



**Polish Wind Energy Association position  
concerning realization of the Nature 2000 Programme in Poland.**

Implementing Nature 2000 Programme was to enable the protection of particularly valuable species and habitats on the European scale while simultaneously realizing sustainable development ideas on the areas included in the Programme. PWEA is not competent to assess Programme's impact on actual nature conservation; however, with great distress we observe that contrary to the assumptions and announcements the implementation of the NATURE 2000 Programme hinders development of investments on areas covered by the Network in Poland. Investors active on such areas have to face skeptical officials, ambiguous regulations, prolonged procedures and..... last but not least lack of knowledge concerning the actual natural value of the areas, on which they plan their investments. In many cases when the investor finds that his project is located on the NATURE 2000 area, in particular when the investment is in initial development phase, he abandons the project on that site. It is worse when the project was developed for a number of recent years, during which the regulatory environment has changed, introducing new nature conservation form – the NATURE 2000. In such case the investor, having already borne specific investment costs (land lease, amendment of study of determinants and directions of commune development, amendment of local spatial development plan, management of geologic studies, other arrangements allowing for future realization of the investment on a particular area) and having made future commitments stemming from concluded contracts, usually decides to continue the project, despite facing the legal status of the land changed to Special Areas of Habitat Conservation (SAC's) or Special Birds Protection Areas (SPA's). Alas, despite assurances that the NATURE 2000 areas do not constitute a strict nature conservation form, and despite implementing in Poland provisions regulating the possibilities for realizing investments on such areas, in case of making the decision on continuation of the project the investor encounters numerous administrative barriers.

Officials responsible for issuing decisions on environmental determinants of investment realization usually are unable or unwilling to independently assess the project's environmental impact study and apply for opinion concerning the possibility to realize the investment to Ministry of the Environment. The Ministry, in accordance with the regulatory environment, replies that it "...is not a competent authority to express opinions concerning possible effects of the planned investment on NATURE 2000 areas, for it is not an authority participating in the procedure for agreement of the decision on environmental determinants of the approval for project realization". This unnecessarily prolongs the process of assessing the investment's impact on the NATURE 2000 area.

Questioning the contents of the environmental impact study submitted by the investor is also common. For example, depending upon the level of knowledge of officials assessing the report the investors may face the charges of lack of minimizing and compensating measures, or the charge that minimizing and compensating measures have been included in the report, what – in the opinion of other officials – indicates future negative effects of the investment on the NATURE 2000 areas.

A common practice is imposing on the investors the obligation to perform a full natural inventory of the investment site. The officials expect the investors to present a full list of flora and fauna species present on a particular area, to characterize their populations, describe animal behavior etc. In practice, given lack of original data concerning the biocenotic value of the land, this entails the need for many years' pre – investment monitoring.

Moreover, it is normal that investments designed for realization on NATURE 2000 areas are verified in detail not only in terms of impact on species or habitats, for the protection of which the particular NATURE 2000 area has been established. The investors are asked to supplement the documentation with information concerning for instance the effects of the investment on the landscape or human health, despite having these issues presented in the "standard", customarily accepted scope of the environmental impact study.



In PWEA's opinion the NATURE 2000 Programme works improperly in Poland; many mistakes have been made during its implementation, what is confirmed by further updates of the NATURE 2000 areas. To streamline the NATURE 2000 ecological network Polish Wind Energy Association, on behalf of investors associated within, applies for:

1. Adopting a single, binding list of NATURE 2000 areas, including the approval of Shadow List areas meeting natural criteria for inclusion in the NATURE 2000 as SAC or SPA.

The Association deems that parallel existence of the so – called Shadow List, including, among others, a list of the so – called Important Bird Areas (IBA's), next to the NATURE 2000 areas is unfavorable both for communes and the investors. Until the IBA's are approved as SPA's the provisions of the Birds Directive apply on these areas, which do not allow for realization of investments that may have a negative effect on bird species protected under it. Only after approving bird habitats of European importance (IBA's) as Special Birds Protection Areas (SPA's) the provisions of the Habitats Directive could apply, giving the possibility to employ the environmental impact sturdy procedure and apply minimizing or compensating measures if necessary.

Moreover, both the parallel existence of officially approved NATURE 2000 list and the so – called Shadow List and continuous (planned or managed) updates of lists of NATURE 2000 areas disorient the investors interested in realizing various projects in Poland. They do not know which of the potential sites shall be considered as excluded from realization of particular types of projects, which sites shall be classified as "sensitive", etc.

In accordance with our knowledge Poland declared implementation of the NATURE 2000 Programme without transitory periods already in 1999, in its negotiation position to the Accession Treaty. Therefore it is surprising that seven years was not enough to perform a natural inventory and develop a map of protected areas, with unambiguously determined SAC and SPA boundaries. One should remember that extending the number and the area of the protected areas constitutes a significant investment risk, in particular given the fact that only part of the country may be a potential site for various kinds of investment (more than 30% of are of the country is subject to various nature conservation forms, almost 30% is occupied by forests, some areas are excluded from investment activities due to development and existing infrastructure etc.)

2. Determination of boundaries of protection zones within the NATURE 2000 Programme.

Lack of determined distance, at which it is „safe” to realize investments without falling under NATURE 2000 environmental impact study procedures makes the investors willing to locate their projects outside the protected areas do not know how far from the designated NATURE 2000 areas they should seek their locations. Lack of unambiguous determination of protection zone boundaries may also cause the investors realizing projects in the vicinity of NATURE 2000 areas to be surprised with information (for instance upon applying for the environmental decision) that their projects do affect the nearby NATURE 2000 area, and therefore they are obligated to pass the full environmental impact study procedure for projects affecting the NATURE 2000 area.

3. Full transparency insofar as sources and methodology for acquiring data concerning the existence of priority species on particular areas.

Currently there is lack of publicly available information concerning the data – how and by whom gathered? – on the basis of which the particular SAC's or SPA's have been established. What is only known is that the areas to be included in the network were qualified on the basis of archive data and information prepared by ecologic organizations, what leads to suspicions concerning the fragmentary nature of the data and lack of uniform methodology for their acquisition. The doubts concerning the quality of the data used to determine the NATURE 2000 areas in Poland are additionally worsened by



the information than Ministry of the Environment decided in 2006 to commence (again?) the natural inventory for the needs of determination of the NATURE 2000 areas.

Moreover, PWEA deems that having regard to proper performance and completeness of the natural inventory commenced by the Ministry of the Environment, the inventory should not be performed only by employees of the State Forests. In our opinions the foresters do not have full competence and appropriate human resources necessary to verify various fauna and flora species on the area of the whole country (not only on forest areas), what may lead to undermining the results of the natural inventory and further updates of list of NATURE 2000 areas.

4. Ceasing shifting the obligation to perform natural inventory on investors interested in realizing projects on or in the vicinity of NATURE 2000 areas.

Currently an often practice of communes and provincial authorities issuing decision on environmental determinants for investment realization is to expect the investor to perform full monitoring of a particular site (preferable lasting many years) and develop a full list of plant and animal species present on a particular area, including information concerning the size of particular populations, their distribution, etc., to be presented in the project's environmental impact study. But it is the investor considering particular sites who should receive from the authorities at least a preliminary information concerning the biocenotic value of the site, to be able to make a decision whether commencing activities on a particular area is purposeful and what possible environmental risks may be encountered.

5. Ceasing increasing the number and area of NATURE 2000 areas without simultaneous development of plans for protection of these areas.

In PWEA's opinion extension of list of NATURE 2000 areas and their area without developing protection plans *de facto* leads to excluding further areas from investment activities. For only the protection plan, not the filled in data form, includes information what protective measures are planned on a particular area, therefore what measures unrelated to the protection of species present on a particular area will be allowable.

6. Legal definition of key terms for assessment of possibilities for realization of investments on NATURE 2000 areas, that is introducing the definition of: "a significant negative impact" and "necessary requirements of superior public interest", upon which, in accordance with Article 34 Paragraph 1 of the Nature Conservation Act, the approval of particular investment for realization may be based (*"If necessary requirements of superior public interest, including requirements of social or economic character, argue for it, and given lack of alternate solutions, locally appropriate province governor may allow for realization of a plan or an undertaking that may have a negative impact on natural habitats and on species of fauna and flora, for the protection of which the NATURE 2000 area has been established, ensuring performance of natural compensation necessary to ensure integrity and proper operation of the Nature 2000 network."*).
7. Development of standards and the so – called good practice insofar as development of environmental impact studies, development of the so – called baseline and management of pre – investment monitoring on NATURE 2000 areas.

Lack of standards and guidelines leads on one hand to many – usually unintended – mistakes in the environmental impact studies, on the other leads to a possibility for undermining or questioning the contents of the reports by various officials. The Nature Conservation Act defines only the standard set of documents that may be changed by officials authorized to agree the extent; it lacks detailed guidelines for development of a reliable report. There is lack of methodology insofar as verifying investments' impact on avifauna or landscape and as assessment of this impact after gathering monitoring data. This leads to a situation where the fact that the investment is visible from afar determines its negative impact on the landscape, whereas non – zero probability of birds collisions – on negative impact of the investment on avifauna.



8. Managing trainings for officials responsible for issuing environmental decisions and participating in environmental impact study procedures concerning NATURE 2000 areas.

Investors' experiences indicate that officials are afraid of issuing decisions on environmental determinants of the approval for realization of the investment on NATURE 2000 areas, they are unaware of their ability to issue conditional decisions and do not believe in the possibility to enforce realization of minimizing and compensating measures. Usually they impose many excessive measures, without prior analysis of actual investment's impact on the nature of a particular area, what – instead of compensating possible damages – may lead to unnecessary disturbance in the functioning of particular ecosystems. It also happens that the officials by definition exclude realization of some types of projects on NATURE 2000 areas without assessing particular project's impact on a particular SAC or SPA, on which it is to be realized.

9. Promoting knowledge concerning the NATURE 2000 Programme among the society and self – governmental administration, including both the information concerning protection rules binding on these areas and the possibilities for investment realization pursuant to the sustainable development rule.

PWEA is satisfied with the position of the Polish Government, in accordance with which the NATURE 2000 areas are to be functional areas where sustainable development will be realized. We are happy that the Ministry unambiguously indicates that bans similar to those established for other, surface nature conservation forms are not established for the NATURE 2000 areas, The only ban concerns undertaking measures that might significantly deteriorate the condition of fauna and flora habitats and significantly negatively affect the species, for the protection of which the NATURE 2000 area has been established. We hope that provisions of the law would be abided by in this case, with each investment individually verified in terms of its impact on a particular protected area. Developing new attitude of the administration and institutions responsible for nature conservation in Poland towards the manner of species and habitats conservation within the NATURE 2000 Programme is necessary to protect areas of the country included in or designated for inclusion in the Programme from being backwater areas.

10. Understanding the need for and the importance of protection of particular habitats and species, PWEA postulates weighing out the importance of biodiversity protection in relation to protection of other elements of the environment, and applies for relating targets insofar as biodiversity protection with other environment protection targets, including those for air and climate protection.

PWEA anxiously observes domination of species' biodiversity in relation to care for the quality of the remaining elements of the environment, including air or climate protection. This inequilibrium is visible in measures taken by Government administration officials, in developed strategic documents of the country, Action Plans. Nonetheless, the Birds and Habitats Directives are not the only directives concerning environment protection to realization of which Poland is obligated as a Membership State to the European Union. One should remember that we do not meet the commitments under the *Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market*, *Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants*, *Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants...*