NGOs and alienate municipal constituents. This created a tug-of-war between international and domestic constituents, with the Bulgarian government caught in the middle.

The case further illustrates the *interface between the Bulgarian biodiversity constituents (environmental NGOs) and the European Community*. With little governmental desire to implement the Directives, pro-biodiversity NGOs took on the role of the state both by raising international funds for the research needed for adequate identification of the sites, as well as by investing significant administrative resources to ensure all the proper documentation was prepared for site designation. The European Union was a political opportunity structure for pro-biodiversity NGOs that allowed them to exert greater control over the state. They used their expertise and financial prowess to drive the site designation process and appeal to the European Commission when the objectives of the Directives were not being properly applied at a national level.

5.2.3. Analysis: Looking at Site Designation from the Forward Mapping Perspective

Looking from the top down, one can see limitations in the conceptual framework developed by Brussels to ensure implementation of the Directives. The subsidiarity principle enshrined in Article 5 of the Treaty on the EU is one of the founding principles of the Union. The principle ensures that the Union does not take action on any measure unless it is more effective than action taken at a national, regional, and local level.[20] This goes hand-in-hand with proportionality that clearly outlines that the Union should not go beyond what is needed to achieve the objectives of the Treaty[21]. In their view, the responsibility of the EU lay primarily in ensuring Bulgaria's effective transposition of the Birds and Habitats Directive. It was left almost entirely up to Bulgaria to determine the most appropriate mechanisms to put into place for the roll out of the Directives. In the case of Bulgaria, the institutional structure of the EU, which separates policy transposition from its implementation, fosters implementation failure. Supra-national institutions passed ambitious targets for biodiversity conservation in Bulgaria, which imposed high costs on the government and its people (Glachant 2001).

The Birds and Habitats Directives were formulated to achieve the objective of the protection of migratory bird species and wild flora and fauna. On the other hand, the objective of the Bulgarian government to transpose the Directives seemed primarily to achieve membership in the European Union. The classical approach taken by the EU to emphasize transposition, while providing little support for targeted promotion of Natura 2000 or administrative capacity development for Bulgarian officials who would eventually be in charge of its implementation, was a clear weakness. Once the sites were

[20] http://Eurospa.eu/legislation_summaries/glossary/subsidiarity_en.htm [consulted 14 November 2014].
[21] http://Eurospa.eu/legislation_summaries/glossary/proportionality_en.htm [consulted 14 November 2014].

identified by the NGOs, more technical support should have been given by the DG Environment to governmental officials to explain its technical legitimacy (EU 2).

Insufficient financing was also a major challenge for the program's effective implementation. Pre-accession programs like PHARE were made available to national and regional governments to help Bulgaria successfully comply with Community acquis. The funding provided support for administrative and regulatory bodies to familiarize themselves with Community procedures and goals. In order to receive the funds, however, Bulgaria had to go through a complicated application procedure, which required significant human resources and time. The result was that in the lead-up to accession there were only three projects related to the implementation of Natura 2000 (NGO 5). One project was in 2001 for 64,000 euros, another in 2003 for 4,000 euros, and the final one in 2005 for 40,000 euros (NGO 5 & NGO 2). These funds were also managed by the European Commission, and it was up to Bulgaria as a candidate country to apply for the funding[22]. Unfortunately, the funds were suspended by the EC due to suspected fraud and conflict of interest between its program administrators. The amount froze totaled 250 million euros (Commission of the European Communities 2008). One source from the Ministry stated, "*The Commission gives the possibility to acquire funds but it is another question what the state will give you. It has to co-finance, it has to appoint a council to access the fund, it has to have sufficient number of people to put the project into action. All of those things depend on the state and not on the Commission" (MOEW 2).* The proportionality principle encouraged a hands-off approach to the logistical and technical limitations of site designation that excluded the domestic context through which the Directives were to be applied.

[22] http://Eurospa.eu/legislation_summaries/agriculture/enlargement/e50020_en.htm [consulted 14 November 2014].

Another significant miscalculation is that the starting point of the EU's engagement with Bulgaria was *assumption they were dealing with a 'coalition of a willing partner'.* Biodiversity was just not on the cultural radar or agenda of the government and its citizens; it was just an import from the 'West'. It can hardly be expected for a country to willingly divert vast amounts of state treasure, and implement development restrictions on over 30% of its land without societal buy-in. In this context, domestic resistance seemed almost inevitable. Adequate control mechanisms were not in place in order to identify and alter the behavior of political officials intent on evading legal mandates to continue with state interests. Bardach calls this policy evasion 'massive resistance' where administrative units, and in the case of Bulgaria political officials, withhold critical elements specified in a policy mandate by overwhelming the ability of administrative agencies or the EC to enforce compliance (1980). Since the starting point of the EU was the assumption that compliance would occur in Bulgaria, they were overwhelmed when 'mass resistance' took place.

The starting point for the EU during pre-accession negotiations should have been to assume non-compliance would follow entry into the EU. This may seem to be reserve logic, but when this logic is used, the range of policy tools entirely changes. In this case, safeguards could have been put into place before any violations occurred and the historically weak enforcement mechanisms of the EU were deployed (Glachant 2001). Biodiversity is extremely fragile and once compromised by construction projects and other deleterious activities, it is very difficult to bring its biological integrity back.

Supporting this is the fact that the average time span between the first step of infringement proceedings and final ECJ judgment is 56 months (Glachant 2001, 19). Violations of the Birds and Habitats Directives in Coastal Dobruzha received their first

infringement procedure in 2007, and until now, there has yet to be a court decision in the case. Local, regional, and national governments have already made millions of euros on wind turbine investments in the region. A pending court case may be considered a concern to officials, but uncertainty about the outcome and the financial penalties which may be imposed disguises the true 'costs' the state will incur through non-compliance, thus promoting its continuation.

This implies that enforcement mechanisms of the EU are not an adequate tool to use for the protection of biodiversity. Enforcement also requires the detection of violations and lengthy court proceedings, which can require more financial resources than incentive structures, capacity building, and prescriptive measures. Moreover, by the time the actual penalties are implemented, they pose little incentive for a country like Bulgaria to change its behavior. Potential fines enacted by the ECJ must be high enough to counter the lawsuits and penalties they would inevitably face by investors for reversing their administrative decisions and tearing down any wind turbines they own. Therefore, it seems that the only potential gains penalties could provide would be to deter other states from implementing similar activities or to prevent them from continuing the practice in other locations. This implies that enforcement and other post-accession policy tools seem to be a weak means to achieve compliance. The carrot of EU membership provides significant leverage for the European authorities, which can be used to ensure that a wide set of measures be taken by Bulgarian government for an effective rollout of the Network. European DGs should play a more active role in guiding and promoting EU programs and policies to avoid implementation 'on paper'.

An illustrative example of post-accession challenges was how the final decision on which sites to include in the Network was left to the Council of Ministers. This is a

political body without environmental expertise let alone knowledge of biodiversity relevance. The final decision taken by the Council was counter to the recommendations given by the Biodiversity Council. The evidence highly suggests that on a national level *the decision to delay and exclude sites was a political one with little scientific grounding*. This poses significant implementation challenges as political decisions are subject to strong lobbies by domestic interests, such as the business community, further challenging the scientific basis for site designations. Therefore, post-conditionality the state implemented a political decision that would satisfy domestic constituents, counter its illegality according to the BA.

5.2.4. Summary

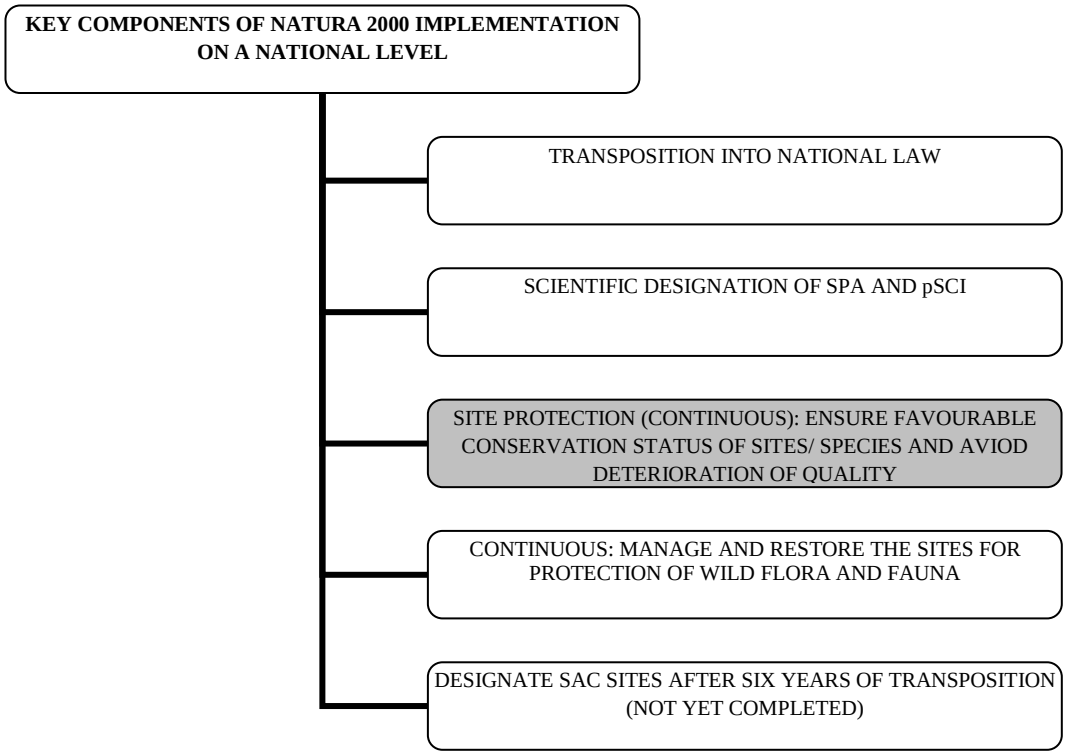
This section illustrated that European institutions were relatively ineffective at developing the institutional framework needed in Bulgaria before accession to the EU. When the relationship between the EU and Bulgaria changed from conditionality to regulatory cooperation, 'massive policy resistance' was orchestrated by domestic constituents and their political representatives in government. This took the shape of delay tactics aimed at proceeding with issuing development permits before the final borders of Natura 2000 were determined. With minimal policy tools available at the European level after Bulgaria's EU membership was obtained, there was little Europe could do to prevent the negative impact. Enforcement mechanisms were also found to be a weak deterrent for the alteration of the government's behavior. The next section will further illustrate how international and European Directives aimed at developing the renewable energy sector aligned with the policy goals of the national, regional and local government. This alignment would pose significant challenges for the protection of

biodiversity in Coastal Dobruzha as administrative officials driven by political objectives identified mechanisms to artificially illustrate compliance to the EC all the while proceeding with state interests at the expense of biodiversity conservation.

CHAPTER 6. THE CASE OF WIND TURBINES IN COASTAL DOBRUZHA: PROTECTION AND THE NEED FOR AQEQUATE EIAs

6.1. Site Protection

Table 6.1. Key Components of Natura 2000 Implementation



Source: Council Directive 92/43/EEC 1992 and Council Directive 79/409/EEC.

Site protection is defined as developing the proper procedures and practices to prevent negative impacts to species and habitats. The preventative procedures will be split into two separate chapters. The first chapter will analyze Environmental Impact Assessments (EIA) by illustrating the pathology of implementation for one targeted wind farm project Kaliakra Wind Power, as well as the underlying reasons for implementation deficiencies. The second chapter will analyze appropriate assessments, Strategic Environmental Assessments (SEA), and assessment of cumulative impact of

projects on Natura 2000 sites in Coastal Dobruzha to highlight additional reasons for policy failure.

The following section begins by giving the regulatory background needed in order to understand exactly why investments began in the wind turbine sector in Coastal Dobruzha. After the contextual overview is completed, this chapter will then move on to highlight the asymmetry of European legislation that is meant to enact uniformity throughout the entire EU acquis communautaire. As the case will illustrate, the flood of European legislation Member States must adopt created unintended consequences and disproportionate impacts when addressing priority action areas of European importance. Bulgaria's implementation of EU renewable energy resource targets highlights this disconnect as its domestic market becomes steered by European legislation into the direction of biodiversity loss regardless of the regulatory framework prescribed by Brussels to ensure its protection.

These EU renewable energy targets were adopted by the Bulgarian government to further approximate the European standards. Wind turbine developments in Coastal Dobruzha began as a direct result of the European and international initiatives adopted to promote the reduction of greenhouse gases. This included several European Directives, as well as, the Kyoto Protocol, which provided economic incentives for investors through carbon offset schemes and feed-in tariffs. Bulgaria is one of the poorest countries in the European Union that has been actively pursuing a strategy for the attraction of foreign direct investments in a wide range of economic sectors including renewable energy[23].

[23] http://www.bbc.com/news/uk-26324564 [consulted 15 November 2014].

Hundreds of millions of euros are at stake, while the Bulgarian dreams of European prosperity are seemingly blocked by Natura 2000, which, many in the government fear could impede substantial economic opportunities deriving from wind turbine investments (Nationa1 & National 3). In order to by-pass costly restrictions Natura 2000 would imply, administrative units in Bulgaria identified methods to by-pass these restrictions by utilizing interacting legislation necessary for the BA to be effective. Coupled with oftentimes vague and weak regulations regarding environmental impacts of development proposals, the consequences were predictable. A few years after EU membership, the biological landscape of Coastal Dobruzha had been dramatically changed, with this change having a direct impact on a wide array of habitats and species protected under the BA. The following section will illustrate how the above-mentioned factors inter-played while the ability of the state to preserve Coastal Dobruzha was being uprooted by a litany of interests including the EU, pro-wind business constituency, environmentalists, and even local governments. Thus, policy overload and contradicting EU policies seem to further impede the implementation of an already unfavorable policy for the government.

6.1.1. International Agreements

Bulgaria has obligations to reduce its carbon emissions due to its international regulatory commitments identified in the United National Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol that operationalizes the Convention[24]. The Protocol sets binding emissions reduction targets for all signature countries, including Bulgaria. Within this legal framework, Bulgaria was required to

[24] In 1992 in Rio de Janeiro the UNFCCC was signed and ratified by the Parliament in March 1995. The Kyoto Protocol was signed by Bulgaria in 1998 and ratified in 2002.

have an emission reduction commitment for the first implementation period (2008-2012) of 8 % of the base year (1988) emissions. Not only does the Protocol set tough mandatory emission reduction targets, but it also permits carbon offsets. These offsets allow signatories to invest in carbon reductions in less developed countries in exchange for their ability to emit the equal amount of carbon emissions in their own. This is referred to as the 'joint implementation programme' (JIP).[25] Under JIP, countries with commitments under the Kyoto Protocol are eligible to transfer and/or acquire emission reduction units (ERUs) and use them to meet part of their emission reduction target[26].

According to a 2006 government analysis on the Convention, there were significant opportunities for emissions reduction in Bulgaria, but they could not be realized due to lack of investments. In the government's view, carrying out JI projects could eventually lead Bulgaria to additional emission reductions amounting to 10-15 million tons CO2-equivalent and stimulate investments (Ministry of Energy and Energy Resources 2007).

The European Union is an important member of the international community, and as a whole, one of the biggest emitters of carbon emissions globally. Therefore, the international prioritization of carbon reductions and investments in renewable energy sources was internalized by the EU through the passage of a series of Directives. These Directives were developed to stimulate economic investments and growth in the renewable energy sector. This included the Renewable Electricity Directive (2001/77/EC), which developed strict renewable energy targets for new Member States. After Bulgaria's entrance into the EU, its share of the burden for renewable energy in gross final consumption is 16% by 2020 (Ministry of Economy and Energy 2012).

[25] http://ji.unfccc.int/index.html [consulted 14 November 2014].

6.1.2. Bulgaria's Download of International Climate Regulations

To meet domestic needs for energy security and to align Bulgaria's national legislation with the Renewable Energy Directive, in 2005, the government passed the National Long Term Program to Promote the Use of RES (2005-2015). The Program identified measures to promote the development of renewable energy systems (RES) in Bulgaria. The report stressed the need for intensive RES development from then until 2015, as well as the advantage RES development held for the achievement of energy security. It also set out its own national targets for RES to exceed 8% of the gross electricity generation by 2010 and to exceed 9% of the gross electricity generation by 2015 (Ministry of Economy, Energy and Tourism 2009).

To further approximate its national legislation with EU regulations, in 2007, Bulgaria passed the Alternative Energy Sources and Bio-fuels Act (RAESBA (SG 49/19.06.2000). The law mandated a new feed-in tariff for renewable electricity. This derived from Article 6 of the Renewable Energy Directive, "reduce the regulatory and non-regulatory barriers to the increase in electricity production from renewable energy sources" (Directive 2001/77/EC 2001, Article 6.1). To attract capital investments in renewables and other sectors the *Investment Encouragement Act (IEA)* was introduced, which enacted a system of measures to promote long-term investments in tangible and intangible fixed assets, as well as the new employment associated to the investments. Within the law, there were two types of investments: Class A with a minimum investment being 32 million Bulgarian levs, and Class B being 16 million Bulgarian levs. Therefore, wind parks were eligible to fall into investor class A if investors invested the necessary financial sum. According to the law, if investors invested in

economically poor regions such as Coastal Dobruzha, the minimum amount of the investment would be reduced to 16 million levs for Class A certificates. These investments were to be promoted through 1) speeded-up administrative procedures, 2) individual administrative services and preferential treatment - for Class A investors, and 3) financial support for the construction of technical infrastructure elements associated with the investment projects (Investment Promotion Act 2013, Article 15).

6.1.3. Wind Turbine Investments Begin in Coastal Dobruzha

One of the results of the new laws favoring renewable energy was that both domestic and international investors began to explore feasible locations throughout Bulgaria to invest in these technologies. Wind energy was one of the obvious investment sector due to the expansive open coastline on the Black Sea coast with high wind velocities. In particular, the northeastern part of Bulgaria located in Coastal Dobruzha was identified as having some of the strongest wind velocities in the country. According to the European Wind Atlas, the area's wind potential was one of the most favorable in Bulgaria, based on the high annual average wind velocity, high wind density and the annual stability of the wind parameters (Joint Implementation Supervisory Committee 2006).

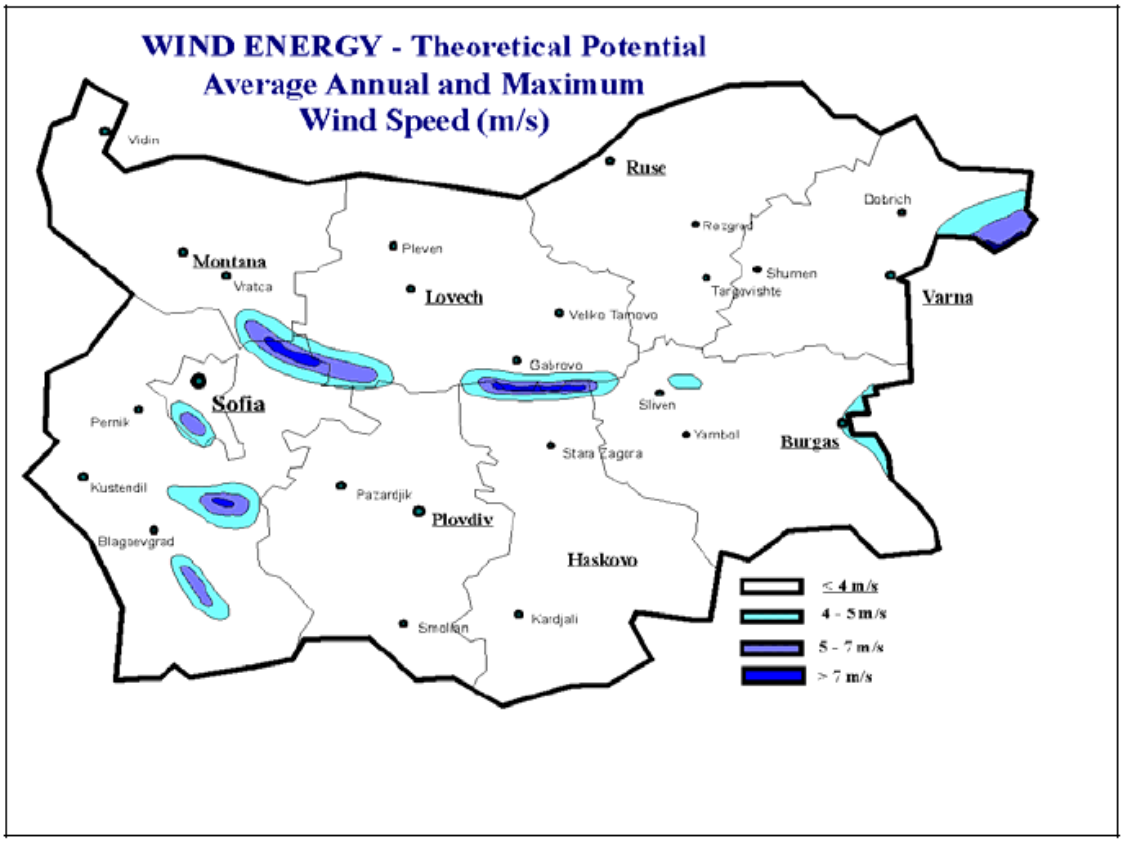


Figure 6.1. Wind velocity in various locations in Bulgaria. *Source:* Ministry of Economy, Energy and Tourism 2010.

High wind velocity, strong economic incentives and loose regulations set the stage for the future developments in Coastal Dobruzha. One informant stated, *"We had the financial incentive (for wind energy), as well as almost no procedure, or at least easy procedure. The civil servants of this country, when they don't know something, they don't apply the precautionary principle. If they don't know something, they decide that there is no problem. It was very simple and this philosophy has been applied for years and its being applied now" (NGO 7)*.

6.2. Kaliakra Wind Power Project

Municipalities in the Dobrich region were extremely interested in capitalizing on investments seeing the potential for substantial tax revenues that could result from renewable energy projects (NGO 7). In fact, the mayor of the municipality of Kavarna was certain that revenues deriving from wind turbines would prove beneficial to the municipality (Novinite.com 2010). The municipal government was so interested in attracting these investments that, in May 2004, the Kavarna Municipality announced a tender for construction of wind farms on municipal land (Personal Communication 2007).

Mitsubishi Heavy Industries (MHI) and INOS, through a joint business venture, were the first to express interest in the land and develop a proposal for the Kaliakra Wind Power Project (KWPP). The project concept was developed in 2004 with the idea to construct 35 wind turbines of 1 MG each, covering a total area of 2,960 square meters in the Municipality of Kavarna, about 4 kilometers from the coast of the Black Sea at Cape Kaliakra (JISC2006). The investors saw a unique opportunity to take advantage of the JIP of Kyoto and the financial scheme available for this investment. It was unfeasible to the investor to follow through with the project without JI framework. The JI credits, however, provided enough incentives to overcome these barriers (JISC 2006). This is why no commercial wind farm projects were implemented without JIP up until 2006. The municipality was also extremely interested in supporting the project as it would bring over 52 million euros in capital investments without taking into consideration the yearly operational costs of the project (JISC 2006).

6.2.1. Interacting Legislation

If the project was to go ahead, the investor had to go through an environmental impact assessment. This was a legal requirement ever since Bulgaria's transposition of the EIA Directive (85/337/EEC) though the passage in 2002 of the national Environmental Protection Action (EPA). Article 81 (1) stipulated that an EIA must be conducted for all plans, programmes, and development proposals, as well as for execution of construction, activities and technologies, or modifications, where the implementation is likely to have significant effects on the environment. Given the ecological importance of the location, as well as the fact that the proposed project sat only a few kilometers from Kaliakra Nature Reserve the project was required to undergo and environmental impact assessment.

Outreach by investors began to take place to experts with knowledge of the ecology of the region. In early 2005, the investor approached BSPB in order to seek recommendations on the scope and direction of the EIA for their investment project. BSPB was asked to help due to the extensive ornithological field research undertaken throughout the years, as well as their participation in the assessment of biodiversity for the Ministries' preparation of the Natura 2000 network. The investors suspected it would be good to receive some recommendations from them before they hired a company to undergo the analysis.

BSPB advised the investors that two seasons of research on the migration of birds and breeding birds was required to determine the extent to which migratory species inhabit the site. The BSPB had also warned the investor that the location of the planned investment had been identified as a potential Natura 2000 site under the "Conservation of Species and Habitats in Bulgaria: EU Approximation" project. Therefore, article 6(2)

of the Habitats Directive should apply, and they should take appropriate steps to avoid any deterioration of the environmental quality of these potential sites[27] (2006).

6.2.1.1. Pre-screening and link between consultants and investors

Within the framework of the EPA, undergoing the EIA was the financial responsibility of the investor. It was up to them to decide which company or individual who was most suitable to do the assessment (EPA 06.2011, Article 96 (1)). In the view of many NGO informants, the outcomes of the EIA reports are oftentimes predictable due to the link between the investor and the consultancy firms. Negative reports are frowned upon by investment companies because they delay project implementation, thus creating significant costs to the investor. As a direct result, the EIA reports, especially in Coastal Dobruzha, are almost never negative (NGO 7; NGO 10; BSC 2012b).

In accordance with the law, the investor then submitted the EIA to the RIEW-Varna for a quality check. When the EIA is ready (before to give it to the public hearing), the RIEW-Varna should give a quality assessment on it, and if the assessment is negative they can give it back to the investor. The quality checks are a closed -door procedure within the RIEW. One informant stated, "*If they approve the quality of the report here and go onto the public hearing, already the chances to stop it is very low that it will be rejected. This is because the investors say that we already have this quality check and that our report is good, and on the other hand, the court relies on the*

[27] Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, insofar as such disturbance could be significant in relation to the objectives of this Directive.

EIA report as the expert report. So this step is really very important and it's completely internal and I don't think it's good and is not done properly" (NGO 7).

6.2.1.2. Insufficient Notice for Public Hearings

Since the assessment by the RIEW-Varna was in favor of the investment, a public hearing was required to be held by the investor in order for the public to comment on the proposal. According to the EPA, the investor must organize a public discussion about the EIA and make the assessment public for 30 days before the public meeting (Environmental Protection Act 2011, Article 96 (6)), but in the case of this EIA, the public hearing was summoned almost 'secretly' without the legally required announcement. According to a complaint to the Bern Standing Committee, just two days before the public hearing a representative of the RIEW-Varna denied to the BSPB that there was even a date assigned to the hearing (BSC 2006).

6.2.1.3. Quality of Ecological Assessments

When the EIA was reviewed by ornithologists and different research institutions at a public hearing on May 31, 2005, they were shocked by what they considered the extremely poor quality with which it was written (BSC 2006). The report had commissioned research on breeding birds and spring migration, which was not complete prior to finalization of the EIA. In fact, during the meeting, a representative from the BSPB presented data on the plot where the investors planned to construct, showing specific species, altitudes, numbers and direction of flights which was dismissed by the EIA experts as 'claims' (BSC 2006).

According to the complaint, regional officials "ignored all results provided by BSPB supporting the warnings about high risk for collision and mortality of birds.

Instead, they cited superficial research technician statement that they adopted as official statement of the Institute of Zoology, though the management authorities of the Institute did not endorse it" (BSC 2006). According to an informant and substantiated by the Bern Convention case file, throughout the entire discussion of the EIA the investor was manipulating the opinions of both the officials from the RIEW-Varna and the public by saying that no study has shown adverse consequences of wind turbines on bird mortalities (NGO 2). The BSPB had also made the suggestion that the site was not appropriate for the wind turbines and that they should be relocated further inland. This proposal was rejected by the authorities, since the investor had already purchased the land from the municipality (BSC 2006).

The Museum of Natural History had also submitted a letter to the BSPB for their complaint to the RIEW-Varna stating the biological significance of the region for Bulgaria, as well as the European continent. The letter warned that any development of wind turbines must be done with careful consideration, since this site would most likely become a Natura 2000 site (Museum of Natural History 2005). The RIEW-Varna received additional letters from the Institute for Botany, the Department of Zoology and the Department of Ecology and Nature Protection of Sofia University, all explaining the biological importance of the region and warning about approving the project (BSC 2006).

Regardless of evidence brought forth by BSPB and other biological experts the EIA was approved by the Expert Council and signed by the Director of the RIEW-Varna on June 23, 2005. The official reasoning given for the approval of the project was that construction and operation of the wind turbines will not lead to any "significant long terms effects on components of the environment" and that the impact prevention plan

given by the investors in the EIA would "eliminate" any significant impacts on the environment. A telling sign of the government's priorities was that the RIEW-Varna mentioned in the decision that the project would produce renewable energy and decrease the impact of harmful emissions of greenhouse gases (Regional Inspectorate for Environment and Water-Varna 2006).

6.2.1.4. Investor First Class Status

On July 8, the investor wrote a letter to the Minister of Environment and Water Dolores Arsenova requesting an approval for their project to be registered and approved for an 'investor first class' status since the total investment was 80 million levs putting the investment high above the 32 million levs threshold for qualification. They also stated that their proposal aligned with the National Energy Strategy of Bulgaria (INOS-OOD 2005).

The national government then threw its weight behind the proposal through an official statement to the Joint Implementation Supervisory Committee. Despite the ongoing concerns with regards to the project's impact on biodiversity, they endorsed the further development of the JI project in accordance with Article 6 of the Kyoto Protocol. The government committed itself to providing assistance as needed for the project's future validation. In the letter, the government acknowledged that uncertainties existed with regards to the EIA and that, if results from further discussions and analysis were positive, the government would consider granting a letter of approval for the project (Annex 4 in JISC 2006)

NGO's Seek Assistance from the National Government

Despite the government's support for the project, BSBP together with the Society for Nature Conservation of Wild Nature (SCWN) appealed the decision to approve the EIA by the RIEW-Varna to the MOEW on several grounds. The complaint presented strong evidence that this EIA should not have been approved. First, according to the Bonn Convention (of which Bulgaria is a Contracting Party) wind power generation facilities should only be planned after monitoring of birds has been carried out for at least two migratory seasons. If the research shows that there would be no significant risk to bird species, only then should the company be given a permit to construct. This was not done by the contracted company that did the EIA, so it should not have been approved. Moreover, there were negative assessment letters on the investment proposal by numerous research institutions including the Bulgarian Academy of Sciences, Bulgarian Herpetological Society, and Balkani Wildlife Society. The BSPB identified 131 bird species of priority for protection and 45 species of European significance in Kaliakra making it one of the most important areas for birds in the country, therefore, the preventative principle of the Habitats Directives should apply. Lastly, the project would also destroy sub-continental pontic steppe habitat, which is of European as well as national significance (BSPB n.d.).

On July 25, 2005, the complainant received an official response from the Minister of Environment and Water Mrs. Arsenova. In her statement, she wrote that the alleged violations of the Bonn convention do not exist because according to the Convention the Contracting Parties are required to do an environmental impact assessment to determine the impact of wind turbines. This was done in the case of Kaliakra Wind Power project. In addition, the results of the public hearing were analyzed by the EIA experts, as well as, the Expert Ecological Council and the head of the RIEW-Varna, which approved the EIA. Most importantly, article 10 (3) of the

Biodiversity Act requires that, "Within three months after the National Council on Biological Diversity has delivered an opinion, the MOEW shall lay for examination before the Council of Ministers a List of special areas of conservation pursuant to Paragraph (2), together with any dissenting opinions"; and according to article 10 (4), "The decision of the Council of Ministers and the list shall be promulgated in the State Gazette". Since these sites (future Natura 2000 sites) were not designated, they did not 'exist' therefore, other relevant national laws on protected areas should apply. The final decision of the Minister was to reject the complaint by the BSPB and confirm the decision of the Head of the RIEW-Varna (MOEW 2005).

NGOs Appeal to the National Courts

With no support for their claim from the local, regional, or national administrative institutions, the BSPB and Balkani Wildlife Society filed an appeal on August 16, 2005, to the Supreme Administrative Court against the Minister's decision approving the EIA. In May 2006, the case was transferred to the Varna District Court. While the case was being appealed, the official approval of the 'investor first class' status of the project came into effect giving ION/Mitsubishi rights for 1) Speeded-up administrative procedures 2) Individual administrative services and preferential treatment; and financial support for the construction of technical infrastructure elements associated with the investment projects (Bulgarian agency for investments 2006). On October 27, 2006, the District Court ignored their appeal and dismissed the case. This decision was appealed to the Supreme Administrative Court, who judged that the complaint is reasonable and returned the case back to Varna District Court to continue the proceedings.

6.2.1.5. Preliminary Implementation Orders

On the 15th of May 2006 a permit for 'preliminary implementation' for part of the project (construction of electro-substation, storehouse for building materials and administrative building) was granted by the Chief Architect of Kavarna Municipality prior to completion of the legal court case on the EIA decision (Personal Communication 2007). Under Article 60 of the Law on Administrative Procedures, an order of preliminary implementation can be issued by the Director of the RIEW-Varna to 'defend state or social interest of high priority'. If there is a danger that implementation of the project can be blocked as a result of delay, which could harm the economic interest of the investor, hence the state, a preliminary implementation can be ordered (Administrative Procedures Act 2006).

When the investor concluded the deal with the MEET, they had to pay a warranty to them for each MGW of energy they would produce. In the case of Kaliakra Wind Power, this amounted to 1.75 million Levs handed over to the state before they were even able to request a decision from the RIEW-Varna on the EIA. As a direct result, INOS had a significant incentive to receive security on their investment through the preliminary implementation order (RIEW 2). An informant from the RIEW explained:

"The Expert Council had concluded that the park with 35 wind generators can be constructed, but at the same time the investor was afraid that the court procedure may be against him or that someone might come to racketeer him, and as a result of all those dangers, there was a need for preliminary implementation of the decision" (RIEW 2).

An NGO source called this another 'chink in the armor' of the entire EIA procedure (NGO 7). They stated her organization had taken the EIA decision to court to

complain about the quality of assessment. While in court however, the Director of the Regional Inspectorate had the power to issue this 'preliminary implementation' order (NGO 7).

NGOs Appeal to the International Community

The NGO community was deeply concerned about the insistence of the local, regional, and national government to approve this project and similar ones even though there was clear evidence of their potential environmental impact on biologically valuable land and birds. Foreseeing the inevitable development of the wind farm projects in Coastal Dobruzha they appealed to Standing Committee of the Bern Convention, as well as, the European Union for help. They claimed that the Bulgarian government had approved *"EIA reports with a completely inadequate assessment of risks to biodiversity of the Kaliakra wind farms and that there was robust evidence of the inappropriately chosen location for the wind farm. All information and up-to-date results of field surveys provided by BSPB and other NGOs and scientific institutions of the Bulgarian Academy of Sciences had been ignored by the state authorities. Since the EIA has already been endorsed, if no strong international pressure is exerted on the Bulgarian Government to reconsider and revoke its decision, the project will be implemented with the full power of the foreseen consequences" (BSC 11.07.2006, 2-3).*

On March 2, 2007, the Biodiversity Council adopted a list SPA sites to be covered under Natura 2000. Kaliakra IBA was excluded from the list as well as many other sites in Coastal Dobruzha with pending or approved wind turbine projects including Shabla Lake, Durankulak Lake, Balchik and Belite Skali (Natura 2000 Bulgaria 2007). After the decision was made by the national authorities to exclude the

sites in March 19, 2007, construction started of the Kaliakra Wind Power project (Personal Communication 2007).

International Assessment Team Join the Fight

Deeply concerned with the ongoing developments in Kaliakra in June a team of experts was sent to Kaliakra by the BSC to examine the claims of the NGO community and to speak with all relevant stakeholders about the ongoing wind turbine projects. A stakeholder meeting was held with investors, scientists, EIA experts, and authorities from all governance levels in Bulgaria. The Chairmen of the meeting was Sinan Mexhmet the Director at that time of the RIEW-Varna. The Director opened the meeting by stating that Bulgaria was a signatory of many Conventions all of them having different obligations. According to Mexmet the government's priority was achieving the 10% renewable energy by 2011 target set by the EU Directive for Renewable Energy (BSC 2007).

The experts also visited Kaliakra and several other locations in Coastal Dobruzha. While there, they identified the importance of these habitats for biodiversity as well as the thin hummus layer on the bedrock soil, which made the area extremely vulnerable to irreversible damage through ploughing and digging. These steppic grasslands were located in a narrow strip along the coast, which, in their view, needed to be protected by relocating the wind turbines. During their conversation with local authorities, they stated the ownership or concessions were given to investors. Based on their discussions with local authorities it was obvious to the expert team that they were 'fully aware' of the biological diversity of the area were trying to avoid protective measures. Moreover, that by ignoring the risk of bird collision and habitat loss there was 'clear proof' of their deliberate intention to underestimate the locations biological

diversity in order to move forward with economic developments. The Standing Committee told the Deputy Minister Jordan Dardov that new development of wind farms must find a balance between ecological functions and economy (BSC 2007).

The Standing Committee also reiterated the importance of Coastal Dobruzha for Via Pontica and the dangers posed to migratory bird species. They suggested that the government review the positive EIA decisions including Kaliakra Wind Power and stated that that the EIA's they read clearly tried to minimize the negative effects of wind turbines on biodiversity in Coastal Dobruzha. Additionally, they requested that the government begin to use 'qualified EIA's' to access the developments in Kaliakra. They found that the biodiversity chapter of the EIA done for INOS and other wind turbine projects in Kaliakra to no way reflect the evidence of risk for habitat destruction and risk of collision with birds and bats. For them, the assessments were incomplete and weak therefore, the MOEW had a legal ground to review EIA's even when projects like Kaliakra Wind farm were under construction (BSC 2007). An illustrative example of the quality of the EIA reports was the EIA "Construction of Wind Power Park in the Area of the Villages of Bulgarevo, Sveti Nikola, Hadji Dimiter, Rakovski and Porouchik Chounchevo, Kavarna Municipality". In one location, the EIA states that:

"Chasing away of some animal species during the building up of the facilities is possible. In view of the high mobility of most mammals and birds, and their ecological plasticity, after the completion of the construction works they would return to the region. The behavior of the migrating birds would not change".

Another excerpt from the report stated:

"*We established during the monitoring investigations during migration that the birds migrating throughout the region fly at a height of over 150 m so that they are not expected to have a direct negative contact with the facilities. The richness in species and number of bats on this territory is with low values and the eventual negative effects over them will be within the limits of the admissible. Their developed sensor system for*

orientation will be a supplementary condition for the localization and avoidance of the propellers of the generators."

According to the experts from the Standing Committee, these examples of approved EIAs clearly proved the non-scientific approach and non-methodological way in which the reports were being produced. It seemed to them that authorities had to know that the precautionary principle should apply before land was sold to private investors. Their conclusion was the officials should immediately halt the Kaliakra Wind Power Project, revoke its license, and others being processed in Kaliakra, and impose a strict moratorium on further investments in and around current or potential Natura 2000 sites. Finally, the government should review how EIA procedures are carried out and to find ways to improve the quality of the reports (BSC 2007).

Exhausting all possible options on a national level to block the project from coming to fruition the BSPB submitted an additional complaint in September 2007 to the European Commission for the insufficient designation and inadequate protection of SPAs not only in Kaliakra, but also throughout Bulgaria (Personal communication 2011). Seemingly, without concern for the pending inquiries into the developments in Kaliakra, or the recommendations given by the Standing Committee of the Bern Convention, the construction was finally completed and in April 2008, the wind farm began to operate (BSC 2008). Based on continuous support of the government and the completion of the wind farm in February the BSPB submitted an additional complaint for inadequate protection of Kaliakra IBA (Case 2008/4260).

6.2.2. Governmental Support for Investors

A high-level informant from the RIEW-Varna expressed her feelings on the Mitsubishi project, as well as, the written warning by the European Union in relation to the investment:

"The investors are mainly Mitsubishi and INOS. But then why the European Commission has such reasoning against us?! OK, it happened. In this case, it means that while Bulgaria has been negotiating its membership in the EU in the period 2003-2006, it should have stopped all kind of investments. Can you imagine stopping the investment of a world leader such as INOS?! They send me every month information regarding the monitoring of the impact on birds. You have no idea how they report to me. For example, 'today at 5 pm the work of the whole park has been stopped due to a passing flock of white storks.' They do it and I call this self-control. We are quite happy with that and there is nothing wrong that this park is functioning" (RIEW 1).

Another sign of the support the RIEW-Varna had for wind turbines in the region was that while interviews were being conducted at least three out of four of the offices had model wind turbines displayed within them.

6.3. Analysis: Looking at Kaliakra Wind Power Project from the Backward Mapping Perspective

From the bottom-up, it was clear that the local, regional, and national administrative institutions had a ***vested economic interest*** in seeing the project come to fruition. Over the years, many municipalities in Coastal Dobruzha had seen a down turn in economic growth and reduced population as large numbers of residents moved to metropolitan cities like Sofia to seek a better income (Local 2). Shabla Municipality which is home to Durankulak and Shabla Lake, both Natura 2000 sites, saw their population decrease from 10,000 people in the 1980s to 5,000 people in 2012 (Local 2).

Large sections of land were abandoned leaving the area ripe with biodiversity. In 2004, seeing the unique opportunity for job creation and to reverse this trend the Kavarna Municipality announced a tender for construction of wind farms on municipal land in order to capitalize on investor interest (Personal communication 2007). They would reap a portion of the 1.2 million Euros in yearly operational costs the project would bring to the municipality. Moreover, this 35 MG proposal by Kaliakra Wind Power would create five new full time jobs. Municipalities like Kavarna also receive rental incomes from wind energy projects that significantly increased the revenue for their municipal budgets. The additional income often amounts to more than 30 % of the budget of the municipality, allowing for much needed capital investments in the municipalities (BWEA 2014). Local residents were set to benefit from the proposal as well since the investor announced at a public event it would provide 25,000 Euros 'donation' in the form of free electricity to Balgarevo village (BSC 2006).

Not only were local governments and citizens likely to capitalize on the investments, but other governmental institutions also had a financial stake in the project's development. For example, the MEET received a warranty payment of 1.75 million levs before they were even able to move forward with an EIA for their investment. Therefore, Bulgarian Agency for Investments made the project a priority by approving the 'investor first class' status giving it speeded-up administrative procedures. They also received other preferential treatments, such as financial support for the construction of technical infrastructure elements associated with the investment project.

While there were substantial political interests entangled in the project's development, it was the responsibility of implementing agencies from the local and regional authorities to carry out objective assessment of the project's environmental

impacts. What this case illustrated is how various governance levels in Bulgaria utilized and withheld critical elements of interacting legislation to proceed with state interests at the expense of biodiversity conservation. This materialized through the subjective interpretation of the EPA by administrative officials for advancement of local, regional, and state priorities of economic growth through wind turbine developments. Regulations outlying the procedures for the EIA were critical for the protection of Natura 2000 sites in Bulgaria. The case study illustrated how this law was utilized in the context of Kaliakra Wind Power project to proceed with the project thus leading to biological degradation. Therefore, it can be stated, that the implementation of Natura 2000 does not flow merely from the bottom-up or the top-down. In fact, *implementation greatly depends on horizontal integration across legislative policies* and on a *coalition of 'willing administrative units'* focused on achieving the underlying objectives of the legislation. There was administrative resistance to biodiversity conservation at the expense of the projects fruition, and this materialized through the misapplication of laws meant to secure its protection. Like the site designation chapter this chapter further illustrated that the starting point of the EU was the assumption that they were dealing with a 'willing partner' in policy implementation. Therefore, adequate control mechanisms were not in place in order to identify and alter the behavior of administrative officials intent on evading legal mandates to continue with state interests. The next section will outline exactly how this 'mass resistance' took place through the utilization of interacting legislation and the withholding of critical program elements as seen in the above case study.

The usage of procedural gaps and interacting legislation to proceed with local, regional, and state interests

The local, regional and national government prioritized the development of renewable energy in Coastal Dobruzha. Personal communications and government documents supported this conclusion as throughout each step of the project's development governmental officials in writing stated their support for the Kaliakra Wind Power project. What the case illustrated was that administrative and procedural measures were taken to bypass the regulations set forth in the BA through utilizing interacting legislation such as the EPA. The methods used in applying this Act by administrative units of the government hindered the objectivity of the reports measuring the impact of the project on biodiversity. These weaknesses would pose a significant challenge not only for the conservation of biodiversity in Kaliakra, but also for all of Coastal Dobruzha as similar implementation failures continued to occur year after year.

One obstacle was the '*investor link'* between the Mitsubishi/INOS and the consultancy companies that carried out the EIA. According to Article 83(1), the assessment shall be commissioned by the initiator of the plan or program or by the initiator of the proposal (EIA 2013). An informant from the Municipality in Shabla stated, *"As long as the investor pays to a team of experts to prepare the report which includes the EIA, the experts have an interest to conclude that there will not be any negative effect. The same thing is happening in Kavarna" (Local 3).* Although the law requires 'independent experts' to be engaged in the evaluation process, research has identified acquiring these 'licenses' as another way for the Ministry to gain money since anyone can get a license if they pay money for the exam (Almer and Koontz 2004).

Bulgaria has been historically plagued with corruption, and this is just another example of how it materializes in administrative functions. Each year it is consistently ranked as one of the most corrupt countries in the EU. In 2013, for example, Bulgaria

was ranked the second most corrupt country in the Union[28]. The energy sector is no different and is afflicted with corruption, oligarchic control, and bad governance making decisions often in favor of lobby groups, like wind power (CSD 2011). Further complicating the matter is that 'experts' oftentimes are scientists who depend on the financial support of investors to earn additional income. One scientist explained, *"Some of them are pensioners with low pensions and they want to participate because the pensions are not enough to survive. Government salaries are low in Bulgaria, so many people from the Bulgarian Academy of Sciences are engaged with these assessments and a negative evaluation means no payment or future work" (NGO 5).* The result is that EIA assessments are typically done by unqualified professionals and are rarely negative because, if they are, the company does not pay for the assessment (NGO 3). One informant checked the registry and found that up until 2009 there were no more than a handful of negative impact assessments (NGO 2). This statement can be further validated by analyzing the government statistics given in a report to the BSC regarding wind farms in Coastal Dobruzha. It showed that from 2007-2011 approximately 68% of all requests for wind turbine construction were approved all the while EU infringement proceedings continued to proceed regarding their dangerous impact on biodiversity (BSC 2012b).

In most cases, the expert who produces the report does not act like an independent consultant, but rather like a lawyer for the investor (NGO 2). As the case illustrated, when independent experts from the Bern Convention analyzed the EIA report for Kaliakra Wind Power, it seemed clear that the consultancy company hired to do the assessment tried to minimize the project's impact on biodiversity. One informant working extensively in EIA development in Bulgaria stated:

[28] http://www.transparency.org/cpi2013/results.

"Very simple: they are doing the assessment, but then they, of course, have very well paid experts who are always ready to give them friendly reports. In Bulgaria, it works very well, so you can be corrupted without problems for your good name. The corruption is very strong and, of course, there are many corrupted experts who are ready for a lot of money to give you the report you want. What are the ways to prepare a positive report that the project has no any impacts: first, to say that in that area there are no protected species and habitats- simple. They say there is nothing there. How can you prove that it is wrong and you have hundreds of those reports? The second way is to say, 'yes, there are species and habitats, but there wouldn't be impacted'. So prove now that scientifically there would be an impact" (Consultant 4).

The EPA also required the EIA for Kaliakra Wind Power to undergo a *'preliminary screening'* by the RIEW-Varna. Since they inspected the report and no significant environmental impacts were found, a final EIA was produced followed by a public hearing. The law, however, excluded the public and NGOs from being involved in the scoping process (Almer and Koontz 2004). Once the EIA report was finalized and submitted for the public hearing, it became very difficult to reverse the decision.

"*Quality check is very important and it is closed. No one knows what happens there, but it is very important indeed, because if they improve the quality of the report here and go on to the public hearing, already the chances to stop it is very low. Because the investors say that we already have this quality check, and that our report is good, and, on the other hand, the court relies on the EIA report as the expert report. So this step, I didn't tell you, is really very important, and it is completely internal, and I don't think it is good and is not done properly" (NGO 7).*

It was the responsibility of the municipality and the RIEW-Varna to organize a public hearing on the approved EIA. As required by law, it was supposed to be announced to the public one month in advance along with a providing a copy of the EIA document for public comment. The conveners were then required to consolidate the public comments and facilitate the hearing (Almer and Koontz 2004).

This was not the case, however, and the public hearing for Kaliakra Wind Power project was summoned almost 'secretly' without the legally required announcement.

Just two days before the public hearing a representative of the RIEW-Varna denied to the BSPB that there was even a date assigned to the hearing (BSC 2006). Several NGO informants explained that this is part of a larger problem of *information suppression regarding public hearing and construction permit announcements* typically done by the local and regional administrations with financial interests in seeing a big project come to fruition (NGO 2; NGO 4; NGO 6). Oftentimes, EIAs are not available on the internet or the public orders for project proposals are not posted on the doors of the Regional Inspectorates (NGO 5; 7; 8; 10).

For instance, according to an NGO informant the RIEW-Varna, *"They don't put dates on the orders and so on. Actually, they play with the dates: they say it is issued on Thursday, it is published on Monday, but you cannot prove when they put it on the wall of the municipality" (NGO 7).* These methods seemed to be deployed by the municipal and regional administration in order to avoid criticism of the investment proposals' environmental impact. The perceived bias of local officials was only exacerbated in the case of Kaliakra Wind Power since after the public hearing the Mayor of Kavarna was seen giving a 'friendly hug' to one of the investors (NGO 4). In fact, research undertaken in 2003 identified bias of governmental officials in Bulgaria as a major concern regarding the public hearings (Almer and Koontz 2004).

The insufficient *quality of the EIA report* for Kaliakra Wind Power was another factor impeding the adequate evaluation the project impact on biodiversity. After careful analysis of the EIA by experts from the BSC, they found that the biodiversity chapter of the EIA done for INOS and other wind turbine projects in Kaliakra to no way reflected the evidence of risk for habitat destruction and risk of collision with birds and bats. For them, the assessments were incomplete and weak; therefore, the MOEW had a legal

ground to review EIAs even when projects like Kaliakra Wind Farm were under construction (BSC 2007). The impact on biodiversity was not properly assessed by the consultancy company but it still received approval by the Expert Council, which evaluated the EIA, the Director of the RIEW-Varna, as well as the MOEW. Research undertaken by Almer and Koontz found that oftentimes in Bulgaria administrative officials are not successful in ensuring accurate and complete information is included into EIA reports. Moreover, they found that often EIAs are directly plagiarized from other EIA reports and use over-generalizations about the environment (Almer and Koontz 2004). The development of the EIA seemed to be a procedural tactic used to validate the investment and not to determine the extent to which the impact would have a negative effect.

Another procedural gap the RIEW-Varna used in order to follow through with the project was Article 60 (1) of the *Administrative Procedures Act*. This allowed for the Director of the RIEW-Varna to order a preliminary implementation of the Kaliakra Wind Power project while the BSPB had challenged the decision of the Director to approve the EIA. This presents yet another challenge, since the EIA may eventually be found in violation of administrative procedures by the court, but with the project already built the effects of the decision would be negligible. Article 60(1) allows for preliminary implementation only "when necessary to ensure the life and health of citizens or to protect a critical state interest that could be prevented or seriously hampered due to delay of its implementation" (Article 60(1)). The Director of the RIEW-Varna deployed this authority in the case of Kaliakra, thus the wind turbines were constructed, further indicating the importance administrative officials placed on making sure the project was implemented. Moreover, companies that complete construction would almost certainly sue the Bulgarian state if they were allowed to follow through with their investment to

then receive a negative opinion from the courts. The preliminary implementation order locked-in projects making them extremely difficult, if not impossible, to cancel after the order had been issued.

From the backward mapping perspective, the case illustrated how administrative officials' intent on implementing political priorities on national, local, and regional level identified mechanisms within their legal authority to evade costly restrictions mandated within the BA. This included the misapplication of interacting legislation and withholding critical program elements needed for the protection of Natura 2000 sites.

6.4. Analysis: Looking at Kaliakra Wind Power Project from the Forward Mapping Perspective

European integration developed a fundamental shift in the region's economic trajectory. Sir Isaac Newton's First Law of Motion states that every object persists in a state of uniform rest unless acted upon by an external force. For the region, the external force would materialize from integrating the European Directives on renewable energy into Bulgaria's legislative framework. This included the passage of the Renewable Energy Strategy of the Republic of Bulgaria, which transposed the EU Renewable Electricity Directive (2001/77/EC), and the ratification of the Kyoto Protocol in 2002. These legislative acts enabled investors to take advantage of preferential policies targeted at stimulating investments in the renewable energy sector, like the JIP of Kyoto used by the investors in Kaliakra Wind Power project. In fact, the sole factor for Mitsubishi Heavy Industries to invest in the project was to take advantage of the Joint Implementation Programme of Kyoto and the financial scheme available for this investment. It was unfeasible for the investor to follow through with the project without

the JI framework. The JI credits (ERUs), however, provided enough incentives to overcome these barriers (JISC 2006).

The EU saw renewable energy as a way to reduce carbon dioxide emissions and tackle climate change, but at the same time biodiversity conservation was high on their political agenda, therefore the Birds and Habitats Directives were promulgated[29]. These Directives would effectively require municipalities in Coastal Dobruzha to implement strict conservation regimes. Some municipalities, such as Shabla, saw almost 40% of their municipal territory fall under the Network (Local 2). While biodiversity conservation and the promotion of renewable energy may have both been equally high on the political agenda of the EU, the promotion of renewable energy seemed to be the preferred policy by the local, regional, and national government.

Bulgaria had a pressing *need for energy independence that aligned with the objectives of the EU Renewable Energy Directive*. This is primarily cause by major structural and technical difficulties in securing the appropriate level of energy supply needed for its rapidly growing and decentralized economic market. Seventy percent of its gross energy demand is imported. Additionally, Bulgaria has no supply of oil and very small reserves of gas, which forces Bulgaria to pay for its energy supplies in cold hard cash. The only in-country source of energy is the low-quality lignite coal with a high level of sulfur content. The energy sector also relies heavily on fuel imports from one single source, the Russian Federation that pumps its fuel through Ukraine. Bulgaria imports 100% of the needed nuclear fuel, 99% of the oil, 99% of its natural gas, and 44% of its coal (MOEW 2006).

[29] Transposed in 2002 with the passage of the Bulgarian Biodiversity Act.

This places enormous pressure on the Bulgarian government to find ways to satisfy the energy needs of its growing economy as well as its citizens. The objectives of the Renewable Energy Directive allowed the government to benefit from energy independence and economic prosperity through direct foreign investments in wind farms, while the benefits of biodiversity conservation seemed negligent and the costs high to the municipalities within Coastal Dobruzha. The objectives of the Birds and Habitats Directives were dramatically affected by two simultaneous parallel processes. The interaction seemed almost inevitable given the location's high-wind speeds making it an ideal spot for wind turbines and bird migration. This set the stage for a mismatch between EU policies and domestic priorities.

Most studies on EU integration find that there must be some 'misfit' between European and domestic policies, processes, and institutions as was the case in Bulgaria (Borzel 1999; Duina 1999 in Borzel 2003). The extent of territorial coverage for Natura 2000 was strongly resisted domestically due to the high degree of 'misfit' between existing institutional traditions of nature conservation and the new norms prescribed by Brussels. Not only was biodiversity conservation a costly policy to implement, but also it ran counter to historical traditions of nature conservation. In 2005, national and nature parks covered about 4.1 percent of Bulgaria's territory (Cellarius 2004). Within a matter of two years, the government would need to protect an additional 30% of its country for biodiversity conservation. This would have significant implications to existing institutional structures and development trends.

The biodiversity conservation objective was just not seen as a domestic priority, but the objective was non-negotiable for the EU. Due to Bulgaria's energy export dependence, however, promoting energy 'independence' through the diversification of

energy sources, such as renewable energy, was a significant domestic concern. The policy framework developed by the international community and the EU to promote renewable energy aligned with those domestic interests. On the one hand, renewable energy would reduce Bulgaria's dependence on electricity imports. On the other hand, much needed cash would flow into local, regional, and national budgets through direct foreign investments in the sector and the tax revenues that they would produce. The Kaliakra Wind Power project alone would amount to 1.2 million euros of yearly operational costs for 12 years, thus fostering significant economic stimulation for the Kaliakra municipality (JISC 2006).

The rationalist logic of institutionalism can also be used to explain Bulgaria's embrace of renewable energy at the expense of biodiversity. The Bulgarian government had a fixed preference for the development of renewable energy over biodiversity conservation. Actions were taken instrumentally in order to maximize their expected utility by deploying all available tools at their disposal to achieve that objective (Borzel 2003). Rapid economic growth was one strategic benefit of wind turbine investments and thus created a direct incentive for avoiding effective implementation of the BA. Constructivists claim arguing/deliberation and learning based on the dynamics of socialization are the means of achieving appropriate behavior of Member States (Risse and Borzel 2000). Through the case study analysis, the opposite appeared to be happening in Coastal Dobruzha. Over time, as the relationship between the EU and the Bulgarian government developed, a 'de-constructivist' learning process began to take place. Rather than learning how to achieve the true objectives of the BA through policy implementation, they began to identify additional mechanisms to avoid the policy or to illustrate compliance through deception. These 'pseudo compliance' tools included information suppression, administrative approvals, incorrect interpretation of the BA,

misapplication of interacting legislation like the EPA, utilizing regulatory gaps, approving scientifically weak EIAs, expedited administrative procedures, and deception. The tools were utilized to circumvent detection by the European Union in order to avoid costly penalties that could potentially be handed down for non-compliance.

Rational institutionalism however, is traditionally used to explain how actors behave within institutional structures. The Bulgarian state however, also has a set of objectives, and European legislation was used for the enhancement of state interests while others were devalued or outright ignored since significant 'mismatch' existed. The Bulgarian government was able to justify its actions in Coastal Dobruzha by saying they were contributing to the reduction of carbon emissions. At the same time in the view of many governmental officials, the Network was too large, and the extent to which the wind turbine project would affect bird species was questionable (National 2 & 3). The most suitable location for wind turbines was Coastal Dobruzha, so the government was caught in a difficult position. Either reject the wind turbine project in favor of the potential biodiversity gains, or find ways to discretely approve the project without taking full account of the potential impacts on biodiversity.

European institutions laid out the legislative framework though which Bulgaria would operate fostering a unique opportunity for the state to take advantage of its strategic interest. Their behavior in the case of Coastal Dobruzha was aligned with those interests and the state utilized the institutional opportunity at the expense of biodiversity and the strategic interests of actors from biodiversity conservation constituency. In essence, the Bulgarian government 'mal-adapted' to European Directives. The actions of the government to satisfy renewable energy targets of the EU caused an inverse relationship to the objectives of the Birds and Habitats Directives. The better they

performed with the stimulation of wind turbines in Coastal Dobruzha, the more they damaged the unique biodiversity of the coast. The result was that mal-adaptation occurred and 'pseudo compliance' followed as administrative units of the government began to deceive the EU, thus shrinking the costs of non-compliance by reducing the probability of detection.

Local and regional authorities were in favor of the project, but even if this would not have been the case, it was still political priority for the government. As a result, administrative units most likely would have acted in the same way since administrative officials in Bulgaria are oftentimes seen as 'political agents' lacking administrative independence. A telling admission came from a senior administrative employee from the MOEW, *"As a whole, the political decisions concerning the national priorities and national interests are outside of our jurisdictions, but the role of the administration is to correctly implement those political decisions. For example, if the state says that it is within its priorities to develop renewable energy, then we as an administrative body have to find the way to work with this decision through concrete procedures and warranties" (MOEW 1).*

The statement provides powerful insight into the role of administrative officials play within their respective institutions in Bulgaria. In fact, oftentimes they are used to carry out political decisions that vary from their legislative responsibilities outlined in the BA and the EPA. This trend would continue year after year in Coastal Dobruzha as administrative officials interpreted legislation like the BA and the EPA in order to proceed with the state interests of the development of wind power projects and to avoid burdensome requirements that would impede them from achieving their goal.

For example, Kaliakra Wind Power project received its permit for development before Kaliakra SPA was finally designated by the Biodiversity Council. According to the ECJ interpretation of the Birds Directive, these projects should have never been issued development permits since these areas were identified as IBAs. Although IBAs are not legally binding, they contain enough scientific evidence for their protection. Kaliakra IBA was eligible to become a SPA site. Therefore, measures should have been taken to protect this site and avoid its deterioration by enacting the precautionary principle[30].

One possible explanation of the implementation failure is that the Bulgarian government lacked a clear understanding of the case law, but upon a deeper investigation, this appears not to be the case. As early as 2005, before the RIEW-Varna approved the EIA, the Museum of Natural History had supported a letter emphasizing their concern that any development of wind turbines must be done with careful consideration since Kaliakra would most likely become part of the Natura 2000 network (Museum of Natural History 2005). In fact, during the pre-screening process, the BSPB warned the investor that the site would eventually become a Natura 2000 site; therefore, Article 6(2) of the Habitats Directive would apply (BSC 2006). Even with the substantial warnings from biological experts, the appeal of the EIA was rejected by the Minister. In the Minister's decision to reject the appeal, she stated that since the Kaliakra site was not designated, it did not 'exist', so other relevant national laws on protected areas should apply (Ministry of Environment and Water, Bulgaria 2005). After deeper analysis, it can be seen that the government's decision on Kaliakra Wind Power project was not due to lack of regulatory clarity; it was rather due to the government's

[30] This is based on the (C-374/98, EU-Commission / France, Basses Corbières Site Case) which determined article 4(4) of the Birds Directives should apply to these sites so "Member States should take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article".

prioritization of the projects that, most likely, would have been approved regardless of what the statutory regulations may require.

Since the 'carrot' of EU membership was no longer at the Commission's disposal, there were little means through which to prevent the project from materializing. The DG Environment regularly spoke with the MOEW regarding the case and their legal obligations, but since the government was intent on following through with the investment, this explanation fell on a deaf choir. A guidance document was also provided to supply additional information on Article 6(4) of the Habitats Directive, explaining how the precautionary principle should apply to sites that should be SPAs, but were not designated (European Commission2004a). In 2007, the Commission sent a written warning regarding the infringement of the Birds and Habitats Directives. This was meant to inform Bulgaria about its failure to develop proper procedures in order to adequately assess potential impact of wind farm projects (European Commission 2007).

The limited ability of the Commission to alter Bulgaria's rational behavior was primarily due to the politicization of the development of wind turbines. The decision to develop wind energy was a political decision with vested state interests. Administrative officials in Bulgaria were effectively finding ways to carry out the political decisions of the government rather than strictly applying the law. For one informant this is the big paradox:

"*When you go to the MOEW and it is like being in the Ministry of Economy: they talk about investors, how the growth of the state is stopped. This is not normal. Compare the situation when you go to the USA in the Environmental Protection Agency. There they will talk about the ecological aspects of some process not economic development. If you go into the MEET, you will talk with experts who try to protect economic interests. If you go into the MOEW, you do not expect them to say 'yes this is a protected area, but we need to check the economic interests maybe someone will want to do business there" (NGO 2).*

A telling sign of the politicization of the MOEW was when upon taking office by the new Minister of the MOEW Iskra Mihalyova in 2013, she fired the directors of 23 regional unites in the ministry, all 16 directors of the regional inspectorates, directors of 3 national parks, and directors of 4 river basins[31]. Research has shown that in Bulgaria administrative and political corruption are closely aligned. It seems rather illogical that high levels of administrative corruption without coordination with higher political officials. According to Stoyanov, if this were the case, it would indicate that high administrative officials have no control over their subordinate administrative officials (Stoyanov 2008). From a careful analysis of the case, it is clear that the prioritization of Kaliakra Wind Power project was a centralized decision coming from the highest echelons of political power in Bulgaria. The local governments also had vested interest in seeing the project materialize, as substantial financial gains would arise from the project implementation, while biodiversity conservation had questionable economic returns. In the Kaliakra Wind Power project administrative officials worked as 'political agents' carrying out the interests of the state, thus stifling neutrality and appropriate assessment of environmental impacts.

6.5. Summary

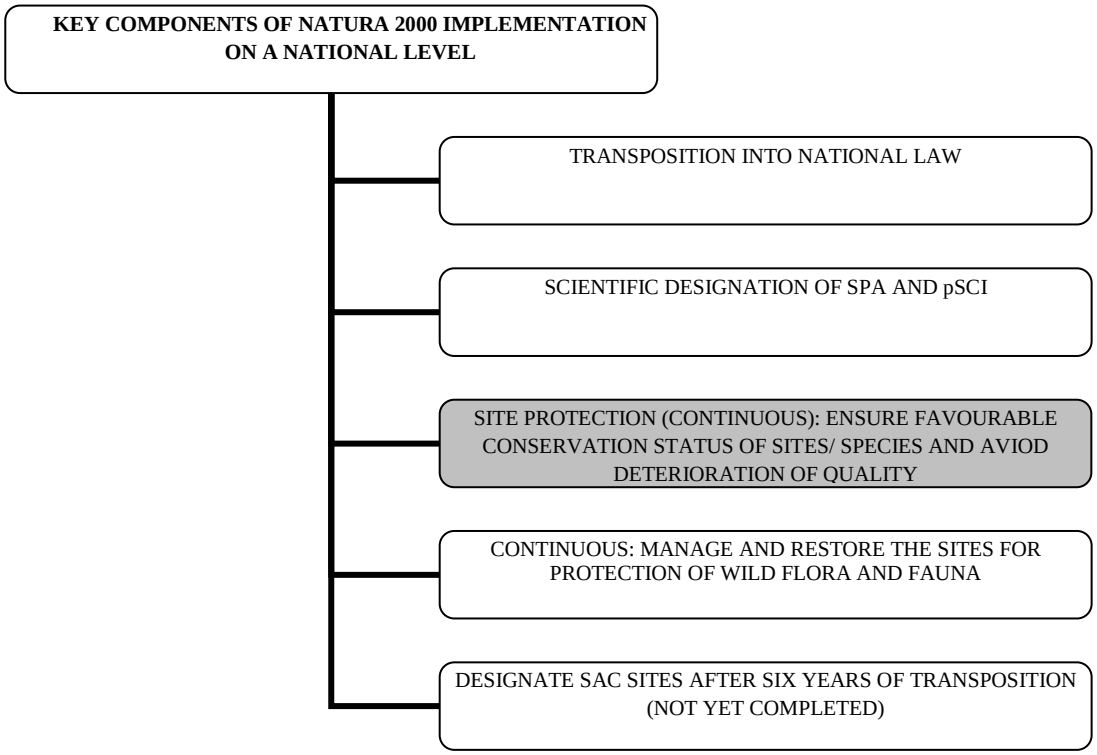
This section illustrated how the Bulgarian government mal-adapted to three key European Directives emphasizing renewable energy of biodiversity conservation. In turn, administrative agencies behaved rationally following a consequentialist logic by

[31] http://sofiaecho.com/2013/08/02/2115044_environment-minister-sacks-all-regional-unit-directors [consulted 14 November 2014].

using various tools at their disposal in order to achieve the realization of the project (March and Olsen 1989, 1999 in Borzel 2003). The measures undertaken were to construct a system of 'pseudo compliance' meant to deceive the EU in order to proceed with investments and avoid detection by the European Commission. This included wrongly interpreting the Birds and Habitats Directives, utilizing and withholding key components of interacting legislation for project realization, suppression of substantive feedback from dissenting actors, approving scientifically weak EIAs, downplaying the impact the project would have on biodiversity, and facilitating the investors' development request through expedited administrative procedures by designating them as an 'investor first class'. The next chapter will provide a further narrative analysis of the mechanisms used by local and regional administration to achieve the state's interests, including capitalizing on legal loopholes. It will also highlight how insufficient planning of investments by national authorities, legislative overload, conflicting decisions by different EU institutions and powerful international economic interests further exacerbated policy failure.

CHAPTER 7. THE CASE OF WIND TURBINES IN COASTAL DOBRUZHA: PROTECTION AND THE LACK OF APPROPRIATE ASSESSMENTS, EVALUATION OF CUMULATIVE IMPACTS, AND STRATEGIC PLANNING

Table 7.1. Key Components of Natura 2000 Implementation



Source: Council Directive 92/43/EEC 1992 and Council Directive 79/409/EEC.

Articles 6(3) and 6(4) of the Habitats Directive are the crux of Natura 2000 site protection mandating preventative measures to ensure the conservation status of all sites. They order that all projects whether individual or combined be assessed in terms of their impact on Natura 2000 sites. This was transposed into the Bulgarian Biodiversity Act (BA) under article 31 whereby (1) any plans, programmes or projects, individually or 'combined', that are likely to have a significant negative impact on the special areas of conservation must be 'appropriately assessed' for its compatibility with the protection of

special area of conservation, and (2) the 'assessment' should be carried out with respect to an area's conservation status.

In the case of Coastal Dobruzha, the opposite appears to be happening. The illustration below (see Figure 7.1) is meant to provide a visual context for the sheer scale of wind turbine investments in the region and the cumulative danger they pose to the ecological integrity of Natura 2000 sites and species. By 2012, over 2,000 wind power generators were officially approved by the RIEW-Varna (BSC 2012b). The green-striped lines are Natura 2000 sites, and the red, green, and black dots are approved or constructed wind turbines. You can see several wind turbines constructed within Natura 2000 sites, but even more troubling is the extent to which permits are being issued outside of Natura 2000 sites.

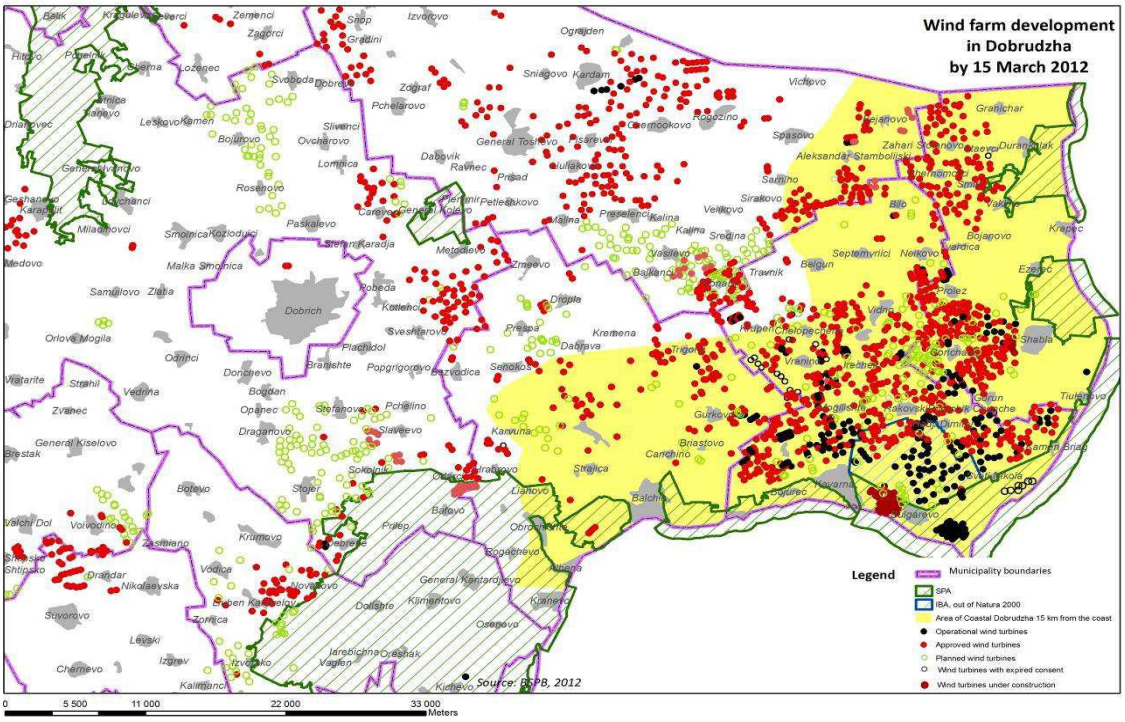


Figure 7.1. Constructed, under-construction, and permitted wind turbines in Coastal Dobruzha. *Source:* BSC 2012a.

Migratory bird species are mobile and do not stop once arriving in protected areas. They fly through Natura 2000 sites on their way north thus subjecting themselves to risk by these neighboring investments. Birds can be driven away by the wind turbines due to loss of foraging grounds. The deleterious results can be high energy loss to birds due to longer distance to foraging grounds, pressure at roosting sites, and scarcity of suitable food resources. They can also fly into the wind turbines causing impact fatalities (BSPB 2013). Since thousands of birds use this route for migration, they face substantial vulnerability to wind turbine developments neighboring Natura 2000 sites (Michev et. al. 2012).

As early as 2005, scientific data was given by international organizations and Bulgarian NGOs, signaling the potential danger birds would be exposed too. As a result, Bulgarian authorities were made aware of the studies identifying the potential risks to birds and habitats. Despite the substantial data available to administrative officials, from 2003-2006, 374 wind turbines were examined and approved in Coastal Dobruzha after undergoing an EIA. Out of this total, 57 turbines were within the Natura 2000 territories defined in 2007. From 2006 onwards, the government received a voluminous increase in written warnings, reports, and lawsuits from the Bern Convention Standing Committee (BSC), the EE, biological research institutes, and NGOs regarding the negative impacts of wind turbine developments. While the EU officially signaled their disapproval for events occurring in Coastal Dobruzha, European investors and banking institutions such as the European Bank for Reconstruction and Development (EBRD) directly invested and financed the very same projects the EU was apparently seeking to prevent. Each continuous year after the EU integration seemed to bring more capital investments. In 2007, there were 256 wind turbines approved, in 2008, there were 372 wind turbines

approved, in 2009, there were 600 wind turbine approved, and, in 2011, there were 158 wind turbines approved (BSC 2012b).

The following section provides the underlying reasons for policy failure that can be attributed to a number of factors. First, the development of wind turbines in Coastal Dobruzha was a political decision deriving from the highest echelons of power in Bulgaria. Consequentially, administrative units from the local, regional, and national government identified mechanisms to mal-adapt to the BA in order to proceed with centralized state decisions. This adaptation included 'pseudo compliance' by developing a series of measures to illustrate compliance with the BA to the European Commission while continuing to proceed with the state interests at the expense of biodiversity conservation. This included wrongly interpreting legally ambiguous terms found within legal text, exploiting legislative gaps, and procedural delays. Many of these strategies will continue to be played out by administrative officials regarding wind turbine investments and approval procedures.

Additionally, Bulgaria seemed to be overwhelmed by the capital investments, which were moving faster than the legislative framework needed to protect the region from their deleterious effects on biodiversity. External limitations included insufficient strategic planning, Bulgaria undergoing the 'wild east of legislative changes' that were moving faster than the ability of administrative units to cope with them, lack of coherence with other EU policies and programs, biased approach by EU institutions regarding wind turbine investment, and the influence of powerful international companies on the Bulgarian state. All these factors seemed to be played out as the struggle for biodiversity conservation continued on a European, national, regional and local level.

7.1. Strategic Environmental Assessment of Plans and Programmes

The Ministry of Economy Energy and Tourism developed the "Energy Strategy of Bulgaria" in 2002 where the utilization of local renewable energy resources was prioritized. The goal of this strategy was to develop the legal framework in line with the acquis communautaire and orientate the energy market away from centralization to free-market principles and privatization. According to the Strategy, the former practice of breaking laws and breaching commitments made by the previous government had impeded private investment. Therefore, the government committed to work on developing transparent and unbiased rules and to 'be careful drafting new laws and regulations, as well as develop a well-defined strategy on attracting new investment' (Ministry of Energy and Energy Resources 2002, 6). The wrong combination of market mechanisms and price control could have 'harmful effect' (Ministry of Energy and Energy Resources, Bulgaria 2002, 6).

Since a strategy had been developed, it was legally required under Article 31(1) of the EPA to carry out a strategic environmental assessment (SEA) of it[32]. One year after the strategy was passed; wind turbine investment proposals were submitted to the RIEW-Varna for their environmental review. With increased investor interest in the ecologically sensitive area of Coastal Dobruzha, discussions began on the need to carry out an SEA. Unfortunately, the national legislative framework for prevention of environmental damage imposed by the new investor interest was not responding

[32] Article 81 (1) a strategic environmental assessment be carried out for plans or programs which are in a process of preparation and/or approval by central or local executive authorities, bodies of local self-government or National Assembly (Environmental Protection Act 2011).

sufficiently to the demand. Foreseeing the potential consequences to biodiversity, in 2003, NGOs requested the Ministry to undergo an SEA of the Strategy (NGO 7). Therefore, BSPB had requested the Ministry of Economy Energy and Tourism (MEET) and the MOEW to make an inter-institutional group of experts to discuss the potential environmental consequences of wind farm developments. They agreed in principle, and in the autumn of 2003, the MOEW issued an order that the MEET had to undergo an SEA of the Renewable Energy Strategy. This was not the case however, and the SEA of this Strategy was never carried out.

"It's compulsory to be done. Maybe they didn't do it because it's not convenient for them. Maybe they could find an excuse, but in reality they actually broke this part of the legislation. They must do it, that's according to the law. And the Ministry of Environment, they never were able to convince the Ministry of Economy Energy and Tourism to follow the legislation so in this environment it was very easy for the investors to obtain permits for the wind farm construction" (NGO 7).

A clear signal the government wanted to stimulate growth in this sector was that the following year the government passed the Bulgarian Energy Efficiency and Renewable Energy Credit Line (BEERECL). This credit line was developed in close cooperation with the EBRD and the EU. It targeted RES projects, including wind turbines. Wind farms with a maximum total installed capacity of 5 MW were eligible to be financed through this credit line. The investment expenses could be financed up to 2,000,000 euros (Ministry of Economy, Energy and Tourism 2009). Then in 2005, the government passed the National Long Term Programme to Promote the Use of RES (2005-2015) in order to align Bulgaria's national legislation with Renewable Electricity Directive (2001/77/EC), and to further encourage wind power generators to be developed.

With no SEA in place and with investments being encouraged through the national regulatory framework and the international community (EBRD, Kyoto, and the

EU), wind turbine projects began. From the period of 2003-2006, several wind power generator projects were approved within Kaliakra IBA (before its designation in 2007). These included INOS-Mitsubishi for 35 generators, Universum Energy (EVN) for 32 generators and Vertical Petkov for four generators (BSC 2006).

The Bulgarian Academy of Sciences, as well as several national and international NGOs were deeply concerned that this new regulatory framework was encouraging international investments in Coastal Dobruzha despite the strong evidence of the biological importance of this region. They were also deeply troubled that there was no comprehensive plan on the responsible growth of the sector or its potential environmental impacts. Environmentalists wanted to create further pressure on the Government to pay immediate attention to this issue. Therefore, in July 2006, they filed a complaint with the Standing Committee of the Bern Convention urging them to open a file against Bulgaria and demanded the government carry out a detailed environmental assessment of all locations in the country where wind farms may be constructed (BSC 2006). They urged for undertaking this especially in "flyway countries whose breeding populations of migrating birds are likely to be affected by wind turbines along *Via Pontica"* (BSC 2006, 9).

7.1.1. Additional Regulatory Incentives with No Planning

The situation then became critical when Bulgaria further stimulated investments in wind power generators by transposing European legislation through the passage of the Alternative Energy Sources and Bio-fuels Act (RAESBA (SG 49/19.06.2007). This new Act required that a feed-in tariff system for renewable electricity be developed. The State Energy and Water Regulatory Commission had the commitment to purchase alternative energy at a higher tariff and for the duration of 12 years. Suppliers refusing to

accept renewably produced electricity would be fined up to 500,000 euros. Electricity produced by RES was to be bought by the National Electrical Company (NEK); the NEK was required to buy all of the electricity produced by the RES; and the construction by the Government of electrical connection infrastructure of the RES project to the electrical grid was to be conducted (MEET 2009). Not only was there financial incentives for companies, but the costs were incurred by the consumers through higher electricity prices. Grid operators had the right to request compensation for the costs resulting from the purchase of electricity from RES (MEET 2009).

These regulatory advantages stimulated international direct foreign investments in the renewable energy sector. One consultant with extensive knowledge on renewable energy in Bulgaria stated that this regulation alone almost single handedly altered the market of energy investments in Bulgaria. It also set the stage for intense about the potential capital gains to local landowners selling their land to investors.

"From 2007-2010 there was really a golden rush in Bulgaria everyone decided this [wind power generators] was the next hotels. Because previously everyone wanted to build hotels on the seacoast, so that is how there were preliminary request for connection in the process of getting the permits to install these wind farms. At some point, I think, that these requests reached 10 Gigawatts in Dobruzha, which is the whole installed capacity of Bulgaria. These are numbers since the beginning of 2010; most of this is wind energy. There were a lot of speculative projects. There were shepherds who said that this is a really lucrative business and that they should buy land from their neighbors, and there were some people in the municipality you could bribe to get the permits. Then you ended up with all these people, who had no knowledge or experience with renewable energy sector that had all these orders with permits that were looking for investors to sell them too. In the first years there was a lot of speculation with almost no strategic planning of this sector" (Consultant 1).

7.2. Appropriate Assessments

By March 2007, the majority of the Natura 2000 sites in Coastal Dobruzha had been designated by the government. Once sites were officially determined, wind turbine projects without previous approval for construction were no longer being accepted within these sites. Since 2007, the location of the approved investments were a few kilometers from the Natura 2000 sites where the wind velocities were still sufficiently high to invest in the projects, but in less controversial locations where the threat of EC actions could be minimized (NGO 4).

Getting an EIA approved is a lengthy procedure costing investors both time and money. Millions of euros worth of investments were flooding into Coastal Dobruzha, and these delays were not only costing the investors money, but also local authorities were concerned about the potential loss of tax revenue (Consultant 2). In order for investors to be able to avoid procedural delays, local and regional authorities seemed to be finding ways around the BA. According to Article 6(3) of the Habitats Directive and Article 31(1) of the BA, any project that may have a '*significant impact'* on Natura 2000 sites either individually or combined, should undergo an appropriate assessment.

Since the region had been identified though scientific research as a vital flyway for migratory bird species and wintering habitat for red-breasted goose, most assessments should have positive meaning there would be 'impact' to Natura 2000 sites. This meant that, according to the BA, all wind turbine projects in Coastal Dobruzha should have undergone an appropriate assessment to determine whether the projects would have an impact on Natura 2000 sites in the region.

"They avoid this procedure. First, they implemented the procedure for preliminary screening of projects, and they will receive the permit without the full procedure. There is no such preliminary screening procedure in Article 6(3). Generally, it can be accepted that there are preliminary screening because some projects do not have any impacts on the sites, so you are not obliged to assess the significance of that

impacts. And then, probably, it is not necessary to have the assessment. So, probably, yes, there is a sense of having preliminary screening if the project has impacts on the sites, but for Coastal Dobruzha it should have been and was obvious to everyone that there would be an impact through the development of wind farms" (NGO 1).

What this meant was that the RIEW-Varna changed the meaning of the procedure by interpreting it in a way that allowed investments to be permitted without an EIA. During an interview, the Regional Inspectorates EIA team admitted to the practice, *"Most of those investments, which are outside the protected zone, are outside the scope of Article 2(1)*[33]*. They are subject for an assessment of compatibility, and we assume that they won't have a negative effect" (Regional 2).*

When it comes to the decision of whether sites need to undergo an appropriate assessment, it was free interpretation of how the standards would have to be applied. The decision was entirely in the hands of the RIEW-Varna to determine what constituted a 'significant impact'.

7.3. Environmental Protection Act's Legal Loophole

The EPA was also being interpreted in a way that would allow for wind turbine permits to be issued. The law did not require that wind turbine projects to undergo an EIA[34]. In fact, wind power turbine projects were included into Annex 2(I) of Article 93(1) where the need for an EIA 'shall be determined' by the director of the RIEW. The result of this legislation was that there was another means for the RIEW-Varna to freely interpret, which wind power generator projects needed to undergo an EIA and which

[33] Article 2 This Act shall have the following purposes: 1. (amended, SG No. 94/2007) conservation of natural habitat types representative of the Republic of Bulgaria and of Europe and habitats of endangered, rare and endemic plant, animal, and fungal species within a National Ecological Network.

[34] Environmental Protection Act Article 92 (1) Annex 1

ones did not. Large companies began to split their projects into smaller ones in order to avoid the EIA procedure in a process the NGO community called 'salami slicing'. "*What the investors did was that they made sister-companies or even in one company they applied to the regional inspectorate with one turbine or have two or three applications in a day. When I made the detailed analysis of all the investments in the region, I saw a lot of this 'salami slicing' of projects" (NGO 7).*

Another source said that the reason for the companies breaking the projects down into smaller ones was clear. "*Many projects were broken down into smaller ones so they could avoid undergoing an environmental impact assessment; one expert had showed me like 20 projects by the same owner, one next to the other, so they did not have to undergo an EIA" (Consultant 1).*

The process of EIA avoidance and the issuance of development permits was a huge problem in Coastal Dobruzha, and in 2007, 320 wind power generator projects were reviewed by the RIEW-Varna with 233 allowed to proceed in Coastal Dobruzha without an EIA. This means that 73% of the approved projects were not required to undergo an EIA despite the warning from the BSC as well as the European Commission. In fact, this practice only increased the following year with a seemingly complete disregard for these warnings by the governmental institutions. Table 7.2 contains a list of measures by the European Commission against Bulgaria for failure to designated appropriate SPA sites in Kaliakra, as well as, failure to access the impact of development projects on Natura 2000 sites in the region. The table clearly illustrates non-compliance despite continued warnings by the EU to halt wind turbine approvals.

Table 7.2: European Infringement Procedures against Bulgaria Regarding Natura 2000 Sites in Coastal Dobruzha and Continued Wind Turbine Development

European Action in 2007: First European infringement procedure for failure to access impact of projects developed on Natura 2000 sites and failure to designate sites
Wind Turbines in Coastal Dobruzha in 2007: 320 wind turbines examined, from them 256 wind turbines were approved (23 after Environmental Impact Assessment/ Assessment on Compatibility (EIA/AC) and 233 with the opinion to proceed without EIA)
European Action in June 2008: Insufficient SPA designation where six SPA sites were significantly smaller than the corresponding IBA including Kaliakra IBA.
Wind Turbine in Coastal Dobruzha in 2008: 399 wind turbines examined, from them 372 wind turbines approved (two turbines after EIA/AC and 370 with the opinion to proceed without an EIA).
European Action in 2009: Commission opened a 'horizontal' infringement against Bulgaria for the incorrect application of the Directives though systematic failure to protect its Natura 2000 sites stating that there was uncontrolled development of wind turbines on many sites (Infringement 2009/4423)
Wind Turbine in Coastal Dobruzha in 2009: 588 wind turbines examined, from them 302 wind turbines approved (192 after EIA/AC and 110 with the opinion to proceed without EIA)

Source: adapted from BSC 2012b.

7.4. Contradicting Aspects of European Policies

While the warnings continued, in 2007, the Saint Nikolai Wind Farm Project launched the previous year by AES secured a 12-year Purchase of Power Agreement with the National Electricity Company (AES 2008). Shortly thereafter, they received a positive EIA within the Kaliakra IBA that was excluded from SPA designation. The investor AES (a Fortune 200 energy company with locations in 29 countries, including Great Britain) sought to expand their market in Europe through this investment (AES 2014). The project value was 258 million euros for development of 52 wind turbines on this sensitive ecological territory. While the violations of the BA and the EPA seemed clear, in June 2008, the EBRD issued a 90 million euros loan to the investor for the project proposal (EBRD 2008). The loan was issued despite the BCSC assessment of the

EIA "Construction of Wind Power Park in the Area of the Villages of Bulgarevo, Sveti Nikola, Hadji Dimiter, Rakovski and Porouchik Chounchevo, Kavarna Municipality" developed for the project that highlighted serious gaps in its analysis. Additionally, on August 29, EBRD received a letter from BSPB warning them not to fund the proposal (BSBP 2008). The letter detailed the case against funding the investment highlighting the pending EU infringement proceeding against Bulgaria regarding the Kaliakra IBA where the AES project would construct the wind turbines (BSBP 2008). The project continued, and on December 16, 2008, Bulgaria's Prime Minister Sergei Stanishev and the Chief Executive Officer of AES Paul Hanrahan conducted a signing ceremony to close the deal on the investment (AES 2008).

Since it seemed that the project was fully financed and most likely would be constructed, in 2009, the European Commission issued a 'horizontal' infringement against Bulgaria for the incorrect application of the Directives though systematic failure to protect its Natura 2000 sites. The infringement stated that there was uncontrolled development of wind turbines on several locations of European significance for biodiversity. The same year, 588 wind turbines were assessed by the RIEW-Varna and 302 of them were approved. One hundred and ninety two of those were approved after an EIA and 110 with the opinion to proceed without an EIA (BSC 2012b).

The EBRD continued with their investment, but seemed concerned about an eventual lawsuit regarding their investment in the Kaliakra IBA. So, in 2010, they financed a project sponsored by the MEET for a "Strategic Review of the Development of Wind Power in Bulgaria" (Consultant 1; NGO 2; NGO 3). They hired the American consulting company ENVIRON Iberia, pm&E with an office in Madrid to do the assessment. A Bulgarian consultancy company POVVIK AD was the local partner for

ENVIRON. One expert involved in the project explained that ENVIRON had almost no experience in the wind sector and zero experience in Bulgaria, so they reached out to POVVIK AD to help them with the report. In fact, although they were partners, POVVIK ended up doing most of the work because they did not know the language and they were not from Bulgaria (Consultant 1). One significant question may arise from the reader:

"Why would EBRD finance such a project knowing that they had investments in Coastal Dobruzha which were politically and ecologically sensitive? Why would EBRD hire a company with little experience in Bulgaria and wind energy?" (Interviewer)?

"Well in my opinion, basically, they [EBRD] were seeing that things were kind of getting screwed with the wind turbine investments, so they wanted to have this study to support their investment. In my opinion, they wanted just to do something and then afterwards to make this report and say that things are fine, and can continue to invest in these projects. ENVIRON, the Spanish consultants, they wanted to do a wishy-washy report that was just not saying anything, but I really pushed that we collect spatial data and really have something that is meaningful, and so we ended up organizing numerous meeting with various stakeholders from all the NGOs and departments. The Academy of Sciences provided data so we overlaid this data and came up with these maps" (Consultant 1).

Regardless of the alleged motives of EBRD, the consultants developed a strong scientific methodology by overlaying different spatial data layers on bird populations, habitats, and other vulnerable locations to determine the degree of vulnerability of different zones for wind turbines. The map in Figure 7.2 was developed by the consultants; as can be seen, almost the entire Dobruzha coast was identified as either areas with high sensitivity or strictly prohibited.

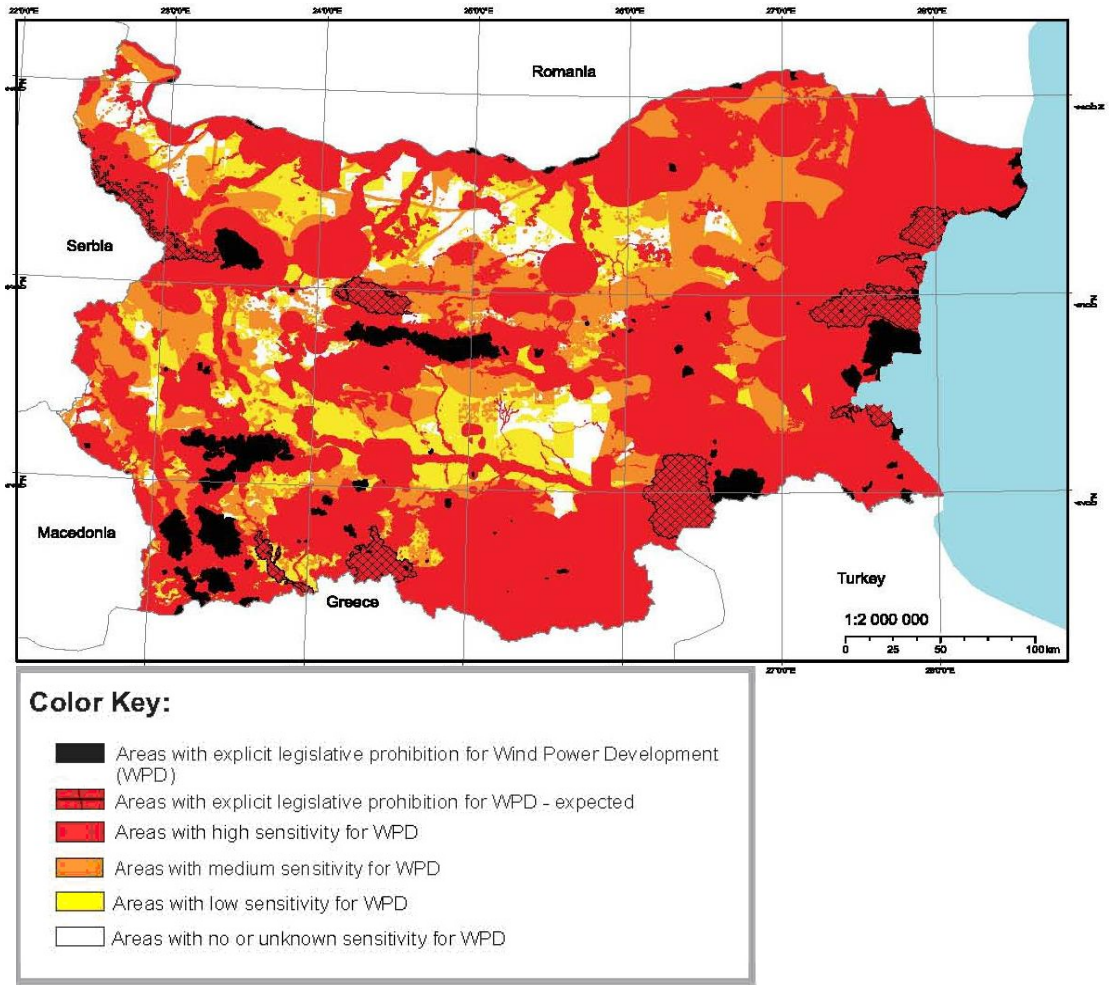


Figure 7.2: Flora, fauna and biodiversity (including bird species and bird related areas) layers aggregation in accordance with identified constraints. *Source:* MEET 2009.

There was an intense discussion between the Bulgarian consultants and the EBRD on whether these maps could go into the final draft of the report published by the MEET. In the view of the consultant who worked on the project, the EBRD was not happy and did not want the consultancy company to include the reports. According to sources engaged in the study, there was a huge argument on whether to include the map, because previous investments and future investments of EBRD were shown to be in zones where wind farms should not proceed. The consultants felt that EBRD did not want a 'real study' but wanted a vague report as their insurance against future litigation. In the end, the research was worse for them (Consultant 1).

On top of the perceived bias of EBRD and their alleged attempts to influence the independent report, there also seemed to be a coordinated effort between EBRD and AES regarding its contents. An informant who developed the report stated she had a conference call where representatives from AES were on a Skype call with EBRD, and they were both telling her how the report should be written (Consultant 1). *"This is outrageous. This is a company which EBRD has given money to, and this company is telling EBRD what the report should have or should not have"* (Consultant 1).

Finally, in June of 2010, the report was published and made public. Final drafts were given to both the MOEW, MEET, and they were also available online for regional and local governments. While there may have been a clear indication that these wind turbine projects could be dangerous, there was confusion in the RIEW-Varna on how exactly to measure the cumulative impact of these projects.

*"The problem is that we do not have a methodology how to do the procedure for the assessment of the cumulative effect. We have a definition but not a methodology. It is very complicated. It would be nice to have a methodology that will be followed by everyone. As far as we understood, the main comment of the European Commission for us is the lack of the assessment of cumulative effect. It exists in every report but, no matter whether it is good or bad, there should be a methodology. This methodology has to be given to us by the Ministry, and the Ministry, on its hand, should align it with the corresponding European requirements and directives (*RIEW 2).

Not only was the methodology unclear to the administrative department of the RIEW-Varna, but also their workload was overwhelming. At that time, they had only two administrative staff working on Natura 2000. According to one informant, the workload was impossible to handle since the RIEW-Varna has over 20 notifications or citizens' requests per day (RIEW 2). Even though administrative staff seemed unclear about how to measure the impact of the investments, and despite the lack of administrative staff to effectively assess the proposals, the RIEW-Varna kept on issuing permits for wind turbines.

7.5. SEA of the New Renewable Energy Directive

Meanwhile, Bulgaria was required to transpose Directive 2009/28/EC on Renewable Energy and according to Article (4), Bulgaria had to submit a National Renewable Energy Action Plan by June 30, 2010. In 2010, a draft of the plan was submitted by the government to the independent consultancy company POVVIK with the request to complete a SEA of the Plan, since the government was legally obliged by the EPA to complete it. The government gave the consultancy firm only two months to complete the assessment. Many biological experts were engaged in the development of the report. They analyzed each zone to determine what species existed, and where the planned projects were for renewable energy. After the completion of the report, one of their recommendations was to ban wind turbines in Coastal Dobruzha. At the beginning, the MOEW desired to have a good quality analysis and they approved of the recommended bans. In the view of the consultants, the MEET, however, was not happy and wanted a report that was good for business (Consultant 1).

Two month later, the SEA was submitted to both the MEET and the MOEW and also was opened up for a public consultation. Many investors, as well as, the Bulgarian Wind Energy Association, were outraged by the bans on wind power developments in Coastal Dobruzha suggested in the report. They sent an official statement to MEET saying that all general bans on wind power development in Dobruzha are 'unacceptable'. They also stated that each project should be considered individually along with its environmental impact (BWEA 2012b). The response from the MOEW was dramatic, completely shifting their opinion on the report.

"When we had public consultations where businesses wanted to tear us apart, and like a year later the MOEW turned 180 degrees and said this report is too extreme. This was because of political pressure from the industry. I will tell you that a person

from the Ministry, when I asked 'What are you doing working there?', because we are friends, she said 'We are doing blow jobs of politicians" (Consultant 1).

"Was there a conflict between the two Ministries regarding the SEA" (Interviewer)?

"No, because they are both from the same party. You know, the meeting I was at a few months ago, where we were supposed to hear the final decision by the Ministry about the SEA of the plan, the consultants felt ambushed by the two Ministries. It was obvious that they met before without us, discussed and decided what the decision would be and it was just a big political theater there" (Consultant 1).

Government Appeasement

The DG Environment began to hold additional discussions with the MOEW on the importance of this issue and the consequences of non-compliance. They began to understand the credibility the BCSC had with the DG Environment, and started to make adjustments to their policy on the avoidance of EIAs. In order to plan more strategically and to avoid project approvals by '*salami slicing'*, the MOEW issued mandatory instructions to the RIEW for reducing EIA permissions until the NREAP was finalized. Within the instructions, it was required that all new wind turbine projects undergo an EIA and explicitly stated that cumulative impact must be taken into account.

That same year, after the instructions were issued, all of the new wind power projects that were approved underwent an EIA. Out of the 814 proposals for wind power generators, 600 were approved in Coastal Dobruzha after undergoing an EIA accounting for almost 77% of the requested projects. It may have appeared to the EU that the changes made by the government requiring all new projects to undergo an EIA would help resolve the situation. In fact, the situation remained the same as wind turbine development permits continued to be issued only now with an EIA.

European Action to Halt Wind Power Projects

Seeing no real change in policy in 2011, the European Commission merged the infringement of 2008 (inadequate designation of IBAs, especially in Kaliakra) and the infringement of 2009 (the approval of many projects for wind turbines in the Kaliakra IBA without proper assessment of the cumulative effect) into one new infringement procedure to try and mobilize the government to take action (BSC 2013). The strategy seemed to have worked to some degree as that same year the SEA of the Renewable Energy Strategy was finally approved.

Submission of the National Renewable Energy Action Plan (NREAP) 2011-2020

With almost a one-year delay on April 20, 2011, the NREAP was finally approved and submitted to the EC by the Bulgarian government. The new law required that by July 1, 2011, all investors had to provide proof of a valid detailed zoning plan, sufficient land rights, and to post a guarantee or payment of 50,000 BGN/MW to the transmission or distribution grid operators. If this were not done, the investment proposals would be annulled regardless of whether a preliminary grid connection was issued. According to the law's provisions, failure to meet all three conditions by July 21, 2011, led to the annulling of the respective preliminary contracts (BWEA 2012a). The consequences were severe as investors rushed to secure their project before they were terminated. By the second half of 2011, an additional 344 wind turbines were reviewed and 158 were approved with an EIA. Meanwhile, the SEA of the REAP was not approved by the MOEW.

The law was useful for ending speculative protects in Coastal Dobruzha. However, it was not implemented in a transparent fashion and incentivized companies to move forward with their projects. The Bulgarian Wind Energy Association (BWEA) did

research on investors and their application of these requirements. A press conference was held in March 2012 by the BWEA to show the results of their research on these investments. What they found was startling. In order for projects to qualify to the 2011 changes to the Renewable Energy Law, a number of conditions needed to be fulfilled to be able to post a guarantee and continue developing. Many projects had not fulfilled the requirements and still, when they posted a guarantee, it was accepted to the grid operator. All these projects needed to have an EIA done. They found that many projects had their EIAs done only after they posted their guarantee so there was a contradiction to the law. These projects should not have filled the necessary criteria (Consultant 2).

They submitted an open letter with their research findings to several governmental representatives, including Boyko Borisov (Prime Minister of the Republic of Bulgaria), Traycho Traykov (Minister of the MEET), Delyan Dobrev (Deputy Minister of the MEET) and many other high level officials, stating that over 50% of the wind energy projects may have failed to meet at least one condition of the law. They urged immediate action stating that, *"Failure to investigate the situation would undermine the entire renewable energy sector in Bulgaria. It would disadvantage law-abiding companies and individuals by allowing projects to proceed that have circumvented or outright violated the due legal process" (BWEA 2012a).*

The report analyzed the 2007 Renewable and Alternative Energy Resources and Biofuels Act stating that incentives for investors were a 'key factor' for attracting investors and stimulating investments in this sector (MEET 2011, 18). The Plan candidly explained that this stimulation lead to (1) environmental projects being implemented in sensitive areas with environmental restrictions in breach of environmental assessment procedures, and (2) changing of agricultural land to non-agricultural purposes for the

implementation of wind power generators by investors who do not have the financial resources to implement the projects, which results in ending the use of the land for agricultural purposes, and (3) only 10-15% of projects registered are actually operational (MEET 2011, 18)

Violations Continue

Despite all the warnings from the international community, the BWEA, and environmental NGOs on the impact of wind turbine projects in Coastal Dobruzha, in 2012, two huge project proposals for wind turbines were developed for the region of Dobruzha. One project was for 150 wind turbines (300 MW) in General Toshevo and the other was for 95 (190 MW) wind turbines in Coastal Dobruzha. The economic investment for the region was substantial. Each MW of wind turbine electricity amounts to 1.2 million of direct capital investments, which do not including operational costs. The total investment in these two projects for the region would be about 600 million euros (Consultant 2). The investment was substantial for this relatively poor region of Bulgaria. The locations of the turbines however were very close to Shabla and Durankulak Lake (Smin wind farm), both important Natura 2000 sites. Below are the proposals approved by the RIEW in Varna: the blue is the General Toshevo project and the red is the Smin wind farm project (Figure 7.3).

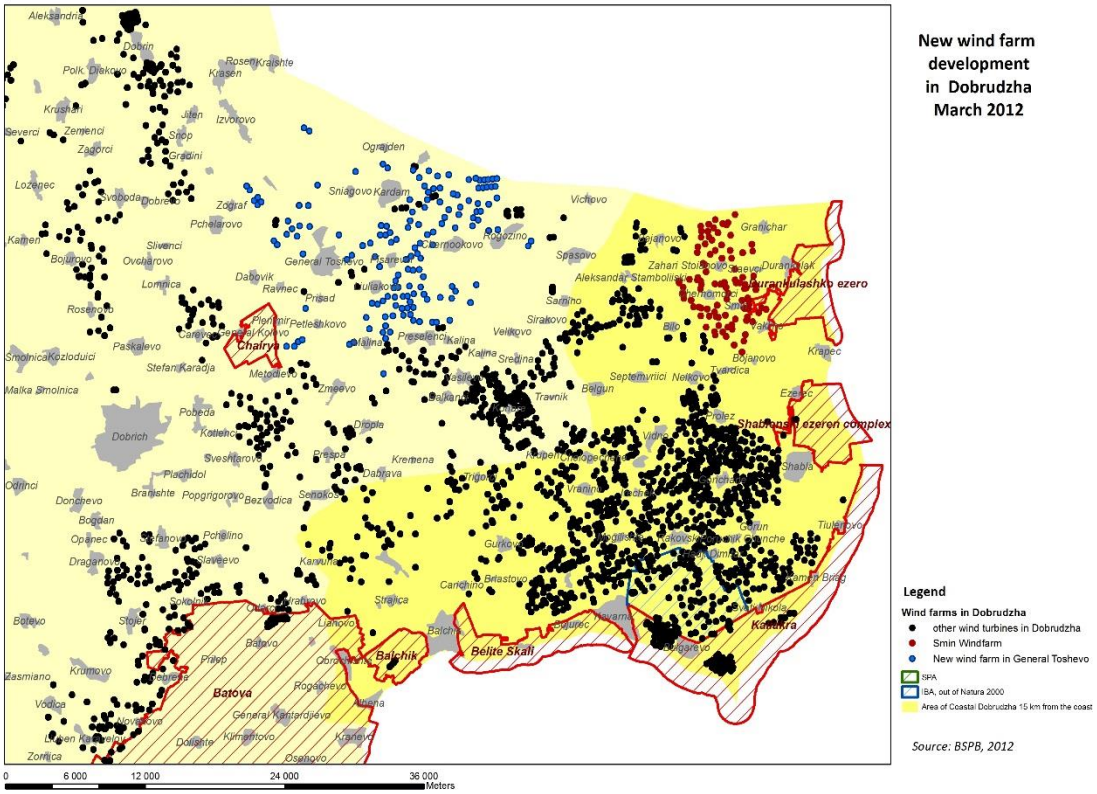


Figure 7.3. Red dots are planned wind turbines for Smin wind farm, and the blue dots are proposed wind turbines for General Toshevo. *Source:* BSC 2012a.

Concerned about the potential impact of these investments, the Wildfowl & Wetlands Trust and the Royal Society for the Protection of Birds, with the support of the BSPB, sent a letter to the Director of the RIEW-Varna warning that there is a genuine concern that the red-breasted goose could be seriously impacted by the wind turbine developments, especially by the Smin wind farm close to the Natura 2000 site of Durankulak Lake. Moreover, that there was no assessment of cumulative impact of the proposal within the EIA. The letter also stated that given the infringement case 2008/4260 regarding the wind farm at Kaliakra, the proposal at Smin appeared 'naïve' (Wildfowl & Wetlands Trust et. al. 2007). Regardless of the concerns presented, the Expert Biological Council approved the proposed EIA by a substantial majority passing 19 in favor and 2 opposed (MOEW 2012b, 4). Then on March 8, 2012, both EIA's were approved by the Director of the RIEW-Varna.

EU Action

Desperately seeking to gain control of the situation and to convince Bulgaria to cease all wind farm activities, on June 21, 2012, the EC issued reasoned opinion against Bulgaria. The Opinion stated that the European Commission was concerned that Bulgaria has not assessed the impacts of wind turbines in the Kaliakra region. They reiterated that any project that may have a negative effect on Natura 2000 sites must undergo prior assessment and that in parallel an EIA should ensure that projects with significant impact on the environment are properly assessed. In their view, Bulgaria approved a high number of projects without an appropriate EIA. They stated that thousands of wind turbines without a proper assessment of their effect or their cumulative impact. Therefore, Bulgaria continued to be in breach of the Birds Directive, Habitats Directive, and the EIA Directive (European Commission 2012a).

Appeal to the National Courts

The NGO community also sought help from the national authorities to reverse the decision of the RIEW-Varna regarding Smin and General Toshevo. The BSPB and Green Balkans appealed the decision to the MOEW asking them to cancel the approval of the EIA by the RIEW Director in Varna. On June 29, 2012, the MOEW issued a negative opinion 181 of decision BA-7/2012 (to approve the EIA) for the General Toshevo and Smin wind farm projects. The decision of the Minister stated that they should have taken into account the suggestion by BSPB and Green Balkans to further analyze the data on the potential impacts on the red-breasted goose, it pointed out the failure to properly access the cumulative impact of the wind turbines and the impact they would have on protected areas of BGC000I30 Coastal Dobruzha, BG0000I54 Lake Durankulak, BGC00062I Lake Shabla-Ezerets (Decision 181 29.06.2012).

Approval of the SEA

With additional pressure coming from the EU the SEA of the REAP was finally approved on July 8, 2012, approximately two years after being submitted to MEET and the MOEW. The damage was already done, and due to this two-year delay, 1,000 wind turbine projects were approved by the RIEW-Varna (BSC 2012b). A consultant who worked on the report partially blames some environmental experts for the delays by the Ministries.

"I think [name withheld, but one of the ornithological experts] does a great job and in this SEA plan she put in maybe 30 measures which are needed for the protection of biodiversity in Bulgaria. But, I think, maybe if she has cut five of them the report would probably have been approved two years ago and would have been implemented. It may have done more damage and trying to achieve the maximum is doing more damage. I'm changing as a result of my work; I think I'm getting wiser because I realized there is no point in being extreme, you need to compromise somewhat. It's very tricky where to draw the line, but I think [name of the consultant] is having a problem with that" (NGO 2).

In the statement No. 1-2/2012, the MOEW explained that it was their priority to prevent adverse impacts on species protected under Natura 2000 areas and to ensure their favorable conservation status and to ensure safe migration corridors for migratory birds. The NREAP 2011-2020 introduced a ban on all 'new' wind turbines (for which the procedure started by the date of the issuance of the decision) in the geographical area of Dobruzha (MOEW 2012). Unfortunately, since the procedure for Smin and General Toshevo had been started before the issuance of the decision, they were not eligible to be automatically banned from going forward. The government also made amendments to the BA and the EPA to further pacify the EU concerns and to decrease the number of projects that would most likely not be realized. The amendment to the EPA ruled that EIA's would lose their legal effect if within five years from the date of issue has not

started (New - SG. 53 of 2012, effective 13.07.2012 Environmental Protection Act). The amendments to the BA stated that the appropriate assessments would lose their legal status if for 5 years from the date of issue sponsor the project was not implemented ((23) (new - SG. 32 of 2012, effective 24.04.2012) BA.

Lawsuit by the Investors

Firing back on July 17, 2012, "Wind Energy" the investment company for Smin filed administrative case № 11084/2012 to the Supreme Administrative Court of Bulgaria challenging the decision of the Minister to reject the decision of the RIEW-Varna. In defense of the Ministers Decision, the BSPB provided to the Court detailed arguments against the approval of the Smin wind farm. This included the fact of two infringement procedures run by the EV - 4260/27.11.2008 and 4461/29.10.2009 (lack of adequate protection for SPAs) and the Recommendation 130/2007 of the Bern Convention. On January 1, 2013, the decision on the case was to annul the Ministers decision claiming he had no authority to rescind the decision.

In order to secure the investment on September 8 and 9, 2012, the Director of the RIEW-Varna issued preliminary implementation agreements for the Smin wind farm and the General Toshevo. In the reasoned opinion for Smin wind farm the Director stated the delay of the implementation may amount to significant financial damage and the order was needed to protect the interest of the country. In the order, it stated that "Wind Power" could lose their bank loan of 9.5 million levs and potentially have to withdraw their investment that would bring 370 million levs of investments in Bulgaria. The investment was also to be part of the EU quotas for 'green energy' and would help meet Bulgaria's commitments under the Kyoto Protocol, which must be fulfilled (RIEW-Varna 2012). According to the Directors decision, not constructing the General

Toshevo project brought forward by the investor 'Wind Power 3000' would reap deleterious economic consequences on the investor and the government. The company was set to lose their bank loan of 15 million levs and they could potentially have to withdraw their investment of 500 million levs if the investment was not realized (RIEW-Varna 2012). Therefore, both projects were of 'national interest' and according to the Director of the RIEW-Varna should continue.

October 17, 2013, the European Commission decided they could meet the burden of proof in court and decided to take Bulgaria to the European Court of Justice for their failure to comply with the Directives (European Commission 2013a). According to the press release, Bulgaria authorized several economic activities in the area without appropriate environmental impact assessment. In the words of the Commission, "Thousands of wind turbines have been authorized without adequate assessments of their effect on Kaliakra's unique habitats and species, and on the thousands of birds and bats that fly over the site each year on their way to and from Africa. Up to 100 % of the global population of the world's most endangered goose species – the red-breasted goose - spends the winter in a small number of sites in and around Kaliakra. No account is being taken of the cumulative effect of the authorized projects, which is also a requirement under the Birds, Habitats and Environmental Impact Assessment Directives" (European Commission 2013a).

Current Status of Smin and General Toshevo Wind Farms

Bulgaria has been taken to court, however the controversy surrounding Smin and General Toshevo wind turbine projects are far from over. The decision of the Ministry to cancel the Smin wind farm is still under appeal by the investor with a final decision expected to come in the nearest future, but construction has yet to begin. The decision by

the MOEW to cancel the EIA of General Toshevo was appealed to the Supreme Administrative Court and after a series of lawsuits; the final decision was taken to cancel the decision to reject the EIA by the MOEW. Now the procedure starts over and is currently under appeal by BSPB in the Varna District Court.

Current Conservation Status of Natura 2000 sites

A major Life + funded research project was conducted entitled "Evidence for landscape scale displacement impact of wind farm development in Coastal Dobruzha on distribution of foraging flocks of the red-breasted goose (*Branta ruficollis*) and "Ponto-Anatolian" flyway population of the greater white-fronted goose (*Anser albifrons*)". Data was collected on foraging areas of the red-breasted goose and the white fronted goose during the winters of 1998-1999 and 1999-2000 before wind farm constructions in Coastal Dobruzha. It was then collected for the winters of 2009-2010 and 2010-2011, after wind farms were constructed. The winter was used as the time interval because geese migrate to the region during the winter to feed off the wheat grains. The scientific analysis provided very concerning data showing a significant displacement of the red-breasted goose due to the construction of wind turbines (Petkov et. al. n.d). As you can see in both comparative graphs in Figure 7.4, the concentration of birds where the wind turbines exist is significantly lower than before their construction. In fact, it seems that the geese are relocating to other foraging grounds to collect food.

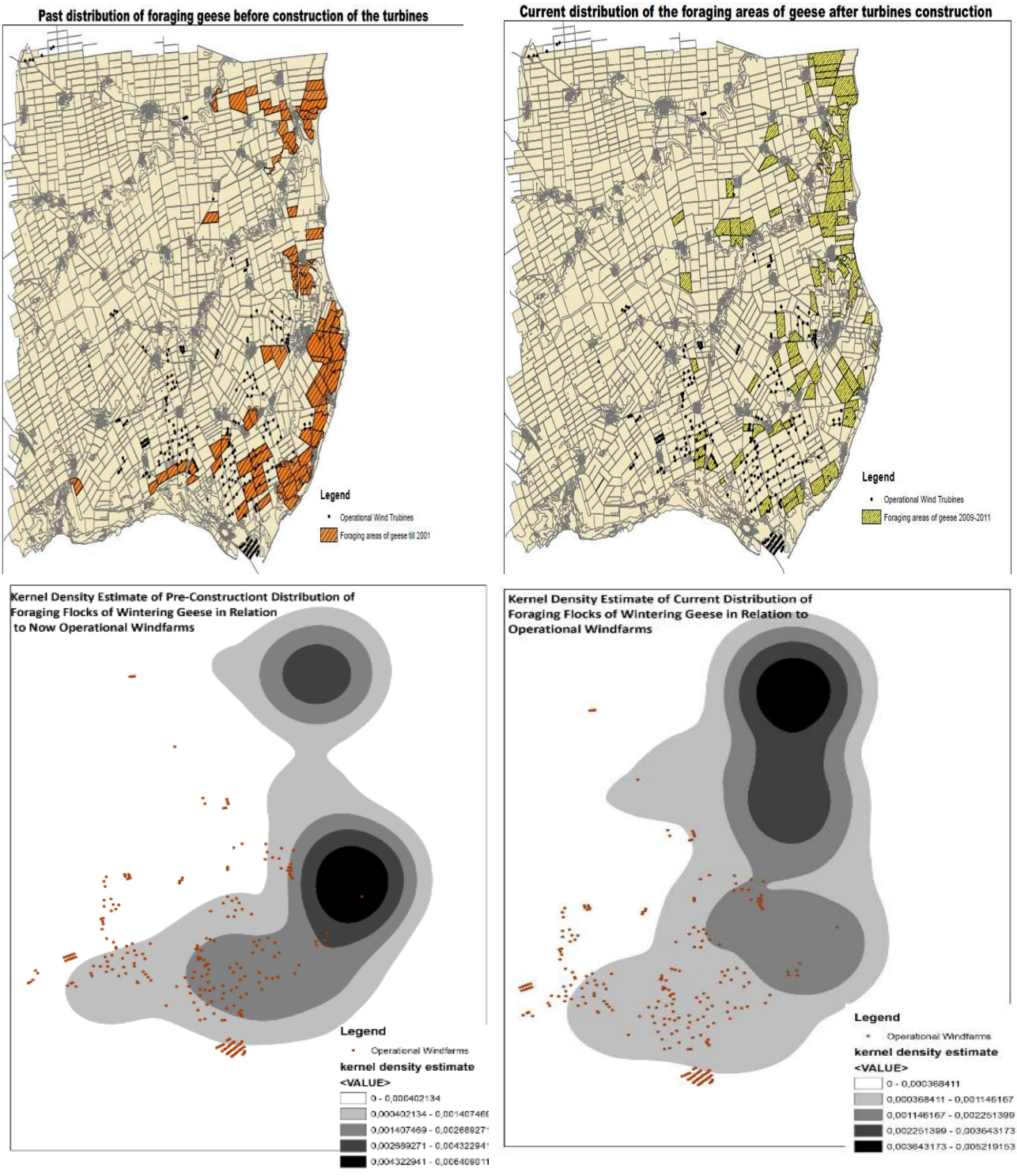
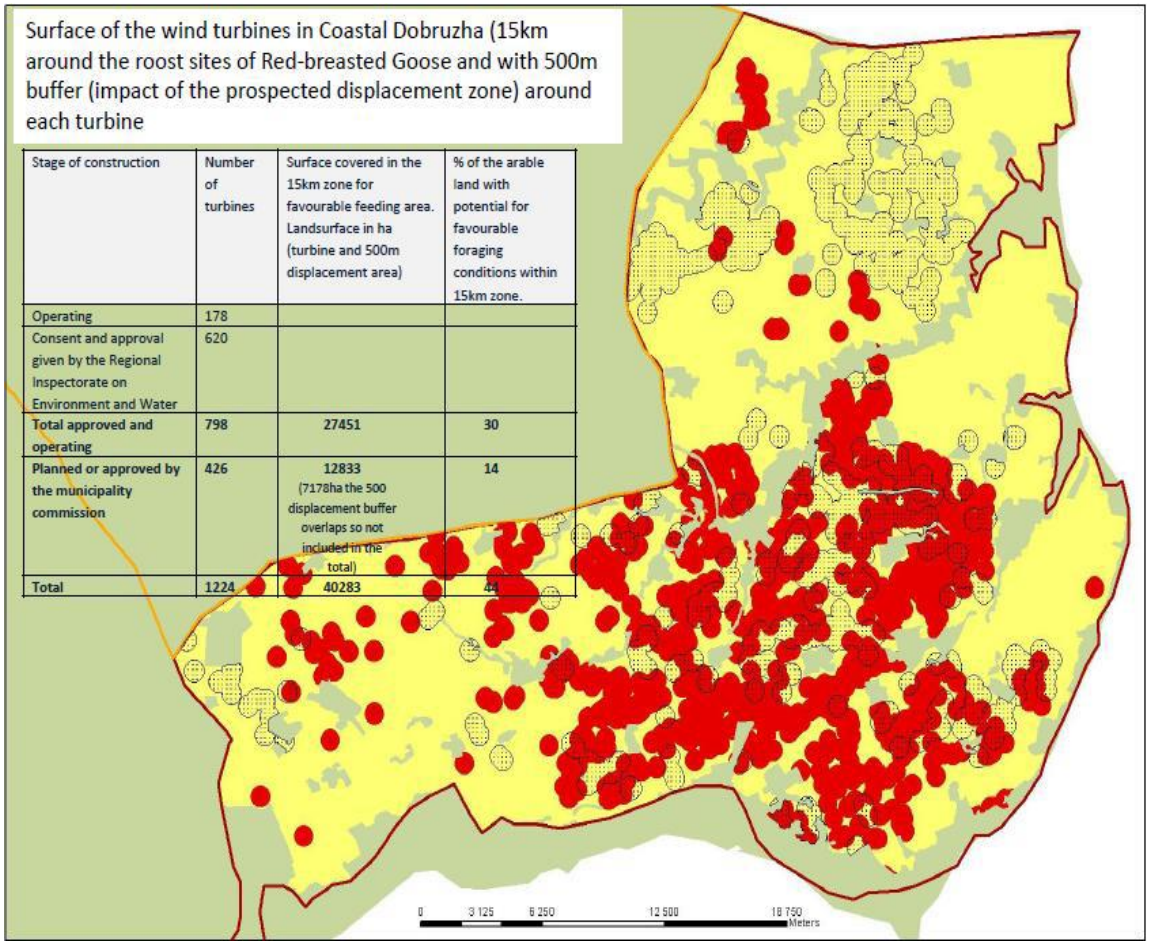


Figure 7.4. The distribution of the red-breasted goose before and after wind turbine construction. *Source:* Petkov, N. et. al. n.d.

Smin wind farm is immediately adjacent to Durankulak Lake SPA. This is one of the most important wintering sites for the red-breasted goose. According to the research, if built, this project would create a major barrier between the roosting site of the geese and the foraging area. They conclude by stating that wind turbine projects in Coastal Dobruzha have caused geese to discontinue foraging there due to bad foraging conditions, loss of safety for wintering, and high energy costs for foraging. They also concluded that the total number of project proposals and approved wind turbines cover 45% of the available foraging area for the red-breasted goose and other wintering geese in Coastal Dobruzha, inducing displacement of the geese (Petkov et. al. n.d)



Stage of construction	Number of turbines	Surface covered in the 15km zone for favourable feeding area. Landsurface in ha (turbine and 500m displacement area)	% of the arable land with potential for favourable foraging conditions within 15km zone.
Operating	178		
Consent and approval given by the Regional Inspectorate on Environment and Water	620		
Total approved and operating	**798**	**27451**	**30**
Planned or approved by the municipality commission	**426**	**12833 (7178ha the 500 displacement buffer overlaps so not included in the total)**	**14**
Total	**1224**	**40283**	**44**

Figure 7.5. Overall project proposals and approved turbines cover 45% of the available foraging area of the red-breasted goose and other wintering geese in Coastal Dobruzha (NE Bulgaria). *Source:* Petkov et. al. n.d.

7.6. Analysis: Looking at Appropriate Assessment, Cumulative Impact and the Need for Strategic Planning from the Backward Mapping Perspective

As illustrated in the previous case ***legal ambiguity*** was a tool deployed by the RIEW-Varna to proceed with the state interest of wind turbine development. This was done through the legal interpretation of the appropriate assessment article of the BA. Article 31(1) of the Biodiversity Act requiring any plan, programme, or project separately or with the interaction of other plans that will have a significant impact on protected zones to be assessed with regards to the preservation goals of the site. One procedural mechanism used by the Director of the RIEW-Varna was the so-called 'preliminary screening' of wind turbine projects. The Director would conduct a preliminary screening of wind turbine projects and, if the screening determined there would be 'no significant impact', they would not have to undergo the lengthy procedure of appropriate assessment. The ability of regional administrative units to interpret the law was that the DG Environment has no definition of significant or cumulative impact. Therefore, administrative officials lacked clarity on what significant impact meant (RIEW 1& RIEW 2).

"If I have a project within the zone without any significant impact, than it will be approved, but if I have a project outside the zone with some emissions in the water or air, it will have a significant impact. This means that the Directive does not limit the need for this assessment only according to the location of the project. You have to decide whether the projects which are 1-10 km from the zone will have an impact on the birds. As I told you, there is also no definition for impact if one bird is affected or if 10 birds are affected? You tell me what significant impact means" (MOEW 2).

In every report to the MOEW by the European Commission, the criticism was that the RIEW-Varna was not taking into account the cumulative impact of the projects in Coastal Dobruzha, but no methodology was given to the RIEW-Varna by the MOEW

or the European institutions (RIEW 2). This posed significant difficulties to regional authorities in charge of restricting or permitting wind turbines. If they rule against a particular project, the investor had the legal authority to start a court procedure against them to request the motives for rejecting the project. Since there was no clear definition, the motives for rejecting the project were difficult to uphold in court (MOEW 2).

One source from the DG Environment suggested that the definition was left ambiguous on purpose by the European Parliament because each case presents particularities, which cannot be determined by an overarching definition. For example, if you say that one percent deterioration in the quality of the site is not significant and the species in question is extremely rare, then it can very well be significant. In the view of the DG Environment, there cannot be a set criteria defining 'significant impact' or 'cumulative impact' (DG 1). While there may be no set criteria for its definition, essentially no guidance by the DG Environment provided a mechanism for regional authorities to proceed with development projects at the expense of biodiversity. In general, ambiguous terms may present important flexibility for law-abiding states keen on achieving the objectives of the Program. In the case of Bulgaria however, this ambiguity was used to proceed with the state interest and avoid effectively implementing the law.

The Director of the RIEW-Varna was also able to *use legislative loopholes to achieve the state's objective.* Legislative loopholes are gaps in the legislation used by administrative officials for personal advantage without technically breaking the law. In the case, it was illustrated that according to Annex 2(I) of Article 93(1) of the EPA, the need for an EIA 'shall be determined' by the Director of the Regional Inspectorate for wind turbines. The result was the Director *used this authority and legal ambiguity to*

carry out political decisions. From the period of 2007-2010, seven hundred and thirteen wind turbines were approved using this method. When the European Commission opened a 'horizontal' infringement against Bulgaria for failure to protect Natura 2000, the government backtracked and in 2010 required all wind turbine projects in Coastal Dobruzha to undergo an EIA (EC Infringement 2009/4423). As illustrated in the EIA chapter, however, the new legal requirement did little to halt the development of wind turbines in Coastal Dobruzha. From 2010-2013, over 1,000 wind turbines passed the ecological assessments and were approved by the RIEW-Varna (BSC 2012b).

The local and regional administration was also overloaded with the sheer scale of investments they were required to approve or reject in the region, and *they were inexperienced at their impact on biodiversity and lacked understanding of their true impact both individually and cumulatively*. Within the RIEW-Varna, there were only four people working with environmental assessments, and ever since 2003, when wind turbines investments began to materialize, they were receiving 20 notifications or inquiries from citizens per day (RIEW 2). With projects bypassing environmental impact assessments and appropriate assessment screenings, it was difficult for the RIEW-Varna to be able to accurately determine the cumulative impact of the projects. This created major challenges to an understaffed and insufficiently educated administration.

7.7. Analysis: Appropriate Assessment, Cumulative Impact, and the Need for Strategic Planning from the Forward Mapping Perspective

On a state level, until 2012, there would be *no sufficient plan for the development of the renewable energy sector and its impact on biodiversity*. Prior to accession, Bulgaria had passed a series of laws aimed at meeting the EU demand of fostering growth in the renewable energy sector. In 2002, the government committed itself to

developing transparent and unbiased rules, to 'be careful drafting new laws and regulations, and to develop a well-defined strategy on attracting new investment' (MEET 2002, 6). The wrong combination of market mechanisms and price control could have 'harmful effect' (MEET 2002, 6). The strategic planning of the energy sector was required by law, and at least on paper, seemed to be on the agenda of the national government. The assessment of the plan's impact on the environment never materialized before foreign investments began streaming in. The large-scale governmental policy of promoting renewable energy had a far greater effect than any single project could have had. Therefore, a policy-based SEA could have provided insight into the geographic, sectoral, and temporal implications of the plan (Buckley in Army Environmental Policy Institute 1998). In order for the legislative regulations outlined in the BA to be effective in protecting Coastal Dobruzha, it had to be horizontally integrated with other components of EU laws and policies. Biodiversity conservation is a crosscutting issue and does not fit into one ministerial silo. It needed to be adopted by the MEET, MOA, and the MOEW when broad governmental policies were made.

The concern over the lack of a strategic plan of the energy sector and its impact on biodiversity was highlighted numerous times by both NGOs and the international community. As early as 2003, environmental NGOs brought the issue up with the national government, but there was never any follow-up. Three years later, after hundreds of wind turbines had been permitted, again the NGOs tried to halt the developments by appealing to the international community to put additional political pressure on the government. The goal was to ensure that Bulgaria took effective measures to prevent the potential environmental impact of Directive 2001/77/EC on the promotion of electricity would potentially have once it was transposed (NGO 3). It was only in July 2012, after the EIAs had been approved for Smin and General Toshevo

wind farms, that the MOEW came out with statement No. 1-2/2012 introducing a ban on all 'new' wind turbines (for which the procedure started by the date of the issuance of the decision) in the geographical area of Dobruzha (MOEW 2012). This was after 2,062 wind turbines have been permitted in the region of Coastal Dobruzha (BSC 2012b).

The *procedural delays* seemed to be another tactic used by the Ministry to allow investors to proceed with investments before the final restrictions were to be made public (NGO 3; NGO 5; Consultant 2). Many informants perceived this as a purposeful political maneuver deployed by the government in order to proceed with large development proposals for wind turbines (NGO 3; NGO 5; NGO7). In their groundbreaking book "The Implementation Game" Bardach points out that "delay is a synonym for perpetual procrastination, which in turn is synonymous for effective resistance or obstruction" (Bardach 1977, 180). The same political maneuvering was used when Bulgaria submitted a list of Natura 2000 sites to the European Commission.

Policy resistance may have been a contributing factor to the delay of the passage of the SEA, but Bulgaria was also going through the *'wild east of legislative changes'* that created challenges to strategic planning:

"Bulgaria doesn't have strategy for the wind power electricity. Bulgaria doesn't have any strategy for the development of the tourism. We do not have strategy for the development of the touristic sector. What do we offer? There is no strategy. Actually the only thing we try to have strategy is the environmental protection. And in fact here is the conflict. In Natura 2000, the territories are being destroyed by the touristic sector and by the energy sector with photovoltaic parks and wind parks. We have one sector with a strategy and at least two sectors without strategy, which destroy the one in which there is strategy. The whole process is chaos. Bulgarian politics does not establish any order in the state. I talk about the legal law and the legal vision policy. They say accept law in order to establish order, but in fact all the institutions can give you a lot of examples how the laws do not coordinate between each other – in one law it is written one thing , in the other something quite different" (NGO 2).

The bulk of Bulgaria's regulatory framework for energy derived from the European regulations where Bulgaria had little previous experience. This resulted in huge discrepancies between laws and their implementation. Additionally, changes were happening faster than the ability of the administration to cope with them.

"I think that one of the reasons why some projects in Bulgaria were not realized the way they should be is that the legal framework was just not suitable for these projects when they first came to existence. The business was moving faster than the legal framework and the administrative capacity. At the beginning some of the people did not know what a wind turbine even looked like" (Consultant 2).

It was the responsibility of the national government to provide greater administrative staff and resources to the RIEW-Varna. It was their obligation to provide support, but even the Ministry seemed unable to fully grasp the scale of the investments. In fact, only 5-6% of the approximately two thousand approved wind turbines in Coastal Dobruzha were actually constructed (BSC 2013). Most of them were speculative projects developed by local landowners hoping to cash in on international investors that should have never received permits in the first place (Consultant 2). State authorities were not prepared for the degree of investor interest and did not react with clear and consistent guidance on the state policy. The regional authorities were also unclear about the impact of wind turbines on biodiversity and lacked a strategic plan to regulate the sector's development. Before 2003, there were no projects for wind turbines in the region, and the excessive investor interest and speculation overwhelmed the regional authorities.

On the EU level, one of the problems was *the lack of coherence and biased approach of the European agencies* like the EBRD in dealing with Bulgaria. The EBRD is an international financial fund that provided a loan to the AES project, which was under EU infringement proceedings. Their shareholders include the European Union and

the European Investment Bank (EBRD 2014). While the European Commission may have been saying one thing, the European investment institution was doing another. The decision of EBRD to co-finance the AES project undermined the credibility of the concerns brought forth by the Commission and the Bulgarian NGOs.

In fact, some of the tactics used by the EBRD during the preparation phase of the strategic environmental review of wind turbine investments in Bulgaria violated their own code of conduct, *"(b) Recognizing that Bank Personnel, as that term is defined in the Code of Conduct for EBRD Personnel, owe their duty entirely to the Bank in the discharge of their offices and that Bank Personnel in their decisions have an obligation to weigh considerations impartially (EBRD 2012, 1).* The EBRD also allegedly attempted to influence the outcome of the report and the neutrality of the consultants who worked on it. According to an informant, officials from the EBRD were actively collaborating with the investor to determine its final outcome (Consultant 1). The EIA report for the project was strongly criticized by experts from the Bern Convention. In an EBRD report regarding the due diligence taken for the project, however, officials claimed that the EIA process and scope of the assessment was reviewed by experts and found to be 'broadly' in line with EU legislation (EBRD 2008).

As legally required, the EBRD submitted the project to the DG Environment to determine whether it complied with the Birds and Habitats Directives. Even with a negative assessment by the DG Environment, the EBRD followed through with the investment proposal (DG 2). These compliance checks are one internal mechanism used by the European Commission to ensure irregularities between EU Directives are identified. The implementation of the check regarding the AES investment was ineffective. One informant from the DG Environment stated:

"We are one service within an institution, within the Commission. We are not the same service that is responsible for renewable energy – that is DG Energy, and we don't see eye to eye. We think that project shouldn't happen but we don't always call the shots. Normally, the funding arm listens to us more than it did in the past, so this was more of an exception (AES investment), but in our view not a very happy one" (DG 1).

Implementation greatly depends upon administrative cooperation across sectors on both a European and national level. The case clearly illustrated the chaotic interaction between European institutions. It is unrealistic to expect the Bulgarian government to enact coherence across their governmental agencies when European institutions with vast experience in European Directives cannot do the same. In fact, the policy of the Bulgarian government to proceed with wind turbine investments seemed to the most coherent aspect of the above case.

Powerful international economic interests have also impeded biodiversity conservation by using the weak state to proceed with business developments in Bulgaria. This sends mixed signals to the Bulgarian government since, on one side, they are receiving infringement letters and, on the other, they are lobbied by high-level officials from European countries to proceed with investments. One informant stated that political interests are so high that at one point Angela Merkel lobbied the Bulgarian Prime Minister to proceed with the EVN project in Coastal Dobruzha (NGO 7; NGO 3). All the companies investing in wind turbines are Bulgarian on paper since if you are a foreign investor, you are not allowed ownership of land in Bulgaria. In order to get around this, foreign investors have Bulgarians register a company and employ staff in order to be able to purchase or rent the land used for wind turbines. They work through a special-purpose vehicle, a company that deals with their investment in Bulgaria (Consultant 1).

"All those people who invest in Bulgaria are members of the European Commission. I suggest that the Commission asks its own members or vice versa, those people to go themselves and defend their investments before the Commission, because if one project has passed, it has been already evaluated. The expert group and the people who have worked on the report have concluded that there would not be an impact on the bird species" (Regional 2).

Almost all of the major wind farms constructed in Coastal Dobruzha that provoked the infringement proceedings were from foreign investors. This includes companies such as Stream Investment Holdings (Swiss), AES (American), Raiffeisen Energy (German), Mitsubishi Heavy Industries (Japanese), E.ON (German), Enel Green Power (Italian), EVN (Austrian), and Enhol Grupoenhol (Spanish). This is only exacerbated by the scale of political corruption and business influence in Bulgaria, which materializes through 'party loops'. These 'loops' allow for segments of the economy and funding coming from the EU to be monopolized by political officials (Center for Democratic Studies 2006).

One sector with particular vulnerability to European lobbyists pandering for political influence is the energy sector. In 2010, in a statement to the press Bulgaria's Prime Minister, Boyko Borissov described the kind of political pressure from Western European governments and lobbying circles were exerting on the government to cater to the interest of large energy companies. "What we are doing right now will get us in a lot of trouble. Enormous lobbying circles are exerting huge pressure on me and the government - there are articles in Western media, statements by Ambassadors whom I respect very much that are telling us that the new democracies have to learn their lessons. I think that I have learned my lesson from Chancellor Angela Merkel that nothing has to be hidden from the society" (Kosturkov 2010, 1). The result, provided

opportunity structures for a relatively weak administration to be captured by strong corporate interests (Stefanov et. al. 2011).

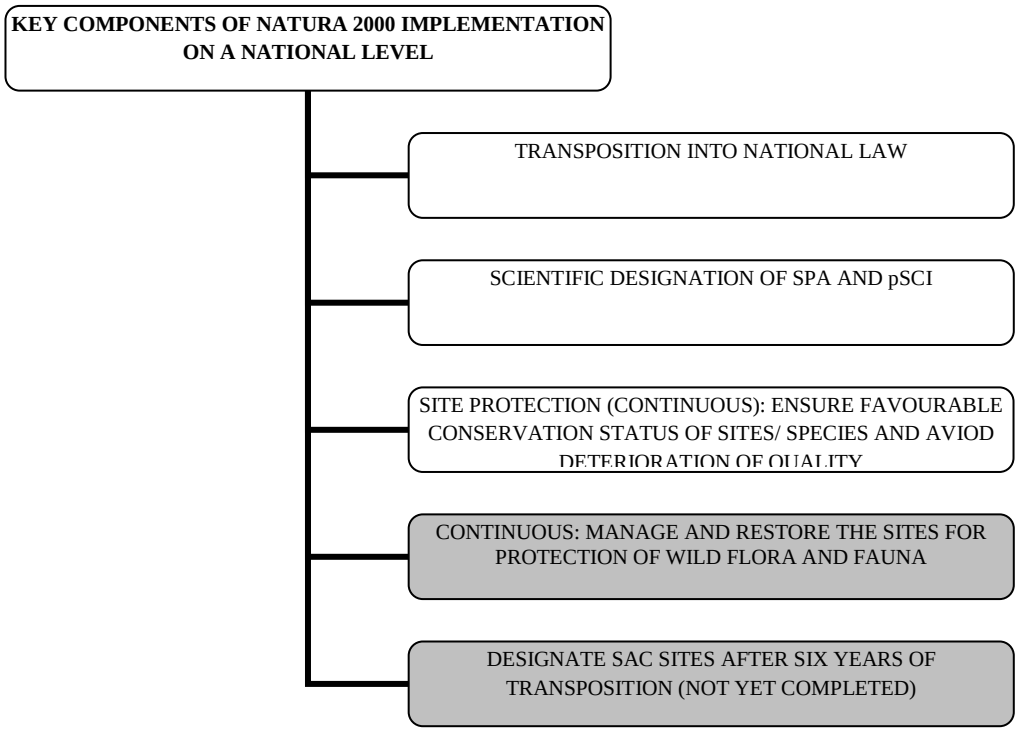
7.8. Summary

This chapter helped illustrate additional reasons for policy failure in Coastal Dobruzha. This was attributed to political decisions deriving from the highest echelons of power in Bulgaria which administrative units from the local, regional, and national government implemented through mal-adaptation and then enacting 'pseudo compliance' with the Biodiversity Act. This included wrongly interpreting legally ambiguous terms found within legal text, exploiting legislative gaps, and procedural delays. External limitations included insufficient strategic planning, the 'wild east of legislative changes' that were moving faster than the ability of administrative agents to cope with them, biased approach by EU institutions in dealing with wind turbine investments, and the influence of powerful international companies on the Bulgarian state. The next section will identify how site regimes, conservation measures, and management have been affected by the Bulgarian government's resistance to Natura 2000, as well as, politicians seeking payback for European citizens' complaints brought forth by NGOs.

CHAPTER 8: THE CASE OF WIND TURBINES IN COASTAL DOBRUZHA: SITE REGIMES, CONSERVATION MEASURES AND MANAGEMENT

8.1. Summary and Overview of Site Regimes, Conservation Measures and Management

Table 8.1. Key Components of Natura 2000 Implementation



Source: Council Directive 92/43/EEC 1992 and Council Directive 79/409/EEC.

Management is defined as the development of conservation regimes, as well as, species and site management plans as recommended, but not required under Article 3(3) of the Birds Directive and Article 6(1) of the Habitats Directive. Preventative measures to protect the conservation of Natura 2000 sites in Coastal Dobruzha consist not only of EIAs and the assessment of cumulative impact of development projects. They also require Member States to set up site restrictions in order to enact measures to maintain

the biological integrity of Natura 2000 sites. These restrictions set the operational framework for national and regional authorities to follow when determining whether activities can be allowed within the zones and identifying violations that occur. Article 6(2) of the Habitats Directive provides that Member States take 'appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species', as well as, SPA sites listed under the Birds Directive (European Communities 2000). While the article may be clear, the modalities of implementation are left for Member States to decide.

In addition to site restrictions, Member States should take positive and proactive measures to effectively control the conservation status of species and habitats. When materialized, proactive measures take the shape of management strategies for species and habitats, as well as their integration into other land use plans. Management strategies are a vital tool for improvement of the conservation status of Natura 2000 sites, but neither the Birds nor the Habitats Directives mandate the development of such plans. Flexibility may be seen as a useful tool for adaptive strategies for the 'in-house' problems of Member States, but as seen in the former chapter, it can also be used to bypass legislative constraints imposed on economic development proposals.

This section seeks to illustrate three key deficiencies in conservation measures and management. First, legislative flexibility may be productive strategy for states that are prone to abide by the law, but for law-averse countries like Bulgaria, this flexibility oftentimes is used to bypass unwanted legislative constraints. Second, vague regimes have created unintended consequences, landowners, powerless to control the actions of the state, have become financial victims when EU resources cannot be received due to vague restrictions. Finally, this section illustrates how personal vendettas and a system

of political patronage can further hinder the implementation process. Powerful national pro-biodiversity interest groups seek to assist the state in taking measures for site protection. These efforts are cleverly undermined by the very state they seek to assist. This case will illustrate how the government used their domestic policy tools of treasure, nodality, organization, and authority to withhold financial resources to implement biodiversity conservation work, enact costly procedural delays, increase monitoring and enforcement of unnecessary rules, deploy fines, and delay or reject necessary administrative approvals to seemingly punish them for their engagement with the European system.

8.2. Formulation of Site Restriction Orders

Legal flexibility provides opportunities for Member States to adapt binding EU legislation to domestic conditions. The same is true for conservation measures applied to Natura 2000 sites. The sole condition the Habitats Directive makes is that sites should maintain a favorable conservation status.[35] One of the essential methods states take to ensure a favorable conservation status of sites is to develop clear regimes to control the types of activities and restrictions within protected areas. Site regimes and conservation measures are meant to protect natural habitats[36], as well as important bird species of European significance[37] (Biodiversity Act 2009). In the Bulgarian context, the objectives of the site restrictions seem less clear-cut. The previous section illustrated the significant delays in site designation many sites in Coastal Dobruzha experienced. These delays were only overcome eleven months past official membership in the European Union and

[35] Article 2 of the Habitats Directive
[36] (Article 6(2) of the Habitats Directive
[37] (article 6(3), article 6(4) of the Habitats Directive

with significant political pressure coming from the EU. By that time, most of the sites in Coastal Dobruzha were designated including Kaliakra (partial PA), Shabla Lake Complex, Durankulak, Balchik and Belite Skali.

8.2.1. Buying Time

Designation of these sites was seen as a triumph for Bulgarian environmentalists, but the site regimes to control developments within them faced substantial delays. Only in August 2009 did the final conservation measure for Kaliakra come into force, followed by Shabla Lake Complex and Durankulak in March 2010, Balchik in February of 2012, and Belite Skali in May 2012[38].

Influenced by the EU infringement proceedings, the new orders mandated a ban on all wind turbines in Coastal Dobruzha. The tough restriction halted all "construction of photovoltaic and wind power generation in the land […] with the exception of those with construction permits before the date of the publication order in the Official Gazette (see designation orders listed in footnote 58)". This could be considered a victory for the environmental lobby and the EU since the government banned the detrimental practice along the Via Pontica. To the careful observer, however, the situation is quite different. Any wind turbine already constructed before the date of the order could continue to operate, and any company that had received a permit to construct before the issuance of the ministerial order could proceed with their project. By the time of the passage of the conservation measures in the Kaliakra SPA, over 100 wind turbines have been permitted and constructed; and in June 2012, construction began of 25 wind turbines in the

[38] Kaliakra designation by the MOEW. Order # RD 559/21.08.09; Shabla Lake designation by the MOEW. Order # RD 259/16.03.10; Durankulak Lake designation by the MOEW. Order # RD 258/ 16.03.10; Balchik designation by the MOEW. Order # RD 130/10.02.12; White Cliffs designation by the MOEW. Order # RD D-353/ 03.05.2012

Kaliakra SPA since the permit was issued before the order (Bern Standing Committee 2012a).

Not only were there delays and pro-development texts embedded within the legal framework, but according to other NGO sources, the conservation measures set forth by the government were notably 'general' (NGO 3; NGO 5; NGO 7). They did not reflect the restrictions, which were presented in the scientifically recognized IBA publication developed by the BSPB in 2007, even though it was done in cooperation the Bulgarian Enterprise for Management of the Activities on Environment Conservation (BEMAEC) under the MOEW (Kostadinova and Gramatikov 2007). According to some journalists and NGOs interviewed, it was obvious that the Ministry did not accept the proposal because they wanted to put in vague restrictions that allowed for flexibility (NGO 2; NGO 6; NGO 10; Journalist 1). For many environmentalists, the actions by the government were 'too little too late' and insufficient to protect the sites (NGO6; NGO3; NGO1).

8.2.2. Government Duplicity

While the orders may have been issued, there were little to no restrictions on economic development. In the eyes of many environmentalists, the orders effectively produced 'Paper Parks'. For example, the report developed by BSPB called for the Kaliakra IBA to restrict any construction of complexes, residential, hotel and temporary buildings on the beach and in the 200-meter zone next to it; and construction of golf courses (Kostadinova and Gramatikov 2007, 298). After the site was designated as SPA, and the official regime order published, there was no mention of any of these restrictions (MOEW № RD-559/21.08.09). Coincidentally, the multimillion-euro golf course Thracian Cliffs, which is located on rare Black Sea Pontic steppe habitat (protected

under the Habitats Directive), had been constructed in Kaliakra SPA before the regime order went into force. In 2013, the multi-million euro golf course held the Volvo World Match Play Championship (Thracian Cliffs Resort 2014).

8.3. Site Management Plans and 'In-House Rules'

Regulatory restrictions alone are not sufficient to preserve the biological integrity of Natura 2000 sites. Proactive measures are also necessary to manage and maintain their biological integrity. The Birds Directive requires Member States to preserve, maintain, or re-establish all habitats for all species of birds in Annex 1 to (b) 'upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones'. Seven years after the first official list of Natura 2000 sites was submitted to the EC, there has yet to be any management plans developed. Since the legal framework of the Birds and Habitats Directives does not require site management plans it is ultimately up to the government to determine to what extent these measures are taken. These are 'in-house rules' within the legislative prerogative of national authorities. Naturally, if the management plans run counter to objectives of the state, it can be expected that these 'plans' will never be realized. In the case, of Bulgaria, no such plans have been implemented.

According to the Ministry, however, the management plans have not been developed because sufficient data has not been collected on the species and sites of concern. In their view, you cannot manage a site without adequate information on what actually is there and why it is valuable. Not only representatives from the Ministry think that this is a problem, environmentalists also identify this as an insufficiency that needs to be overcome. Maps are outdated and major research needs to be done to ensure that

all habitats are properly identified (NGO1; NGO3; National 2). A 13-million euro project funded by the European Regional Development under the Operational Programme 'Environment' began in 2011 entitled "Mapping and identification of conservation status of natural habitats and species" to collect additional data on species (MOEW 2013). The hope is that this will be a major step in overcoming the management challenge of insufficient data.

The problem is apparently more widespread than lack of data in the official cadastre. Many sites in Coastal Dobruzha and throughout the country are incorrectly labeled (NGO 2). As the departments of spatial planning for local governments were digitizing maps, very often they were bribed to change grasslands or wetlands into arable lands. According to several sources, bribes were given to local officials to change the designation because arable land was worth more since it could be easily changed to urban or energy use (NGO 2; Journalist 2; RIEW 1). Employees from the Environmental Impact Department of the Regional Inspectorates do not go into the field to physically check whether the designation status is correct; they rely on the digitized maps instead. This was an underlying reason many wind turbines were built in Kaliakra (NGO 6). The government's own report to the EC highlights this problem. It acknowledges requests were submitted for the conversion of agricultural land for non-agricultural purposes in order to construct wind power plants, which lead to the alteration of the land use and its use for agricultural purposes (Ministry of Economy, Energy and Tourism 2010b).

The "Mapping and identification of conservation status of natural habitats and species" project is almost complete, but there has yet to be any significant signs that the government will develop management plans. Meanwhile, investments continue while these priority habitats should be strictly protected. Since there are no management plans,

the ecological integrity of sites is easily undermined with European funds like the National Rural Development Program and the afforestation program (NGO 9). Many environmentalists fear that these plans will never be realized within Natura 2000 territories with high investor interest for wind turbines and other economic developments (NGO 2; NGO 10; NGO 11). Indeed, almost 8 years after sites were designated, the plans do not exist.

8.3.1. Financial Blockade

The development of management plans is running into implementation difficulties as a result of the long-standing feud between BSPB and the national government. Species management plans are typically integrated into Life + projects. The Programme only provides 40 percent as an advance payment for project implementation, and applicants must spend 150 percent from what they have received in order for the money to be reimbursed by the European Union. This means that applicants have to invest money. In Bulgaria, the Environmental Enterprise within the Ministry provided bridging loans to environmental organizations, as well as municipalities, in order for them to be able to implement European programs that have these requirements. In 2010, the Enterprise voted to ban Life + Programs in Bulgaria for being eligible for these funds (NGO 6; NGO 3). The only way environmental organizations can now access the bridging funds is by taking a loan out from the bank at a higher interest rate.

"I don't believe in world conspiracy, and I don't want to believe, but having in mind that we are the biggest recipient of LIFE+ funding, and they have taken this very precise decision, what does it mean? [It means] that they don't allow us to apply for funding from this instrument" (NGO 3).

The result is that NGOs find it increasingly difficult and cost-prohibitive to be able to develop projects using the LIFE + Programme, which is the main funding source for the protection and management of Natura 2000 sites.

8.3.2. Compensation for Landowners

Another important part of site management plans is compensation for landowners since landownership can be costly for owners of land that falls within the borders of Natura 2000 in Coastal Dobruzha. Farmers must comply with restrictions on their land and maintain it in a high environmental quality (Natura 2000 Romania 2012). They are subject to checks and can face financial penalties if they do not comply. In order to offset costs of the regulation to their agricultural business, agri-environmental payments under the Rural Development Fund (RDF) (2007-2013) were set up to provide them with financial assistance. After the final site designations were made, however, farmers began to experience significant difficulties in obtaining the funds promised under the program. First, the documentation was complex and with little knowledge of the inner working of the Program or time needed to fill out the form, farmers were discouraged from undergoing the bureaucratic procedure (National 2). The more significant problem was that the regimes the government put in place for Natura 2000 sites were vague, and in order to qualify for funding under the Program you had to show that you agricultural activities would be restricted. One of the resulting factors was that in 2011, only 4,629,039 levs was paid out nationally to farmers for the conservation of Natura 2000 sites (Zingstra 2007). From 2009-2010, however, payments under measure 311 of the RDF for the diversification into non-agricultural activities including energy generation from renewable energy was 33,082,364 million levs (Zingstra 2007). The difficulties in

attaining funds for Natura 2000 sites and the reverse incentive created by the same program developed major resentment of Natura 2000 by landowners and further complicated its implementation (Journalist 1).

The ability of some landowners to maintain their farming activities not only is in the interest of a particular individual, but also plays an important role with regard to the biological integrity of sites. Farmers from municipalities in Coastal Dobruzha play a critical role in the protection of feeding and nesting grounds for red-breasted goose. The geese feed primarily on oats, and any change to the agricultural crops grown can drive away the geese to other foraging locations costing them vital energy. Therefore, owners of agricultural lands where the geese winter have to either maintain or alter the agricultural crops to oats (Personal communication 2013).

Many believe that government action has been inadequate, but environmental NGOs are again taking the lead to ensure site management (Journalist 1; NGO 2; Regional 3). Realizing the need to entice farmers to agree with the restrictions or to change agricultural practices, the BSPB heavily lobbied for the government to enact experimental agri-environmental measure 214 for geese. This was included into the National Agri-Environmental Program of 2012. They also held an informational meeting for 100 farmers in February 2013 to guide them on the application process for the funds available for the maintenance of habitats for endangered bird species including the red-breasted goose (BSPB 2013). These measures help, but do little to offset the problems caused by vague regimes for sites.

8.4. Species Management Plans

In order to provide additional support to the farmers and the globally threatened red-breasted goose, in September 2010, BSPB began a joint partnership with the Bulgarian Hunting Association in Shabla to develop a management plan for Natura 2000 sites in Coastal Dobruzha. The 2010-2015 project entitled "Safe Ground for the Red Breasts-Conservation of the Wintering Population of the Globally Threatened Red-Breasted Goose (*Branta ruficollis*) in Bulgaria" was a project sponsored by the Life+ Program for 2 million euros with another 2.5 million euros coming from international bird interest groups. The objectives of this project were to develop a land management scheme to favor the red-breasted goose, long-term public private land management partnerships, stabilization of the population of the species currently in decline, and improve its global conservation status. They also created two experimental goose-feeding refuges, covering 450 ha, using management contracts with farmers to sustain appropriate management. The two refuges selected contained 2,000 geese during the winter or about 5% of their global population (Personal Communication 2013).

8.4.1. Government Authority

Due to BSPB's lawsuits against governmental authorities, they immediately began to encounter roadblocks with their project to protect the goose. One informant stated that the local and regional governments are making the project extremely difficult to implement. The project has a significant technical component and requires them to catch the geese using a method of non-selective catching with a net. By using this method, it is impossible to determine how many geese will be caught. Their first catch

was on a Sunday, and immediately six people from the RIEW-Varna appeared to observe the catch. Since they were permitted to catch only 35 geese and caught extra, they were issued a fine of 27,000 levs for violations of Articles 4 and 5 of the BA. According to the informant, it was strange that the RIEW-Varna was even working on a Sunday.

"They don't work on Sundays; they don't have money for fuel. Whenever you call them for any violation in the region, they are not available. We have this illegal fishing and poaching, and we also have these red-breasted geese killed in front of one of our guys who does the monitoring. And [from] the pictures he had taken it is obvious – there is blood. You see the hole in the head but you see the blood also, and in the protocols of RIEW-Varna, it was written that the reason is unknown even though it was clear it was killed by a hunter. We are obviously trying to help, and the ironic thing is that we are blocked at every turn by the government. All these problems cost us money and time and we are the only ones who care about these birds or do anything to help the situation, but at the same time. We are blocked for personal vendettas" (NGO 3).

8.4.2. Procedural Delays

The BSPB and other environmental organizations are also developing additional species management plans for other globally threatened species in Bulgaria. The process is cumbersome requiring significant capital investments that are supplemented by the Life + funding. As the official national authority, the MOEW must approve all such plans before they can be enacted. Therefore, the LIFE + Programme requires project implementers to get the plans approved by the Ministry before the funding can be reimbursed. Environmental organizations are experiencing significant barriers in getting approval for these plans (NGO 12 & NGO 3). Since the majority of the management plans are implemented with Life+ funding, environmental NGOs that take loans out from the bank to implement the project cannot pay them back since the LIFE+ projects withhold payment until the final approval by the Ministry. As in the case of the red-

breasted goose project, the sums can be substantial amounting to hundreds of thousands of euros. In the words of one environmentalist:

"And that's hundred thousand euros and [another] hundred thousand euros. How will we recover these funds? We will die. Now they are more sophisticated, they [the government] don't enter into a direct fight with us but they have evolved and are killing us with financial means" (NGO 4).

Regardless of the apparent road blocks put up by local and national institutions, the project to save the red-breasted goose along with other management plans are still underway. The future positive results of these actions for the region are less certain.

8.5. Forward-Backward Mapping Analysis: Looking at Site Regimes, Conservation Measures, and Management from the Backward Mapping Perspective

Site regimes are within the legal authority of the MOEW to designate. The case illustrated that only in late 2009 were the first site restrictions issued for Coastal Dobruzha. By that time, 930 wind turbines had been approved by the RIEW-Varna. In 2012, Belite Skali regime was issued banning wind turbines. By that time, however, approximately 1,400 additional wind turbines have been approved in the region (Bern Standing Committee 2012b). The delay tactics seemed to be another way for the state to bypass the Birds and Habitats Directives in order to proceed with investment proposals for wind turbines, thus further complicating implementation for the regional administration. This was substantiated by government documents presented in the previous three chapters illustrating the government's support for the development of wind turbines in Coastal Dobruzha.

It also seemed apparent that the government was concerned about providing opportunities for investments for economic development within Natura 2000 zones and therefore left the regimes flexible. An informant from the Ministry explained that the proposal for the regimes developed in the IBA report provided no room for economic development and in his view, *"If you ask them [NGOs], they will tell you that nothing should be built in and outside of Natura, but this cannot happen. We are for the balance" (MOEW 2).*

The ecological importance of Coastal Dobruzha was well-documented thus requiring strict site protection to avoid deterioration of natural habitats and species.[39] The regulatory requirement was not directly challenged by the national authorities. In contrast, they used their regulatory authority to bypass costly restrictions that would affect investment proposals. *This was done by implementing vague restrictions, causing substantial regulatory delays, and capitalizing on weaknesses identified within the BA*. The direct effect was to make preserving the conservation status of the sites increasingly difficult and it attributed to significant ecological damage to Natura 2000 sites in Coastal Dobruzha, such as Kaliakra SPA. Another unintended consequence of the vague regimes was deficiencies in site management as farmers encountered problems in receiving funding.

Representatives from the MOEW pointed out that there were some practical reasons for the delay of site regimes because there was inadequate data for the assessment of sites and species located within the Bulgarian territory (MOEW 1 & MOEW 2). Only in 2011, approximately four years after accession, did the project entitled "Mapping and identification of conservation status of natural habitats and species" begin. While this was a great start, the project needed to have been undergone

[39] Article 6 (2) Habitats Direcitve.

prior to accession in order to validate the work of the NGOs and produce solid scientific grounds for site conservation.

The example further portrayed the critical role BSPB have played in developing measures to manage Natura 2000 sites in Coastal Dobruzha. This role has been undermined by state authorities seeking political payback for the long-standing opposition they have taken to governmental decisions that impede biodiversity conservation. Exhausting all possibilities within the national institutions and the judiciary, BSPB and other environmental NGOs had no other choice than to file citizen's complaints with the European Commission. The existing political culture of Bulgaria does not permit this kind of opposition to government authority, and everything is taken as a personal offence (NGO 8). Bulgarian life has a strong dependence of the political parties in power and it is almost impossible to survive in opposition. One way this materializes is though the widespread practice of Ministers and Members of Parliament developing a network of NGOs dependent on them for the appropriation of funds from various projects (Tzenkov et. al. 2010).

This tactic of national funds withheld as punishment seemed to have been deployed by the BEMAEC under the MOEW for LIFE + funded projects. The practice has created significant barriers to the development of management plans. Additionally, the BSBP must operate in Coastal Dobruzha in municipalities that are highly supportive of wind turbine projects. This includes Shabla Municipality where the majority of the winter-feeding grounds for red-breasted goose are located and where the BSPB has an ongoing project to protect it. In an interview, the Mayor of Shabla Municipality made no qualms about what she thought about the BSPB:

"What they do here is terrorism, it shouldn't be like this. They even wanted the symbol of the town to be the goose. It is not right a goose to depict people here. If there

is an endangered animal here, no matter how big the danger for it is, we cannot put it before the people. It may stay but what if the people leave instead. So, I do not agree with the protection activities that those NGOs implement. We have contradictions with the Society for the Protection of Birds, with Green Balkans and with the rest of the organizations, because they are too narrow-minded; they protect only a particular kind of birds, such as the red-breasted goose" (Local 2).

Based on informants and government documents obtained, it seems that administrative units on a local, regional, and national level are using their authority to create significant roadblocks for the BSPB and other NGOs in implementing measures aimed at the conservation of high value species and habitats. The Bulgarian state is no longer entering into direct fights with NGOs or the European Union. They have learned new mechanisms to proceed with political interests and to punish those who do not agree with them. Constructivists may see social interaction with the European Union as a way through which administrative agents of the Bulgarian state can develop a better understanding of the Bird and Habitats Directives, thus more effective implementation (Checkel 1998, 325-327). Therefore, they claim that policy instruments that emphasize arguing/deliberation and learning based on the dynamics of socialization are the means of achieving appropriate behavior (Risse and Borzel 2000).

This socialization, however, seems to have taught the Bulgarian state ways to maneuver around the Directives in order proceed with state interests which oftentimes run counter to biodiversity conservation. In order to punish dissidence, administrative officials have stepped up monitoring activities of environmental NGOs in local municipalities, blocked national funding for project implementation, and delayed or outright rejected management plans developed by NGOs.

8.6. Forward-Backward Mapping Analysis: Looking at Site Regimes, Conservation Measures, and Management from the Forward Mapping Perspective

Management plans are optional according to Article 6(2) of the Habitats Directive, which provides that Member States take "appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species', as well as, SPA sites listed under the Birds Directive" (European Communities 2000). Since according to the subsidiary principle, the Union does not take action on any measure unless it is more effective than action taken at a national, regional, and local level, the implementation of plans was left to the national government (Europa 2014).

The DG Environment essentially has its hands tied when it comes to ensuring management plans are put into place. The DG Environment on many occasions brought the concern about insufficient planning of Natura 2000 sites, but by law, they cannot intervene. It is up to the Member States to implement the legislation and all the DG Environment can do is follow-up on their actions (DG 1). Authorities from the DG Environment are also well aware of the conflict between the Bulgarian NGOs and the government, as well as the problems related to developing management plans (DG 1& DG 2). One representative explained *"Yes, but in Bulgaria this is the problem: everything is taken personal. When there is a problem, they don't say 'let's sit together to find a solution', everyone takes everything personally. When there is a problem, they don't come together and say 'let's fix it', they just want to punish each other for bringing cases to us" (EU 1).* Conflicts between civil society organizations and governmental officials are an internal issue lying within the authoritative powers of the central government. All the DG Environment can do is to continue their dialogue with

the government as a means to change their mindset and make them aware of these detrimental practices.

8.7. Summary

This chapter illustrated additional techniques used by the government to delay the implications of Natura 2000 sites on economic development. This materialized through procedural delays, implementing vague site regimes, and foregoing 'in-house measures' such as management plans to counter potential restrictions to economic growth. The case also illustrated, however, that there are technical complications, such as identifying and mapping Natura 2000 sites, which further complicate the development of such plans.

It also illustrated how the domestic interface between environmental NGOs and the national government became perverse through supra-national interactions between the European Commission, the state, and civil society. In a country where actions against governmental authorities are taken as a personal offense, NGOs are finding it increasingly difficult to implement activities aimed at the management of Natura 2000 sites in Coastal Dobruzha. The government used its organizational, nodal, financial, and administrative resources to carry out that payback and undermine their ability to effectively conduct their work. This was done through the implementation of procedural delays, increase monitoring and enforcement of unnecessary rules, financial blockades, and blocking administrative approvals to punish them for their engagement with the European system. The next section will provide a set of conclusions deriving from the research as well as its implications.

CHAPTER 9. RETHINKING EUROPEAN INTEGRATION AND REGULATORY COMPLIANCE FROM THE FORWARD-BACKWARD MAPPING PERSPECTIVE

9.1. Conclusion Set 1: The Interaction between the European Union and the State

The first set of conclusions highlights the interaction between the European Union and the state. As the case illustrated, biodiversity conservation was neither a driving motive for EU Membership, nor was it on the political agenda for Bulgarian citizens or their representative government (European Commission 2006b). Without domestic support or political desire for biodiversity conservation, the government went through the lengthy procedures necessary to effectively transpose the Birds and Habitats Directives into their legislative framework. This was largely due to the promise of EU membership. The EU spent considerable time and energy to ensure this framework was in place, but invested little to no resources in developing the technical expertise and understanding of Bulgarian administrative officials for the implementation of the law to be effective. Moreover, the EU did not engage in any public outreach to Bulgarian politicians or other domestic stakeholders in order to address the benefits of its implementation. This outreach needed to be geared towards explaining how objectives within the BA would lead to the benefits desired by EU membership such as security, economic development and employment. With little domestic buy-in for a costly policy resistance was inevitable.

Once the carrot of EU membership was obtained, the relationship between the EU and the Bulgarian government went from one of conditionality to regulatory cooperation. The EU, however, did little to facilitate the growth of the necessary

domestic infrastructure for that cooperation to be efficient. European support for the development of administrative capacities, political buy-in, as well as, financial assistance were all necessary to produce the outcomes the European Commission desired. Bulgaria was required to make tough decisions over which sites to include into the Natura 2000 network. These decisions had significant domestic implications, which had the potential to financially harm a variety of domestic actors, including regional governments, local property owners, and business interests. During post-conditionality, these interests trumped European concerns about biodiversity conservation, so political and domestic resistance to the BA began to materialize almost immediately.

The government eventually included most of the proposed sites back into the Network, but this action was only 'on paper' as construction of wind turbines continued unabated in Coastal Dobruzha. While Bulgaria did not outright reject the Birds and Habitats Directives, it conducted 'pseudo compliance' to appease the EU, thus shrinking the costs of non-compliance by reducing the probability of detection through deception.

This dichotomy between paper and action is what Diahanna Post argues happens systematically in Central and Eastern European countries. Countries do not actually defect from EU laws through refusal to implement them, but deceive the EU. The domestic laws show cohesion with the EU, whereas the implementation of these laws is weak. She calls this phenomenon the "deception gap" or the difference between what is written and what is implemented (2002, 3). Jacoby goes further to state that the EU indirectly encourages EE nations to create two-faced organizations, where one side seeks to pacify the EU and the other to satisfy domestic constituents (Jacoby in Post 2002).

Rapid economic growth was one strategic benefit of wind turbine investments and thus created a direct incentive for avoiding effective implementation of the law. Constructivists claim arguing/deliberation and learning based on the dynamics of socialization are the means of achieving appropriate behavior of Member States (Risse and Borzel 2000). Through the case study analysis, the opposite appeared to be happening in Coastal Dobruzha. Over time, as the relationship between the EU and the Bulgarian government developed, a 'de-constructivist' learning process began to take place. Rather than learning how to achieve the true objectives of the BA through policy implementation, they began to identify additional mechanisms to avoid the policy or to illustrate compliance through deception.

Since the starting point of the EU is the assumption that they are dealing with a 'coalition of willing partners' in Member States, adequate control mechanisms were not in place in order to identify and alter the behavior of administrative officials intent on evading legal mandates to continue with state interests Bardach calls this 'massive resistance' where administrative units withhold critical elements specified in a policy mandate by overwhelming the ability of administrative agencies to enforce compliance (1980). Since the starting point of the EU was the assumption that compliance would occur in Bulgaria, they were overwhelmed when 'mass resistance' took place.

The 'pseudo compliance' measures orchestrated by state administrative units included the seemingly purposefully incorrect interpretation of ambiguous legal articles transposed into national legislation, utilizing legal loopholes, procedural delays, the usage and avoidance of critical elements of interacting legislation to meet national objectives obstructed by the BA, the utilization of interacting legislation, suppression of substantive feedback from dissenting actors, downplaying the impact wind turbine

projects would have on biodiversity, approving scientifically weak EIAs, utilization of in-house measures, government duplicity, and facilitating the investors development requests through expedited administrative procedures such as 'investor first class' status, and orders of preliminary implementation.

The central government seemed to encourage national, regional and local administrative agents in charge of the implementation of the BA to evade these laws and for investment projects to proceed. Since Bulgarian life has a strong dependence on the political parties in power, it is almost impossible to maintain administrative positions in opposition to higher authorities. Therefore, as the case study illustrated, administrative officials were used as tools to implement political decisions. This left little discretion for 'street level bureaucrats' to implement the underlying objectives of the policy in a professional and unbiased manner (Tzenkov et. al. 2010). As this case study further illustrated, however, local and regional administrative units also seemed supportive of wind turbine projects for the economic development of the region further encouraging non-compliance. Therefore, the 'inputs' or policy tools were only as good as the intentions of the administrative agents that wielded them.

Tallberg argues that in collaborative situations states tend to renege on agreements since they gain more when they take all the benefits without contributing what they are supposed to. Therefore, in order to achieve collaborative gains, states must deter other states from reneging (Tallberg 2002). From this perspective, enforcement can be seen as the means to ensure state compliance. This is done through increasing the costs of non-compliance to such a degree that the state reverses adverse policies, which are then transferred to the regional and local authorities. These mechanisms include

sanctions, monitoring and monetary penalties. Sanctions and monetary penalties increase the costs of non-compliance thereby reducing the chance of defecting (Tallberg 2002).

In the case of Bulgaria, this may seem like a plausible method to deploy to ensure compliance and achieve conservation objectives. The average time span, however, between the first step of infringement proceedings and final ECJ judgment is 56 months (Glachant 2001, 19). Violations of the Birds and Habitats Directives in Coastal Dobruzha received their first infringement in 2007, and until now, there has yet to be a court decision in the case. Local, regional, and national governments have already made millions of Euros on wind turbine investments in the region. A pending court case may be considered a concern to officials, but uncertainty about the outcome and the financial penalties which may be imposed disguises the true 'costs' the state will incur through non-compliance, thus promoting its continuation.

The cycle of political elections also strongly deters compliance with Directives that run counter to national priorities. Parliamentarians in Bulgaria are elected to office once every four years and the President – once every five years. With European court cases taking an average of five years to decide, most governmental representatives engaged in political decisions contrary to EU law, cycle out of politics before the state is even penalized for non-compliance. Many of the politicians who were involved in less than honest business deals will have already retired and reaped financial kickbacks of projects by that time. Eight years after the initial infringement notification for Coastal Dobruzha, and after Bulgaria has changed three coalition governments, there is no final decision by the courts.

Enforcement also requires the detection of violations and lengthy court proceedings, which can require more financial resources than incentive structures,

capacity building, and prescriptive measures. Moreover, by the time the actual penalties are implemented, they pose little incentive for a country like Bulgaria to change its behavior. Potential fines enacted by the ECJ must be high enough to counter the lawsuits and penalties they would inevitably face by investors for reversing their administrative decisions and tearing down any wind turbines that they own. Therefore, it seems that the only potential gains penalties could provide would be to deter other states from implementing similar activities or to prevent them from continuing the practice in other locations.

All these constraints strongly suggest that the means with which enforcement and other post accession policy tools typically deployed by the European Commission are a weak deterrent. Greater measures must be taken by the European Union of ensure preventative measures are applied before transposition when the 'carrot' has already been obtained by the national governments.

Additionally, there is a significant need to support the Bulgarian government to develop administrative capacities of policy implementers on a national, regional, and local level. Each section of the case identified that administrative officials lacked sufficient financial remuneration for their duties, expertise in biodiversity conservation, experience in measuring the impact of various development projects on biodiversity, and staff to implement the regulations. One example of this was the relative inexperience of administrative officials in dealing with wind turbine projects coupled with the lack of strategic planning. With large-scale investments in wind turbine flooding into the region and no practical experience of administrative officials in dealing with such investments, the outcome was predictable. These implementation problems can be considered a "vertical disintegration of policy" (O'Toole and Hanf

1998). Bulgaria is inexperienced in translating these biodiversity commitments into specific tasks and, particularly, at distinguishing costs and benefits of environmental compared to economic-oriented legislation. Therefore, the constructivist argument holds some weight as fostering better understanding of the EU Directives and developing administrative capacities of policy implementers would certainly improve implementation to some degree.

Another important finding regarding the intersection between the state and the European Union is that the implementation is a non-linear process. It is not a forward or backward chain starting from the European Commission and ending with local actors or vice versa. Implementation is a kaleidoscope of various European and national policies all interacting in a complex way to create unique patterns of compliance. These interactions must be identified and empirically studied for two reasons. The first reason is to provide greater insight into how European Directives can interact with each other and how these interactions influence obtainment of strategic European objectives. This way objectives can be prioritized and trade-offs can be made between them in order to identify the ideal collective outcomes desired by the European Community.

European Directives transposed through the integration process created a marketplace of domestic objectives. In the eyes of the European Commission, these objectives were uniform and countries should strive to achieve them with equal vigor. In reality, however, there are trade-offs between various objectives embedded into EU laws. In the case of Bulgaria, we could see that achieving the targets of Renewable Electricity Directive (2001/77/EC), created a trade-off between the development of renewable energy and biodiversity conservation. When domestic preferences aligned with domestic legislation transposed through EU integration, compliance occurred. This

was the case with the development of renewable energy, as investments in the sector would bring economic development to a poor region of the country. When domestic preferences did not align with domestic legislation transposed through EU integration, policy aversion took place.

In essence, the Bulgarian government mal-adapted to European Directives. The actions of the government to satisfy renewable energy targets of the EU caused an inverse relationship to the objectives of the Birds and Habitats Directives. The better they performed with the stimulation of wind turbines in Coastal Dobruzha, the more they damaged the unique biodiversity of the Coast. Marginal trade-offs existed between regional development and the protection of Coastal Dobruzha. Therefore, the Bulgarian government took marginal risks by not outright rejecting the Birds and Habitats Directives through non-transposition, but through avoiding costly measures that would sacrifice the development of wind power. The government, in fact, mal-adapted to the European renewable energy targets through averting costly measures found within the legal framework of the BA through 'pseudo compliance'.

To illustrate this point in greater detail, we need only to analyze how the implementation of the Renewable Energy Resources and Bio-fuels Act deleteriously affected biodiversity in Coastal Dobruzha. From 2005 until 2010, Bulgaria went from 9.4% to 13.8% total domestic renewable energy production (European Commission 2013a). This trajectory put Bulgaria on trek to achieve easily the mark of 16% renewable energy by 2020. In fact, Bulgaria achieved their required 16% renewable energy in 2012, which was eight years ahead of schedule. This made them one of the first countries to achieve their target in the European community (Eurostat 2014). If you look only from the perspective of the renewable energy resource targets, Bulgaria would be

considered and overachieving performer. One must also analyze, however, the relative impact these developments have had on the biodiversity objectives of the Birds and Habitats Directives. In the case of Bulgaria, we saw that the stimulation of renewable energy sector through European renewable energy targets impeded Bulgaria's conservation of SPA and pSCI sites in Coastal Dobruzha.

The second reason is that compliance with the Birds and Habitats Directives greatly depends on interacting legislation, which, if not implemented properly, will only exacerbate non-compliance. In Bulgaria, legislative loopholes in the EPA permitted wind turbines to be developed without going through an EIA. Additionally, the legal text of the EPA was applied in a way that impeded a fair and balanced analysis of various wind turbine projects and their impact on biodiversity. The Administrative Procedures Act permitted projects to be constructed while court cases were pending on their legality thus making them hard to revoke after they were constructed. The European institutions must identify better ways to analyze and to cross-fertilize important legislative objectives that depend on each other for effective implementation.

The case also uncovered the role that European investment institutions and international companies can play in encouraging, and, in some cases, supporting perverse investments at the expense of biodiversity conservation. Through in-depth interviews, the research uncovered that officials from EBRD were allegedly using their powerful position to influence the outcome of independent reports warning of the dangers posed by wind turbines to biodiversity in Coastal Dobruzha. Even more troubling was the alleged collaboration between the EBRD and the private company AES. The DG Environment warned EBRD of the ongoing infringement procedure for Kaliakra IBA, but the investment was still able to pass the compliance checks within the

European Union (DG 2). The European Union must develop stronger compliance check procedures for projects and investigate the conduct of officials from the EBRD in relation to the Saint Nikolai Wind Farm Project. European institutions are not silos functioning separate from one another without any interaction. Oftentimes, EU institutions have inter-institutional priorities that contrast those of other European institutions. In such a situation, prioritization of objectives goes to the institution that holds more political power. In the case of wind turbines in Coastal Dobruzha, it seemed that the EBRD was able to lift their institutional priorities above those of the DG Environment at the expense of extremely rare European bird species and habitats. The European Union must accept this fact and work more effectively to ensure greater cooperation and communication between their respective institutions.

Article 49 on the Treaty of the Functioning of the European Union provides freedom to international companies of the European Union to establish themselves in Bulgaria and to provide services (European Commission 2014). Once the regulatory incentives were in place for the development of wind power, the Treaty provided a mechanism for European companies to establish a foothold in the newly emerging European state. Investments came flooding in as investors promised economic support to municipal budgets and job growth if the projects made it past administrative procedures. With weak administrative oversight, prioritization of wind power by the national government, corruption, and no previous experience with wind power, the projects were easily approved. Once they were approved, any reversal of this decision by the national government would result in lawsuits by investors claiming economic losses like was seen in the case of Smin wind farm. These companies were able to capitalize on a state in transition by utilizing its weak institutional structures to proceed with profitable

projects, which would have never been approved in Member States with strong institutional structures and sufficient rule of law.

9.2. Conclusion Set 2: The Impact of Europeanization on Internal Domestic Politics

The second set of conclusions focuses on the alteration of the internal relationships between Bulgarian government and their domestic constituencies through the EU integration process. Each segment of the case illustrated that on a domestic level a few well-organized NGOs with the policy preference of biodiversity conservation pushed to have the proper implementation of the Birds and Habitats Directives on the national agenda. The state authorities resisted this agenda and developed sophisticated methods for law avoidance. In order to counteract the state, the NGOs took their complaints to the national courts that failed to address their concerns. Therefore, biodiversity interest groups circumvented the national government entirely and appealed to the European Commission by filing citizen's complaints regarding governmental infringements of EU legislation (Marks 1993; Sandholtz 1996).

This empowered the NGOs by giving them greater leverage against the state to maximize their embedded professional interests. Environmental NGOs, like the BSBP, were able to capitalize on their policy preferences in this new political sphere of influence by aligning their core values and expertise with EU legislation. The state, on the other hand, also aligned their policy preferences with EU legislation in this new sphere of political influence. The renewable energy targets ran parallel with what they saw as the domestic need for energy security and economic development through the stimulation of investments in the renewable energy sector. This set the stage for a showdown between powerful governmental actors and a few well-coordinated civil

society groups who were able to implant Bulgaria's non-compliance with the Birds and Habitats Directives onto the European agenda.

Throughout the case study, we were able to see that the BSPB was well coordinated, received international funding to support their activities, and was able to develop detailed citizen's complaints that the European Commission had to investigate and address. European legislation may have developed new opportunity structures to ensure biodiversity was on the agenda of the national government, but the government itself controlled the domestic resources to counter unfavorable laws. The adverse effect was that this undermined the ability of these NGOs to cooperate with governmental authorities to achieve their ultimate aim of site conservation in Coastal Dobruzha. Bulgarian authorities sought political payback for the actions taken against them by the NGOs and the European Union. The Bulgarian government controlled organizational, financial, and administrative, and nodal resources, which were deployed to carry out that payback and undermine their ability to effectively conduct their work. The means deployed by the Bulgarian authorities included financial blockades, procedural delays, withholding crucial governmental approvals, issuing fines, and unfair regulatory enforcement. The long-standing feud will only further impede the management and protection of important habitats in Coastal Dobruzha. This 'showdown' between the government and these NGOs is something not widely known in civil society thus reducing the public pressure on the government to change their pattern of behavior.

9.3. Forward-Backward Mapping and Hood's Policy Tools Framework: Their Theoretical Value for EU Integration Studies

Forward-backward mapping sheds light into the policy implementation process in Bulgaria. On the forward mapping side, the research was able to identify the set of decisions that the European Union has to influence in order to have a positive effect on

the policy. Throughout the case, we saw that biodiversity conservation in Coastal Dobruzha was simply not a domestic priority for the national government. In order to obtain real implementation, not just on paper, the European Union must build national commitment to the Network. During the case study review it seemed clear that the primary tool the European Commission deployed to entice Bulgaria into implementing the Birds and Habitats Directives before accession was the 'treasure' in the form of EU membership. Little 'treasure' organizational' or 'nodal' tools were used to develop administrative capacities or societal buy-in necessary for domestic implementation to be effective. As a result, domestic resistance occurred after EU Membership was obtained. Consequently, from a long-term perspective, compliance depended on changing behavior based on institutionalizing pro-biodiversity ideas and norms before accession came into effect. The policy environment in which Bulgaria takes action is social as well as material. Therefore, this environment can provide Bulgarian stakeholders with a forum through which methods of compliance can be learned and beliefs can be shaped (Checkel 1998).

With regard to the Birds and Habitats Directives, the legal understanding of the legislative requirements within them was weak, causing confusion on whether excluded sites could proceed with wind turbine developments before designation. Perhaps, if the EU placed greater emphasis on explaining these legal terms and concepts to the national authorities before accession, some significant compliance failures could have been avoided. The scientific validity was questioned and challenged by national authorities since the initial proposal of sites came from the pro-biodiversity constituency. One way that could have prevented aversion to the Network is for European scientists to work together with national authorities in charge of site submission to explain its technical

validity. The case also illustrated how interacting laws play a critical role in protection of Natura 2000 sites. The regulatory agents of the DGs must do a better job in ensuring effective transposition of European legislation to catch any gaps that may exist. Legislative flexibility may prove useful for law-abiding states to adapt EU legislation to 'in-house problems', but for law-averse states like Bulgaria this legal flexibility can also provide new venues to maneuver around costly restrictions the state does not wish to implement.

Hood's policy tool framework proved useful in identifying how Natura 2000 implementation is not dependent merely on the officials in charge of implementing the Biodiversity Act, but is greatly dependent on interacting legislation and other administrative agents in charge of implementing those legislative mandates. These administrative units have an entirely different 'toolkit' used to implement those mandates, which in some cases run counter to those of the BA. Policy analysts much deploy greater resources not in quantitatively measuring each individual 'tool' used for compliance, but in enacting broader macro-approaches to the evaluation of tools in order to understand the policy environment and temporal context through which they are deployed.

From the forward mapping side, post-conditionality the primary tool the European Union could implement to ensure compliance was their 'authority' in the form of infringement proceedings and 'nodality' in the form communication with national authorities and the collection of citizen's complaints. These measures were largely insufficient to prevent the government from implementing strategic political decisions that ran counter to biodiversity conservation. Therefore, the European Union must apply

tools before the relationship between the EU and national institutions turns into one of regulatory cooperation.

On the backward mapping side, local and regional authorities were carrying out their administrative duties in order to comply with centralized political decisions coming from the national government. Therefore, the tools available for implementation were not effective as these political decisions ran counter to biodiversity conservation. In fact, authorities were learning how to mal-adapt to European legislation by using their administrative 'toolkit' to implement wind turbines and circumvent costly restrictions to economic growth found within the BA. Therefore, the policy failure manifests itself on the central level and trickles down to regional and local levels. The local and regional governments however had a direct incentive to evade legislative mandates to facilitate economic development in their communities and to fend off rapid depopulation in their municipalities. Strict scientific stipulations and little supportive financing was also a recipe for non-compliance. This socio-economic context seemed to be overlooked by the European Commission when they enacted ambitious biodiversity targets with little support to ensure their application. Hood's policy tools framework was useful understanding this broader socio-economic context and how it materialized through the implementation process. What it uncovered was that the tools used to implement Natura 2000 are only as good as the intention of the administrative units in charge of deploying them. In the Case of Wind Turbines in Coastal Dobruzha strict biodiversity conservation seemed to be only the intention of the DG Environment and environmental NGOs. There was also another practical reason for this policy failure which was the insufficient administrative capacity of the local, regional, and national authorities to implement the Directives. This is due to lack of manpower, professional expertise, and financing constraints. This

was further exacerbated as local and regional authorities had little knowledge or previous experience dealing with biodiversity conservation. They also lacked sufficient technical knowledge to connect the cumulative impact of various proposals for wind turbines and to strategically plan the flood of investment requests being submitted to the RIEW-Varna for approval.

The significance of the findings has broad implication for the understanding of implementation. While the case of wind turbines in Coastal Dobruzha may seem like an isolated phenomenon the implementation of Natura 2000 is running into significant troubles throughout the country.

"When I say that it's an example, it's just one case in one particular case, and you have all kinds of violations of environmental law, mainly environmental legislation, including EIA. And it shows all the gaps. It also shows how the political pressure can influence the experts' decisions. And, unfortunately, it is not endemic; it is pandemic because Kaliakra is just one example, but now with the Smin case and other special protected areas the same things are happening. You go to Sakar, to other SPAs, and similar things are happening. If you go further on the Black Sea Coast, and it's the same. We have taken the Kaliakra case because it is a bottleneck, an important site for migratory birds; that is why we think it's of international importance, it is not only European and national. But we can illustrate what is happening in Bulgaria, the lack of implementation and law enforcement with many other cases" (NGO 2).

This statement was not meant to be empirically quantified in the dissertation; it was only meant to draw out the contextual factors driving Bulgaria's failure to protect Natura 2000 sites in Coastal Dobruzha. The above statement, however, is a telling sign of what is happening throughout the rest of the country. The hope is that the theoretical concepts obtained through this research can be tested in less deviant cases in order to provide validity to its findings. The case also challenges some of the leading scholarly research on European integration. In the case of Coastal Dobruzha, we saw that the ambiguity of the European infringement procedures and its procedural length provides little deterrent

for a state faced with the immediate need for the creation of jobs and economic growth. The case also illustrated that the theoretical concept of social learning, which is used by constructivists, can be applied, but that this learning is not always positive and constructive. In fact, learning can cause mal-adaptation and further perverse the relationship between states and the EU. States can learn to deploy deceptive tactics through 'pseudo compliance', which can impede future implementation of unfavorable domestic policies enacted during the approximation process. Furthermore, the European institutions cannot look at implementation merely from the top-down, but must understand domestic limitations of state actors and how they can be overcome through collective support for newly emerging Member States like Bulgaria.

9.4. Policy Recommendations and Conclusions

1. State learning is not always constructive and oftentimes can be de-constructive as states learn mechanisms to circumvent EU legislation that run counter to domestic priorities. Learning can cause mal-adaptation to European policies and further perverse the relationship between states and the EU. This thesis identified mechanisms through which the state circumvented the Birds and Habitats Directives. These 'pseudo compliance' techniques should be further researched by implementation and policy tool scholars to better identify these techniques and to theorize on how such techniques can be prevented or reversed.

2. Implementation is a kaleidoscope of various European and national policies all interacting in a complex way to create unique patterns of compliance. These interactions must be identified and studied empirically. This could provide valuable insight into how European Directives can interact with each other and

how these interactions influence obtainment of strategic European objectives. Counter to contemporary European scholarly perception, legislative objectives of the EU Directives are not 'uniform'. As a direct result, key strategic objectives should be prioritized by the European Commission and trade-offs should be made between them in order to identify the ideal collective outcomes desired by the European Community.

3. Europeanization creates new power structures within Member States allowing domestic interest groups to maximize their embedded professional interests. The adverse effect is that this can undermine the ability of these interest groups to cooperate with governmental authorities to achieve these strategic objectives. Further empirical research should be undertaken in order to better understand this phenomenon. Measures should also be enacted by the European Commission to circumvent the state and to support civil society actors that share strategic European interests that the government may not prioritize. These measures should also be aimed at countering state actions used to diminish their impact. This should be done, however, in a sensitive way that does not further deteriorate the relationship between the state and civil society actors.

4. During the pre-accession process, greater emphasis must be placed on developing the administrative capacity of governmental officials and domestic support for controversial Directives. The European Community must build this structural framework before regulatory cooperation while conditionality maintains a 'coalition of the willing'. Otherwise, European legislation will oftentimes remain only on 'paper' and lack domestic implementation.

5. The European Union must develop stronger internal compliance check procedures for EU funded projects and investigate the conduct of officials from the EBRD in relation to the Saint Nikolai Wind Farm Project.

6. The way European Commission currently enforces EU Directives is a weak deterrent for violations in relation to the Birds and Habitats Directives. Interim enforcement measures should be developed and applied in cases of non-compliance.

7. Interacting laws play a critical role in protection of Natura 2000 sites. The regulatory agents of the DGs must to a better job in ensuring effective transposition of European legislation to catch any gaps that may exist.

8. While the EU acquis is 'harmonized' throughout all EU Member States, the costs of compliance are not uniform. This should be acknowledged by the European Community and measures enacted to ensure the equitable distribution of costs among Member States. Costs should be shared proportionally across EU Member States for countries that are required to designate significantly more territory.

9. One of the most important findings was that Bulgaria had a strategic interest in the development of wind energy in Coastal Dobruzha, which was provoked by the European Renewable Electricity Directive (2001/77/EC). The European Union must pay close attention to how these policies can interact with one another in a way counter-productive to site protection.

10. Polling must be rigorously pursued to identify state and domestic interests and to determine what the likelihood of compliance will be. Once the likelihood of compliance is determined, measures can be set up for interim monitoring,

capacity building, and enforcement. If a policy does not align with domestic preferences, policy makers must anticipate policy aversion.

11. Policy analysts much deploy greater resources not in quantitatively measuring each individual 'tool' used for compliance, but in enacting broader macro-approaches to the evaluation of tools in order to understand the policy environment through which they are deployed.

FINAL THOUGHTS

For Bulgaria, the transition into the EU created a number of opportunities for economic and political entrepreneurs to take advantage of a state in transition. This included the exploitation of economic, environmental, and even administrative legal provisions. International, national, regional, local, and civil society stakeholders used this transition to try and capitalize on their personal interests. For the government, economic development and energy security trumped biodiversity conservation, and policy resistance, both direct and indirect, began to ensue. The European Union must go to greater lengths to better understand this transition in the context of the country that undergoes it. Each Member State has unique geographic, cultural, political, and economic circumstances that become dramatically transformed through the EU approximation process. The EU must develop a holistic approach to policy-making that will not only achieve concrete goals, but also change the policy environment to one that is more favorable to the new policies. Only when this is achieved can we begin to see a European system where Member States work together with European institutions to overcome domestic barriers they face in order to achieve strategic objectives of European importance.

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