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Natura 2000: Bulgaria's park 'on paper'

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The 'Natura 2000' network derives from the [EU] 'Birds and Habitats' Directives and is the centerpiece of the European Union's nature and biodiversity conservation policy. Many Member States, however, have failed to comply or behave in a way that is consistent with the legislative objectives in the two Directives. Unfortunately, there has been little academic research conducted on this final stage of implementation to explain why the targets of EU policy do or do not behave consistently with the objectives of the policy. This research provides answers to this important question through an in-depth case study analysis of Bulgaria's deviant 'Case of Wind Turbines in Coastal Dobruzha'. The case study is timely, as in January 2016 the European Court of Justice ruled against the Bulgarian state in the case brought by the European **Commission**.

Keywords: Pseudo-compliance, maladaptation, coalition of willing partners, implementation

Introduction

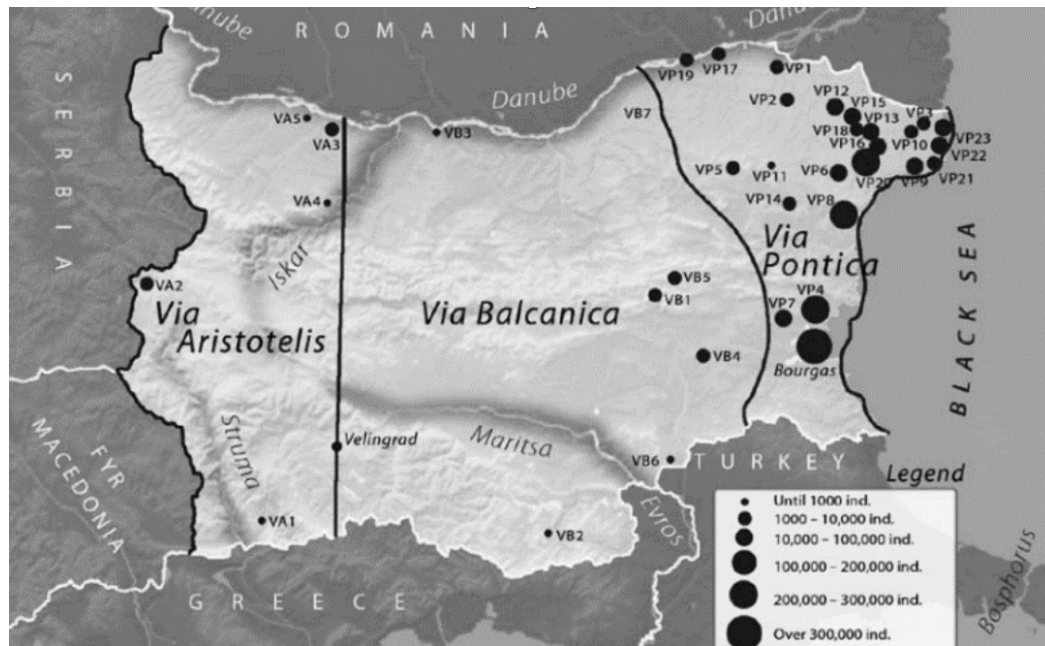
In principle, development tends to simplify ecosystems, thus contributing to biodiversity loss and the decrease in availability of plants and animal species for future generations (World Commission on Environment and Development 1987). The EU response to this crisis was the creation of the largest network of protected areas in the world called 'Natura 2000' throughout the member nations. The Network was set up not as strictly a nature reserve, but on the principle of sustainable development where human interaction with nature takes place in an ecologically sound manner. This Network is the centerpiece of the EU's nature and biodiversity conservation policy based on legally binding legislation: the 'Habitats Directive' and the 'Birds Directive' (European Commission 2013a). 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 through the designation of 'Special Areas of Conservation' (SAC). Together they form the Network through a system of protected sites and species protection measures². Each Member State must transpose these Directives into national legislation as a requirement for membership in the European Union. Bulgaria, like many other countries of Central and Eastern Europe, plays a fundamental role in the conservation of biodiversity in Europe, largely due to the biological richness of the region, where a great number of rare species and habitats can be found. The region, however, faces immense challenges as the process of transition from communism to a fully functioning democratic market economy is still underway. Bulgaria is also among the poorest nations in the EU, and it is facing immense pressure to develop its economy and at the same time comply with the wide range of legislation covered under the EU Acquis, including that on the environment. In addition, since accession to the EU in 2007, Bulgaria's implementation of these Directives has not been entirely satisfactory. The country has been plagued by site designation delays, illegal development on potential sites, as well as a poor public awareness and participation throughout the Natura 2000 process (World Wildlife Fund 2008).

Bulgaria's compliance with these Directives is not only vital to the preservation of biodiversity within Bulgaria, but 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 (Republic of Bulgaria 2003). Over 80% of bird species on the European continent can be found there. 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 (Republic of Bulgaria 2003). An essential component of sustainable development is ensuring diverse ecosystems capable of providing essential services needed to sustain human life. If we cannot ensure the integrity of these systems in countries like Bulgaria, it leaves us exposed to unacceptable environmental risks.

There is ample literature on why Member States adopt or fail to adopt EU law, but little research on how European legislation produces the desired results (Glachant 2001). Moreover, there is little research on the final stage of EU policy implementation which is understanding why targets of EU policy do or do not 'comply' or behave in a way consistent with the objectives of the policy (Weaver 2009). The primary concern of policy makers should be whether these habitats of European significance are preserved in a sustainable way for future generations. Adopting a policy formally is not sufficient for the conservation of biodiversity. In fact, many European countries face challenges in implementing Natura 2000 after its adoption. The empirical study upon which this paper is based sought answers to these critical questions through the examination of Bulgaria's implementation of and compliance with the Birds and Habitats Directives in Coastal Dobruzha, an area of high conservation value that is also under intense pressure from investors to develop wind turbine energy. The study provides empirical and theoretical insights into the implementation and compliance of EU policies in Member States.

This research focuses on the deviant 'Case of Wind Turbines in Coastal Dobruzha' as a clear example of non-compliance through the misapplication of the EU biodiversity Directives in Bulgaria. The importance of Coastal Dobruzha stems from its location on the migratory bird route 'Via Pontica', the second largest migratory bird route in Europe, as well as the endangered habitats of several bird species within it. Recent work by Michev highlighted that hundreds of thousands of birds fly through this region during the autumn migration, making it a vital place for the protection of biodiversity (Michev 2012).

Figure 1. Total number of soaring autumnal migrating birds in Bulgarian airspace over 35 sites during the period 2004–2012.



Another aspect of Coastal Dobruzha's biological importance is that it is one of the 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, amounting to 90% of the global flyway population (Petkov, Popgeorgiev and Gigov 2012). Bulgaria and Romania contain 100% of the wintering population in the EU and thus have a special obligation under the Birds and Habitats Directives to protect this species (Cranswick 2012).

If we evaluate the overall impact the Natura 2000 legislation has had on the biological integrity of these sites in Coastal Dobruzha, the results are resoundingly poor. Other European legislation, such as the 'Renewable Electricity Directive' (2001/77/EC) have given strong economic incentives to foreign and domestic investment 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. In Figure 2 below, highlighted in yellow, is Coastal Dobruzha, a place important to migratory bird species of all types, as well as the globally endangered red-breasted goose. As illustrated, the current development trend poses a significant threat to bird species and is in direct violation of the Birds and Habitats Directives.

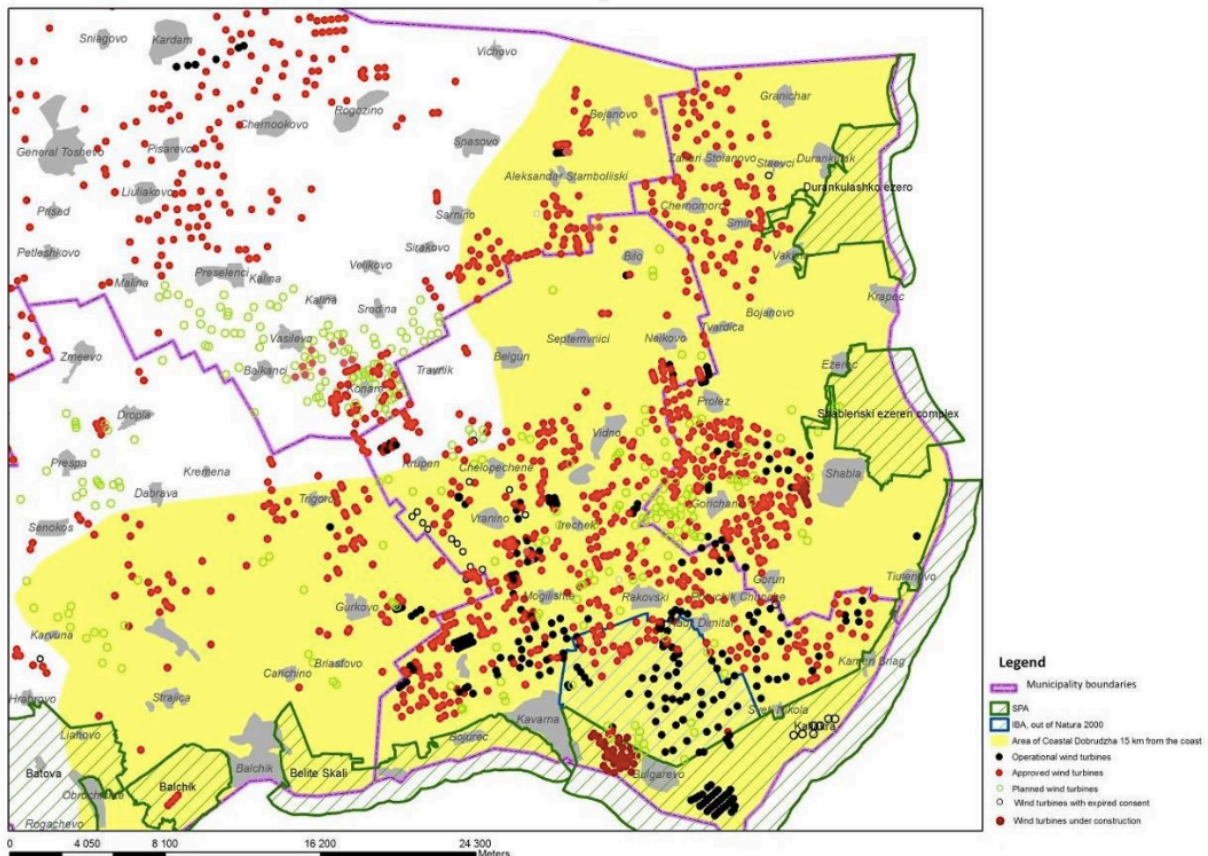
On October 17, 2013, the European Commission announced it would take Bulgaria to the European Court of Justice for its failure to designate appropriate sites, failure to implement appropriate assessments on sites in Coastal Dobruzha, for frequently issuing permits with inadequate or no 'Environmental 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, 'Although Bulgaria is committed to increasing the protection of rare species and habitats in the region, the reverse appears to be happening' (European Commission 2013b). Then, in January 2016, the European Court of Justice (ECJ) found the Bulgarian government in violation of the Directives and threatened to impose fines for the damage. It is of critical importance to understand why biodiversity there has significantly deteriorated in contrast to the legislative objectives of the Birds and Habitats Directives (European Court of Justice 2016). Therefore, the region makes for a unique empirical testing ground for the study of implementation, due to the extreme nature of the case.

The overarching aim of this single case study analysis was to uncover the conditions under which the current deteriorated state of Natura 2000 sites has come to be. Additionally, it was meant to identify the measures used by implementing bodies to try to obtain compliance, and how those measures interacted with the targets of the policy. This case study provided an

opportunity to identify new variables that may not be seen in standard cases, in order to use them as a basis for empirical testing in less extreme cases.

The objective was to trace the pathology of the implementation of Natura 2000 from the lowest jurisdictional levels up to the EU level in order to categorise the strengths and weaknesses of the logic of implementation in the Natura 2000 sites in Coastal Dobruzha, as well as to develop an explanatory narrative of how European and domestic factors influenced the practical application and enforcement of the objectives of the Birds and Habitats Directives on the mentioned sites.

Figure 2. Wind farm construction or administrative approvals in Coastal Dobruzha by March 2012



2. Theoretical Constructs of Implementation and Compliance

This section provides background from the literature on implementation and compliance theory and connects it with the empirical context needed, in order to approach the policy failure in the case of Coastal Dobruzha. Broad macro-approaches to European integration theory provide an important lens for the conceptualisation of Bulgaria's transposition of the Birds and Habitats Directives. While they are useful for gaining insight into underlying reasons for their legal passage, they provide little insight into the nature of attempts to implement the policy objectives. Therefore a more nuanced approach was taken, drawing from the field of EU implementation literature, as well as top-down and bottom-up implementation theories. This was done in order to provide a greater depth of understanding of the factors limiting compliance by 'street-level bureaucrats' and other relevant actors engaged in policy implementation.

a) EU Implementation Theories: Misfit Theory and Veto Players

It was only in the 1980s that scholars studying EU law began to analyse the underlying reasons for effective implementation of the 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 the national level (Falkner, Treib and Hartlapp, et al. 2005). There were also scholars in the field of implementation suggesting that the inclusion of all relevant actors, such as sub-national entities, NGOs, parliamentary bureaucrats, and interest groups, in the decision making process at EU level was an avenue for the effective transposition of Community Law (Ciavarini cited in Falkner, Treib and Hartlapp, et al. 2005). In their view, the inclusion of stakeholders in the decision making process was a way to prevent decisions that conflicted with the realities ‘on the ground’ facing bureaucrats. Bulgaria however, was not a member of the EU when both the Birds Directive and the Habitats Directive were promulgated. Without having participated in the analysis of the need for such a (or any) law, bureaucrats and other stakeholders may question the legitimacy of the Directives (Duprey 2014). 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 (Botcheva 2001).

Bulgaria, however, 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 zero percent in 2008 of internal market legislation (Internal Market & Services DG, European Commission 2008). Bulgaria’s transposition record may have been sufficient in the eyes of the EU, but why did that not ensure effective domestic application and enforcement of the Birds and Habitats Directives? In regard then to domestic implementation, these theories tend to lose their explanatory power.

One significant aspect not touched upon by either of these theories is the domestic impact of European policies and programs. Only in the 1990s did research begin to explain the domestic impact of 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. Since Bulgaria’s communist elites held on to power much longer than did the analogous elites of other Central and Eastern European (CEE) countries, democratic reforms were slow to materialise (Vachudova 2005). This prepared the way for a significant misfit between the EU policies and national legislation. Naturally, 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 laws.

Another attempt at explaining the ways domestic factors influence the subversion of EU legislation was the ‘veto players’ theory formulated by Tsebelis, according to whom veto players are the individual or collective actors whose agreement is necessary to make change. In this theory the greater the number of veto players, the greater the probability of non-compliance (Tsebelis 2002). Indeed, in Bulgaria there was significant opposition to the legal designation of Natura 2000 sites. Municipal business interests, as well as landowners who opposed the size of the Network, pressed the Bulgarian government to delay the submission of sites. A business interest group called ‘Natura 2000 for the Benefit of Municipalities Coalition’ lobbied the government for a submission delay and made media statements about a lack of consensus over the borders of the Network (Sofia News Agency 2007). ‘Veto-players’ theory provides some insight into the government’s initial resistance and delay in the legal designation of the sites.

In 2007 however, Falkner found empirically that both the misfit theory as well as veto-player theory show a statistically weak influence on Member State performance in the transposition of EU law. On her findings, she suggests that there are ‘three worlds’ of transposition compliance: a world of law observance, a world of domestic politics, and a 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, and non-compliance happens rarely, when key domestic traditions or fundamental regulatory philosophy are challenged. In the world of domestic politics, domestic concerns based on an internal cost/benefit analysis, prevail over transposition. Finally, the world of transposition neglect is where a country may not care about the transposition of the law or has administrative inefficiencies that prevent it from implementing the law (Falkner and Hartlapp 2007).

b) Forms of Compliance and Implementation of Community Law

In 2008, Falkner analysed whether Central Eastern Europe (CEE) countries represent a new world of compliance that 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’ and the promise of accession to the EU 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 & Sedelmeir cited in Falkner 2008). This means that CEE countries like Bulgaria in most cases transpose EU Directives, but then appears non-compliance at the latter stages of monitoring and enforcement (Falkner and Treib 2008). According to Jacoby, the EU approximation process in new East-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’ (Jacoby cited in Lynch 2000). One flaw in this analysis however, is that it does not take into consideration the domestic forces that either encourage governments in new Member States to actually implement the legislation, or ‘deceive’ the EU through post-accession deviation from the EU *acquis communautaire* or through failure to apply and enforce the law (Duprey 2014).

The promise of EU membership in most cases induces good performance by potential Member States, and Bulgaria was no exception. Actions that do not align with EU objectives may impede states’ ability to join the EU. Once they are members, 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 reversed, 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.

Research from 2005 by Ellen Mastenbroek reviewing 20 years of published compliance literature finds that there is growing consensus that domestic politics needs to be taken into the equation in a more explicit fashion in researching compliance. Nationally, there should be more research on the implementation deficit in the application and enforcement of EU law. In the author’s view, without such research, compliance will remain a ‘black hole’ (Mastenbroek 2005).

This research addresses these gaps by temporally analysing Bulgaria’s implementation of the Birds and Habitats Directives in Coastal Dobruzha in practice, from its practical application to its enforcement.

c) Theoretical Framework for Analysing Implementation: Top-Down and Bottom-Up Approaches

There have been many frameworks proposed for analysing the implementation of domestic laws. None have been more widely accepted in academia than the top-down and bottom-up implementation frameworks. The top-down analysis starts by analysing the statute or law and its purpose. Then this framework follows the statute down each consecutive level of implementation, arriving finally 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 1979-80). 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 to control compliance downwards to each level of governance. Top-down research makes a clear distinction between the formulation of a policy and its actual implementation by placing most of its emphasis on control through 'policy outputs', defined as actions taken to realise a particular policy decision, and policy outcomes focus on the consequences of the policy to society after it has been implemented (Sabatier 1975).

The bottom-up approach originates from Lipsky's 1980 article entitled 'Street Level Bureaucracy' in which 'street-level bureaucrats' are 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' (Lipsky 1980). In Bulgaria, these public service workers are typically the directors of the regional Inspectorates, local mayors, and senior experts from the Departments of Tourism and Ecology, etc. Lipsky focuses 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). The bottom-up approach (or backward mapping) begins its analysis at the final stage of the implementation process where street-level bureaucratic action crosses the private choices taken by citizens. At this level, researchers then identify the network of actors involved in the delivery of policy and ask them about their objectives, interests, strategies and contacts (other people who may be participants in the delivery of the policy, with whom it may be suggested they should speak with).

d) An Integrated Approach: Forward-and-Backward Mapping

How much central policy makers in the EU and national governments influence the decisions of street-level bureaucrats in Bulgaria can be debated, but there is no doubt they do influence implementation³. 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 centralised policies play a role in the decisions made on how to cope with them (Duprey 2014). Therefore, this research adopts the theoretical framework of forward-and-backward mapping (Elmore 1983), which incorporates both the top-down and bottom-up concepts of implementation. This was done in order to identify the domestic constraints facing policy implementers in the application and enforcement of the Biodiversity Act (BA) in Coastal Dobruzha.

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 policy tools as well as their likely effects. Once these are measured, policy decisions are made that are based on these evaluations. This approach, however, only develops a hypothetical cause-and-effect relationship between the tool/s and their expected results, without taking into consideration the end beneficiary/s and implementing agencies, or asking what options they face. 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 with 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 tools and increases their ability to respond to them. Moreover, this type of analysis changes the content of the policy options that are recommended. People both at a political and administrative level see policy in terms of tools that they control, without taking into consideration that the success of policy depends not only on the tools themselves, but also on the relationships between the tools 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 means a bargaining strategy must be developed to maximise the policy maker's interests and anticipate 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).

On the forward-mapping side of this analysis, policy tools should translate into the organisational paths across jurisdictions that produce desired outcomes (Elmore 1983). There is nothing in this view, however, that shows how these policy tools 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 between political jurisdictions into making trade-offs amongst objectives to produce results that are consistent with national objectives and local conditions' (Elmore 1985). '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). In sum, '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). The case below – the designation of Natura 2000 sites in Coastal Dobruzha – seeks to draw out these contextual constraints from the point of view of the key actors in the implementation process.

Methodology

This research is based on a series of interviews conducted with officials from the Bulgarian government, NGO staff, journalists and informants from the Directorate General for the Environment between 2012 and 2015, as well as an archival analysis. In total 48 semi-structured open-ended, long interviews were conducted with 40 individuals. A double-ended snowball sampling technique was used to identify informants, starting with a purposeful sampling of key participants in the relevant decision making processes. A deviant or outlier case 'Wind Turbines in Coastal Dobruzha' was used in order to identify new variables connected to policy implementation that may not be seen in standard cases where implementation was more successful (George and Bennett 2005). This method is also more relevant to this longitudinal case, as it can be examined over multiple years. It provides important insight into how certain conditions change over time (Yin 2003).

The data were analysed using the 'grounded theory' approach to generate theory, which was supplemented by a narrative analysis of the case (Corbin and Strauss 1998). The results were further validated through the use of primary and secondary source materials. Due to the sensitivity of the case, informants' names are strictly withheld, with only general positions given in order to protect them from any form of retribution.

Interviews	Data analysis	Narrative analysis	Primary and secondary source materials
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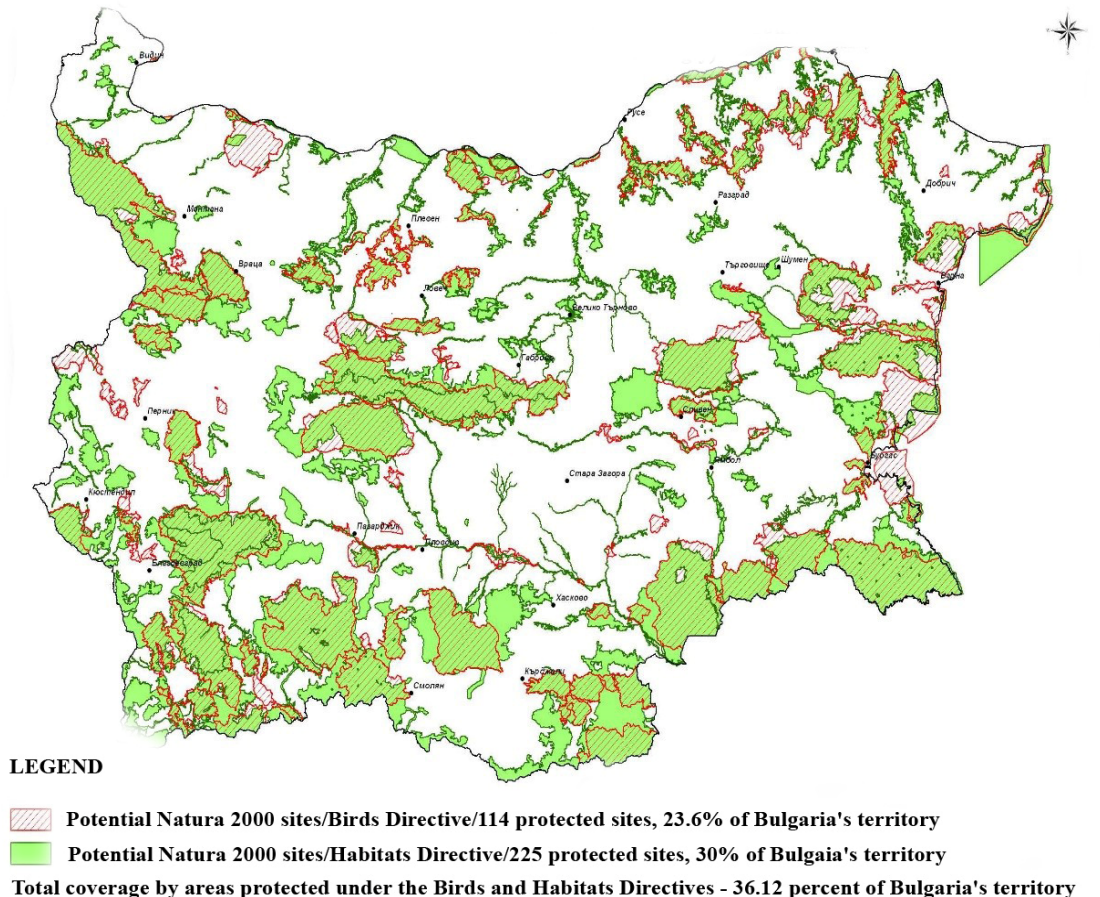
<p>48 interviews with 40 individuals</p>	<p>Mixed-methods approach:</p> <ol style="list-style-type: none"> 1. Thematic analysis with ‘open codes’ 2. Axial coding following data saturation 3. ‘Selective coding’ – categories analysed and merged 	<ul style="list-style-type: none"> • narrative through the case-study illustrations • drawing out the logic and structure embedded in the data 	<ul style="list-style-type: none"> • data triangulation to increase the overall quality of research • increased validity and explanatory richness of the analysis
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The Interaction between the European Union and the State: Designation of Natura 2000 Sites in Coastal Dobruzha

Bulgaria was required to submit a list of national sites included in the Natura 2000 area upon its date of accession to the European Union, on January 1, 2007. These included potential Sites of Community Importance (pSCI)⁴ and SPA sites based entirely on ‘scientific information’ without taking into account any economic activities (Council Directive 92/43/EEC 1992). Since identifying sites takes considerable human resources, time and effort, this process typically occurs years before accession. The government, however, allocated only one person from junior staff for the Natura 2000 documentation in the Ministry of Environment and Water (MoEW) (World Wildlife Fund 2008), a largely insufficient human capacity for the implementation of site assessments. Therefore, in 2004 the government asked two well-known Bulgarian NGOs working in the field of biodiversity conservation to make a list of potential Natura 2000 sites. Green Balkans (GB)⁵ was selected by the MoEW to assess the pSCI that would fall under the Habitats Directive. The second NGO, Birdlife International and the Bulgarian Society for the Protection of Birds (BSPB)⁶, had already conducted its own, scientifically highly regarded, assessment of Important Bird Areas (IBA)⁷ in Bulgaria.

During the site assessment process, the team designated over 140 potential SPA sites under the Birds Directive and 150 pSCI sites 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 IBA by the BSPB (Kostadinova and Gramatikov 2007). The proposed sites covered 36% of Bulgaria’s territory – substantial given the average territorial coverage in Member States is 17% (Natura 2000 Reporting Services 2016).

Figure 3. List of Natura 2000 sites proposed by the Bulgarian NGOs



Source: (Natura 2000 Bulgaria 2007).

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. While potential Natura 2000 sites were being identified, the government still went ahead in approving proposed wind turbine projects in some of the most ecologically sensitive areas that had a very high probability of eventually becoming part of the Natura 2000 network. To try to mitigate any potential destruction of these ecologically sensitive sites, the BSPB led efforts to lobby the Bern Standing Committee⁸ to open a case file against the government for approving wind projects in the region of Coastal Dobruzha.

After an analysis of the proposed list presented by NGOs, and while taking into account business opposition, Bulgaria's Biodiversity Council, the governmental body responsible for proposing Natura 2000 sites to the Council of Ministers, approved 112 SPA sites and another three with reduced territories, including Kaliakra SPA, one of the most biologically diverse parts of Coastal Dobruzha. Concurrently, 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) on the basis of the economic impacts of the original list (Tonchev 2007). 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 from a dissenting NGO representative on the Council (in favor of the whole network of 114 SPA); another from the head of the National Nature Protection Service under the MoEW (in favor of an SPA network of 109 sites); a third list was developed by the Biodiversity Council itself (Tonchev 2007).

The EU required Bulgaria to designate Specially Protected Areas by January 1, 2007, when it officially became a member of the European Union. However, municipal business interests, as well as landowners who opposed the size of the Network, pressed the Bulgarian government

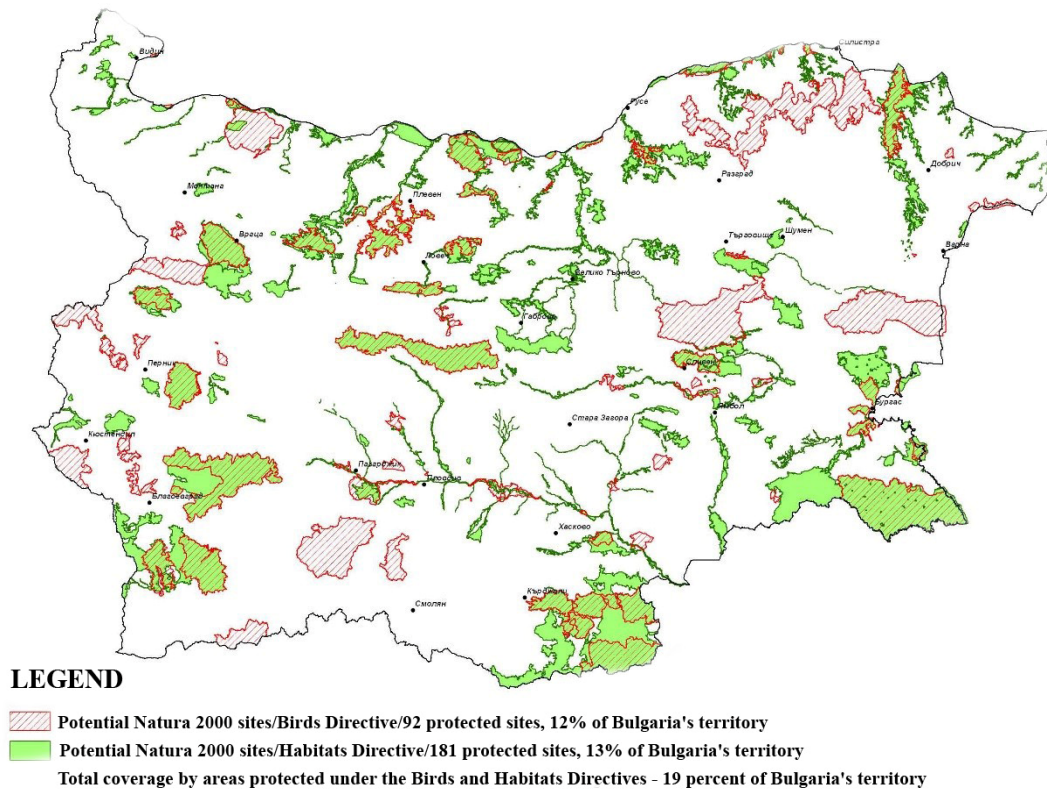
to delay the submission. A business-interest group – called ‘Natura 2000 for the Benefit of Municipalities Coalition’ – lobbied the government for a submission delay and made media statements about the lack of consensus over the borders of the Network (Sofia News Agency 2007). In support of the delay, National Ombudsman Ginyo Ganev accused the Ministry of Environment and Water (MOEW) and the Agriculture and Forests Ministry of giving insufficient information and of a lack of transparency on Natura 2000 issues. He claimed that the Ministries had ignored local authorities in deciding on zones to be included in the environmental Network. He called for amendments to the Biodiversity Act⁹ to allow landowners to question the ministerial order declaring certain areas as protected (Grancharova 2006). There was also substantial media coverage about Natura 2000 and its impact on the booming real estate and renewable energy market in Coastal Dobruzha.

By 2007, no decision had been made and Bulgaria joined the EU in violation of its Natura 2000 obligation to designate sites upon EU membership. After much debate and a two-month delay, the final list was submitted by the Council of Ministers in March of 2007¹⁰. The list submitted to the European Commission included only 180 pSCI covering 13.4% of the territory. This was less than half the territory proposed by the Bulgarian NGOs. Of the 114 SPA sites listed in the NGO proposal, only 88 IBA were designated as SPA under the Birds Directive, and five others were significantly reduced in size. Of the 26 IBA totally excluded from the government proposal, half were situated along the Black Sea coast, including sites in Coastal Dobruzha such as the Shabla Lake Complex, Durankulak Lake and Kaliakra (Tonchev 2007). These sites, included in the original NGO proposal but not on the official list, had thus 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). A re-evaluation by the Bulgarian Academy of Sciences was also requested by the government and a deadline for the new assessment was set for October 2007. This delay in submission was not allowed by the Biodiversity Act nor by the Birds and Habitats Directive, which put the EC in a situation of having to choose between waiting for the government to submit the completed list, or restarting the entire procedure for the adoption of sites (Marin, et al. 2007).

Investors began to rush forward with proposals for, and launched construction of wind turbine projects in Coastal Dobruzha prior to finalisation of the Natura 2000 network (Tonchev 2008). The Green Balkans, along with several other NGOs, filed formal complaints to the European Commission for breaches of both the Birds and Habitats Directives. Some of the NGOs submitting formal complaints were those in charge of the original biodiversity assessment, including Green Balkans and BSPB (Marin, et al. 2007).

The Council of Ministers finally submitted a new list of sites to the European Commission in November 2007. The resubmitted list contained almost all the sites covered in the NGO proposal; however, several sites were smaller (Tonchev 2008). The territory covered was 33.8% of the country. Six of the sites re-included in 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), and the arable land with wind-farm development projects were excluded. In fact, construction of wind turbines proceeded as planned on the sites in both the Kaliakra SPA and the Kaliakra IBA, which were not designated.

Figure 4. Final Natura 2000 proposal submitted by the [Bulgarian] Council of Ministers to the European Commission in March 2007



Source: (Natura 2000 Bulgaria 2007)

In a year's time after accession, 256 construction permits for wind turbines in the region of Coastal Dobruzha had been issued by the RIEW-Varna (Ministry of Environment and Water of Bulgaria 2012). Many of these permits were issued without any comprehensive 'Environmental Impact Assessment' (EIA) due to a legal loophole in the Environmental Protection Act. In the Act, smaller-sized wind turbine projects were included in 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 law was that the RIEW-Varna could freely interpret which wind power generator projects needed to undergo an EIA and which 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 calls 'salami slicing'. In 2007, 320 wind power generator projects were reviewed by the RIEW-Varna with 233 allowed to proceed in Coastal Dobruzha without an EIA by this legal loophole. This means that 73% of the approved projects were not required to undergo an EIA despite the warning from the European Commission. This practice only increased the following year with a seemingly complete disregard for the warnings of the European Commission and the Bern Convention Standing Committee (Ministry of Environment and Water of Bulgaria 2012).

By August 2009, 223 turbines of various private companies were approved or in the approval procedure stage within the boundaries of Kaliakra SPA and IBA sites, 45 of which were operational and 79 under construction (Bulgarian Society for the Protection of Birds 2009). Attempting to gain control of the rapidly deteriorating situation, the Commission opened a 'horizontal' infringement against Bulgaria for the incorrect application of the Directives though the systematic failure to protect its Natura 2000 sites, stating that there was uncontrolled approval and construction of wind turbines on many sites (EC Infringement 2009/4423). Responding to the concerns of the Commission, the Bulgarian government made additional concessions and restored some of the IBA sites to the list, but again excluded the Kaliakra IBA. The territory covered was now to be 34.3% of the country. It seemed, however, that no matter what the European Commission did in order to try to slow down wind power development, and no matter what the Bulgarian government insisted they were doing to prevent it, development continued. Below is a graph of European measures against the Bulgarian government and wind turbine developments in Coastal Dobruzha.

Table 2. European infringement procedures against Bulgaria regarding Natura 2000 Sites in Coastal Dobruzha and continued wind turbine development

European legal action in 2007	First European infringement procedure for failure to assess the impact of wind power development projects on Natura 2000 sites and failure to designate the sites
Wind turbines in Coastal Dobruzha in 2007	320 wind turbines examined, of which 256 wind turbines were approved (23 after Environmental Impact Assessment/ Assessment of Compatibility (EIA/AC) and 233 with the given permission to proceed without EIA)
European legal action in June 2008	Insufficient SPA designation where six SPA sites were significantly smaller than the corresponding IBA including Kaliakra IBA.
Wind turbines in Coastal Dobruzha in 2008	399 wind turbines examined, of which 372 wind turbines were approved (two turbines after EIA/AC and 370 with permission to proceed without an EIA).
European legal action in 2009	Commission opened a ‘horizontal’ infringement against Bulgaria for the incorrect application of the Directives through systematic failure to protect its Natura 2000 sites, citing uncontrolled development of wind turbines on many sites (Infringement 2009/4423)
Wind turbines in Coastal Dobruzha in 2009	588 wind turbines examined, of which 302 wind turbines were approved (192 after EIA/AC and 110 with permission to proceed without EIA)

Source: (Ministry of Environment and Water of Bulgaria 2012)

By the end of 2011 there were 158 new wind turbines approved by the RIEW-Varna despite the new proceedings initiated by the Commission (Ministry of Environment and Water of Bulgaria 2013). Construction was also initiated on 25 wind turbines in the Kaliakra SPA by EVN LTD Company (Bulgarian Society for the Protection of Birds 2012). On 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 its failure to comply with the Directives (European Commission 2013). Unfortunately by that time, according to the government report, approximately 2,062 wind turbines had 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 (Ministry of Environment and Water of Bulgaria 2013). After a long legal battle, in January 2016 the European Court of Justice ruled against the Bulgarian government, who as the unsuccessful party was ordered to pay penalties.

The consequences for Natura 2000 sites in Coastal Dobruzha have been significant. One serious example is the impact of the wind turbines on the red-breasted goose and the white-fronted goose. A 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 the foraging areas of these birds before and after the construction of the wind farms. The scientific analysis provided very pertinent data showing a significant displacement of the red-breasted goose due to the construction of wind turbines (Petkov, Popgeorgiev and Gigov 2012). These geese are experiencing reduced habitats and have to travel further to obtain food, which is a serious threat to this globally endangered species.

Findings

The findings highlight the interaction between the European Union and the Bulgarian state. The case illustrates that biodiversity conservation is neither a driving motive for EU membership, nor is it on the political agenda for the Bulgarian government or its citizens (European Commission 2007). In 2008, a Eurobarometer survey of the EU's 27 member nations asked people to rank their top five environmental concerns out of a 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 outranked by urban problems such as traffic jams and green space (European Commission 2008). While Bulgarians may not be deeply concerned with biodiversity, the investment in it required by European legislation is substantial. Bulgaria holds the second largest territorial coverage of sites in the EU at 33.89% of the country, while the average European coverage is 17% (Natura 2000 Reporting Services 2016). It is natural to assume Bulgaria will continue to face serious political resistance to the Network.

Without domestic support or political desire for biodiversity conservation, the government went through the lengthy procedures necessary to transpose the Birds and Habitats Directives into their legal framework. This was largely motivated by the promise of EU membership. The EU spent considerable time and energy ensuring that this framework was in place, but invested little to no resources in developing the technical expertise and understanding of the Bulgarian administrative officials responsible for the effective implementation of the law. Moreover, the EU did not engage in any public outreach to Bulgarian politicians or other domestic stakeholders in order to make clear to them the benefits of its implementation. Such an outreach needs to be geared towards explaining how objectives within the Biodiversity Act would lead to the later benefits of 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 help create the domestic structures necessary for efficient cooperation. Bulgaria was required to make tough decisions over which sites to include in the Natura 2000 network. These decisions had significant domestic implications which had the potential to financially harm the interests of a variety of domestic actors, including regional governments, local property owners, and businesses. During post-conditionality, these interests trumped European concerns about biodiversity conservation, so that political and domestic resistance to the Directives began to materialise almost immediately.

The government eventually put 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 a deceptive pseudo compliance¹¹ to appease the EU, thus shrinking the costs of non-compliance by reducing the probability of detection.

This dichotomy between 'paper and action', Diahanna Lynch argues, happens systematically in Central and Eastern European countries. While countries do not ignore EU laws through refusal to implement them, they do attempt to deceive the EU. The domestic laws may show coherence within the EU, but their implementation is weak. She calls this phenomenon the 'deception gap' or the difference between what is written and what is implemented (Lynch 2000). Jacoby goes further to state that the EU indirectly encourages EE nations to create two-faced organisations: one face seeks to pacify the EU, and the other, to satisfy domestic constituents (Jacoby in Lynch 2000). The designation of Natura 2000 sites in Coastal Dobruzha has provided strong empirical evidence to support these findings.

The assumption on the part of the EU is that it is dealing with a coalition of willing partners – the Member States – who actively and in good faith seek to implement European Directives. The result for the EC in Bulgaria was that adequate control mechanisms were not in place to identify and alter the behavior of administrative officials intent on evading legal mandates. Bardach calls this 'massive resistance' – administrative units withhold critical elements specified in a policy mandate by overwhelming the ability of administrative agencies to enforce compliance (Bardach 1974). The EU assumed that compliance would occur in Bulgaria, and were overwhelmed when 'massive resistance' took place. The pseudo-compliance measures

orchestrated by state administrative units included the seemingly purposeful but incorrect interpretation of ambiguous legal articles that were transposed into national legislation, which included legal loopholes, procedural delays and strategies for bypassing Environmental Impact Assessments (Duprey 2014).

Tallberg argues that in collaborative situations, states tend to renege on agreements, since they gain more by taking the benefits without contributing what they have agreed to. Therefore, in order to achieve collaborative gains, states must deter other states from renegeing (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, and the national government then pressures regional and local authorities to comply. The available means of enforcement include sanctions, monitoring and monetary penalties which increase the costs of non-compliance and thereby reduce the chance of defecting (Tallberg 2002).

In the case of Bulgaria, this may seem like a plausible method to ensure compliance and achieve conservation objectives. The average time span, however, between the first stage of infringement proceedings and final ECJ judgment is 56 months (Glachant 2001). Bulgaria's violations of the Birds and Habitats Directives in Coastal Dobruzha first resulted in infringement proceedings in 2007, and only in January 2016 did the ECJ finally reach a decision in the case. A court case might have been of concern to Bulgaria's officials, but uncertainty about the timing of the decision, the eventual outcome and possible financial penalties disguised the true cost to the state of non-compliance, thus promoting its continuation.

Enforcement also requires the detection of violations and lengthy court proceedings, which can use more financial resources than do incentive structures, capacity building, and prescriptive measures. Moreover, by the time actual penalties are implemented, they provide little incentive for a country like Bulgaria to change its behavior. Potential fines imposed by the ECJ must be high enough to counter the lawsuits and damage claims that would inevitably be taken up by investors for the reversal of administrative decisions and the costs of tearing down wind turbines. Therefore, it seems that the only potential gains penalties could provide would be to deter other states from implementing similar evasive activities, or to prevent them from continuing the practices in other locations.

All these constraints strongly suggest that the means by which enforcement and other post-accession policy tools are typically deployed by the EC are a weak deterrent. Greater measures must be taken by the European Union to ensure that preventive measures are in place *before* transposition – before 'the carrot' has already been obtained by a national government.

Additionally, there is significant need to support the Bulgarian government in developing the administrative capacities of policy implementers on a national, regional, and local level. Administrative officials often lack sufficient financial remuneration for their duties, expertise in biodiversity conservation, experience in measuring the impact of various development projects on biodiversity, as well as staff to implement the regulations. One example of this is their relative inexperience in dealing with wind turbine projects coupled with the lack of strategic planning for wind turbines in Coastal Dobruzha. With large-scale investment in wind turbine power flooding the region and the lack of 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 versus economic-oriented legislation. Therefore, fostering better understanding of the EU Directives and developing the administrative capacities of policy implementers would certainly improve implementation to some degree.

European Directives, transposed by Member States 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 the various objectives embedded into EU laws. In the case of Bulgaria, we see that achieving the targets of the Renewable Electricity Directive (Directive

2001/77/EC 2001), created a contradiction between the development of renewable energy and biodiversity conservation. Bulgaria has a pressing need for energy independence that aligns with the objectives of the EU Renewable Energy Directive. This is primarily caused by major structural and technical difficulties in securing the energy supply needed for its rapidly growing and decentralized economic market. Seventy percent of its gross energy supply is imported. Additionally, Bulgaria has no supply of oil and very small reserves of gas, which forces it to pay for its energy supplies in hard cash. The only internal source of energy is low-quality lignite coal with a high level of sulfur content. Bulgaria imports 100% of its needed nuclear fuel, 99% of the oil, 99% of its natural gas, and 44% of its coal (Ministry of Environment and Water of Bulgaria 2006).

When domestic preferences align with domestic law transposed from EU Directives, compliance occurs. This was the case with the development of renewable energy, as investments in the sector could bring economic development to a poor region of the country and help mitigate what is seen by government officials as negative energy trends. When domestic preferences do not align with domestic legislation transposed from the EU, policy aversion takes place.

In essence, the Bulgarian government maladapted itself¹² to European Directives on biodiversity. 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 there. Some marginal trade-offs occurred between regional development and environmental protection. Thus the Bulgarian government took only marginal risks by not outright rejecting the Birds and Habitats Directives through non-transposition, but through avoiding costly measures that would have sacrificed the development of wind power. The government, in fact, maladapted to the European renewable energy targets as well, by avoiding costly measures through pseudo-compliance techniques (Duprey 2014).

To illustrate this point in greater detail, we need only analyse how the implementation of the Renewable Energy Resources and Bio-fuels Act (RERBA) deleteriously affected biodiversity in Coastal Dobruzha. From 2005 to 2010, Bulgaria increased from 9.4% to 13.8% its total domestic renewable energy production (European Commission 2013). This trajectory put Bulgaria on track to easily achieve the mark of 16% renewable energy production by 2020. In fact, Bulgaria achieved the required 16% of renewables already by 2012, eight years ahead of schedule, making it one of the first countries to achieve the target in the European community (European Commission 2015). From the perspective of the renewables targets, Bulgaria would be considered an overachiever. One must also analyze, however, the relative impact these developments have had on the biodiversity objectives of the Directives: in Bulgaria the stimulation of the renewables sector through European renewables targets impeded the conservation of Natura 2000 sites in Coastal Dobruzha.

Conclusions

The findings of this research are significant also because the process of European integration continues and the prospects of additional countries in the western Balkans joining the European Union look promising. These countries, of great biological richness, will undergo a similar transformation as Bulgaria and encounter many of the same challenges. There is a plethora of legislation the EU has created to ensure a healthy and vibrant environment for future generations. None of these measures will be effective, however, without ensuring their intended outcomes. In essence, the transposition of the Birds and Habitats Directives and the creation of the Natura 2000 network in Bulgaria has done little more than create a park 'on paper'. The theoretical concepts derived in this research must therefore be tested in less deviant cases in order to validate its findings.

In the case of Coastal Dobruzha, we saw that the ambiguity of the European infringement proceedings and their procedural length provide little deterrence to a state faced with the

immediate need of job-creation and economic growth. The case also illustrates that states learn techniques of adaptation to European laws transposed to the domestic level, but also that the result of this learning is not always positive and constructive. In fact, learning can be inverse when over time Member States learn how to evade costly policy mandates of the EU in favor of national priorities by implementing pseudo-compliance techniques to delay or reduce the probability of the evasion's detection. The European Union repeatedly ensures that all European laws are harmonized with one another. The case illustrates, however, that the RERBA with its requirement of a 'feed-in tariff' system for renewables indirectly impeded the effective protection of Natura 2000 sites in Coastal Dobruzha. This caused the Bulgarian government to maladapt to the Directives to further pervert the relationship between the state and the EU, which will directly affect biodiversity and the future sustainability of European ecosystems. Therefore, understanding how this transition is playing out in the landscape of biodiversity conservation is of fundamental importance to a more effective steering of policy in the direction of its desired outcomes. The theoretical and empirical findings derived from this research are an important contribution to this understanding, and serve as a wake-up call to European officials concerned with the formulation of effective policies on sustainable development.

Notes

¹ For more information on Specially Protected Areas, see URL:

http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm [12 May 2016]

² For additional information on Natura 2000, see URL:

http://ec.Eurospa.eu/environment/nature/legislation/habitatsdirective/index_en.htm [consulted 12 May 2016].

³ For additional information on Natura 2000, see Url:

http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm [consulted 12 May 2016]

⁴ Potential Sites of Community Importance must be submitted by the time of EU accession and designated as official Sites of Community Importance six years after accession.

⁵ Green Balkans has fundraised over 3.5 million euros for projects over the years depending primarily on international sources to fund their work. It is also one of the most successful and professional NGOs in Bulgaria working in the field of nature conservation, and more particularly biodiversity-related projects.

⁶ 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. It is also one of the first and most well-established NGOs in Bulgaria working in the field of biodiversity conservation.

⁷ Birdlife International developed a set of scientific criteria to determine Important Bird Areas (IBA). 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 several times in rulings confirmed the scientific validity of the IBA designation to help 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, in 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)

⁸ 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 organisations, 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.

⁹ The Biodiversity Act is the law in Bulgaria which was promulgated to transpose the Bird and Habitats Directives.

¹⁰ This happened in Decision No. 122 of 03.02.2007.

¹¹ 'Pseudo-compliance' is said to occur when the government intentionally seeks to undermine provisions of a Directive while demonstrating compliance to reduce or delay the cost of detection through deceptive measures.

¹² Maladaptation is an adaptation to European law that, while reasonable at the time, becomes more harmful than helpful as the adaptation continues.

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