



To: European Commission
Directorate-General for Environment
1049 Brussels, Belgium

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Complaint concerning violation of EU Environmental Law by a Member State

This letter concerns a failure by Romania to provide for:

- (1) effective and timely strategic environmental assessment in breach of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (“SEA Directive”)¹;
- (2) effective and timely Appropriate Assessment in breach of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”)²;
by its failed implementation of these Directives in respect of Pastoral Management Plans (PMPs);
and;
- (3) (3) degradation of habitats due to failure to carry on effective strategic environmental assessment, appropriate assessment and environmental impact assessment in breach of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”)³ and Birds Directive Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds⁴

These breaches are particularly serious and systematic as they not only violate EU and international legislation but also contribute to the destruction of habitats and biodiversity loss.

As the evidence below illustrates, the complainants have made extensive efforts to resolve the issues and have exhausted available domestic remedies. [In many cases these efforts have been blocked by the Romanian authorities.]

¹ OJ L 197, 21.7.2001, p. 30–37.

² OJ L 206, 22.7.1992, p. 7–50.

³ OJ L 206, 22.7.1992, p. 7–50.

⁴ OJ L 20, 26.1.2010, p. 7–25.

1. LEGAL FRAMEWORK

Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ("SEA Directive")⁵ came into force on 21 July 2001.

Article 1 of the SEA Directive, entitled 'Objectives', provides:

"The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment."

Article 2(a) of the SEA Directive, headed 'Definitions', provides:

"For the purposes of this Directive: ...

(a) "plans and programmes" shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and*
- which are required by legislative, regulatory or administrative provisions;*

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision"

Article 3 of the SEA Directive provides:

"Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

- (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC"/*
- (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.*

⁵ OJ L 197, 21.7.2001, p. 30 - 37



Article 4 of the SEA Directive, entitled ‘General obligations’, provides:

“1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

2. The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.”

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”) came into force on 10 June 1992.

Article 6 paras 2, 3 and 4 of the Habitats Directive relate to the protection of Natura 2000 sites and require that:

“2. 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, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”

Romanian law

SEA

The Governmental Decision no. 1076 of 8 July 2004 which implements the SEA Directive into Romanian law.

Art 2 (c): c) plans and programs - plans and programs, including those co-financed by the European Community, as well as any changes thereto, which:



- (i) is developed and / or adopted by a national, regional or local authority or is prepared by an authority for the adoption by legislative or regulatory procedure by Parliament or the Government; and
(i) are required by legislative, regulatory or administrative provisions;

Article 3

1. The environmental assessment shall be carried out during the preparation of the plan or program and shall be finalized prior to its adoption or its submission to the legislative procedure.

(2) This procedure is carried out in stages, as follows:

- a) the screening stage - classification of the plan or program in the environmental assessment procedure;
- b) the stage of finalizing the draft plan or program and the achievement of the environmental report;
- c) stage of analysis of the quality of the environmental report.

According to Article 5(2)(a):

“(2) An environmental assessment shall be carried out for all plans and programmes:

a) which are prepared for agriculture, forestry, fishing and aquaculture, energy, industry including activity of mineral resources extraction, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, regional development and which set the framework for future development consent of projects laid down in Annex 1 and 2 to Governmental Decision no.918/2002 regarding the setting of the framework procedure of environmental impact assessment and for approval of the public or private projects list subject to this procedure [...].”

Article 5(2)(b) of the Decision no. 1076 of 8 July 2004 5(2)(d) stipulates that:

“(2) An environmental assessment shall be carried out for all plans and programmes:

[...]

b) due to the likely effects on sites, have an impact on the special protection areas and special conservation areas established by Emergency Government Ordinance no. 236/2000 on natural protected areas regime, natural habitats, wild fauna and flora preservation, approved with amendments by Law no. 462/2001”.

2. FACTS AND PROCEDURE



The study "Improving Agri-Environmental Policies by Participatory Research and Civic Inclusion Interpretation of grassland land use/land cover change using LUCAS data, Final report, 15.11.2021, realised by Dr. Laura Sutcliffe (sutcliffe.laura@gmail.com) has identified the following problems concerning the grasslands habitats in Romania: "Permanent, natural and semi-natural grassland habitats support some of the highest diversities of plant and animal species of any habitat type, are important as a carbon sink, play a key role in producing food through grazing animals, and have a key societal role as cultural heritage. Romania has c. 54.6 thousand km² of grassland on its territory, of which at least a third is of high nature value (Paracchini et al. 2008).

Evidence from personal observations of the project team suggests that the state and land-owners are not taking the protection of grassland seriously, and large areas of permanent grassland are being lost to other land uses. This is a major threat for the maintenance of biodiversity and other ecosystem services that grassland provides, and additionally not permissible under the EU common agricultural policy greening regulations (European Commission 2017)".

The conclusions of the study showed that: "2408 km² of grassland was lost between 2012-2015 over the whole of Romania. In the three most strongly affected areas (Centru, Nord-Est, Nord-Vest), the amount of grassland reduction is between 5.7 and 9.5 % of the total grassland area. There seems to be a slower rate of loss of grassland inside Natura 2000 protected areas compared to outside, although the difference is not significant: 19 % of permanent grassland in 2012 had been converted to other land cover by 2015 inside Natura 2000 areas, compared to 27 % outside of Natura 2000 areas".

The study developed as part of the project "Improving agro-environmental policies through participatory research and civic inclusion," project number ACF 3 MM 1031, funded by ACTIVE CITIZENS FUND Romania, signed by Magdolna-Beáta LÓZER botanist, protected area specialist, has analysed the situation across Transylvania, in five counties: Mureș, Satu Mare, Bihor, Arad, and Cluj and 16 Sites of Community Importance (SCI) or Special Areas of Conservation (ROSCI0020 Câmpia Careiului, ROSCI0021 Câmpia Ierului, ROSCI0025 Cefa, ROSAC0068 Diosig, ROSAC0099 Lacul Știucilor - Sic - Puini – Bonțida, ROSAC0214 Râul Tur, ROSAC0231 Nădab - Socodor – Văršand, ROSCI0295 Dealurile Clujului de Est, ROSAC0297 Dealurile Târnavei Mici-Bicheș, ROSAC0384 Râul Târnavă Mică, ROSCI0387 Salonta, ROSPA0015 Câmpia Crișului Alb și Crișului Negru, ROSPA0028 Dealurile Târnavelor și Valea Nirajului, ROSPA0068 Lunca Inferioară a Turului, ROSPA0097 Pescăria Cefa - Pădurea Rădvani, ROSPA0103 Valea Alceului).

The conclusions of the study are quite worrying: "The analysed protected areas had a total area of 284,722.20 ha. The average size of the protected areas was 18,981.48 ha. Of the total area of the areas, 49.68% were visually identified as grasslands. Of the identified

grasslands, during the analysed period, 15,284.74 ha were ploughed, representing 10.8% of the grassland area and 5.36% of the protected area”.

We looked into the juridical regime of the grasslands to find out why there is such a high percentage of habitat loss in Romania. Therefore, we submitted requests for information all over Romania to find out how the pastoral management plans are adopted and if they are subject to the strategic environmental assessment or, appropriate assessment. We also looked at a solar park that was approved recently in Romania, located inside the Natura 2000 area and checked how the SEA, EIA and Aa procedures were respected:

1. The number of adopted pastoral management plans and their approval according to HG 1076/2004 on establishing the procedure for carrying out the environmental assessment for plans and programs

The analysis shows that very few pastoral management plans were approved according to HG 1076/2004, and for all of them, classification decisions were issued, in violation of Article 5 of this normative act:

NR CRT	County	Number of localities that requested pastoral management plans according to the answer of Minister for Agriculture and Rural Development	Number of PMP s elaborated, according to the answer of Minister for Agriculture and Rural Development	Number of PMPs under elaboration	Number of SEA procedure finalized or on going, according to the county EPAs
1	Alba	78	65	13	22
2	Arad	66	47	19	4
3	Argeş	100	82	18	36
4	Bacău	92	69	6	0
5	Bihor	99	95	4	0
6	Bistriţa Năsăud	62	33	29	3

7	Botoșani	78	78	0	0
8	Brașov	57	49	1	0
9	Brăila	41	41	0	2
10	Buzău	82	54	28	0
11	Caraș Severin	74	73	1	0
12	Călărași	43	43	0	0
13	Cluj	81	32	33	No answer, no procedures identified online
14	Constanța	60	60	0	0
15	Covasna	45	28	17	3
16	Dâmbovița	70	67	3	0
17	Dolj	46	42	4	0
18	Galați	57	57	0	2
19	Giurgiu	53	52	1	0
20	Gorj	57	42	0	0
21	Harghita	65	65	0	5
22	Hunedoara	69	69	0	47
23	Ialomița	65	53	12	0
24	Iași	98	90	8	1
25	Ilfov	5	4	1	0
26	Maramureș	71	56	15	5
27	Mehedinți	62	57	0	0
28	Mureș	102	72	30	14
29	Neamț	83	71	12	0
30	Olt	86	86	0	0
31	Prahova	102	102	0	0
32	Satu Mare	64	64	0	0
33	Salaj	61	53	8	1
34	Sibiu	64	52	12	22
35	Suceava	114	114	0	1
36	Teleorman	85	84	1	0
37	Timiș	98	81	17	0
38	Tulcea	47	46	1	0
39	Vaslui	70	55	15	4
40	Vâlcea	56	44	12	0
41	Vrancea	69	68	1	15
42	București	No answer	No answer	No answer	0
	TOTAL	2877	2495	322	187

From the research above, it follows that an extremely small number of the total requested and elaborated pastoral management plans go through the strategic environmental assessment procedure and none of them went through the full procedure, being finalized with a decision on inclusion. Also, no development has gone through the appropriate assessment procedure regulated by Emergency Governmental Ordinance no 57/2007 for grasslands that overlap with protected areas.

According to HG 1076/2004 regarding the establishment of the procedure for carrying out the environmental assessment for plans and programs:

'1) The environmental assessment is carried out for plans and programs that may have significant effects on the environment, according to the provisions of para. (2)-(4).

(2) All plans and programs that:

a) prepare for the following fields: agriculture, forestry, fishing and aquaculture, energy, industry, including the activity of extracting mineral resources, transport, waste management, water management, telecommunications, tourism, regional development, territorial planning and urban planning or land use, and which establish the framework for issuing future single agreements for the projects that are provided in annexes no. 1 and 2 to Government Decision no. 918/2002 regarding the establishment of the framework procedure for assessing the impact on the environment and for the approval of the list of public-private projects subject to this procedure; either one due to the possible effects affecting the avifaunistic special protection areas or the special conservation areas regulated according to Government Emergency Ordinance no. 236/2000 regarding the regime of natural protected areas, conservation of natural habitats, flora and fauna, approved with amendments and additions by Law no. 462/2001.

(3) Subject to environmental assessment only if they can have significant effects on the environment:

a) the plans and programs provided for in paragraph (2), which determines the use of small areas at the local level;

b) minor changes to the plans and programs provided for in paragraph (2);

c) plans and programs, other than those provided for in paragraph (2), which establish the framework for issuing future single agreements for projects.



(4) The decision on the existence of potentially significant effects on the environment of the plans and programs provided for in para. (3) is taken through a case-by-case examination, according to the provisions of art. 11'.

Therefore, the completion of the strategic evaluation procedure by issuing a screening decision is possible only if the plans/programmes, in this case, the pastoral management plans, are among those listed in art. 5 of 3. In the case of the PMPs that do not fall into these categories, it is mandatory to carry out the procedure of strategic environmental assessment with the issuance of the environmental opinion.

In the case of pastoral management plans, it is not a matter of small areas either, they do not establish frameworks for issuing single agreements for projects, nor do they represent changes to other plans. Therefore, illegally, these pastoral management plans were approved only by issuing screening decisions with the conclusion that no environmental assessment was needed.

Also, in the case of pastoral management plans for which environmental approval was not even requested, the approval through Decision of Local Council was done illegally, in violation of art. 3 of HG 1076/2004, without strategic environmental assessment and without appropriate assessment.

2. Failure to comply with management plans in the case of grasslands included in protected natural areas

We have pursued in court 5 case, aimed at carrying out agricultural works/building works on lands located in protected natural areas, in violation of management plans.

a. Degradation of protected habitats in ROSAC0214 Râul Tur/Special Protection Area ROSPA0068 Lunca Inferioara a Turului

On 27.09.2018, on the occasion of the activities of our personnel to inventory and map the habitats of community interest from the Site of Community Importance ROSCI0214 Tur River and the Special Avifaunistic Protection Area ROSPA0068 Lunca Inferioara a Turului, on the territory of UAT Lazuri, Nisipeni village, on the land with no. cadastral 2679, land register 1483 of approximately 10 hectares, we found that the habitat of community interest 6510 – Low altitude meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) present until autumn 2017, was destroyed. On that land, grassland vegetation was destroyed by plowing and cultivation of arable land.



We mention that the habitat was inventoried and mapped as part of the project to develop the management plan for protected areas. At the time of the habitat inventory, 6510 – Low altitude meadows on the territory of ROSCI 0214 Tur River had a total area of 577.57 ha.

We notified the National Environmental Guard who, analysing the notification formulated, established that it is necessary to notify the criminal investigation bodies.

In the criminal file 3131/2018, the Prosecutor's Office attached to the Satu Mare Court established that the prosecution of the act would not be of public interest and the Court maintained this solution, i.e. the waiver of the criminal prosecution of the lessee from that period. On 24.10.2022, the Environmental Guard carried out an inspection after which they found that rapeseed was grown in the protected habitat.

The fact of habitat destruction continues today, the land being illegally ploughed in violation of the conservation measures of the approved Management Plan of the protected area, without the competent authorities, including the administrator of the protected areas, ANANP, having taken protective measures, allowing thus destroying the habitat.

b. Destruction of grasslands within ROSAC0214 Raul Tur and ROSPA0068 Lunca Inferioara a Turului, on the territory of Turulung UAT

On the occasion of the activities of our staff to inventory and map the habitats of community interest from the Site of Community Importance ROSCI0214 Tur River and the Special Avifaunistic Protection Area ROSPA0068 Lunca Inferioara a Turului, on the territory of UAT Turulung, village Turulung Vii, on land no. cadastral 1253/35 I found that on the habitat of community interest 6440 - Flooded alluvial meadows of *Cnidion dubii* present, the construction of a hall-type construction was started. From the information we have, this construction has no environmental consent or building permit. According to the Management Plan of the Protected Areas Tur River plot no. 1253 is in Zone II. Surfaces where the conservation of habitats and species is a priority (Type II Surfaces) and where the development of built infrastructure is prohibited.

Also, according to the findings of the Environmental Guard, there is no environmental agreement or framing decision issued following Lg. 292/2018 on the assessment of the impact of certain public and private projects on the environment, Annexes 1 and 2 (depending on the number of animals).



The National Environmental Guard, analysing the notification formulated by us, established that the contravention sanction is required and finally the notification to the criminal investigation bodies.

We do not know the situation of the criminal case, in which we are not a party.

Although it is clear that the destruction of the habitat continues today, the constructions even expanding, in violation of the conservation measures in the approved Management Plan of the protected area, the Romanian authorities did not take any action, allowing the destruction of the habitat.

c. Destruction of grasslands located in ROSPA 0103 Valea Alceului

The 22 ha land located in ROSPA 0103 Valea Alceului was included as a grassland in the Governmental Decision 971/2011 for the amendment and completion of Government Decision no. 1.284/2007 regarding the declaration of areas of special protection areas as an integral part of the European Natura 2000 ecological network in Romania. The land has been a grassland for over 50 years, according to the satellite images below.

The land was used as grassland and regulated as a grassland according to Order 1245/2016 regarding the approval of the Management Plan and the Site Regulations as well as the Emergency Governmental Ordinance no 34/2013 regarding the organization, administration and exploitation of permanent grasslands and for the amendment and completion of the Land Fund Law no. 18/1991.

In 2018, the land was ploughed illegally, without obtaining regulatory documents according to the Governmental Emergency Ordinance no 57/2007. According to art. 16 letter b of the Site Regulation, Annex 2 to the Management Plan of ROSPA0103 approved by Order 1245/2016, it is forbidden to plough, discuss, scarify the grasslands, and by Art. 14. (1) it is forbidden to change the use of the grasslands (pastures and hayfields). According to the map in the Management Plan (page 91) with the grasslands existing during the proposal of the Management Plan for approval, this land can also be identified. The land represents approximately 6% of the total area of grasslands in the protected area, according to the Natura 2000 Standard Form of the site and is located in the Toboliu UAT near DJ797 road between Cheresig and Roit (Stereo coordinates 249885, 618602).

However, the land "is registered in CF no. 50016 Toboliu no. cad 100 has the category of use arable", thus illegally changed the category of use of the land from grassland to arable land, in violation of art. 14 para. 1 of the Management Plan approved by Order 1245/2016



as well as of art. 5³ of GEO 34/2013 which prohibits changing the category of use of grasslands.

According to the attached CF extract, the change in the category of use was realised in 2018, when it was already mentioned.

In 2018, in addition to the prohibitions related to the establishment of the protected natural area and the management plan, the Emergency Governmental Ordinance 34/2013 was also in force, which prohibits changing the category of use of grasslands. Priority between the agricultural activity and the protection regime of the respective land established since 2011, has the protection regime as provided by European law, the Habitats Directive, art. 191 of the TFEU which regulates the precautionary principle in decision-making and art 28 of the Emergency Governmental Ordinance 57/2007.

In the answers communicated by the Environmental Guard, National Agency for Protected Areas (ANANP) and Environmental Protection Agency (APM) Bihor, it is stated that the land would have been the subject of an exchange carried out by Local County Decision no 11/2012, on which occasion the category of use would have been changed, without taking into account the protection regime instituted for the protection of birds, ROSPA0103 Valea Alceului .

The grassland constituted important feeding habitat for the red-footed falcon *Falco vespertinus*, the most important protected species from the site according to the table below and the study "Inventory, mapping and evaluation of the conservation status of bird species from the site ROSPA0103 Valea Alceului" carried out by SC Ocellus SRL within the project "Management of protected areas ROSPA0067, ROSPA0103, ROSPA0113, ROSPA 0126, ROSPA 0142, ROSPA 0144, ROSCI 0390" financed by SOP Environment 2007-2013, but also for other species present in the site.

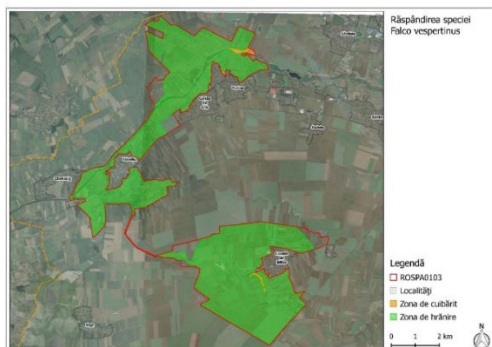


Figura 30. Zona de cuibărit și de hrănire a vânturelului de seară pe situl ROSPA0103 Valea Alceului.

Tabel 31. Datele colectate în cursul anului 2015 cu populația cuibăritoare de vânturel de seară din ROSPA0103 Valea Alceului.

LOCAȚIA	LATITUDINE	LONGITUDINE	DATA	NUMĂRUL PERECHILOR DE VÂNTUREL DE SEARĂ CARE OCUPĂ CUIBURILE ALTOR SPECII/ARTIFICIALE					
				CORFRU		CUIB ARTIFICIAL		TOTAL	
				min	max	min	max	min	max
Sintion	21.78830	47.08838	4.6.2015	5	6			5	6
Tărian	21.77216	47.08077	4.6.2015	4	5			4	5
Toboliu	21.71515	47.04300	4.6.2015	5	6			5	6
Livada de Bihor	21.80048	47.00213	26.5.2015	12	15	6	7	18	22
TOTAL				26	32	6	7	32	39

În comparație cu anii precedenți, efectivele cuibăritoare de vânturel de seară se află în ultimii ani într-o tendință de stagnare, după cum reiese din tabelul 7, respectiv diagrama de mai jos (Figura 14.)

The transformation of the grassland into arable land endangers the feeding areas of bird species, considering that the area of grasslands that constitute the feeding habitat of several bird species was insufficient anyway, according to Annex 2 of the Management Plan:

Anexa 2 la Planul de management al Sitului Natura 2000 ROSPA0103 Valea Alceului - Fișele speciilor

I. SPECII DEPENDENTE DE PAJIȘTI

Erete vânat - *Circus cyaneus*, Erete sur - *Circus pygargus*, Vânturel de seară - *Falco vespertinus*, Vânturel roșu - *Falco tinnunculus*, Șoim dunărean - *Falco cherrug*, Sfrâncioc roșiatic - *Lanius collurio*, Sfrâncioc cu frunte neagră - *Lanius minor*, Șerpar - *Circaetus gallicus*, Fâsă de câmp - *Anthus campestris*, Fluierar de mlaștină - *Tringa glareola*, Bătăuș - *Philomachus pugnax*, Cioară de semănătură - *Corvus frugilegus*, Cocor - *Grus grus*, Ciuf de pădure - *Asio otus*, Porumbel gulerat - *Columba palumbus*, Egretă mică - *Egretta garzetta*, Egretă mare - *Ardea alba*, Lopătar - *Platalea leucorodia*, Țigănuș - *Plegadis falcinellus*.

Cerințele specifice ale speciilor privind habitatul	Indicatori relevanți	Stare actuală	Starea de conservare favorabilă	Relevant pentru speciile:
Pajiști naturale și seminaturale cu tufișuri și arbori	Suprafața pajiștilor naturale sau seminaturale	670	Minim 1800	Toate speciile.
	% pajiște utilizată ca fâneță	Sub 5%	10 - 20%	<i>Ciconia ciconia</i> , <i>Falco vespertinus</i>

Along with the destruction of the land area that is the subject of this request, the survival of the bird species mentioned above is endangered.

3. The construction of solar farms inside protected natural areas in violation of the rules regarding the change of use category and in violation of the management plan of the protected natural area.

The photovoltaic park located inside the Natura 2000 Sites ROSAC 0231- Nădab - Socodor - Vârsand and ROSPA0015 - Câmpia Crișului Alb and Crișului Negru.

a. Environmental permit issued for Urban Zonal Plan (PUZ) & related Local Urbanistic regulation attached to the PUZ - CONSTRUCTION AND CONNECTION OF ARAD 1 PHOTOVOLTAIC PARK IN THE EXTRAVILAN OF GRĂNICERI AND PILU TOWNS, ARAD COUNTY.

The zonal urban plan aims at the change of use from agricultural land to construction yards of land with an area of 1064.4484 ha, out of a total of 1318.5 ha studied, located in Arad County, on the territory of the Pilu and Grăniceri territorial administrative units, to build a photovoltaic plant with a power of 1065MWdc."

The lands on which the photovoltaic park is intended to be built had grassland vegetation, which was destroyed by illegal conversion to arable land. In the standard form Natura 2000 of the site in section 4. Description of the site, point 4.1 General characteristics of the site, it appears that when the site was designated, 91.2%, i.e. 7115.42 ha, was pasture. This fact also emerges from the biodiversity study, which identifies the plant species on these lands,



which are constitutive species of the habitat of priority community interest 1530* Pannonic and Ponto-Sarmatic salt steppes and salt marshes. The authors of the study even state the opinion that this habitat of community interest would have pre-existed on these lands.

In accordance with Art. 6.2 of the Habitats Directive, the member state has the responsibility to prevent the deterioration of habitats of community interest, as well as the disturbance of species of community interest on the territory of Natura 2000 sites.

The fact that a habitat of community interest (priority) from a Natura 2000 site (site of community importance) has been damaged, following the Habitats Directive Art. 6, should lead to the obligation of the Romanian state authorities responsible for the management of natural areas protected to ensure their recovery. Building a photovoltaic park, which allegedly has as a side effect the restoration of grassland vegetation, should not be considered ecological reconstruction and also not a conclusion resulting from the appropriate assessment. Thus, on page 5 of the environmental notice, the existence of the habitat and its deterioration is noted, but it is decided to change the land use category and to use the land for construction, and not to restore the habitat as would be legal from the point of view of the conservation objectives of ROSAC 0231- Nădab - Socodor – Vârsand.

Changing the use of the land in courtyards-buildings practically takes out the land from the agricultural circuit and makes it unusable for the wild animals that live there and that are the object of the protection of the Natura2000 sites ROSAC0231 Nădab-Socodor- Vârșand and ROSPA0015 White and Black Cress Plain.

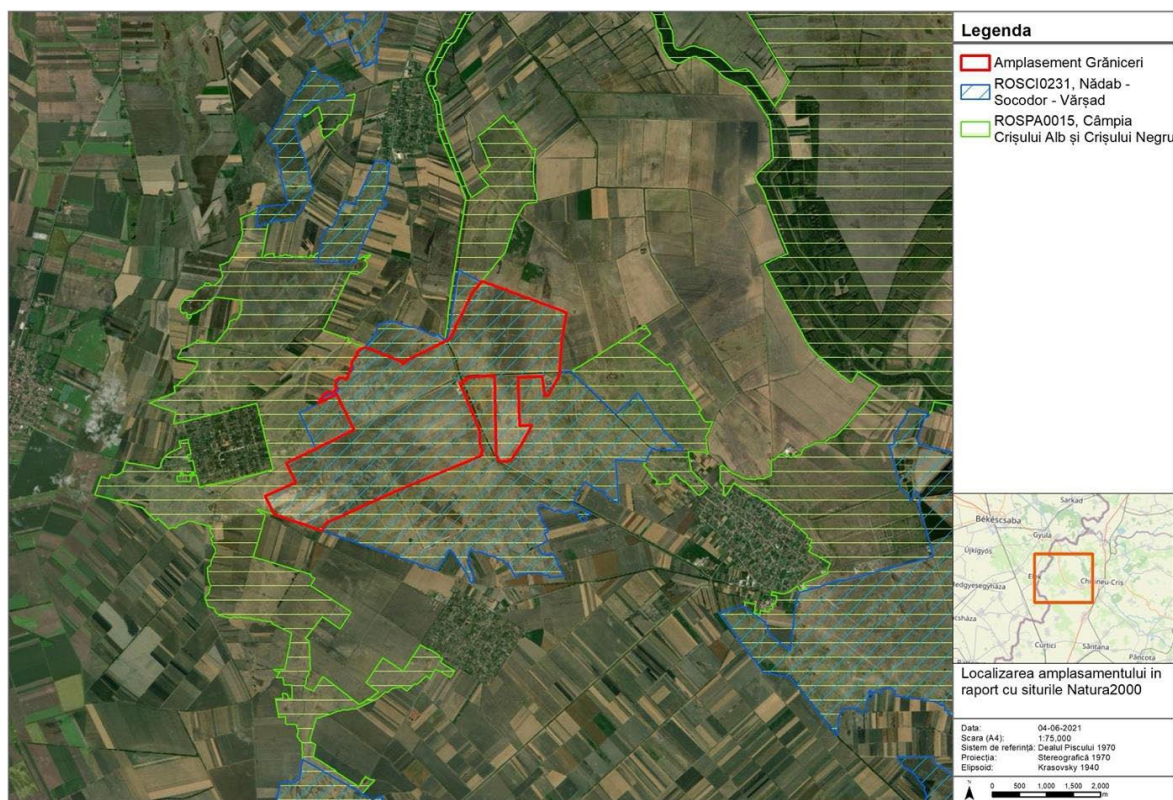
b. The screening decision no. 7306 of 03.05.2023 for the project 'Construction of Photovoltaic Park Arad 1'

In the classification decision, it was concluded that the appropriate assessment regulated by the Emergency Governmental Ordinance 57/2007 and Order 19/2010 (enforced at the time) is not necessary and also that the project is not subject to environmental impact assessment.

Both conclusions are erroneous and endanger both the integrity of the Natura 2000 sites with which they overlap and the conservation objectives of the species and habitats in the project area. This project is to be built without any environmental assessment, considering that the project-specific assessment regulated by Law 292/2018 would not be necessary nor

the appropriate assessment of the project as there is an appropriate assessment already realised for the Urban Zonal Plan.

The project completely overlaps the protected natural areas of community interest ROSAC0231 Nădab-Socodor- Vărșand and ROSPA0015 Câmpia Crișului Alb și Negru, where a map with the overlay of the locations is also provided:



Habitat 1530* - Pannonian and Ponto - Sarmatic saline grasslands and marshes are wrongly identified without an asterisk (In the Habitats Directive and OUG 57/2007 habitats with an asterisk to the right of the indicator are priority habitats with a specific legal regime).

It is also erroneously stated that it was not identified in the project area in violation of the provisions of the management plan, which was not consulted even though it is mandatory according to the law. In this case, it is soil with high salinity, where the priority habitat 1530* partially destroyed by agricultural activities is also present.

The same is done with the other habitats and species, without making any kind of correlation with the management plan.

Regarding the category of use mentioned on page 3 of the classification decision according to the urban planning certificate issued by the Pilu Municipality City Hall, i.e. unproductive



arable land, the classification decision wrongly concludes that it would be intensively worked arable land. It is impossible to develop intensive agriculture works on unproductive land. Moreover, considering the usual flooding of the area certain period of the year the category established in the urban planning certificate is probably the correct one, since the lands are not productive from an agricultural point of view. The zoning decision bypasses the scientific presentation of the wetland present on the site, stating only on pages 6 and 7 that there is a salinized soil structure and that it is a wetland that has not been declared of international importance. This implicitly acknowledges that there is a wetland, although the presentation memorandum does not describe and qualify the area as such, as only agricultural land is wrongly mentioned, and the classification decision does not make any kind of analysis of it, with the simple motivation that it is not declared of international importance. However, wetlands are protected even if they are not declared to be of international importance.

APM decided that the proper evaluation procedure of the photovoltaic park construction project is no longer necessary since it was drawn up during the PUZ phase. As part of the appropriate assessment related to the project, the impact of the actual construction on species and habitats is observed in detail. If the proper assessment procedure had been carried out, it would have been able to identify, for example, the wetlands where the building ban measure could have been effectively established and also scientifically analyse the degree of degradation of priority habitat 1530*, and it would have established measures to restore it and the possibility of coexistence with the photovoltaic park, aspects that could not be established within the PUZ-type urban planning documentation. Therefore, these aspects were not even addressed in the respective appropriate assessment study.

Moreover, the appropriate assessment study related to the PUZ does not contain and does not properly evaluate all the species and habitats related to the location area.

It is also falsely stated that the land has been ploughed since 2005, as shown in the management plan in the habitat distribution map below. Thus it is falsely shown that the said habitat would have been completely destroyed after the establishment of the Natura 2000 Site, although it is mentioned in the Management Plan and the Natura 2000 Standard Form as can also be seen below in the distribution map of the management plan and the lack of any attempt by APM Arad to request the analysis regarding the possibilities of restoring the habitat and the establishment of measures in this regard.

In this case, given the presence of priority habitat, it was mandatory to complete the appropriate assessment procedure for the project to determine whether this project could be carried out on the respective site under the conditions of the strict regulations mentioned above.

http://www.campiacrisurilor.ro/harti/index_svg.html

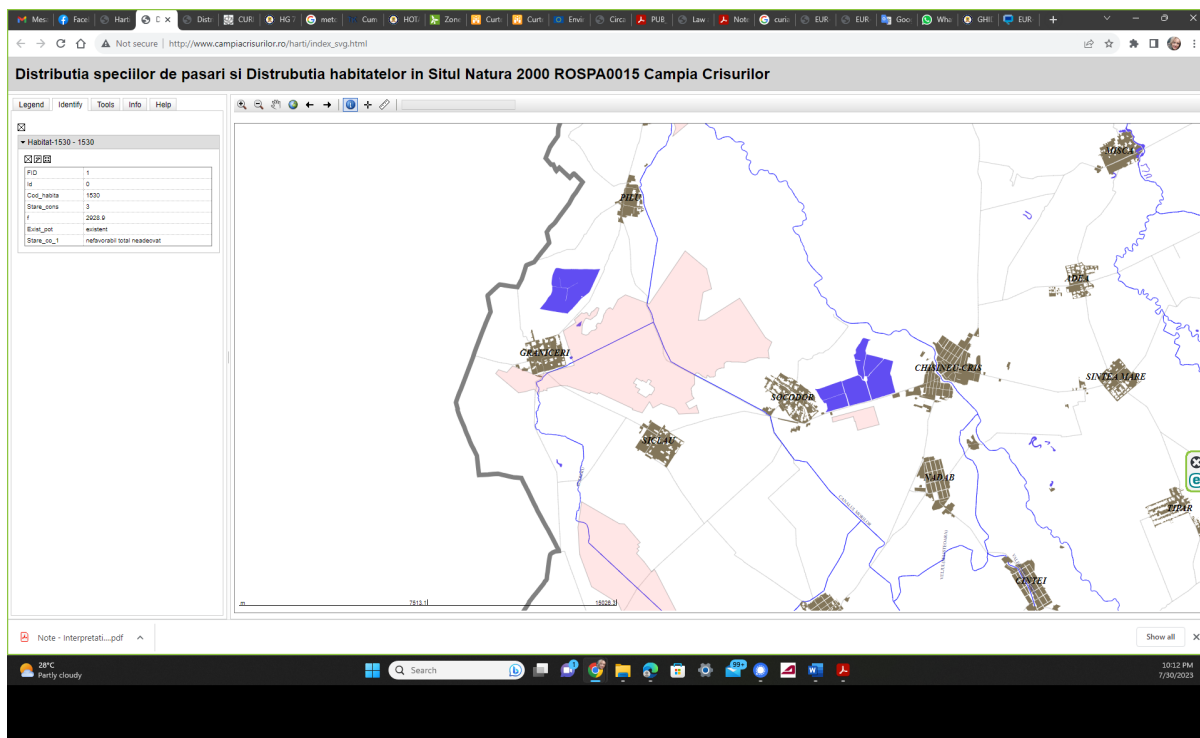


Photo: habitat distribution map available on the Natura 2000 Site administration page

In this case, on this land the object of conservation is the habitat of priority community interest 1530* Pannonic and Ponto-Sarmatic salt steppes and salt marshes mentioned in Annex I of the Habitats Directive as 1530 * Pannonian salt marshes and steppes and also **26 species of birds that constitute priority species** being mentioned in Annex I of the Birds Directive that will be affected by the installation of the photovoltaic park.

Salt marshes (salt grasslands destroyed by illegal conversion to arable land) with large areas flooded by stagnant water during wet times of the year – especially during bird migration periods, provide habitat for a large number of birds (see photos and videos here: <https://docs.google.com/document/d/1WQH1k1ol12D8i2RJjdVP11bZR4gFdvT2U-uluMHwmhZw/edit?usp=sharing>). This fact is also revealed by the data extracted from **Open Birds Maps**, a public database, which contains biotic data collected unsystematically by

field ornithologists in Romania and which shows the regular presence of some bird species typical of water areas, such as: *Anas acuta* – pintail, *Anas crecca* – Eurasian teal, *Anas penelope* – Eurasian wigeon, *Anas platyrhynchos* – mallard, *Anser anser* – greylag goose, *Branta ruficollis* – red-breasted goose.

In this drive please check the maps generated based on data from Open Bird Maps: <https://drive.google.com/drive/folders/1T2bh2sLuDUBIGMXI2nvOwOqO8WxX6AYW>. The appropriate assessment study identifies this richness of avifauna, being observed here: 87 species of birds with a total of 35268 individuals. Of these species, 26 are listed in Annex I of the Birds Directive.

The appropriate assessment study, wrongly, does not assess the effects of the plan on the following bird species:

a. Large or very large birds

Through coverage of the surface of 1064.45 ha in proportion of 80% with solar panels and technological roads practically these birds LOSE habitats necessary for their life. A significant part of the birds, which use the location as a habitat are large or very large (e.g. *Grus grus* - crane, *Ciconia ciconia* - white stork, *Ciconia nigra* - black stork, *Aquila heliaca* - imperial eagle, *Haliaeetus albicilla* - white-tailed eagle, *Egretta (Ardea) alba* – great egret, *Egretta garzetta* – little egret), who do not have the possibility to land between photovoltaic panels:

- *Aquila heliaca* (Annex I Directive Birds) - imperial eagle. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p.90-92). Although the surface of the species' habitat is large, considering the fact that it is a sedentary species, we consider the general state of conservation of the species as unfavorable-inadequate.
- *Aquila pomarina* (Annex I Birds Directive) – lesser-spotted eagle. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat. Although the surface of the species' habitat is large, considering the fact that it is a summer guest species (migratory species present in Romania only in summer), we consider the general state of

conservation of the species as unfavorable-inadequate. It can also nest near the site (for example in the Socodor Forest) or appears in migration.

- ***Ciconia ciconia* (Annex I Birds Directive)** – white stork. The species uses the site as a feeding territory during the breeding season. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.
- ***Ciconia nigra* (Annex I Birds Directive)** - black stork. The species uses the site as a feeding territory during the breeding period, but also during passage. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p.90-92).
- ***Egretta (Ardea) alba* (Annex I Birds Directive)** – great egret. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat.
- ***Egretta garzetta* (Annex I Birds Directive)** – little egret. The species uses the site as a feeding territory. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.
- ***Haliaeetus albicilla* (Annex I Birds Directive)** – white-tailed eagle. Species with permanent presence, uses the site as a feeding (hunting) habitat. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p.90-92).
- ***Hieraaetus pennatus* (Annex I Birds Directive)** – booted eagle. It is a species with a permanent presence in the Natura 2000 site in a very small number: 1-2 pairs. Although the surface of the species' habitat is large, considering the fact that it is a sedentary species, we consider the general state of conservation of the species as unfavorable-inadequate. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.

- ***Grus grus*** (Annex I Birds Directive) – common crane. It's present in the passage period. The study does not discuss the impact on species, although it was identified in the time implementation inventory protocols, according to chapter 3.2.5 (p.90-92).
- ***Platalea leucorodia*** (Annex I Birds Directive) – Eurasian spoonbill. Species present both during breeding and passage. Uses areas permanently or temporarily covered with water for feeding. It may be affected by the construction of the solar park due to the loss of feeding habitat.

b. Birds of prey

Birds of prey, even small ones, are prevented from hunting between the panels without colliding with them or the wire mesh fences that are proposed to enclose the site. Such species are:

- ***Asio flammeus*** (Annex I Directive Birds) – short-eared owl. It is present BOTH in the reproduction period, how much and winter. It can be affected BOTH through the loss of feeding habitat, how much and the reproductive one, being species nesting on the ground.
- ***Circus aeruginosus*** (Annex I Directive Birds) – western marsh harrier. It is a species present at all times of the year (mainly in the nesting period and in the passage) and uses SITE as a feeding habitat. It may be affected by the construction of the solar park due to the loss of feeding habitat.
- ***Circus cyaneus*** (Annex I Directive Birds) – hen harrier. The species is present on the site during the wintering period, using it as a feeding habitat. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat.
- ***Circus pygargus*** (Annex I Birds Directive) – Montagu's harrier. It is a nesting species on the territory of the site with a presence of 6-9 pairs in the entire site. It may be affected by the realization of the photovoltaic park through the loss of feeding and breeding habitat. The general conservation status of the species is unfavourable and inadequate. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p.90-92).

- ***Falco cherrug*** (Annex I Birds Directive) – saker falcon. The species is present during the nesting and passage period. Species with a large range of activity during the nesting period. In the vicinity (Grăniceri – Șiclău) there are 2-3 nesting pairs every year. It may be affected by the realization of the photovoltaic park by the loss of the feeding habitat. The general conservation status of the species is unfavourable and inadequate. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to chapter 3.2.5 (p.90-92).
- ***Falco columbarius*** (Annex I Birds Directive) – merlin. The species is present on the site during the wintering period. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat
- ***Falco peregrinus*** (Annex I Birds Directive) – peregrine falcon. The species is present on the site during the passage and wintering period. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. The study does not discuss the impact on the species, although it was identified during the implementation of the inventory protocols, according to Chapter 3.2.5 (p.90-92).
- ***Falco tinnunculus*** (Appendix 4B. OUG 57/2007) – common kestrel. Species present throughout the year, using the site with high frequency for feeding. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.
- ***Falco vespertinus*** (Annex I Birds Directive) – red-footed falcon. The species present in both breeding and passage, using the site with high frequency for feeding. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.
- ***Milvus migrans*** (Annex I Birds Directive) – black kite. The species is present in the area during the breeding period in small herds: 2-3 pairs and uses the area as a feeding habitat. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat.
- ***Pernis apivorus*** (Annex I Directive Birds) – European honey buzzard. The species is present with a very small breeding stock: 2-3 pairs in the entire Natura 2000 site. Although the surface habitation of the species is large, having in view the fact that it

is a sedentary species, we think mood general conservation of the species is unfavourable-inadequate.

c. Birds particularly rare

The location proposed is one of few nesting habitats of the shorebird – *Limosa limosa* black-tailed godwit, a species wader (shore) that arrives very rare in Romania. It may be affected by the realization of the photovoltaic park by the loss of feeding habitat. To be seen Map with distribution nesting habitats, in the link <https://drive.google.com/drive/folders/1T2bh2sLuDUBIGMXI2nvOwOqO8WxX6AYW>.

d. The species *Circaetus gallicus* - short-toed snake eagle (Annex I Birds Directive).

It was not analysed by the environmental report in the framework of the SEA procedure and the impact of the plan on this species was not assessed, although the species is present during the breeding season.

Litigation

We were able to file 5 lawsuits concerning he 5 identified cases:

1192/83/2023	TB Satu Mare	Annulment of SEA permit for PUZ of the solar park
1193/83/2023	TB Satu Mare	Obligation to restoration of the degraded habitat for Valea Alceului Natura 2000 site
1572/83/2023	TB Satu Mare	Annulment of the solar park screening decision
509/83/2023	TB Satu Mare	Obligation to restoration of the degraded habitat for Raul Tur/ Lunca Inferioara a Turului, UAT Lazuri, sat Nisipeni
508/93/2023	TB Satu Mare	Obligation to restoration of the degraded habitat Raul Tur/ Lunca Inferioara a Turului, UAT Turulung

All the cases are ongoing. The two cases concerning the solar park were dismissed by the first court on procedural grounds, and we filed appeals. The other 3 cases are still in the first court.

2. LEGAL ANALYSIS

This letter concerns a failure by Romania to provide for:

(1) effective and timely strategic environmental assessment; failed transboundary consultation procedure.

(2) effective and timely appropriate assessment; and

(3) failure to protect the habitat and species inside Natura 2000 areas leading to degradation of habitats, disturbances of species and loss of biodiversity

(1) Breach of Article 3 of the SEA Directive

Article 2(a) of the Strategic Environmental Assessment Directive (SEA Directive) specifies that plans and programmes are defined as plans and programmes “as well as any modifications to them which are:

- subject to preparation and/or adoption by an authority at the national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

- required by legislative, regulatory or administrative provisions”.⁶

Pastoral Management Plans (PMPs) in Romania are subject to adoption by an authority at the local level and are required by legislative provisions.

Article 3(2) of the SEA Directive requires Member States to conduct environmental assessment for all plans and programmes.

“which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework or future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC”

Annex II(1) of the EIA Directive lists several agriculture operations, including:

“(a) Projects for the restructuring of rural land holdings;

(b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

National legal regime of the Pastoral Management Plans (PMPs)

Pastoral Management Plans might be expected to fall within Annex II of the EIA Directive and thereby trigger a SEA. But, in any event, where PMPs are prepared for sites which fall directly within Natura 2000 areas, one would expect a SEA to be triggered by Article 3(2)(b) of the SEA Directive.

⁶ OJ L 197, 21.7.2001, p. 30–37.

There is no discretion for Member States to determine whether the plans and programmes covered by paragraph 2 are likely to have significant environmental effects: the Directive deems them to have such effects and requires an assessment to be carried out.⁷

This element is also reflected in Article 5 of Decision 1076/2004 on the environmental assessment procedure of certain plans and programmes.

Article 4(2) of the SEA Directive provides for the environmental assessment procedure either to be integrated into existing procedures for the adoption of plans or programmes or, to be incorporated in a separate procedure.

Pastoral Management Plans are required by Article 6 of the Emergency Governmental Ordinance no 34/2013 regarding the organization, administration and exploitation of permanent grasslands and for the amendment and completion of the Land Fund Law no. 18/1991 and Article 1 of the methodological rules of application approved by GD 1064/2013.

The procedure of approving the PMPs

This law specifies that pastoral management plans **should be prepared by local councils** that also approve them through a Decision.

The administration of the grasslands in the public/private domain of the communes is done by the local council (art. 4 of the rules).

The mayor, through the specialized apparatus, verifies compliance with the measures for the use of grasslands, under the provisions of the present methodological norms. For the good administration of the grasslands, the secretary of the administrative-territorial unit keeps the register with the records of the grasslands, the cadastral plan of the concessioned or leased areas, in compliance with the legal provisions in force (art. 5 of the rules).

According to Article 5 of 1 of GEO 34/2013, it is forbidden to remove grasslands permanently or temporarily **located outside the city limits** from the agricultural circuit. However, Article 5 para 3 allows certain exceptions among which the renewable energy production projects.

The definitive or temporary removal from the agricultural circuit of the permanent grasslands located outside the village for the location of the objectives provided for in art. 5 of 3 is approved by:

- By decision of the director of the county agriculture department with the approval of the Ministry of Agriculture and Rural Development for land up to and including 100 ha
- By Government decision for agricultural land with an area of over 100 ha, initiated by the Ministry of Agriculture and Rural Development

The change in the category of use of permanent grasslands **located inside the city limits** is approved by a decision approving the change in the category of use, given by:

⁷ Guidance on Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment, par. 3.21, p. 10



- The specialized department within the Ministry of Agriculture and Rural Development, for land areas over 1 ha;
- For land areas up to 1 ha, inclusive, by decision approving the change of use category, given by the county agriculture department.

In practice, we find out after our investigation that the PMPs are not subject to SEA procedure. According to the results presented above, an extremely small number of the total requested and elaborated pastoral management plans are subject to the strategic environmental assessment procedure and of those, none went through the full procedure, being finalized with a screening decision. Also, no PMP has gone through the appropriate evaluation procedure regulated by the Emergency Governmental Ordinance no 57/2007 for grasslands that overlap with protected areas.

The legislation providing the change of the category of use of the grasslands provides no obligations to submit the PMP to the environmental norms, other than The Governmental Decision 1076/2004 and the Emergency Governmental Ordinance no 57/2007 stipulates that:

The Governmental Decision no 1076/2004 regarding the establishment of the procedure for carrying out the environmental assessment for plans and programs:

'(1) The environmental assessment is carried out for plans and programs that may have significant effects on the environment, according to the provisions of para. (2)-(4).

(2) All plans and programs that:

*a) prepare for the following fields: **agriculture**, forestry, fishing and aquaculture, energy, industry, including the activity of extracting mineral resources, transport, waste management, water management, telecommunications, tourism, regional development, territorial planning and urban planning or land use , and which establish the framework for issuing future single agreements for the projects that are provided in annexes no. 1 and 2 to Government Decision no. 918/2002 regarding the establishment of the framework procedure for assessing the impact on the environment and for the approval of the list of public private projects subject to this procedure; either one*

b) due to the possible effects affecting the avifaunistic special protection areas or the special conservation areas regulated according to Government Emergency Ordinance no. 236/2000 regarding the regime of natural protected areas, conservation of natural habitats, flora and fauna, approved with amendments and additions by Law no. 462/2001.

(3) Subject to environmental assessment only if they can have significant effects on the environment:

a) the plans and programs provided for in paragraph (2), which determines the use of small areas at the local level;

b) minor changes to the plans and programs provided for in paragraph (2);

c) plans and programs, other than those provided for in paragraph (2), which establish the framework for issuing future single agreements for projects.

(4) The decision on the existence of potential significant effects on the environment of the plans and programs provided for in para. (3) is taken through a case-by-case examination, according to the provisions of art. 11’.

Therefore, the completion of the strategic evaluation procedure by issuing a screening decision is only possible if the plans/programmes are listed in Article 5 of 3. In the case of those who do not fall into these categories, **it is mandatory to carry out the procedure of strategic environmental assessment with the issuance of the environmental opinion.**

In the case of pastoral facilities, it is not a matter of small areas either, they do not establish frameworks for issuing single agreements for projects, nor do they represent changes to other plans. Therefore, illegally, these pastoral arrangements were approved only by issuing screening decisions.

Also, in the case of pastoral facilities for which environmental approval was not even requested, the approval through the Decision of the Local Council was done illegally, in violation of art. 3 of HG 1076/2004, without an environmental assessment.

By its systematic failure to carry out SEA in respect of Pastoral Management Plans, Romania is in breach of Article 3(2) of Directive 2001/42/EC.

(2) Breach of Articles 6 and 7 of the Habitats Directive

Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site given the site's conservation objectives.

The appropriate assessment (AA) is aimed at verifying what are the implications of the plan or project concerning the site's conservation objectives, either individually or in combination with other plans or projects. The focus of the appropriate assessment is therefore specifically on the species and/or the habitats for which the Natura 2000 site is designated. The AA is finalised by the preparation of a set of conclusions allowing the competent authorities to ascertain whether the plan or project will adversely affect the integrity of the site concerned.

While the provision of Article 6(3) of the Habitats Directive does not specify what should be the method for carrying out such an assessment, it is required that this assessment precedes the plan. CJEU in its ruling in *Waddenzee* (C-127/02) concluded that: *‘according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the site's conservation objectives’*⁸.

⁸ Case C-127/02 *Waddenzee* ECLI:EU:C:2004:482, paras 52-53.

As it was noted by the Court, the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible to prevent adverse effects on the integrity of protected sites as a result of the plans or projects being considered.⁹

Another requirement is that the competent national authorities may authorise an activity subject to an assessment only if they have made certain that it will not adversely affect the integrity of the protected site. This can be done only in cases where there is no reasonable doubt from a scientific point of view as to the absence of such adverse effects.¹⁰

As indicated in the Commission's notice 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC'¹¹, timing is an important element of the AA. It needs to be emphasized that the assessment precedes and provides the basis for the other steps (particularly, approval or refusal of a plan or project).¹² It, therefore, needs to be conducted before any decision is made.

As a result of our investigation, no Pastoral Management Plan was submitted to the appropriate assessment.

In the cases that we identified, no situation of change in the use of grasslands that were ploughed was subject to the appropriate assessment in the three cases described above.

Even more, the approval of a plan (the urban zonal plan) to build a solar park inside a Natura 2000 Site was formally approved, by not assessing the environmental factors that are going to be negatively affected by the plan, as mentioned above.

Furthermore, the project itself of building the solar park was exempted from the appropriate assessment based on the argument that the appropriate assessment realised for the plan was sufficient. This is not the only situation in Romania when the appropriate assessment is not done, Potoc Wind Farm¹³ is in the same situation (except the project was exempted also from EIA procedure even if it is located in a sensitive area for birds and other species).

(3) Degradation of habitats and biodiversity loss

Breaching of Article 6 (2) of the Habitats Directive: *'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, in so far as such disturbance could be significant in relation to the objectives of this Directive.'*

⁹ *Ibidem*, par. 58.

¹⁰ Case C243/15 Lesoochránárske zoskupenie EU:C:2016:838, para 42.

¹¹ Commission Notice on Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (C(2018) 7621 final).

¹² *Ibidem*, p. 45.

¹³ <https://www.mmediu.ro/categorie/parcuri-eoliene-in-romania/459>

According to the European Commission's Notice - Managing Natura 2000 sites¹⁴:

'The article takes as its starting point the prevention principle. (...) These measures go beyond the management measures needed for conservation purposes since these are already covered by Article 6(1). The words 'avoid' and 'could be significant' stress the anticipatory nature of the measures to be taken. It is not acceptable to wait until deterioration or disturbances occur before taking measures (case C-418/04 — see also under section 4.4.1 the interpretation of 'likely to' in Article 6(3)).

This article should be interpreted as requiring Member States to take all the appropriate actions to ensure that no deterioration or significant disturbance occurs.

It requires both human-caused and any predictable natural deterioration of natural habitats and the habitats of species to be avoided.

The scope of this article is broader than that of Articles 6(3) and 6(4) which apply only to plans and projects. It also applies to the performance of all ongoing activities, like agriculture, fishing or water management, that may not fall within the scope of Article 6(3) (29), along with plans and projects which have already been authorised in the past and subsequently prove likely to give rise to deterioration or disturbances (30). It can also apply to the implementation of plans or projects which were authorized before Article 6(3) became applicable (C-399/14 para. 33)'.

None of the cases took into consideration the management plans of the Natura 2000 areas where the activities/plans/projects were located, thus, the species and habitats described in the management plan and their conservation objective were not included in the assessments.

In all four cases, the mentioned habitats were degraded and certainly, it entailed disturbances of species including birds. As results from the two studies mentioned in the first part of our complaint, the total habitat loss for grasslands in Romania is considerably high, both outside and inside Natura 2000 sites.

3. CONCLUSION

In light of the above, we consider that:

- (1) by failing systematically to carry out a timely and effective assessment as required by Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Romania is in breach of its obligations under Article 191(2) of TFEU in conjunction with Article 3 and 4(1) of the SEA Directive.
- (2) by failing systematically to carry out a timely and effective assessment as required by Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora, Romania is in breach of its obligations under Article 191(2) of TFEU in conjunction with Article 6(3) of the Habitats Directive.

¹⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0125\(07\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0125(07))



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(3) by failing systematically to carry out a timely and effective assessment as required by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Romania is in breach of its obligations under Article 191(2) of TFEU in conjunction with Article 6 (2) of the Habitats Directive in conjunction with the Birds Directive.

We therefore kindly request you to consider this issue as a matter of urgency.

Yours sincerely,

Rădulescu Cătălina Mihaela, Attorney at Law

On behalf of

Janos Mark-Nagy, President

Societatea Carpatină Ardeleană Satu-Mare