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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

36th meeting
Strasbourg, 15-18 November 2016

Possible file

**Follow-up of Recommendation No. 98 (2002)
on the project to build a motorway
through the Kresna Gorge
(Bulgaria)**

- REPORT BY THE NGOS -

*Document prepared by
BALKANI Wildlife Society, Wilderness Fund, Environmental Association "Za Zemiata" (For the
Earth), Bulgarian Society for the Protection of Birds, Green Policy Institute, Centre for
Environmental Information and Education, Association "ECOFORUM" and CEE Bankwatch
Network/Friends of the Earth International*

- OCTOBER 2016 -

· БЪЛГАРСКО ДРУЖЕСТВО ЗА ЗАЩИТА НА ПТИЦИТЕ ·



ПОМОГНИ ДА ОПАЗИМ
ПТИЦИТЕ И ПРИРОДАТА
НА БЪЛГАРИЯ

IZ.№ 142/14.10.2016 г.

To: Ing. Iliana Zaharieva
Member of the Executive Council
Agency "Road Infrastructure"
Sofia

Copy: MoEW
Department „Prevention activity”
and NNPS

EUROPEAN COMMISSION
DG „Environment”

EUROPEAN COMMISSION
DG „Regio”

Council of Europe
Bern Convention
Secretariat

Subject: Consultations on scope and content of Environmental impact assessment (EIA) of the investment proposal “Improvement of the route of Lot 3.2 of the “Struma” Motorway

Dear Mrs Zaharieva,

In regard to your letter IZ №04-20-13/14.09.2015 on consultations on scope and content of Environmental impact assessment (EIA) of the investment proposal “Improvement of the route of Lot 3.2 of the “Struma” Motorway, received by BSPB on 27.9.2016, after we reviewed the documentation, we expose the following statement:

I. IN REGARD TO THE ONGOING EIA AND AA PROCEDURE, LEGAL ASPECTS AND ENGAGEMENTS TAKEN

We believe that the investment proposal, subject to this procedure is not in accordance with decisions taken for approval of the "Struma" at national level, at the level of the EC, as with the commitments of Bulgaria to the Berne Convention, the European Commission and the Bulgarian scientific and NGO community, namely:

I.1 The Recommendation 98(2002) of the Bern Convention Standing Committee in relation to the case file “Kresna” require Bulgaria to not allow the design of Struma Motorway through the Kresna Gorge, explicitly mentioning expansion of the existing road, as well as the need to explore alternatives to passing outside the Kresna Gorge. In addition during the decision making process the authorities have to take into account social and environmental criteria and not only technical, legal and economic criteria. Recommendation required maintaining the existing road as a local road to be used by local communities. In relation to the decisions a dialogue have take place and the decisions have to be taken

with consensus by stakeholders. The requirements of the recommendation are relevant to the overall construction of "Struma" Motorway no matter how long it lasts.

I.2 EIA and AA, elaborated in 2006/2007 unequivocally demonstrate that all alternatives of Struma Motorway designed to pass through the Kresna gorge, including the zero option are not eligible due to significant negative impacts on biodiversity components. **In terms of birds the Appropriate assessment explicitly recognizes that the realization of alternatives within the gorge (including expansion of the existing road), even after the implementation of mitigation measures, significantly and irreversibly will affect between 10 and 18 species of birds (depending on the specific alternatives) that are subject to conservation in "Kresna" SPA.** In this case there is no possibility to compensate for impacts related to permanent and irreversible destruction of habitat, significant disturbance and mortality. Possible for the passage of the gorge through the entire tunnel, west of it (ie. purple version) and alternative passing east of the gorge, developed by "Votan Consult". As a preferred option of the two possible states tunnel option due to the lesser impact on species and habitats. In fact, the realization of any of these two alternatives with implementation of mitigation measures will avoid significant impacts on bird species subject to protection in the SPA. Appropriate assessment itself contains comprehensive information on the affected species and habitats, expected impacts, the most vulnerable to these areas and appropriate mitigation measures and should serve as a minimum on which should be built each subsequent evaluation.

I.3 EIA Decision 1-1 / 2008 of the Minister of Environment and Water for approval of the investment proposal for the construction of "Struma" Motorway indicates that the project can be realized in the section flowing through the Kresna gorge only in purple option, namely through the tunnel, assuming passage of the highway within the gorge is inadmissible under Art. 6 of the Habitats Directive and Article 32, para. 1 of the Biodiversity Act. In terms to the EIA states that in the design phase, in parallel with the development of the tunnel option the developers could "seek options for its optimization and reaching the best possible option that is ecologically admissible, technically feasible and economically viable". Within the meaning of the text above options should be sought within the approved route of the tunnel, and environmental eligibility excludes consideration of alternatives location to be designed in the gorge since EIA (2007) grounded rejected them, although partially differ in its parameters. The commitment made by Bulgaria by the EIA that the passage of the highway in the region of Kresna Gorge will be achieved through a tunnel was ground for Berne Convention to consider that the problems are resolved and closed the file on the case "Kresna", and the European Commission adopted that only in this case will finance the construction of "Struma" Motorway.

I.4 The updated assessment of the EIA Struma motorway in 2012, made for the purpose of financing the project by the European Commission, confirmed incurred in 2007 expert analysis and conclusions, as well as the selection of the tunnel option of passing in the area of the gorge. This assessment clearly justifies the reduction of impacts on biodiversity, the object and purpose of the preservation of protected areas Natura 2000 in the realization of the tunnel option, approved by decision 1-1 / 2008 of the Minister of Environment and Water.

I.5 In deciding on the financing of the "Struma" Motorway the European Commission requested assurances from Bulgaria that will realize Lot 3 tunnel option. According to European Commission Decision C (2013) 1045 final, 27 February 2013 the approval of the overall "Struma" Motorway project explicitly include a tunnel for Lot 3, "which will avoid ecologically sensitive Kresna Gorge." Bulgaria has ensured the European Commission that the tunnel option will be implemented and therefore has received funding for the entire highway.

I.6 „Struma” Motorway passes through Kresna SPA (BG0002003), designated with an order ПД-748 / 24.10.2008 in order to protect 38 threatened bird species according to art.6.1.3 of the Biodiversity Act and 10 non-threatened migratory bird species according to art.6.1.4 of the Biodiversity Act. Despite the relatively large territory, the Kresna Gorge itself is a complex of typical habitats for a group of biome-restricted species typical for the Mediterranean biome, which are subject to protection in the SPA, because they are threatened. The order states ban to the reduction of the area of riparian forests of native tree species (section 6.4), and for extraction of inert materials from the river beds (6.6), but such actions will be inevitably required when crossing the highway through the gorge.

II. ON STAKEHOLDER PARTICIPATION AND TRANSPARENCY IN DECISION-MAKING,

We believe that to date the involvement of BSPB is only formally, without actually take into account our opinions:

II.1 As a member of the monitoring committee on the construction of “Struma” Motorway, BSPB has repeatedly expressed his position since autumn of 2014 until the winter of 2016 related to information presented by the developer that there is a need to consider a backup to pass through the Kresna gorge as the construction of tunnel will be problematic and negative environmental impacts. First BSPB asked committee members to familiarize themselves with the technical reports and granting them access to the project documentation, so that this issue to be discussed by the Committee. Since the autumn of 2014 to date, the Monitoring Committee were given only TORs of contracted studies, but not the reports, data and results of the studies underlying concerns of the designers of significant impacts and risks in construction. In practice, the monitoring committee did not have access to the documents and was not able to discuss and comment on the problem of substance to determine its significance and to offer constructive opinion. Documentation and characteristics concerning the backup alternative proposed by the current procedure also have not been submitted to the monitoring committee for discussion and coordination. Despite the lack of specific information and documentation on the problem itself, announcing the existence of backup alternative provoked BSPB to defend the stance taken previously also by the Bern Convention and the European Commission that variants of transition in the region of Kresna Gorge can be seen only outside Gorge itself. Therefore, if the designers demonstrate a need to change the location of the alignment of the tunnel option adopted by Decision 1-1 / 2008, then alternatives must be sought only outside the gorge. The alternative, developed by "Wotan Consult", and evaluated in 2007 as possible to be realized with some impacts on species and habitats on Natura 2000 can be regarded as such a backup.

II.2 As part of this consultation procedure on the scope and content of the EIA for Lot 3 of Struma motorway, we found that the revised Terms of Reference for the EIA report does not reflect recommendations of BSPB, submitted in writing duly within the term of the previous consultation on the scope and content of the EIA, namely recommendations in the statement with № 158 / 12.02.2015. The current assignment does not include reference for consultations held at the end of 2015 in accordance with Art. 9, para. 5 of the Ordinance on EIA elaboration. Also the failure to take account of our recommendations in practice means that the investor has not fulfilled its obligation under Art. 95, para 3, item 4 of Environmental Protection Act. By failing to consider our comments and recommendations on the procedure for public consultations, the investor has violated Art. 6.3 of the Habitats Directive, which requires considering all alternatives, including received during the consultations. We support our opinion of 02/12/2015, which is again attached to this opinion (Appendix 1) and below are presented additional arguments, including the new proposed alternative.

III. IN REGARD TO THE SCOPE OF EIA AND AA

The current scope of the EIA is not in accordance with the requirements set by the Ministry of Environment and Water in its letter ref. №OVOS-85/05.13.2015, which requires in parallel with EIA report to prepare a Appropriate assessment report according art. 6 of the Habitats Directive. The current scope of the EIA report does not include scope and content of the Report Appropriate assessment (AAR), which is in flagrant violation of Art. 39, para. 7 of the Ordinance on the terms and conditions for assessing the compatibility of plans, programs, projects and investment proposals with the object and purpose of the conservation of Natura 2000. Although in our statement of 02/12/2015, the explicitly emphasized the need for this weakness to be removed, in the current scope of EIA it still lacks scope and structure of AAR.

The current scope of the EIA is not in accordance with the requirements of Decision 1-1 / 2008 of the Minister of Environment and Water (see paragraphs I.3 and I.4 above), as well as commitments to international institutions including the one that finances the "Struma" Motorway (see paragraphs I.1 and I.5 above). The current Assignment contradicts to Art. 6.3. of the Habitats Directive, which requires consideration of all alternatives - not just those offered by the investor but also those proposed during the consultation. Specific proposals by BSPB with a reasoned opinion from 12.02.2015, the alternative to "Wotan Consult" is not included the scope of the EIA. The proposed scope of EIA at the stage assignment is already inconsistent with the requirement of equal consideration of all alternatives.

The alternatives presented in the assignment are discussed with different levels of detail of parameters. In detail are presented solely alternatives G20 blue and red, and the new proposed route outside the Kresna gorge, which is part of alternative G7/10.50. The parameters of the rehabilitation of the existing road through the gorge, which is a part of alternative G7/10.50, are not presented at all. The tunnel option is presented with much less level of detail compared with options G20, although invested heavily in detailed studies. The "ECO A", "B ECO" and "Western" alternative are only briefly presented and excluded beforehand due to unclear reasons. Our proposed alternative of "Wotan Consult" is not considered at all.

For this reason, our specific proposals on the scope of the EIA and Appropriate assessment (AA) are as follows:

III.1 "The tunnel variant" to be regarded as a major route subject to EIA and AA as it is the only approved option at present. The current scope of EIA does not give enough information about the parameters of the tunnel option, as opposed to a detailed studies that have been carried out about this option and compared to the level of detail of the description of G20 alternatives through the gorge. Not even listed basic parameters such as dimensions of the routes and the tunnel maximum and minimum longitudinal slope, the highest elevation of passage. It is to be presented in a clear and comparable all parameters of the facility "long tunnel".

III.2 Proposed alternatives "G20" (blue) and "G20-optimized" (red) to drop out of the scope of the EIA, as they largely overlap with alternatives rejected in the course of the EIA procedure in 2007. Although partially differ from those alternatives that were assessed in 2007, essentially the options "G20" (blue) and "G20-optimized" (red) have the same characteristics and effects on the components of biodiversity - they include a large number of facilities (between 12 and 23 new tunnels, between 6 and 18 new bridges, 2-13 viaducts; 7-12 overpass and 39 to 69 fortification walls) in the most vulnerable areas in this section, namely inside the Kresna gorge. These facilities cover 75% of the motorway section into the gorge of alternative "G20" (blue) and 88% of the route in the gorge of alternative "G20-optimized" (red). These facts confirm that the alternatives G20 blue and red are similar in significance of impacts on habitats and species in the gorge as the alternatives rejected by Decision 1-1 / 2008 of the Minister of Environment and Water. In this sense, although cosmetically altered they are practically unacceptable. These alternatives also are contrary to the commitments made to the Bern Convention and the European Commission. In addition to the possible construction of a highway in the gorge will completely block traffic through the gorge for several years and will deprive the local population of the local road for long-term. On the other hand the presence of a stretch of at least 20 km in which the speed should not exceed 80 km. during operation along the highway with designed speed in other sections of 120 km/h. will be a prerequisite for creating traffic jams and prerequisites for accidents for long period of time.

III.3 The proposed alternative option G7 / 10.50 be removed from the scope of the EIA, as the part that pass through the gorge overlap with alternatives rejected in the course of the EIA procedure in 2007, including the rejected option for expansion, rehabilitation of the road. It is also not in compliance with the requirements of the Bern Convention and the EC; also deprives local people of local road and as well as options G20 will be a prerequisite for creating congestion both inside the gorge and a new route due to low project speed compared to other sections of the highway. The division of the route will not relieve traffic in the gorge since the presence of the highway north and south of it will attract more vehicles compared to the current situation. On the other hand, this alternative will have a double impact on protected Natura 2000 sites. In the gorge it will cause the same degree of impact to animal species and their habitats (in terms of mortality, disturbance, and quality of habitat) as the alternatives rejected in 2007. In addition, however, will create additional similar effects outside the gorge, part of which are subject to mitigation measures. However, if the investor decides to consider this alternative in the EIA and AAR, the terms of reference of the scope of EIA must indicate all detailed parameters not only on the new route, but also on the rehabilitation of existing road, and to consider this alternative equivalent to all others.

III.4 To consider the following alternatives equally as spare of the main tunnel variant:

- a. **Optimized tunnel variant with two temporary departures during construction** (as working variants were presented to us before autumn 2014)
- b. **Alternative that pass east of the gorge, developed by "Votan Consult"** (submitted both to the investor and MoEW in electronic format as appendix to our statement of 2.12.2015). Although some impacts on biodiversity outside the Kresna Gorge, compatibility assessment in 2007 indicated this option also as possible to be realized with mitigation measures. In fact, the implementation of mitigation measures will remove entirely significant impacts on bird species subject to conservation in "Kresna" SPA and in respect of some habitat types and species, subject to conservation in "Kresna-Ilindentsi" SCI would remain marginal to average local impacts. This variant does not affect in any way the traffic in Kresna gorge during construction. The parameters of this alternative are visibly better than to the parameters of the proposed alternatives **"ECO A" and "ECO B" and "western option"**. In a small section of about 1,5 km only it will need restriction to the speed to be made up to 89 km/h, but this section with restricted speed is much shorter than the length with restricted speed of any of alternatives which pass through the gorge (their length is between 20 and 24 km). The proposed option for the route of the "Votan Consult" must be designed and assessed at the same level of detail as well as the tunnel option.
- c. **Environmental alternatives "ECO A" and "ECO B" and "western option"** mentioned in ToR of the scope of the EIA and AA reports; the current ToR provides almost no information on the characteristics of these three alternatives, but it says they will not be considered due to technological and environmental reasons. Terms of Reference for the EIA is not a document that gives conclusions regarding the admissibility of an alternative. On the other hand it is not clear who, by what methods and based on what evaluations came to the conclusion that these alternatives are unacceptable and will not be considered in the EIA. The proposed alternatives must be designed and studied at the same level of detail as the tunnel option.
- d. Zero alternative, which is to use this road in this section, without building highway.

III.5 The EIA report to examine the status and impacts of each alternative on all species and habitats, which are subject to protection under the Biodiversity Act and those included in the Red Book of Bulgaria. In creating reference lists, which will be subject of assessment and for the purposes of the assessment itself, to be used as sources of information at least: the existing publications about the Kresna gorge, the EIA report drafted in 2007 under the assessment procedure for "Struma" Motorway, the additional assessment made in 2012, data from the project of MoEW "Mapping of natural habitats and species - Phase I," the book "Important Bird Areas in Bulgaria and Natura 2000", the Atlas of Breeding Birds in Bulgaria, the standard data forms for Natura 2000, the studies of mortality of the species within the current project of design of this section. For example the current scope of the EIA report indicate only bird species that are subject to conservation in "Kresna" SPA and the species identified in studies in the period 2012 – 2016, which gives more complete bird list as compared to the previous version of the scope of EIA. It is necessary complete list of relevant bird species to be attached to the scope of EIA, indicating the status of occurrence, conservation status and which ones are established in routes in the gorge or outside the gorge or in the area of the passage of the tunnel. Appendix 2 to this statement apply list under the proposed model, which can serve as a basis for establishing such a reference bird list to the scope of EIA. Such reference lists should be developed for other groups of animals, plants and habitats. In current terms of reference of the EIA are not listed sources of information on the flora and fauna and national ecological network. As far as the in previous ToR of the EIA these sources were inadequate and did not reflect the best available information, we express concerns regarding the sources of information in this case as well. It is still in the terms of reference for the EIA and AA to indicate the sources of information that will be used for valuation purposes. The direct field studies of wildlife set in the ToR should be carried out in accordance with the ecological particularities of the animal species and their life cycle. They must cover the period from March to July and to be made equal efforts in the surveys for each of the alternative routes.

III.6 As a mandatory part of the EIA terms of reference to be developed and submitted the scope and content of the Appropriate assessment, which at present entirely lacking in documentation, subject to consultation.

III.7 Following types of impacts arising from the project and can have a significant negative impact on the components of biodiversity have to be considered in the assessment considering:

- a. Direct destruction of habitats;
- b. Deterioration and fragmentation of habitats;
- c. Mortality of animals;
- d. Expulsions of animals due to increased human presence;
- e. Engineering barriers for regular, seasonal or multiannual migrations of animals;
- f. Noise pollution;
- g. Light pollution;
- h. Air pollution;
- i. Increased risk of fire;
- j. Risk of accidental pollution in road crashes;
- k. Invasion of alien species in natural habitats;
- l. Damage to the opportunities for sustainable development in the protected Natura 2000 sites.

IV. ACCORDING TO THE CONTENT OF THE EIA AND AA AS PART OF THE EIA AND AA REPORTS FOR EACH PROPOSED ALTERNATIVE:

IV.1A detailed description of each of the alternatives to be presented, including those mentioned in this opinion, which contain:

- a. Detailed design of the routes in subject of assessment, including the supporting facilities, temporary approaches and bypass roads;
- b. Methods of construction of the highway and the accompanying facilities for each of the alternatives, incl. type and quantity of necessary equipment, manpower, construction band, places for basement of equipment and workers;
- c. Quantitative data on the volume of the expected generated land masses and intensity of their transportation, including data on the nature of the land masses (rock type, etc.), the proposed routes for the transportation and places for their disposal;
- d. Quantitative data about generated dust, noise and light pollution during construction;
- e. Quantitative data on the intensity of traffic and the related: existing and projected emissions from traffic, retention rate / absorption and accumulation in the local environment, dispersion; existing and projected noise throughout the day, accumulation and distribution.

In accordance with the stated in paragraphs I.1, I.2, I.3, I.4, I.5 and I.6 of this opinion, the terms of reference for preparation of the EIA report to be refined, where to reflect correctly the efforts made in terms evaluation and design of the tunnel variant, as well as to reflect the assessment made in 2012.

IV.2 To develop an environmental assessment of the impact of the motorway on existing protected areas and Natura 2000 sites. The parameters have to include: degree of degradation and the area of destruction of habitats of endangered species in the area projected routes to the area of the same habitats in the protected zone; degree of fragmentation; the possibility of application of mitigation and compensation measures.

IV.3 For each habitat listed in Annex 1 of the Biodiversity Act and any habitat of species listed in Annex 2 of the same law to be developed assessment on the fragmentation of the habitat, level of destruction and its ability to continue to perform environmental functions according to the purpose of their conservation;

IV.4 For each species listed in Annex 2 or 3 of the Biodiversity Act to develop an assessment of the extent and the risk of fragmentation of its population due to implementation of the project, the degree of post-isolation, capabilities of the species to self-sustaining its population in the existence of the highway. Given the width of the roadway and the intensity of the traffic, to assess the risk for reducing the population of the species due to direct destruction. For each species separately to assess possibility for application of mitigation and compensation measures.

IV.5 To prepare economic assessment of biodiversity loss or deterioration of the ecological functions of the environment due to the construction of the motorway, equally to each of the proposed routes.

IV.6 In the terms of reference of the EIA report and AA report to include requirements set by the Ministry of Environment and Water under par. 1 to 13 (page 5 to 7) of its letter outgoing number OVOS-85 / 05.13.2015, which so far are lacking in the ToR subject this consultation procedure. In addition to the requirements of the Ministry, we pay attention to the following aspects:

- a. The overall assessment of the impact of the motorway on biodiversity to be done on the basis of the most affected species and / or habitats.
- b. The maps presented in the EIA and AA to indicate the location of the affected species and habitats under various alternative routes, the location of the planned mitigation measures and The scale of maps have to comply with the level of detail of the design of the tracks; in this sense, except the overview map, overlapping all affected components of biodiversity, to be presented and detailed maps of affected populations of species and habitats;
- c. At the presentation format in the above EIA, the estimates to be equally developed for each of the proposed routes, by presenting the methodology of collecting information, the methodology on the basis of which the assessments are done. It is necessary the comparisons between different routes to take place in tabular form. The expert reports, on the base of which the EIA was prepared, to be presented as annexes to the report.

IV.7 Report have to contain detailed engineering-geological characteristic of each of the proposed routes, which provides a clear picture about the risk in earthquakes and erosion as well as about security road route; the reports of studies to be publicly available as during the EIA procedure and thereafter;

IV.8 The significance of the expected impacts on biodiversity should be based on an assessment of the nature of the impact (degree of impact, spatial extent, probability, duration, frequency and reversibility of the impact, ability of manifestation of cumulative and synergistic interactions) to the sensitivity of each of the affected components biodiversity (importance, vulnerability). For significant impacts to be considered when the affected receptor is highly important (unfavorable conservation status, long reproductive period and / or a strong dependence on particular type of habitat / limited distribution, protected by law or it is of national or international importance) and vulnerable (in poor condition, dependent on many environmental conditions) and the nature of the impact is irreversible adverse change, long-term deterioration or there are cumulative, secondary or synergistic effects or spatial scope is unacceptable in terms of risk to the affected receptor.

IV.9 The proposed mitigation measures to be attributed to each of the alternatives, stating:

- a. Description of the measure, possibly with quantitative parameters;
- b. Phase of the project, during which it applies;
- c. Its location (unless it is a whole section, indicating exact location and is illustrated on the map material);
- d. Which components of the environment and biodiversity are targeted by the proposed measure;
- e. Which significant impacts are addressed by the proposed measure;
- f. Expected impact of implementation of the measure;
- g. Monitoring the effectiveness of the measure.

IV.10 When comparing the alternative options to assess the degree of impact and compliance with the subject and purposes of Natura 2000 sites, recommendation 98 (2002) of the Bern Convention and the commitments to the European Commission.

In conclusion we consider that both presented the scope and content of the EIA and AA report of the project "Improvement of the route of Lot 3.2 of Struma Motorway" is not consistent with the commitments undertaken by Bulgaria for the construction of the "Struma" Motorway in this specific section, it has significant gaps and deficiencies, and therefore need to be re-elaborated and submitted for public consultation before being submitted to the competent authority for approval. The basic requirement is not met, namely the route of the motorway to be designed outside the Kresna Gorge. Requirements set in the official documents issued by the Berne Convention, the European Commission and the Ministry of Environment and Water should be fully and correctly tailored in scope and content of the EIA and AA reports. The proposals made in our opinion could significantly contribute to removing inconsistencies and gaps in the ToR of EIA and AA if they are adequately reflected.

We maintain our statement that the passage of the highway through the gorge in any form of design routes will lead to the irreversible destruction of unique and fragile ecosystem without real opportunities this destruction can ever be recovered or compensated.

Since this opinion is based on limited data, we reserve the right to make additions to it if new information related to the project appears.

Appendix:

Appendix 1. Statement of BSPB of 2.12.2015 on scope and content of Environmental impact assessment (EIA) of the investment proposal "Improvement of the route of Lot 3.2 of the "Struma" Motorway

Appendix 2. Reference list of bird species, that occur along the proposed tracks of Struma motoway in its section Lot 3.2q which is subject of EIA and AA.

Sincerely yours,

Nada Tosheva-Ilieva
Executive director

**FOLLOW-UP OF RECOMMENDATION NO. 98 (2002) ON THE PROJECT TO BUILD A
MOTORWAY
THROUGH THE KRESNA GORGE (BULGARIA)**

UPDATE TO THE CASE (JULY 2016)

Document prepared by:

BALKANI Wildlife Society, Wilderness Fund, Environmental Association "Za Zemiata" (For the Earth), Bulgarian Society for the Protection of Birds, Green Policy Institute, Centre for Environmental Information and Education, Association "ECOFORUM" and CEE Bankwatch Network/Friends of the Earth International, National Museum of Natural History, Sofia
www.nmnh.com

- (AFTER 15 JULY 2016) -

POSSIBLE CASE FILE ON RECOMMENDATION NO. 98 (2002)

After the latest update sent to the Convention on June 15th, 2016, there has been a series of new developments around the Kresna gorge case and the Struma motorway project. As a result, and taking into account the current update on the case, the undersigned NGOs insist that the Standing **considers seriously the opening of a new file case and to adopt the following recommendation**: "The Bulgarian government strictly fulfils the provisions of Recommendation 98/2002 of the Bern Convention, guaranteeing the construction of the last section of the Struma motorway (that of the Kresna gorge) to be done using a route that diverts the traffic outside of the Gorge and turning the existing road into a local road, important for the local rural community. The project is implemented in close cooperation with the European Commission for securing joint financing for completion of the whole Struma motorway project using an ecological alternative. The European Commission commits to ensure the necessary funding for the realisation of such a measure and to create a mechanism for information exchange and civic monitoring of the project implementation".

Hereby, we are presenting an update regarding the latest developments of the case on the following points:

- 1) A new alternative route has been proposed by the Road Infrastructure Agency, replacing the long tunnel alternative, which, once again, does not correspond to the Standing Committee Recommendation 98/2002;
- 2) A new Environmental Impact Assessment (EIA) and Appropriate Assessment (AA)¹ has been initiated by the Road Infrastructure Agency, which exclude any alternatives that correspond to the Recommendation 98/2002.
- 3) Enhanced public information campaign of the government was initiated, justifying the rejection of ecological alternatives with the argument that they are too costly, that there is shortage of available funding from the side of the European Commission, and the time to implement a EU-funded project, which is the Struma motorway, is insufficient;
- 4) A short history of the engagement and commitment for the construction and financing of the Struma motorway using an alternative, which preserves the Kresna gorge, by the European Commission

¹ Sofia, September 2016. Updated scope and content of the environmental impact assessment for investment proposal "Improvement of the alignment for Lot 3.2 of Struma Motorway", Road Executive Agency, 114 page and 6 appendixes.

1. New alternative proposed by the Government again not complying with the Recommendation 98/2002 of the Standing Committee

On July 21st, 2016, the Road Infrastructure Agency, during one of the meetings of the Struma Motorway Monitoring Committee, proposed a new alternative route for the motorway in the section of the Kresna gorge (named with the abbreviation G7 in the new EIA and AA report).

This new alternative consists of two parts:

- 50% of the traffic direction Sofia – Thessaloniki would continue to pass through the Kresna gorge using the existing road; a planned rehabilitation of the road and its road slope is planned, which would include the construction of 5 kilometers of new road in order to bypass the town of Kresna. However, it would cross protected habitats, and it is likely that there would be future expansion of the current road that goes through the gorge, for reaching project speed of 80-90 km/h. This is what could be concluded from statements of the direction of the Road Agency²;
- the remaining 50% of the traffic going in the opposite direction, northbound, would be diverted outside of the Kresna gorge via the construction of a new route east from the gorge, an alternative route, which is similar to that proposed by the NGOs back in 2002.

On the September 20th, 2016, in the National Museum of Natural History of the Bulgarian Academy of Science, the scientists concerned for protecting the Kresna gorge, held a meeting and issued a common statement regarding the construction of Struma motorway.³ The statement is currently signed by 99 scientists from the Bulgarian Academy of Science, the Faculty of Biology of Sofia University, the University of Forestry, Plovdiv University and experts from environmental protection NGOs. We, the undersigned NGOs, support fully this opinion statement and hereby attach it as Appendix I.

Short summary of the Position statement on the construction of Struma motorway through Kresna Gorge by scientists and experts in the field of biodiversity conservation:

The proposed alternative route (G7) leads to significant impacts on the integrity of the NATURA 2000 network (Emerald) and violates Recommendation 98/2002 of the Standing Committee. This is valid, as it uses the existing route for the one-way direction of the traffic, solely preventing temporarily the significant direct construction works outside of the current road. In the long run, this alternative does not solve the problems and negative impacts on the fauna caused by the traffic – 10-15 years from now, according to official projections for the traffic, by the government until 2030-40⁴ the traffic on Struma motorway will nearly double the current traffic in both directions through the Kresna gorge (the current traffic in both directions is currently over 7,000 vehicles per 24 hours). So the reduction of 50% that is envisaged is not solving any problems in the long run.

In this way, the motorway would destroy the biological corridor, which has a narrow migration front in the Kresna gorge. This alternative leads to significant impacts on the integrity of the Natura 2000 network: the impact would occur not only in the specific Kresna-Ilindentsi protected zone, but it would have a regional impact, affecting the integrity of the entire network, which can neither be compensated, nor reduced through mitigation measures. The statement of the scientists concludes further, that even the most intense measures for reducing the impacts from fragmentation are applied, this would be inefficient in the conditions of the Kresna gorge, and could even lead to a worse negative impact rather than have the expected positive one.

² Statement of engineer Lazar Lazarov, Director of the Road Infrastructure Agency on the Bulgarian National Television, 25th August 2016. <http://imedia.bnt.bg/predavanyia/denyat-zapochva/gotova-li-e-stolitsata-da-posreshhtne-esenta-25-08-2016?611575>

³ 20th September 2016. Position statement by scientists and experts in the field of biodiversity conservation on the construction of Struma motorway through Kresna Gorge, p.8.

⁴ Actualisation of the projection of the traffic and of the cost benefit analysis report for Lot 3 of the Struma motorway. Report for actualisation of the traffic projections. Version 01/29th December 2014. OP Transport 2007 – 2013. National company “Strategic infrastructure projects”. 111p.

The conclusion of the scientists is aligned with Recommendation 98/2002 and the Appropriate Assessment of 2008 that the only acceptable decision for mitigation of the impacts during the construction and exploitation of the motorway is the construction and diversion of the whole traffic outside of the gorge (for further details of the statement, please refer to Appendix I).

2. New Environmental Impact Assessment (EIA) and Appropriate Assessment (AA)⁵.

On August 31st, 2016 the Struma motorway Monitoring Committee held its regular meeting to discuss the preparation of a new EIA and AA, and the inclusion of the new G7 alternative route as a feasible option to the long tunnel one, which has been continuously criticized and rejected in the public space by the Bulgarian Government for the last 2 years.

The two NGO representatives in the Committee proposed the inclusion of an alternative route option that corresponds to Recommendation 98/2002 – and namely, completely diverting the traffic east and outside of the gorge, an alternative similar to the one suggested in 2002 by NGOs and evaluated in 2007-2008 by the EIA and CA reports. This proposal was rejected by the Government representatives with the argument that such an alternative would cause significant cumulative impacts and fragmentation.

On September 14th, 2016, the Road Agency started a public debate of the terms of reference of the scoping assignment for the new EIA and AA. The following conclusions could be made regarding the scoping report:

- The alternative proposed by the NGOs, which is technically feasible and corresponds to Recommendation 98/2002, bypassing the Kresna gorge, is not considered on the grounds that it has already been assessed in an Appropriate Assessment in 2007⁶ as incompatible with Natura 2000. In our views, this claim is not correct.
- The Appropriate Assessment Report by NRIF from 2007⁷ assesses that alternative as ecologically feasible, provided that compensatory measures under Art. 6.4. of the Habitats Directive 92/43 EEC are implemented. At the time, the long tunnel alternative was selected, as it was evaluated that it had less impacts, which do not require compensatory measures. This is also the unilateral opinion of the scientists expressed in their position statement of September 20th, 2016, which points that the expected impacts are local, easily compensatory and applicable to the procedures under Art. 6.4 of Directive 92/43.
- In the new terms of reference for the scoping assignment), there is only one alternative included, which reflects Recommendations 98/2002 and that is the tunnel alternative. However, as we know, since 2014, the Government makes attempts to prove that the tunnel option is not financially, environmentally and technically feasible using also false claims. The other two alternatives that are included in the scoping: G20 (expansion of the existing road with the construction of two new lanes above it through the Kresna gorge) with 2 options and G7 (extension of the existing road, 2 new lines outside the Kresna Gorge, or called semi-eastern bypass) are obviously in contradiction with both Recommendation 98/2002, as well as with the AA from 2007/2008.

Taking into account the inherent problems in the scoping assignment, which ignores the imperative requirement to equally assess all possible feasible alternatives, we could expect a non-objectiveness of the EIA and AA reports. This, in our view, would be an attempt to prove the significant impacts of the tunnel alternative, contrary to the 2007/2008 AA conclusions, and in opposition with the opinion of the majority of the scientific community.

⁵ In accordance with the Bulgarian Regulation on the conditions and arrangements for assessing the compatibility of plans, programmes, projects and investment proposals with the object and aims of NATURA 2000 sites. The term

⁶ NRIF (2007), Appropriate Assessment report of Struma motorway, Sofia – Kulata, section Dragichevo-Kulata

⁷ Beshkov *et al.* 2007. Appropriate Assessment report of Struma motorway, Sofia – Kulata, section Dragichevo-Kulata. National Road Infrastructure Fund. 26 October 2007.

3. Enhanced public campaign of the government.

During the months of July, August and September 2016, the Government undertook an enhanced public campaign in order to justify the rejection of the environmental alternative (the proposed eastern bypass by NGOs), which was developed in accordance with all environmental requirements.

The following statements have been made publically:

- That the environmental alternative, or the eastern bypass proposed by NGOs, for diverting the traffic outside of the gorge could lead to delays in the construction works and eventually, to failure of the whole project due to the tight deadlines for finalization of the construction of the motorway under the EU funded projects by 2020, and that this is technically not possible.
- That this environmental alternative would lead to increase of the project costs with over 1 billion BGN (around 600 million euros), which are not secured under EU funding programmes, and that the lack of this funding would lead to failure for the whole project leaving the traffic inside of the gorge, which would be an environmental catastrophe.

The governmental campaign ended with a meeting organised on the September 28th. 2009 by the Bulgarian Construction Chamber with the participation of the Road Infrastructure Agency, and a statement that declared and justified the rejection of the environmental tunnel alternative due to the lack of sufficient time for its implementation within the deadlines of OP Transport of the EC, and with the lack of sufficient funding secured by EU funding programmes.

4. Short history of the commitment for construction and financing of Struma motorway

We would like to remind that the construction and the financing of the Struma motorway using an environmentally acceptable alternative route for the Kresna gorge section, which preserves the biodiversity, is a joint commitment of both the Bulgarian Government, but also of the European Commission, and in this context, we would like to refer to several facts regarding the construction and implementation of the Struma motorway project as a priority project of the EC.

- On April 29th, 2004, Struma motorway was declared a priority project of the EC, when an amendment of the „Community guidelines for the development of the trans-European transport network”⁸, was approved and the motorway became part of Transport Corridor 7, part of the Igoumenitsa-Patra-Athens-Sofia-Budapest axe.

On September 26th, 2007 a joint meeting was held in the Ministry of Transport in Sofia, between the Bulgarian authorities, representatives of DG Environment of the EC, and NGOs. The following has been agreed: the design of the Struma motorway will strictly follow the European legislation and Recommendation 98/2002 by planning the motorway route using an environmental alternative outside of the Kresna gorge.

Therefore the NGO Partners call on the 36th meeting of the Standing Committee to:

Re-open the Kresna gorge case file in order to assist Bulgaria to fulfil its obligations regarding the protection of the Kresna gorge and to adopt recommendations urging the Bulgarian Government and the European Commission to undertake all necessary measures, including to provide the necessary financing for the finalisation of an ecological alternative outside the Kresna Gorge.

For contacts:

Associate Prof. Dr Stoyan Beshkov
National Museum of Natural History
GSM +359 896869601
stoyan.beshkov@gmail.com
<http://www.nmnh.com/beshkov-stoyan-bg.html>

⁸ http://ec.europa.eu/ten/transport/legislation/doc/2004_0884_en.pdf

Contact details of the NGO Partners:

Wilderness Fund

Geko Spiridonov

Sofia 1612, zh-k Ivan Vazov, ^Emil berzinski str., bl 75/A, fl. 1, apt.1,
tel: + 359 887 828 167, e-mail: gekospiridonov@abv.bg

Environmental Association "Za Zemiata" (For the Earth)

Desislava Stoyanova

Sofia 1000, PO box 975

tel./fax: + 359 2 943 11 23, e-mail: desislava@zazemiata.org

Bulgarian Society for the Protection of Birds (BirdLife in Bulgaria)

Irina Mateeva

Sofia 1111, PO box 50

tel./fax: + 359 2 72 26 40, e-mail: irina.kostadinova@bspb.org

BALKANI Wildlife Society

Andrey Kovatchev

93 Evlogi i Hristo Georgievi Blvd., fl. 1, apt. 1

1142 Sofia, Bulgaria

tel: + 3 592 9631470, e-mail: kovatchev6@gmail.com

Green Policy Institute

Petko Kovachev

93 Evlogi i Hristo Georgievi Blvd., fl. 1, apt. 1

1142 Sofia, Bulgaria

tel./fax: +359 88 8 420 453, e-mail: gpibulgaria@gmail.com

Centre for Environmental Information and Education

Daniel Popov

93 Evlogi i Hristo Georgievi Blvd., fl. 1, apt. 1

1142 Sofia, Bulgaria

tel./fax: +359 2 8669047, e-mail: dpopov@bankwatch.org ,

CEE Bankwatch Network/Friends of the Earth International

Anelia Stefanova, Programme Director

phone: +39 333 809 24 92, email: anelias@bankwatch.org

Nature School Vlahi

Dimitar Vassilev, vassilevdimitur6@gmail.com

www.vlahi.org

Appendix 1 to the update to the case after 15 July 2016

Position statement on the construction of Struma motorway through Kresna Gorge by scientists and experts in the field of biodiversity conservation

20 September 2016

The Kresna Gorge is a refuge (in many cases exclusively in Bulgaria) for a complex of thermophilic Mediterranean fauna and flora. There are many species which cannot be found anywhere (in Europe) north of the Kresna Gorge and inhabit only the lowest parts between the Struma river and the current road. It is a unique area in terms of biodiversity with an exceptional richness of species and many species of conservation importance, concentrated in a small space. So far, over 3 200 species of animals have been identified in the gorge, while a full study is expected to identify an estimated total number of around 4 500 species. Faunal diversity in the Kresna Gorge is significantly greater than that in the Central Balkan National Park, while it is found in an incomparably smaller area. The gorge is inhabited by 122 butterfly species; in comparison, across the UK there are only 58 species of butterfly. The Kresna Gorge is a unique area, inhabited by 83 endemic animals and over 400 important species with conservation status, of which 42 species are globally threatened. The Kresna Gorge is home to 24 endemic species of plants and it is one of the five most important places in the region for the protection of oriental plane⁹ forests and one of only five locations featuring Greek juniper¹⁰ forests.

The current statement is provoked by the restart of the environmental impact assessment (EIA) and Appropriate Assessment (AA)¹¹ procedures for the construction of the Struma motorway in the section of Kresna Gorge, and the Terms of Reference (Scoping Report) for new EIA and AA reports sent by the Road Infrastructure Agency (RIA) on 14.09.2016.

1. We declare our consensual demand that the scope of the EIA and AA include and provide an equivalent evaluation to an **alternative plan that runs to the east and outside of Kresna Gorge, along a technically and environmentally feasible route**, as imperatively required by Article 6.3 of the Habitats Directive and Recommendation 98/2002 of the Bern Convention.

Such a route was proposed by NGOs in 2002 and assessed in a Appropriate Assessment Report by NRIF from 2007¹² as ecologically feasible, provided that compensatory measures under Art. 6.4. of the Habitats Directive 92/43 EEC are implemented. The currently proposed eastern alternative for high-speed two-lane road G7 follows almost the same corridor for passage, but is designed to feature fewer engineering facilities. Our request is that the scope of the EIA and AA include the assessment of an alternative for the complete removal of traffic from the Kresna Gorge that includes proven feasible technical alternatives - the G7 alternative route or a route close to it in the same corridor.

In terms of expected impacts during construction on some habitats listed in Annex 1 of the Bulgarian Law on Biodiversity and of Directive 92/43, we wish to point out that these effects are **significant at the local level** with respect to the conservation status of these habitats in the Kresna-Illindentsi protected zone (SCI), affecting **widespread habitats in numerous protected zones (SCIs)**, including the areas neighboring to the territories directly affected. These impacts can be **easily, quickly and fully compensated** by restoring areas of the same habitats in the protected zone. Given the long time that recovery measures for such habitats take, and the need to have those measures approved by the European Commission, we consider it necessary that the compensatory measures should cover larger areas than those directly affected. For each specific habitat we can propose experts on oak, riparian and grassland habitats from the Bulgarian Academy of Sciences or from universities,

⁹ *Platanus orientalis*

¹⁰ *Juniperus excelsa*

¹¹ In accordance with the Bulgarian Regulation on the conditions and arrangements for assessing the compatibility of plans, programmes, projects and investment proposals with the object and aims of NATURA 2000 sites. The term

¹² Beshkov *et al.* 2007. Appropriate Assessment report of Struma motorway, Sofia – Kulata, section Dragichevo-Kulata. National Road Infrastructure Fund. 26 October 2007.

who can contribute to the effective implementation of compensatory measures. We recommend such measures to begin immediately in order to be fulfilled before the end of the EIA/AA procedures, so as not to delay subsequent coordination procedures with the European Commission, given that for the compensation to be approved it should be applied to the terrain that fits the requirements of Art. 6.4. Such action is necessary in view of the fact that this alternative may be the only one that is both ecologically feasible (corresponding to Art. 6.3 and 6.4 of the Habitats Directive) and technically feasible (in case the road authorities demonstrate that the tunnel option is technically not feasible).

2. With respect to the tunnel option, our opinion, based on the information presented, is that there is no new data that would require any change in the conclusions made in 2007 about the absence of significant effects:

2.1 The three exits that are planned - one on the old road bypassing the tunnel, one at Kresna Inn next to the old road detour of the international road, and one by the road to Gorna Breznitsa village - have a point impact and are located close to existing asphalt roads. Therefore, they will not lead to significant direct damage, and, most of all, they prevent the permanent fragmentation of habitats.

2.2 The traffic generated during the construction phase will have an impact, however, this impact is temporary and incomparably smaller than the traffic generated by the highway itself. On this point we fully agree with the conclusions of the 2007 AA report that the main risk to the fauna remains the constant and extensive traffic generated by the highway.

2.3 The impact on surface water: we know of only one surface spring that feeds into a river course, located at the bottom of the Divilsko gully, which has been captured to supply water to the Kresna Inn, so it has long ago ceased to bear significance to the flow and ecosystem of the Divilsko gully itself. All other rivers and gullies along the route of the tunnel are surface-fed or their sources are located far above the tunnel (the springs of Breznishka river). We do not believe therefore that the tunnel will have a real impact on the hydrology of surface ecosystems.

In this sense, we do not see how the detailed design of the tunnel has brought any new information to that already presented in the 2007 AA report. Hence, we see no reason to change the key conclusion of the report, namely that the tunnel is an alternative that allows the highway to be carried out in a way that avoids significant impacts at the construction phase, and is a genuine measure that reduces the impact of the highway during its operation phase to 'minor' – i.e., it fully satisfies the requirements of Art. 6.3 of the Habitats Directive.

Since we are not engineers, we cannot comment on the issue of the technical feasibility of this route, but we would like to remind you that timing and financial considerations cannot be the prevailing arguments when making a decision pursuant to Art. 6.3.

3. With respect to route G7 - the newly proposed alternative involving a detour east of Kresna Gorge with two-lane speed road in the direction Kulata-Sofia and use of the existing road through the Kresna Gorge near the town of Kresna in the direction Sofia – Kulata, featuring a detour of the city using a new route that runs along the bottom of the valley of Vlahinska river, the Melo hill and farmland south of Kresna:

Our opinion is that this alternative leads to significant impacts on the integrity of the Natura 2000 network: the impact will occur not only in the specific Kresna-Ilindentsi protected zone (SCI and SPA), but it will have a regional impact, affecting the integrity of the entire network, which can neither be compensated, nor reduced through mitigation measures. On this issue our conclusions are fully in line with the conclusions made in 2002 in the report by an international expert of the Berne Convention¹³, as well as in the 2007 AA report. In essence, this alternative represents an expansion of the existing road (but planned outside the gorge) – an option that has been excluded as inadmissible in both of the above-mentioned documents. Thus, this alternative prevents, and probably only temporarily so, only the direct construction activities in the area of the current route of the road, but it

13 Guy Berthoud, 2002. Construction of a Motorway in the Gorge of Kresna Corridor No. 4 of transport: EU PHARE Project –Connection Bulgaria – Greece (Motorway E79: Sofia-Kulata). Report of the on-the-spot appraisal (30 May – 1st June 2002). Convention on the Conservation of European Wildlife and Natural Habitats, Standing Committee: 22nd meeting, Strasbourg, 2-5 December 2002, tpsv2002\file07e_2002, 30 pp.

does not solve the problems and impacts on fauna, caused by traffic. If we need to briefly summarize our findings:

3.1 As shown in a brief analysis of road deaths in a NGO complaint to the Bern Convention of 9.09.2015¹⁴, the traffic, which has strongly increased to over 7 000 vehicles per day, (6 979 vehicles in 2013, according to data from the National Strategic Infrastructure Projects Company (NSIPC)¹⁵), resulting in significant damage to the populations of most animal species. Detouring the traffic along the Kulata-Sofia direction outside the Kresna Gorge in 2020 will have only a fleeting and insufficient effect on fauna recovery rates. According to NSIPC, in just 10-15 years' time, the traffic in one direction will exceed 6 000 (in 2030), and even 7 000 (in 2040) vehicles per day. Such intensity will not allow for the recovery of populations that are already damaged and even close to current entirely lethal levels. In this sense, **the removal of 50% of traffic outside the gorge is NOT an effective measure** to reduce the impact on the populations of all the species that are already damaged.

3.2 Building classic defragmentation structures is ineffective, as it causes damage and fragmentation to habitats, especially for all small- and medium-sized species, due to the following reasons. The gorge is a narrow front for migration and habitation due to its climatic conditions – a sudden climatic gradient from north to south - and because of the narrow and steep terrain, combined with high mountains. Many species' populations and, in some cases, entire habitats are concentrated in the bottom of valley and surrounding slopes, spending their entire lifetime there, including their daily and other migrations. Thus, the road crosses the heart of a key habitat for many different species with different requirements and different daily and other migrations within their habitats. This makes the construction of periodic structures at every 30 or 50 meters, combined with walls to bar crossing the road, a completely inadequate measure. On the contrary, this would lead to fragmentation and complete loss of connectivity and functionality of habitats. Moreover, in nearly 60-70 percent of the length of the gorge, steep topography prevents the building of such functioning facilities due to the steep slopes on the side of the road. In brief: **reducing the impact of traffic with classic defragmentation structures is not applicable and impossible in the conditions of Kresna Gorge.**

3.3 In relation to an NGO proposal to reduce impacts through a comprehensive reconstruction of the route of the current road by around 0.6-1 meter, lifting the road above its current level, achieving 100% transparency for medium- and small-sized species, including barrier fences for bats and structures allowing for the passage of larger species (under-passes), crossing gullies and other natural declines, our position is as follows:

At first glance these impact reduction measures appear more appropriate than the traditional measures. Nonetheless, they still lead to significant damage to fauna, including species from Appendix 2 during the phase of construction, and are therefore inadmissible, pursuant to Art. 6.3 of the Habitats Directive. These effects carry the risk of significant damage to populations and habitats of those species:

3.3.1 First, when construction is carried out during the hibernation period, there is a significant risk that the heavy equipment used will harm directly or indirectly (e.g. through vibration) the wintering grounds of reptiles listed in Annex 2 of the Biodiversity Act and the Habitats Directive, which are located right next to the road - some identified hibernation places of such species are located within 10 meters of the road.

Even when carrying out construction outside the period of hibernation, it will again cause high levels of mortality. In all cases, risks remain for accidental damage of adjacent habitats by the equipment – those habitats are vulnerable given their role in the protection of the species from Appendix 2.

14 Strasbourg, 16 September 2015, T-PVS/Files (2015) 39. Follow-up of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria) Construction of the Struma motorway (Motorway E79: Sofia-Kulata) through the Kresna Gorge, Bulgaria. Report by the NGOs. CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS. 12 pp.

15 Update traffic forecast and "cost - benefit" analysis for Lot 3 of "Struma". Report to update the forecast traffic. Version 01 29.12.2014g. OP Transport 2007-2013. National Company "Strategic Infrastructure Projects". 111 pp.

Last but not least, the most important problem is the effective maintenance of such structures, which is extremely difficult in the conditions of the Kresna Gorge, and would even be impossible without substantial funds and resources due to the constant liana overgrowth and caving in of slopes, which would render these structures unusable.

The final conclusion is that **the implementation of unconventional highly intensive defragmentation measures, associated with 100% transparency of the existing road, with barriers for bats installed, carries significant risks to the fauna during the construction phase, due to expected intense construction activities, and raises doubts about their effectiveness** due to difficulties in their actual maintenance in the conditions of Kresna Gorge, and therefore **should not be considered to deliver a sufficient level of impact mitigation, pursuant to Art. 6.3 of the Habitats Directive.**

3.4 In connection with the statement made in September this year by the head of RIA Mr. Lazar Lazarov on BTV television that the **subsequent development of the project would without any doubt entail straightening out of the track within Kresna Gorge in order to improve road conditions**, we believe that this aspect of potential impacts should necessarily be assessed in the evaluation of future cumulative impacts of this alternative. Potential impacts from the construction include: direct damage of habitats in the Kresna Gorge and of the Kresna Gorge wildlife corridor, which is characterized by a narrow migration front, and affect a large complex of species, including ones listed in Annex 2 of the Biodiversity Act and the Habitats Directive, also affect habitats of all groups, including those listed in Annex 1. Such an impact is **absolutely inadmissible** under Art. 6.3, and it also contradicts the recommendation 98/2002 of the Bern Convention.

3.5 Apart from all else, all described impacts affect **species** (the impact of traffic), and – in the case of construction works on the slopes – affects also habitats whose biogeographical distribution is limited to the Kresna Gorge. In other words, the Kresna Gorge is their northern or southern limit of distribution in this narrow migration front . Moreover, this place features a unique compression of species. **Damage and fragmentation of this bio-corridor is an impact that cannot be compensated, which also has a regional effect**, to the extent that it will not allow the complete adaptation of the distribution of these species and habitats, particularly in the conditions of occurring climate change.

3.6 In addition, one should consider the **direct impacts of the destruction of habitats of species from Appendix 2 in Vlahinska river and the territories after Kresna**, which will be significant. For species listed in Annex 4 of the Habitats Directive, these are the only breeding grounds and habitable territories, this being the northern border of their distribution.

4. With regard to the blue and red options of alternative G-20, which envision a route running entirely through Kresna Gorge, using the existing road and construction of a new track above it: in the area between Kresna Inn and Peyo Yavorov train stop – a 'shelf' on two levels, and in the town of Kresna – a detour of the city with a new route in the bottom of the Vlahinska river valley, burrowing through the Melo hill and going over farmland south of Kresna, our conclusion is similar to that on alternative G7, with the difference that this is a completely destructive alternative, if it can be called an 'alternative' at all. All conclusions about the expected impacts of using the currently existing road are valid here as well, however, with the addition of direct destruction of habitats from Annex 1 and of habitats of species listed in Annex 2 during the phase of construction, exacerbated by the creation of a new entirely impassable barrier for any kind of migrations for smaller-sized species inhabiting the slopes of the gorge. This would represent a catastrophe for about 50% of the biological corridor and habitats in it. Without going into details, this alternative should be categorically rejected, unless we want to destroy Kresna Gorge irreversibly.

Conclusion: We insist that the motorway be built outside the Kresna Gorge, along a technically feasible route at the discretion of authorized institutions. The entire transit traffic should be taken outside of the gorge and the biological corridor that has formed in it. Two of the alternatives proposed here fulfill this condition – the tunnel option that has less impact on biodiversity and the complete eastern bypass (option), including two roadways with two lanes in each direction, which can be carried out with compensatory measures. Therefore, these two alternatives must be included in the EIA and AA reports.

Date: 20 September 2016

Respectfully,

(See attached list of signatories)

**FOLLOW-UP OF RECOMMENDATION NO. 98 (2002) ON THE PROJECT TO BUILD A
MOTORWAY
THROUGH THE KRESNA GORGE (BULGARIA)**

UPDATE TO THE CASE (JULY 2016)

Document prepared by:

BALKANI Wildlife Society, Wilderness Fund, Environmental Association "Za Zemiata" (For the Earth), Bulgarian Society for the Protection of Birds, Green Policy Institute, Centre for Environmental Information and Education, Association "ECOFORUM" and CEE Bankwatch Network/Friends of the Earth International, National Museum of Natural History, Sofia
www.nmnh.com

Possible case file on Recommendation No. 98 (2002)

We would like present to the Secretariat the recent developments of Struma motorway (Lot 3.2) through the Kresna gorge case as follow up of the discussions during of December 2015 meeting of the Standing Committee of the Convention and in addition to the previous update report from 26.02.2016.

We would appeal to the Secretariat to propose to the Standing Committee to re-open the case file about Struma Motorway through Kresna gorge. The information presented below provide evidences for lack of efforts of the Bulgarian government to enforce Bern Convention recommendation for development of solution for protection of the Kresna gorge. With 2/3 of the Motorway completed and advancing construction just next to the gorge pressure over the precious biodiversity is escalating. Instead of developing the alternatives that have been accepted for the purpose of implementation of the requirements of the Bern Convention and Habitat Directive (the EIA/AA 2008 approved tunnel versions and easter bypass of the gorge versions) the government is starting to develop again a so called "new" alternative that is not in compliance with the Recommendations 98/2002 (in fact this is already discussed and rejected enlarging of the existing road). Further delays in developing of a route that bypass the gorge will mean deterioration of the biodiversity conservation status of the site and also loss of the EU funding for construction of the motorway. Therefore a clear signal should be given to the Bulgarian government for the need of urgent action for detailed design of "true" alternatives for the gorge and openness and collaboration with CSOs for quick start of construction work of this portion of the Struma Motorway.

We will provide details on the following points:

- State of construction and functioning of the selected "long tunnel" option and the measures taken to minimise the risks to the wildlife;
 - The selective approach in preparation of the governmental reports to the Bern Convention
 - Summary of DG Environment/DG Regio – NGOs meeting in Brussels
 - The ongoing new EIA procedure for lot 3.2 (Kresna Gorge) of the Struma Motorway – state of the development and short overview of all alternatives. The meeting of Monitoring committee on Struma Motorway on 4 July 2016
 - Access to public information
- 1. State of construction and functioning of the selected "long tunnel" option and the measures taken to minimise the risks to the wildlife**
- The "long tunnel", selected as preferable option by the EIA decision from 2008 is not under development and construction. The government stopped all work on further research, planing and design it and 2008 EIA decision is fully disregarded.

- The measures taken to minimise the risks to the wildlife: there are no measures taken to minimise the risks to the wildlife. After 2013 Struma motorway construction started in the three other sections, without measures taken to protect the wildlife in Kresna Gorge site. The prescribed mitigation measure for wildlife in Kresna Gorge in 2008 EIA – priority construction of “long tunnel” is withdrawn after implementation of the project in other sections. Moreover the result of the split of Lot 3 (that includes Kresna gorge section) is now visible – the contracts for Lot 3.1. and 3.3. are made, thus the destructive option for the gorge is predetermined before any EIA to be made.
- Land acquisition around current Lot 3.2 alignments have already been started by authorities despite the lack of officially chosen and approved route under the new EIA process. Such an early land acquisition may preclude other alternative routes to be explored and potentially approved. There is also a risk for local people selling their land without any need if alternative route is approved and that case they may not even be able to get it back.

2. *The selective approach in preparation of the governmental reports to the Bern Convention.*

We monitored the partial and bias information about the case in the Governmental reports to the Bern Convention regarding Kresna gorge case. On 13.11. 2014 Prof. Dr. Ing. Julian Jordanov Totev, Professor and Head of the Department "Transport Structural Facilities" at the University of Architecture, Civil Engineering and Geodesy, gave a public lecture on "The tunnel at Kresna - adventure or necessity"¹⁶. The main conclusions and findings of this public lecture were completely disregarded by the Government and hidden from the EU institutions and the Bern Convention. None of these findings were reflected in the Governmental report to the Standing Committee from 23 November 2015. Here we will summarise the 10 most important of them cited on the basis of subsequent media publications¹⁷¹⁸ and meeting held between professor Totev and NGOs in May 2016.

1. The tunnel is still possible to be constructed within the period of 2020 (2022) even if there would be two tubes. According to professor Julian Totev if construction start in 4 points the overall construction could be finalised in 3,5 years.
2. The price for running costs for the tunnel is too much overestimated. According to the government the overall year running cost will be BGN 50 million, but professor Julian Totev calculates 5 times lower costs - up to the BGN10 million. Such figures can also be found in the most recent CBA of the project (version 04, 14.04.2015, p. 62), where the operational costs for the long tunnel option are estimated at BGN 10.75 mln or EUR 5.49 mln). We believe further measures for increasing energy efficiency are available through use of solar energy that currently are not taken into account.
3. The construction price is also overestimated. The professor Totev estimates EUR 450 million for construction cost – which is twice lower than the figures shown by the government report. In the same time professor Totev considers that the cost for construction of G20 alternative (EUR 300million) in the gorge is underestimated. Professor Totev says: “In the rough terrain and limited access however the value of 1 meter road with short tunnels and bridges is higher than the linear meter of base tunnel. The construction of a large number of portals planned for 24 short tunnels seriously increases the cost of "reserve" option. Separately, it should be noted that "catching" portals is the slowest job at digging of tunnels.”
4. The excavated rocks from the tunnel are high quality material for the construction of roads and other infrastructure and/or buildings and is 4 times less than the official figures – the Government gives 44 million tons of excavated rocks, but professor Julian Totev calculated only 11,2 million tons of excavated rocks.
5. The “radon problem” could be solved with installing a proper ventilation system.

¹⁶ <http://uacg.bg/?p=180&l=2&id=1524&f=4&dp=44>

¹⁷ http://gradat.bg/infrastructure/2014/11/24/2425173_tunelut_pri_kresna_-_avantjura_ili_neobhodimost/?ref=miniurl

¹⁸ <http://www.zonacomfort.eu/bg/news/10989/tunelat-pri-kresna-edna-godina-pagubno-bezdeystvie>

6. The uranium is a well-spread in the rocks within the whole area of Struma valley, Pirin and other neighboring mountains. The Kresna gorge is not an exemption. However, we believe the uranium presence on the route of the tunnel is highly overestimated. Until 1992 Bulgaria has an extensive uranium mining production and most of high amount uranium mines have been developed and explored already.

7. The ecological problems arising from access roads and G20 option (inside the Kresna Gorge) is many times higher than the tunnel option. The G20 has 49 tunnels and bridges, each of which is a separate construction object and each of which requires making an access road to it inside the Kresna Gorge (contrary the “long tunnel” option will require not more than 4 short access roads to entrances for starting construction points).

8. The problem with draining of ground waters is more serious with “shallow” tunnels (this is the case with the “new” governmental G20 alternative and SPEA green alternative) as they are situated more closely to strongly cracked surface of rocks, and as deep is the tunnel (the “long tunnel” option) as the problem is less serious.

9. The “long tunnel” option is rather basic deep tunnel, than a sloping tunnel and is more stable in seismic condition, as this is a deep tunnel with high coverage of stable rock above the tunnel more than 450 m high. In the opposite proposed by the Government alternative G20 in the Kresna Gorge includes only unstable shallow slope tunnels, from which the longest one is 1100 m.

10. The information that there are no Bulgarian companies that can realize such type of project is not true.

According to the EIA decision from 2008 regarding the construction of the entire Struma highway and the agreed with the services of the European Commission preconditions for the financing of the project the crossing of the Kresna gorge should bypass the gorge through a long tunnel under the situated to the West Maleshevska mountain.

Despite the announced in the public space arguments against the construction of the tunnel, the only official document describing those is the Report of the Bulgarian Government to the 35th meeting of the Standing Committee of Bern Convention provoked by the NGO request to the Committee for a reopening of the Kresna Gorge file.

We will analyze here the arguments stated in this report, particularly related to the geological conditions – seismology, hydrology, radiology – since they are identified in the report as the most important ones. For this purpose we will use the only available Geotechnical study, produced by the Bulgarian company “GEOPS-GEOTECHNICA-CONSULT” (further in the text just as “Study”) and financed by the Bulgarian OP Transport 2007-2013. We will comment also other 4 papers called in the governmental report “studies” which have rather the character of expert statements since they compile and interpret already existing information without new solid ground investigations behind. All those mentioned documents are not public and the access has been granted to us only as members of the Monitoring Committee of Struma highway after numerous requests and with significant delay. One very interesting detail is that those arguments have been used in the public space and the media an year before the official issuing of the Study on 01.07.2015 and was released to us four months later – on 13.11.2015.

The problematic geological hazards listed at the Chapter 3.2 “Overview of the key problems” and further in the text of the Bern Convention report are:

1. *“The tunnel alignment leads through multiple fault zones. Crossing these zones carries a high-degree risk of numerous hazardous phenomena with limited predictability – rockslides and rockfalls, high capacity water discharge, mudflows. Such events may result at human casualties. ... An alternative option does not present such a threat to the safety of people since the shorter tunnels, viaducts and open road sections reduce the probability of critical and disastrous events”*(p.15)

Our findings: The fault zones around Kresna, as other zones in European Turkey, Greece or Romania, are with higher risk for engineering structures but still complex constructions are realized in such zones including zones with higher seismic potential (the tunnel under the

Bosphorus, Japan, California, Peru etc.). That is why the geological and geotechnical studies are made – this is a necessary precondition for a proper engineering design. According to the alternative assessment of an earthquake expert¹⁹ the Study does not include and evaluate the three essential elements of the seismic hazard assessment:

- Argued verifications of the presence or non-presence of seismogenic surface-rupturing faults affecting tunnels
- Probabilistic or deterministic seismic hazard of ground shaking
- Identification, mapping and assessment of secondary earthquake effects

The Study and the additional scientific statements describes existing sources to convince us that the region is very risky, but do not implement the main goal of the work – to identify the exact level of seismic hazard of each geological structure to each engineering structure. Without such precise identification and evaluation it is not possible for the designers and engineers to calculate and design the future transport facility. This is valid both for the long tunnel, as for the alternative option with number of small tunnels and viaducts. Our conclusion here is supported by the conclusion of the Seismic chapter of the Study “*Based on the analysis of existing studies and scientific publication can be recommended paleoseismologic assessment of the active faults and, on this basis, to perform detailed microseismic zoning for the engineering structures – tunnels and bridges. This is the only objective approach for assessment of the seismic hazard risks.*” (p.99)

The described hazardous phenomena are a result of surface events provoked by steep slopes and the presence of fissures and fractures at the rock. As such, those are primarily a risk for the option with small tunnels and viaducts than for an overall structure as the long tunnel, which will pass deep through the solid massif. This is confirmed in different parts of the Study or the other documents identifying that the main source for the rockslides and mudflows are the fissures and cracks at the weathered rock surface of the western slope of Kresna gorge (Bondys, p.12-14) and “*The fissure water spread in the area of the study determines the filtration environment as anisotropic. In vertical terms the water conducting and aquiferous properties depend mainly of the degree of watering of rocks. In the sections close to the surface the weathering processes are most active and there is almost complete fracturing of the rocks. In depth, the extent of fragmentation decreases. Gradually the pieces become larger, until a transformation into cracked rocks occurs and the intensity of cracking decreases. Under suitable relief conditions in the weathering zone a common aquifer is formed, which is characterized by decreasing filtration properties in depth. The thickness of the weathering zone varies from several meters to tens of meters depending on the type of rocks and the degree of tectonic processing. Below this zone, the aquiferous capacity of rocks entirely depends on the tectonic fractures. In sections with solid rocks it is low and in areas of major tectonic disturbances water conductivity is high.*” (prof. Benderev, p.4)

2. “*The health of people during the construction of a long tunnel is also highly endangered by the increased radioactivity in the region which is two times higher than the typical values in Bulgaria. There is a risk if separate radioactive particles fall into the respiratory system of workers and engineers, the same after certain period can cause cancer.*” (p.15)

Our findings: The only available information regarding the radioactivity is in the Study in the Chapter “Hydrogeological background”. On p.128 is described that “*On the Kresna tunnel alignment around km.380+285 is registered local exceeding of the studied radiological indicators (natural Uranium, α - and β -activity) at drilling PS-2kr (only one of thirteen drillings). The exceeding is regarding the established values under Regulation /2007 for underground drinking water and those exceeding can be a problem if this water is used for drinking purposes. The registered increase is related to the presence of minerals containing genetically Uranium.*” The conclusions on p.132 is very clear that “The

¹⁹ See the Annex 1, Full text in Bulgarian and Annex 2, Summary in English.

hydrogeological condition (although complicated) are not an obstacle for the implementation of the planned project.”

Anyway, if such a radiation in the Kresna gorge rocks exist, it will be equally dangerous for the human health in both cases – the long tunnel and the succession of short tunnels and viaducts where also significant quantities of rocks will be blasted, excavated or displaced.

3. *“The area is well known for the major faults that form the Kresna gorge and its high seismic potential. In 1904 the area was struck by an earthquake with a magnitude of 7.2 on the Richter scale, followed after about 20 minutes by another earthquake with a 7.9 magnitude.*

The tectonic and seismic features of the Kresna gorge have, to date, not been studied at sufficient detail. ...It now appears that the potential of the faults in the area, as well their potential to damage engineering structures, must be thoroughly studied. In order to address the issue additional studies of the tectonic and seismic features to the following scientific teams – prof. Shanov, prof. Dobrev and prof. Marinov. All three studies independently conclude that a long tunnel in the Kresna gorge would be in high risk to be damaged by the faults and that the construction of shorter structures (tunnels and viaducts) is preferable.” (p.16)

Our findings: Two of the mentioned scientist (Shanov and Dobrev) are co-authors of a scientific publication from 2005 (Ganas Athanassios at al.,2005) regarding the active faults in the Southwest of Bulgaria where the earthquake from 1904 associated to the Krupnic fault had a magnitude of 6,7-6,9. Other recent publications (Dineva at al,2002) confirm those lower level of the earthquake magnitude and explain the reasons for the mistake at the previous studies. Such values will change significantly in a positive direction the final calculations of the seismic hazard related to the engineering structures in the Kresna fault zone.

4. *“The tunnels falls into one of the most seismically active areas on the Balkan Peninsula, which is determined to provide the most unfavourable conditions for construction. The existence of four active faults in such an area, the movement of which in the long run may accumulate deformations in it, is another problematic factor which must be taken into account. As a result of this, there is a high-degree risk of sudden detachment of unstable rocks during the tunnel construction or operation. During strong earthquakes along these faults and fault zones can be expected slipping in the range of several decimal centimetres, which will lead to shifting across the tunnel axes. Such phenomena cannot be predicted and present a high-degree risk hazard. They may not only result in human casualties, but also inflict irreparable damage to the tunnel engineering structure. The probability for occurrence of such phenomena is much higher in a longer tunnel, where simultaneously the possibility for avoiding the hazardous zones is lesser. In the alternative motorway alignment the probability for occurrence of hazardous geological process is smaller and easier to predict.”*

Our findings: the statement above is just not correct because:

- such conclusion can be drawn only after serious assessment of the hazard risk to the concrete parameters of the engineering design, including the probability of the seismic event during the design life of the structure – this task is not fulfilled, so the statement has the character of suggestion and do not have adequate proves;
- in cases of an earthquake, the most affected are the shallow infrastructure (Sharma and Judd, 1991) which will be the short tunnels near the fractured surface;
- the conducted Study identify that the rock quality increases with depth and the seismic coefficient decrease with depth (Hashash at al.,2001) – both arguments are in favor of the long tunnel in depth

Our conclusions:

1. NC SIP (National Company “Strategic Infrastructure Projects”) has ordered, payed and approved a Geotechnical study, which do not provide the most important answer – what

are the precise values of seismic hazard that is necessary for the engineering design of the tunnel corresponding to the seismic hazard.

2. Both the Study and the others statements overstate the seismic hazard and other potential difficulties to the long tunnel. For this purpose available scientific publication are not taken into account and uses assumption instead solid and verified arguments.
3. Both the Study or the other statements recommends the “alternative” option passing through the gorge using absurd arguments (as the surface events like rockslides, rockfalls and mudflows) against the long underground tunnel, but do not refer the same arguments to the much more vulnerable to those event alternative option with small tunnels and viaducts. At the same time the mentioned risk of these events will increase significantly both the price of the construction and the maintenance of the alternative.
4. Based on those questionable assumptions the Bulgarian authorities manipulate, in this case the Committee of Bern Convention, but most probably also the services of European Commission and definitely the Bulgarian public, to not implement the already agreed precondition for public financing of Struma highway – an option which will bypass the environmentally sensitive Kresna gorge.

Our recommendation is that the services of European Commission should take full control on the process of realization of Lot 3.2 of Struma highway by implementing an independent thorough geological, geotechnical and engineering assessment of the long tunnel option.

3. Meeting DG Environment – NGOs in Brussels

On 31 March 2016 a meeting was organised in DG Environment office on Kresna Groge case. The participants were: Nicola NOTARO (Head of Unit, Nature, DG ENV), Georges-Stavros Kremlis (Head of Unit, Enforcement/Cohesion, DG ENV), Wladyslaw Piskorz (Head of Unit, Bulgaria, DG REGIO) and for the NGOs: Robbie Blake (FoEE), Markus Trilling (FoEE/CEE Bankwatch, Martina Mlinaric (WWF-EPO), Daniel Popov (CEIE, Bulgaria), Andrey Kovatchev (BALKANI Wildlife, Bulgaria). The main outcomes are:

- The commission advises NGOs to meet with JASPERS team in Bulgaria to discuss the Kresna Gorge case. After the meeting NGOs contacted JASPERS, but they refused any meetings with NGOs.
- The representatives of the Commission stated that EC will review the current EIA/AA procedure after completion for an infringement of article 6.3 of Directive 92/43 (assessment of project impact on protected habitats). Considering They express hope that all feasible alternatives will be considered by the Bulgarian government and the EIA/AA procedure will be conducted timely and throughly due to the increased pressure on the biodiversity in the NATURA 2000 site.
- The Commission officials stated that an infrigment of implementation of article 6.2 of of Directive 92/43 (avoid deterioration of natural habitats) could be considered.
- It becomes clear that according the DG Environment any new EIA/AA procedures should consider all feasible alternatives.
- It was not clear however how the commission will cope with significant delays in implementation of mandatory mitigation measures for fauna in Kresna Gorge prescribed in 2008 EIA/AA consent arising from the launching of a new EIA/AA procedures and specifically the delays or even rejection of the “long tunnel” construction.

4. The ongoing new EIA procedure for Lot 3.2 (Kresna Gorge) of the Struma Motorway – state of the development and short overview of all alternatives

There are no new developments in the new EIA procedures. There are significant delays in all procedures, due to significant changes in the institutions in charge for the project. On 7 April 2016 the Bulgarian Parliament has closed the National Company “Strategic Infrastructure Projects” which was managing and operating the project and all its responsibilities were transferred to Road Executive

Agency (REA). Meanwhile active public campaign led by officials, business and political activists continues to justify the “danger” of construction of “long tunnel” option, which in last months, was accompanied by strong pressure on local authorities.

Below we provide short analyse of all alternatives available for Kresna Gorge section and their compliance with the EU legislation and Bern Convention requirements. Several criteria were establish to assist review of the applicability of the alternatives: .

- Criterion 1: Alternatives leading to significant negative impact on the integrity of the Kresna Groge site and this was already established by the 2008 AA consent
- Criterion 2: Alternatives not meeting the requirement of the point 3 of the Recommendation 98/2002 of the Standing Committee of the Bern Convention to study alternatives outside of the Kresna Gorge
- Criterion 3: Alternatives affecting the area of the Strict reserve “Tissata” and priority habitat 9560 – Greek juniper woods.

In specific column we indicated with “+” or “-“ whether particular alternative is *part of the new EIA* imitated by the Bulgarian authorities, as we can judge from the available documentation

| Name | Description | New EIA | Criterion 1 | Criterion 2 | Criterion 3 |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------|
| Long tunnel option 1 | Tunnel from 6 parts (5 small entrances planned in the gorge), proposed by citizens of Kresna town | - | Applicable, not significant impact AA permit 2008 | Applicable, outside the area | Applicable, not significant impact |
| Long tunnel option 2 | Tunnels from 2 parts (13.3 km and 2,08km), Further developed in 2010 on the base of option 1 | + | Applicable, not significant impact AA permit 2008 | Applicable, outside the area | Applicable, do not cross |
| “New G 20”, alternative proposed by the Government of Bulgaria as the main one in 2014 and “New G 20-optimized”, alternative | Combines elements of 2 old alternatives already assessed and rejected by the Bern Convention in 2002 and AA in 2008 – the existing road (2 lines) with 6 small tunnels and the green alternative passing above it by bridges and 18 small tunnels | + | Not applicable, significant impact, AA permit 2008 | Not applicable, widening of the existing road inside the Kresna Gorge | Applicable, do not cross |
| Existing road | 18 km of the existing road in the Kresna Gorge (part of alternative G20) | + | Not applicable, significant impact, AA permit 2008 | Not applicable, widening of the existing road inside the Kresna Gorge | Applicable, do not cross |
| Green SPEA | 4 lines - 12 km small viaducts and tunnels and 16 km cutting the slope - above the existing road – repeated as ideology in G20, but with 2 lines | + | Not applicable, significant impact, AA permit 2008 | Not applicable, widening of the existing road inside the Kresna Gorge | Applicable, do not cross |
| Red SPEA | 4 lines above the river Struma – 1,8 km viaducts and 7,4 km tunnels and 20.0 km cutting the slope | - | Not applicable, significant impact, AA permit 2008 | Not applicable, widening of the existing road inside the Kresna Gorge | Applicable, do not cross |
| ECO A | Outside the Kresna Gorge, avoids from East, proposed by the NGOs, 5.2 km viaducts and 13.0 km tunnels and 10,2 km on the ground | - | Applicable, not significant impact AA permit 2008 | Applicable, outside the area | Applicable, not significant impact |

| | | | | | |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------------------------|------------------------------|------------------------------------|
| ECO B | Outside the Kresna Gorge, avoids from East, proposed by the NGOs, 3.8 km viaducts and 16.2 km tunnels and 11,3 km on the ground | - | Applicable, not significant impact AA permit 2008 | Applicable, outside the area | Applicable, not significant impact |
| Alternative A SPEA | Outside the Kresna Gorge, avoids from East, 7.2 km viaducts and 12.9 km tunnels and 9,6 km on the ground | - | Not assessed | Applicable, outside the area | Not applicable, significant impact |
| Alternative B SPEA | Outside the Kresna Gorge, avoids from East, 2.5 km viaducts and 9.8 km tunnels and 21,7 km on the ground | - | Not assessed | Applicable, outside the area | Applicable, not significant impact |

5. The meeting of Monitoring committee on Struma Motorway on 4 July 2016

On 4/07/2016 was held the 15th regular meeting of the Struma motorway Monitoring Committee, with some 8 months of delay. The REA announced development of a completely new alternative. The alternatives were presented only verbally without any preliminary projects, drawings, situation, profiles, etc. This alternative envisages upgrade of the existing road for use the motorway traffic in one-direction. The traffic in the opposite direction will go on newly constructed motorway line east of the gorge.

While we appreciate the attempts of the REA to look for alternatives that could minimize the impact on protected biodiversity in the Kresna gorge we are seriously concern that this alternative still does not comply with Recommendations 98/2002 and article 6.3 of Habitat Directive requirements :

- this alternative still consider construction of the motorway in the gorge although just for the traffic in one direction. Construction work for upgrading the current road for high-speed traffic (straightening some section of the road through tunneling and digging) will have still significant impact on biodiversity in the gorge. At least 50% of traffic of the completed Struma Motorway will stay in the Kresna gorge, thus preventing the restoration of the species' populations, including the rare ones, already destroyed from the heavy traffic. Thirdly, the local farmers community would lose its local road.

The REA representative answered that the most destructive “New G-20” alternative would still stay in the EIA ToR.

- further delays in development of the alternatives that might not be applicable in the sense of the Recommendations 98/2002 and article 6.3 of Habitat Directive requirements, might became an insurmountable obstacle (in relation to the time and funding for construction) for the thorough alternatives for preservation of the gorge such as tunnels and motorway east of the gorge alternatives.

6. Access to public information

During the last 6 months under the Access to Public Information Act we received different documents from NCSIP. However some of the most crucial one about Kresna gorge (Lot 3.2) related to the long tunnel and the new alignments subject to the new EIA was refused. We have also requested some information from the European Commission.

As of 6 July we have two court cases in Bulgaria and one confirmatory application to European Commission for denying access to information related to Lot 3.2 of the motorway.

Both court cases are against NCSIP and now Road Infrastructure Agency (RIA) as their legal successor.

The first case, № 2396/2016 of the Administrative Court, Sofia City, is against the refusal to grant us access to reports about the tunnel part of Lot 3.2. prepared for NCSIP by Via Plan – Amberg consortium under contract 37/29.07.2013. We requested the information on 19.01.2016 (№3086)

under the Access to Public Information Act. We have been refused 4 documents: the conceptual design, the preliminary design and the reference design for the long tunnel, and the final report of the consortium. We have been effectively prevented access to any technical details about the tunnel, thus refusing us the possibility to assess the feasibility and validity of technical and environmental arguments used by the authorities to publicly discard the construction of the long tunnel. In its decision №3857/07.06.2016 the court declared the refusal unlawful and instructed RIA to grant access to the requested information. RIA has appealed in higher court and new court decision is pending.

The second case, № 2395/2016 of the Administrative Court, Sofia City, is against the refusal to grant us access to reports about the 2015 developments of the road and the tunnel parts of Lot 3.2. The documents were prepared for NCSIP by „Lot 3.2 Project Group“ under contract № 130/29.07.2015 which should've ended 13.01.2016. We requested the information on 19.01.2016 (№3090) under the Access to Public Information Act. We have been refused all the documents: inception report, topographical survey, geological survey, preliminary designs for the road and the tunnel part, the reference design report as well as all maps, diagrams, tables etc. NCSIP denied access claiming future public procurement procedures might be compromised. In its decision №3265/13.05.2016 the court declared the refusal unlawful and instructed RIA to grant access to the requested information. RIA has appealed in higher court and new court decision is pending.

During the last 6 months we were unable to receive adequate information from the European Commission on the progress of the project as well as its views on the problems we have raised. We have requested information about Struma motorway from European Commission on two consecutive occasions under Regulation 1049/2001. In the first letter on 14 December 2015²⁰ we requested a list of the communication between European Commission and Bulgarian authorities, including the meetings where the project has been discussed, as well as a list with the communication which involves European Investment Bank (EIB) and JASPERS. The information requested covers the period from December 2012 onwards. After several clarifications, changes of the handling procedure,²¹ extensions of the deadline, on 15 February 2016 we received very incomplete list. After an official complaint from our side we were finally granted more comprehensive list on 29 April 2016.²² After reviewing the list in two separate letters we requested copy of the minutes of the meetings between EC and Bulgarian authorities and correspondence between the EC and Bulgarian authorities on the case.

EC refused access to the minutes claiming the „disclosure of the documents requested would seriously undermine the protection of the decision making process of the Commission,“²³ The refusal was challenged through a confirmatory application and EC's answer is expected until 04.08.2016.

Therefore the NGO Partners call the Bern Convention to:

Re-open the monitoring of the case and to re-open the case file in order to assist Bulgaria to fulfil its obligations regarding protection of the Kresna gorge.

Contact details of the NGO Partners:

Green Policy Institute, Petko Kovachev, gpibulgaria@gmail.com

BALKANI Wildlife Society, Andrey Kovatchev, kovatchev6@gmail.com

Centre for Environmental Information and Education, Daniel Popov, dpopov@bankwatch.org,

CEE Bankwatch Network/Friends of the Earth International, Anelia Stefanova, anelias@bankwatch.org

Environmental Association "Za Zemiata" (For the Earth), Dessislava Stoyanova, desislava@zazemiata.org

National Museum of Natural History - Sofia, Associate Professor Dr Stoyan Beshkov, stoyan.beshkov@gmail.com

²⁰ Ref GestDem No 6626/2015 from 17 December 2015

²¹ From under Regulation 1049/2001 to a procedure under the European Code of Good Administrative Behaviour.

²² Ares(2016)2057777 - 29/04/2016

²³ Ref. Ares(2016)2543612 2 June 2016, p. 2

Appendix

RESUME OF FINDINGS OF THE GEOLOGICAL STUDY FOR THE CONSTRUCTION OF LOT 3 OF STRUMA HIGHWAY

The access to the Geological study, produced by “GEOPS-GEOTECHNICA-CONSULT” and financed by the Bulgarian OP Transport 2007-2013, was granted to the Environmental NGO’s on 13.11.2015, four months after the Final report was issued (01.07.2015).

Since this study was one of the main reasons stated by the Governmental services to reject the long tunnel option bypassing the Kresna Gorge as required by the EIA decision I-1/2008 we submitted the document for alternative assessment to an expert from the “Earthquake geology” section of the Geological Institute of the Bulgarian Academy of Sciences. The main subject of the assessment is the Chapter 5 “Seismotectonic background”

The main findings from this assessment can be summarized as follows:

1. No one of the eleven experts listed as the team of the geotechnical report do have previous experience at the fields of seismology, active tectonics, paleoseismology and seismotectonics;
2. The Study does not include and evaluate the three essential elements of the seismic hazard assessment:
 - Argued verifications of the presence or non-presence of seismogenic surface-rupturing faults affecting tunnels
 - Probabilistic or deterministic seismic hazard of ground shaking
 - Identification, mapping and assessment of secondary earthquake effects
3. The document does not specify the goal of the study;
4. In different parts of the text the authors state that the region and the existing tectonic structures determine the highest seismic risk in Bulgaria which is not supported by arguments. The assertion that the Kroupnik fault is “...regional and very active contemporary fault” cannot be drawn from the presented fault characteristics;
5. In many places in the text it is identified that the authors have used a different, already existing, geological study for a remote gas pipeline route applying directly the results to the tunnels;
6. Some evaluated fault parameters contradict the Anderson’s theory of faulting. Faults of non-realistic geometry and kinematics have been used to manipulate the final conclusions for higher seismic risk;
7. The conclusion of Chapter 5 “Seismotectonic background” (p.99) “The seismotectonic conditions of the region where the routes of the tunnels “Jeleznica” and “Kresna” are one of the most unfavorable for construction works in Bulgaria” is not acceptable as it is not argued in the current study. The assertions has a character of a suggestion as there is no adequate proves. Although the authors of the Study are familiar with published scientific researches which state that the Kroupnik fault cannot be a source of an earthquake comparable with the 1904 one during the operational lifetime of the highway, they uses this historical event to classify the routes as “most unfavorable”;
8. The report assumes very high risk from fault ruptures in tunnels accompanying small earthquakes of magnitude below 5. Such an assumption contradicts the global observations that magnitudes of the surface-rupturing events are above 5,5-6,0.
9. There are several recent geological studies identifying active fault (probably even two or three) intersecting the route of “Jeleznica” tunnel. Those facts are not commented at the current study.

The final conclusions as drawn by the expert are:

1. Appropriate methods are not used in the Study
2. The relevant scientific sources of information are insufficient

3. Most of the presented results are not correct
4. The arguments of the stated high hazard are questionable

He presented results in the Study are inapplicable for the correct seismic hazard assessment of all three components: surface ruptures, ground shaking and secondary effects.

**FOLLOW-UP OF RECOMMENDATION NO. 98 (2002) ON THE PROJECT TO BUILD A
MOTORWAY
THROUGH THE KRESNA GORGE (BULGARIA)**

UPDATE TO THE CASE (FEBRUARY 2016)

Document prepared by:

BALKANI Wildlife Society, Wilderness Fund, Environmental Association "Za Zemiata" (For the Earth), Bulgarian Society for the Protection of Birds, Green Policy Institute, Centre for Environmental Information and Education, Association "ECOFORUM" and CEE Bankwatch Network/Friends of the Earth International.

Re: Re-opening of case file on Recommendation No. 98 (2002)

RECENT DEVELOPMENTS

In continuation of December 2015 discussions of the Standing Committee of the Convention we present to the Secretariat the following information about the developments of Kresna Gorge and Struma motorway case. Kresna Gorge is part of Lot 3.2 of the motorway. We will provide details on the following points:

- 1 Progress on Environmental Impact Assessment of Lot 3.2
- 2 Design and construction of Lots 3.1,3.2 (Kresna) and 3.3 of Struma motorway
- 3 Meeting with DG Environment's officials in Bulgaria
- 4 Correspondence with DG Regional and Urban Policy

1. PROGRESS ON ENVIRONMENTAL IMPACT ASSESSMENT OF LOT 3.2

The National Company Strategic Infrastructure Projects (NCSIP) advanced significantly in agreeing on the scope of the new EIA (EIA2015) and Appropriate assessment for Lot 3.2 (passing through Kresna Gorge) of the Struma motorway. According to a working document, summarising the progress of the EIA, published online by NCSIP on 3 February 2016, the scope was commented by JASPERS in January 2016 and further amended. According to public register of the Ministry of the Environment and Water (MoEW) the revised scope was submitted to the MoEW on 24 February 2016 for final approval. The submitted revised scope is not publicly available.

From the working document mentioned above one can clearly see that NCSIP and JASPERS completely disregard Recommendation No. 98 (2002) of the Bern Convention and EIA Decision 1-1/2008. The revised EIA scope includes two alternatives called Dual Carriageway (2014) and Dual Carriageway (2015), which differ from each other only slightly. In our signal from 15 September 2015 we have already pointed that these alternatives either enlarge the current road. NCSIP plans to achieve this by rehabilitation/reconstruction and building a second new carriageway next to it in order to provide movement in both directions.²⁴ Such an alternative is completely rejected by Recommendation No. 98 (2002), as well as by EIA Decision 1-1/2008. In order to conceal this obvious fact that NCSIP declares these two alternative as "NEW", "not-assessed" by EIA. In the EIA non-technical summary they are described as "upgrading one of the lanes (carriageway), closely following the current road

24 NCSIP (2016), Multi-Criteria Analysis of Struma Motorway Lot 3.2, Release 1, February 2016, p. 29, [in English] [http://ncsip.bg/files/Documents/NCSIP%20Struma%20Lot%203.2%20MCA,%20Release%201%20\(complete\).pdf](http://ncsip.bg/files/Documents/NCSIP%20Struma%20Lot%203.2%20MCA,%20Release%201%20(complete).pdf)

through the gorge, rectifying some sections, while the second lane is developed independently with tunnels and viaducts.”²⁵

Besides Recommendation No. 98 (2002) and EIA Decision 1-1/2008 NCSIP also neglects 2007 Appropriate Assessment (AA 2007). NCSIP claims that the EIA Decision 1-1/2008 “approving the long dual tunnel alternative is based on limited technical information, at the time, and the assessment did not take into account the impact of the tunnel both during construction and operation. Subsequently it was considered that the tunnel is likely to have significant impact on NATURA 2000 areas, mainly during its construction.”²⁶

The quoted statement is completely not true – the Appropriate Assessment report from 26 October 2007 evaluates all impacts – during construction and operation.²⁷ The only relevant argument of NCSIP for increased risk for the fauna in the Kresna Gorge by the tunnel construction is the increased traffic of heavy trucks during excavation. The AA 2007 report assesses the impact of the traffic during construction as not significant compared to the risks by the motorway traffic when operational. The traffic of the motorway is several times more intensive than the traffic during construction, it is permanent and longitudinal. It poses a risk for the species populations which is disproportionate compared to the risk of the temporary and much less intensive traffic during construction.

In January 2016 JASPERS recommends “All alternatives with acceptable/low impacts on the Natura 2000 (i.e. those fulfilling the requirements of Recommendation No. 98 (2002) of the Bern Convention) should be re-evaluated, as this could help avoid significant delays in issuing necessary permits”.²⁸ Not only the recommendation is unclear, but JASPERS does not make reference to the obvious contradiction of the EIA2015 scope to the Recommendation No. 98 (2002).

On a round table discussion organised by the Building Chamber on 3 February 2016 with participation of NCSIP, it was publicly declared that the new EIA 2015 report and the Appropriate Assessment should be ready by the end of March 2016 – which is less than a month from now. Mr Assen Antov NCSIP Director did not deny this.

2. DESIGN AND CONSTRUCTION OF LOTS 3.1, 3.2 (KRESNA) AND 3.3 OF STRUMA MOTORWAY

Kresna gorge is part of motorway section Lot 3.2. The construction of the motorway sections Lot 3.1 from the north and Lot 3.3. from the south of the Kresna Gorge has already begun. The tender procedures for construction companies for lot 3.1 and 3.3 are at the final stage or finalised. Hence the connections with lot 3.2 are predetermined. Therefore on the basis of engineering reasons not environmental ones emanating from the EIA 2015 or its AA, any alternatives by-passing the gorge from the East or West are excluded (i.e. NGO more environmentally friendly Eastern alternative from 2002). The only feasible option left, respecting Recommendation No. 98 (2002) is the long tunnel.

3. MEETING WITH DG ENVIRONMENT'S OFFICIALS IN BULGARIA.

On 14 January 2016 a package meeting with DG Environment officials was held in Sofia. One of the topics was the Struma motorway construction through the Kresna Gorge and the discussion during the December 2015 meeting of the Bern Convention. Mr. Georges Kremlis - Head of Enforcement, Cohesion Policy & European Semester, Cluster Unit 1²⁹ was chairing the meeting.

25 Author unknown (2016), Struma Lot 3.2 Development of EIA, working document, Release 1, 3 February 2016, p. 2. ,[in Bulgarian] <http://ncsip.bg/files/Documents/Struma%20Lot%203%202%20EIA%20160203%20BG.pdf>

26 Author unknown (2016), Struma Lot 3.2 Development of EIA, working document, Release 1, 3 February 2016, p.4, [in Bulgarian] <http://ncsip.bg/files/Documents/Struma%20Lot%203%202%20EIA%20160203%20BG.pdf>

27 NRIF (2007), Appropriate Assessment report of Struma motorway, Sofia – Kulata, section Dragichevo-Kulata

28 Author unknown (2016), Struma Lot 3.2 Development of EIA, working document, Release 1, 3 February 2016, p.5, [in Bulgarian] <http://ncsip.bg/files/Documents/Struma%20Lot%203%202%20EIA%20160203%20BG.pdf>

29 <http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=69014&lang=en>

NGOs requested EC and DG Environment's position on the following questions:

- I. How will DG Environment fulfil its commitment to follow the Kresna gorge case and Struma motorway
- II. Will EC guarantee adherence to Recommendation No. 98 (2002) and 2008 Appropriate Assessment decision
- III. Will EC start urgently an infringement procedure similar to Via Baltica case in Poland

Mr Kremlis responded in a lengthy dialogue making the following statements:

- **Regarding the role of the Bern Convention** he said „It is not to the Bern convention to decide how the project will be implemented, it is to the competent authorities to decide” and „Don't overestimate the Bern Convention, EU law is more important.”
- **Regarding enforcement of Recommendation No. 98 (2002) and AA 2007**, Mr Kremlis stated „The motorway is almost built. The project was implemented, new EIA and AA will be applied and there will be public hearing there.” and „Design and build project (tunnel) is extremely complex. The new EIA should analyse all reasonable alternatives.”
- **Regarding NGOs request for infringement procedure**, Mr Kremlis stated „It is only the court to decide where there is a problem, EC is not in a position to decide on this project.”

The NGO coalition “Save the Kresna gorge” deems such answers as unacceptable. DG Environment refuses to cease EU funding for the project and to start an infringement procedure. It refuses to acknowledge any violations of Article 6(3) of Directive 92/43 and Recommendation No. 98 (2002).

4. CORRESPONDENCE WITH DG REGIONAL AND URBAN POLICY

On 21 January 2016 representatives of the NGO coalition sent a letter to Mr. Walter Deffa, Director General of DG Regional and Urban Policy regarding Struma motorway construction and Kresna gorge. We asked specifically:

- What was EC's reaction to the 2014 decision of the Bulgarian government to develop alternatives in the gorge? On what grounds did the EC approve this decision?
- Why did EC not stop the development of alternatives that go against the conditions from the official EIA and AA decisions (from 2008 and 2012) as well as Recommendations 98/2002?
- Why did the EC approve construction of the other subsections of Lot 3 (Lot 3.1, tunnel Zheleznica and Lot 3.3) despite the lack of guarantee by the Bulgarian government for the protection of the Kresna gorge (Natura 2000 site) and in violation of the prerequisite that financing of other sections should be conditioned with a tunnel construction?

On 26 January 2016 we received an answer signed by Władysław Piskorz Head of Unit - Competence Centre Inclusive Growth, Urban and Territorial Development, DG Regional and Urban Policy. One reads “The Commission is aware of NCSIP exploring alternatives to the long tunnel option but it has neither competence nor any reason to prevent NCSIP from studying alternative routes for lot 3 of the Struma motorway.So far the Commission has not received an official application to approve lot 3 of the Struma motorway. The application and its approval by the Commission are a prerequisite for EU co-financing. While the Commission is following the development of the entire Struma motorway it will only be able to assess lot 3 after it has received the official application including all necessary documentation from the Managing Authority.”

The NGOs conclusion is that European Commission at present refuses to take any actions to prevent negative environmental impacts in the Kresna gorge, and to scrutinise the case despite the requirements of EU legislation, where preventive action is a fundamental principle according to Article 191 (2) of the Treaty of European Union and Article 6 Directive 92/43.

Therefore the NGO Partners call the Bern Convention to:

Re-open the monitoring of the case and to re-open the case file in order to assist Bulgaria to fulfil its obligations regarding protection of the Kresna gorge.

Contact details of the NGO Partners:

Bulgarian Society for the Protection of Birds (BirdLife in Bulgaria), Irina Mateeva,
irina.kostadinova@bspb.org

BALKANI Wildlife Society, Andrey Kovatchev, kovatchev6@gmail.com

Green Policy Institute, Petko Kovachev, gpibulgaria@gmail.com