Update from February 7, 2024 to a complaint for violation of Art. 6, Par.3 of Directive 92/43/EEC on the construction of the TEN-T Struma motorway in the region of the Kresna Gorge in Bulgaria

submitted to the offices of the European Commission on August 3, 2023.

Contents

A. „Document of Compliance“[1] prepared by the Bulgarian Ministry of Transport

A.1 Chronology of the facts and events that became known to the public

At **the end of 2022**, the Minister of Regional Development and Minister of Environment and Waters [2](witihin the term of a temporary caretaker government) stated several times that they were starting the preparation of a "Document of Compliance" in which an analysis of the Struma AM project will be made in relation to the SSCOs approved that year in October of NATURA 2000 areas in the Kresna region. Also, a general announcement - the public had no access to the process.

On **February 15, 2023,** the Government made the ToR for the preparation of this “Document of Compliance” available to a small group of people for discussion. This happened at a meeting of working group 2 "Environmental aspects" created according to recommendation 212/2021 of the Standing Committee of the Bern Convention and aimed at reaching consensus proposals between the government and the applicants. DG Environment observers were present at the meeting. The

ToR for "Document of Compliance" was not approved by the working group - representatives of NGOs and scientific institutions objected this document due to the lack of a legally valid revision of the EIA 2017 and also disputed the validity of the conclusions of this document, which predictably tries to validate the EIA decision from 2017 and circumvent the violations of Art. 6, par. 3 of the HabD found by the EC services. The observer from the European Commission questioned why the ToR for this document was now being considered when the European Commission services had already received a draft of the document itself for comments. The question stayed without an answer.

On **August 29, 2023**, the Ministry of Regional Development and Public Works of Bulgaria held a second meeting of Working Group 2 established according to Recommendation 212/2021 of the Standing Committee of the Bern Convention. This time the working group discussed the so-called "Document of Compliance", prepared by the Bulgarian government – and this was the first and only public discussion of this document. According to government representatives it was prepared, in order to respond to the European Commission's (EC) comments from 2019 on the EIA and AA of the Struma motorway project in the Kresna Gorge area. Furthermore, according to the statements of the government representatives at the meeting, this "Document of Compliance" has been discussed many times between the commission's offices and the Bulgarian government and its existence, approach and content are fully in line with the recommendations of Jaspers and the EC services. The representatives of the government stated that after the meeting of the working group the document will be sent for final "approval by the EC". The representatives of NGOs, members of the group, submitted 2 written positions against this "Document of Compliance", and the arguments of the NGOs are generally that it is informal, has no legal force according Art. 6, Par. 3 of the Habitats Directive (HabD) and cannot remedy the serious violations of Art. 6, Par. 3 of HabD established by the EC in the EIA of 2017. Another argument of the NGO was that in essence and in its content the document does not respond and does not adequately address any of the findings of the EC of 2019. We attach the two written opinions of NGOs to this working group (in Bulgarian) – see Attachment 3.

On **17 January 2024** the Minister of Regional Development and Public Works of Bulgaria, Mr. Andrey Tzekov, presented a speech on a special meeting of the Committee of Regional Development, Public Works and Local Self-governance within the Bulgarian Parliament [3]. Minister said that the "Document of Compliance" was sent for approval to the commission **in July 2023**. The minister pointed out to the Bulgarian MPs that after that a letter was received from DG Environment demanding a new EIA procedure. Afterwards, at a meeting with DG Regio on behalf of the Bulgarian government, it was agreed not to carry out a new EIA, but to receive a questionnaire from the EC, to which the Bulgarian government would respond in writing, and then to hold a technical meeting to clarify the issues. **According to the opinion of the minister Tzekov, this will be enough to get approval from the EC offices for the quick start of construction of the Struma Motorway in April 2024 without need of a new EIA**.

A.2 Violation of Art. 6, Par.3 of Directive 92/43/EEC in the „Document of Compliance“

A.2.1 The „Document of Compliance“ does not constitute a revision of the 2017 EIA through a procedure with legal consequences and is an informal non-binding document.

This document has no relevance to the Appropriate Assessment procedures in the Bulgarian Biodiversity Act and could have no legal effect. This document therefore has no relevance to the Appropriatte Assessment procedures according to Art. 6, Par. 3 of the Habitats Directive (HabD) as well. It cannot legally address the violations established by the offices of the European Commission according to Art. 6, Par. 3 HabD [4], the EC offices found a number of violations of Art. 6, Par. 3 of Directive 92/43/EEC in the EIA and AA decision of 2017). Each one of these violations individually is significant, leads to a biased choice of damaging alternatives and eventually poses risks to nature and people. This is further underlined in the EC's letter to the Bulgarian authorities from July 2022[5], in which the EC insists on a revision of the EIA/AA from 2017 with a new analysis of all meaningful alternatives.

From the point of view of public participation and access to justice (Appropriate Assessment procedures fall within the scope of Article 6 and Article 9 of the Aarhus Convention) the approval of this document violated all requirements for these civil rights. It was prepared in complete secrecy from the public, formal discussions took place only after it was approved and delivery to the offices of the European Commission, and since the document is not a legal act, it is not subject to any judicial control.

A.2.2 The „Document of Compliance“ does not regard all alternatives – it assessed only the alternative “G10,5 Eastern” officially approved by EIA/AA 2017.

The letter of the EC offices from July 2022[6] is clear – revised EIA with a new analysis should be provided <u>for all meaningful alternatives</u>. However in the „Document of Compliance“ only 1 alternative is "assessed" - the alternative “G10,5 Eastern” officially approved by EIA/AA 2017. Two other meaningful alternatives of EIA/AA 2017 (described as feasible in the 2019 Application Form) – “G20 Eastern” and “Full tunnel” are only described in general in the beginning of document, pages to 10, but are not included at all in the so called "assessment" afterwards (pages 20 to 118 and Appendicies to the document). Such an “assessment” is provided only for alternative “G10,5 Eastern”.

A.2.3 The „Document of Compliance“ does not regard violations of Art. 6, Par.3 of Directive 92/43/EEC (HabD) listed in EC 2019 Comments to the Application form[7] – moreover it repeats most of them.

After 2019, the Bulgarian government interprets and subordinates the violations established by the EC in 2019 to Art. 6, Par. 3 HabD - in full, as a result and subject to the absence of SSCOs (one of all found violations). And it interprets all other violations entirely in the light of the adoption of new SSCOs – that is, with the adoption of these SSCOs, the violations themselves probably cease to be violations. The Bulgarian government completely refuses to recognize the fact that the violations established in 2019 are independent and with independent significant legal effects compared to the final decision and choice of alternative and determination of mitigating measures. This is also the philosophy of the "Document of Compliance" - to review the EIA of 2017 against the approved SSCOs and thus assume that all other grounds for violation of Art. 6, Par. 3 HabD dissapeared. An approach that essentially chicanes and circumvents the numerous violations of Art. 6, Par. 3 HabD established in 2019 by the EC.

- In 2019 EC found that approach of 0,5% or 1% of the area lost/destroyed used in EIA/AA 2017 Report to determine the significance of the adverse effects - has no basis in Art. 6, Par. 3 of the HabD and is not in line with the Court of Justice of the EU (CJEU) case law (Sweetman C-258/11). In the „Document of Compliance“, once again, only the method of assessment with "0,5% or 1% of affected area" was applied, stating without reference to any source that this reflects adopted SSCOs. However such criterion is missing in the SSCOs at all, thus „Document of Compliance “ is repeating the same flows as EIA/AA 2017. As a result we see an imitation of an assessment against the officially approved SSCOs - but in essence there is only the "% of affected area" assessment;

- In 2019 EC found that EIA/AA 2017 failed to properly take into account of the different degrees of importance of conservation goals and gave the example of feature of Kresna Gorge protecting habitats of reptiles of high value having higher importance than other features, and thus the EIA/AA 2017 failed to make correct comparison of the impacts of different alternatives. In 2023 the „Document of Compliance“ is not assessing at all different alternatives and more over again, the role of the NATURA 2000 site for the protection of the habitats of reptiles in the Struma river valley - having a specific conservation priority role for the coherence of the NATURA 2000 network - is nowhere reflected;

- In 2019 EC found that EIA/AA 2017 failed to provide substantiating evidence that project for upgrade of the railway in the valley of Kresna Gorge has no cumulative impacts in combination with the motorway project. EC also found that cumulative impacts of the upgrade of the railway had been only assessed towards “Full tunnel option” (in EIA/AA consent from 2015 for upgrading the railway was made an assessment of the cumulative impacts to the motorway project, however alternatives G10,5 Eastern and G20 Eastern didn’t existed at all at that time – they were proposed in 2016. This consent expired in 2020). In 2023 the „Document of Compliance“ is not assessing again and at all the cumulative impacts towards the alternatives approved and/or assessed in EIA/AA 2017. It is only stating that mitigation measures of the expired EIA/AA consent for the railway project will be applied. Why and how they will be applied (the EIA/AA consent expired) and how this reflects motorway alternatives appeared and assessed later in EIA/AA 2017 – all this is completely

unclear. It is important to stress that railway in Kresna Gorge is part of the same trans-European transport corridor and should be upgraded finally to high-speed railway. However the expired EIA/AA consent for railway upgrade didn't regard at all high speed train in this section. Thus in conclusion still there is no assessment of cumulative impacts of future upgrade of the railway in the same transport corridor to highspeed train.

· In 2019 EC found that project at this moment had significant changes in the project design (viaducts, bridges, connectivity roads) compared to the project approved by the EIA/AA 2017 and not assessed according art.6, par 3 of the HabD. And again, nowhere in the „Document of Compliance", the significant changes referred by the EC in 2019 are reflected. In fact alternative "G10,5 Eastern" is described and "assessed" in this document completely **on the base of initially provided version in 2017, and there is no reflection of project changes appeared in 2019.**

· In 2019, it was established that the mitigation measures in the EIA/AA 2017 lack the necessary scientific certainty regarding their effectiveness. The "Document of Compliance" again accepts the same measures as effective - **only on the basis of a declaration of will by the authors**. Not only that - in the document, the scope of the measures is reduced compared to the EIA/AA 2017 - without them changing in essence and without giving any justification for this reduction.

Here we should remind that in 2019 the EC found that the cumulative impact of the construction of the other sections of the same Struma Motorway led to adverse impact to the populations of the 4 species of reptiles from NATURA 2000. That is, that in essence the construction of the motorway, already co-financed by the EU structural and cohesion funds, has already led to a violation of Art. 6, par. 2 of HabD.

A.2.4 Conclusions

In conclusion - the "approval" of the "Document of Compliance" by the European Commission services and the start of construction according to the EIA/AA decision from 2017 by Bulgarian authorities (regardless of whether with or without co-financing from the EC) - means that the project will be implemented in violation of Art. 6, par. 3 of HabD. in addition this will not allow recovery of the damaged populations of the 4 species of reptiles from NATURA 2000 as a result of the cumulative impacts of the construction of the other sections of the same motorway, already co-financed by the EU funds and thus caused violation of Art. 6, par. 2 of HabD.

B. Significant changes to the 2017 motorway project (including construction in the Gorge) - "salami slicing" procedure for providing environmental permit without a new EIA and Appropriate Assessment according to Art. 6, Par.3 of Directive 92/43/EEC (HabD)

B.1 Chronology of the facts and events that became known to the public

In European Commission observations to the application form for Lot 3.2 of AM Struma from 2019[8] it is indicated that there are significant differences between the technical specifications of the project subject to EIA/AA in 2017 and the project presented for financing with the application form from 2019 (changes in road facilities - tunnels, viaducts, access roads), which changes require compliance with the procedures of the Habitats Directive.

At **the end of 2022**, the Minister of Regional Development and Public Works (from the temporary caretaker government) stated several times that he was starting the preparation of a "Document of Compliance" in which an analysis of the Struma AM project will be made in relation to the SSCOs approved that year in October of NATURA 2000 areas in the Kresna region. Also, a general

As already stated in our complaint dated August 3, 2023 - on **7 April 2023** the Road Infrastructure Agency (RIA) submitted a project notification to the Ministry of Environment and Waters (MoEW)[9] called "Struma Motorway route optimization, Lot 3.2". The project provides detailed planning and amendments to the previously adopted “G10,5 Eastern” route with the EIA decision No 3-3/2017. This project reflects the changes made to the route of the alternative approved in 2017 (including changes of more than 100m in the lane alignment from the original alignment) - including the changes to the road facilities. In addition, **it includes a large number of construction activities along the current road in Kresna Gorge - retaining walls, large underpasses and overpasses, bridges, widening/straightening of the lane** (in Attachment 4 we attach a map in Bulgarian with an analysis of these changes – jpg fail and free GIS digitalization in Google Earth). **In the EIA/AA 2017, the main ground and argument for the lack of damage to the NATURA 2000 sites is the non-allowance of new construction in the Kresna gorge - only the rehabilitation of the road surface of the existing road was allowed**. Until December 2023, this project was not moved by the Ministry of Environment and Water (MoEW) and remained frozen. But **its approval by the MoEW was included as a condition for the start of construction according to the motorway construction contracts concluded on April 6, 2023** (see our complaint dated August 3, 2023).

On **December 15, 2023**, a new project named "*Amendment of investment proposal for improving the route of Lot 3.2 of the Struma Motorway according to the eastern variant G 10.50*" was presented to the public on the website of the MoEW[10] with the submitter "Road Infrastructure Agency" (the proposal is dated itself on 15 October 2023). This project corresponds to the project submitted on April 7, 2023, but all construction activities in the Kresna gorge are excluded and only the changes in the construction of the new route outside the gorge and bypassing the town of Kresna are left (NGOs have not yet analyzed whether the amendments to the project submitted on December 15 correspond to the amendments to the project from April 7).

On **December 22, 2023**, a letter from the MoEW to the "Road Infrastructure Agency" was announced on the website of the Ministry, requesting the initiation of a procedure for screening the need for EIA and AA for the project submitted on December 15, 2023[11]. The announcement lacks a copy of the letter signed by the minister, and a transcript/quotation of the letter was made and the ad literally says: "*Today, 22.12.2023, in connection with a notification received by the Ministry of Environment and Water (MOEW) pursuant to Art. 4, para. 1 of the Ordinance on the conditions and procedures for carrying out an environmental impact assessment (EIA Ordinance) for the investment proposal "**Amendment of the investment proposal to improve the route of Lot 3.2 of the Struma Motorway according to the eastern option G 10.50***". However, the NGOs received a copy of the original letter (attached as Attachment 5) - which shows that the MoEW letter includes **both the investment proposal of December 15 and the investment proposal of April 7 - and that this information was hidden from the public, as false and misleading information is given in the public announcement**.

On **January 17, 2024**, [12]the Minister of Regional Development and Public Works, in front of the deputies in the relevant committee of the Bulgarian Parliament, said verbatim the following regarding this project: "now we have submitted the documents to the Ministry of Environment, we were told that the project is admissible and we will start designing by April, and then construction“. This statement by the Minister shows a **pure political expectation** that the MoEW, after a „screening” by the end of March 2024, will decide not to carry out an EIA and Appropriate Assessment of the project and that the result of the screening will not be objective, but will be politically predetermined.

B.2 Violation of Art. 6, Par.3 of Directive 92/43/EEC in the new project for amendment of approved in 2017 alternative

The constant practice of the ECJ indicates that the criterion for carrying out an Appropriate Assessment is the presence of a probability of having a negative impact on the NATURA 2000 site – when on the base of available scientific information it is

not possible to exclude such a risk. The significance of the impact itself, to what extent it damages or not the integrity of the site, the measures to mitigate the impact and their effectiveness are subject to assessment in an Appropriate Assessment procedure according to Art. 6, Par. 3 of HabD.

B.2.1 Probability of negative impacts of construction works in Kresna Gorge included in the amended project

Construction works in Kresna Gorge and along the length of the current road were not foreseen and allowed in the EIA/AA of 2017. The amended project submitted on April 7, 2023 contains significant construction activities. These activities lead to the risk of direct damage to the following habitats and habitats of protected species in the NATURA 2000 sites (the list is not exhaustive and only those most significantly affected by construction activities are listed):

- Habitats - 91E0, 92A0, 92C0, 92D0;
- Habitats of species from HabD– *Elaphe situla, Elaphe quatorlineata, Testudo graeca, Testudo hermanni, Lutra lutra*
  - Habitats ot species from Birds Directive - *Hippolais olivetorum, Alcedo atthis, Actitis hypoleucos, Charadrius dubius, Ciconia nigra, Ardea cinerea, Anas platyrhynchos, Gallinula chloropus, Dendrocopos syriacus, Dendrocopus medius, Accipiter brevipes, Coracias garrulus, Lanius minor, Lanius nubicus;*
  - *Connectivity for species of large carnivores – *Ursus arctos, *Canis lupus*

B.2.2 Probability of negative impacts of amended rout and road facilities of the new lane outside the Kresna Gorge and the new lane by-passing Kresna Town.

The 2017 project changes lead to a significant re-alignment of the motorway lanes in places with more than 100 meters re-alignments. They also lead to significant changes to all facilities - tunnels, viaducts, excavations, embankments, access roads. This directly leads to:

- Changes in the strength and intensity of the negative impacts on habitats directly affected by construction 91E0*, 91M0, 9170, 9560*, 92A0, 91AA*, 6220*, 6210;
- Changes in the strength and intensity of the negative impacts on species from Habitats Directive directly affected by construction *Austropotamobius torrentium, Erannis ankeraria, Eriogaster catax, Euplagia quadripunctaria, Morimus asper funereus, Cordulegaster heros,*

Ophiogomphus cecilia, Triturus karelinii, Bombina variegata, Elaphe quatuorlineata, Elaphe situla, Testudo graeca, Testudo hermanni, Ursus arctos, Canis lupus*, Lutra lutra, Rinolophus ferrumequinum, Mineopterus schreibersii, Myotis emarginatus, Rhinolophus euryale;*

· Changes in the strength and intensity of the negative impacts on species from Birds Directive directly affected by construction *Accipiter nisus, Actitis hypoleucos, Alectoris graeca, Anthus campestris, Aquila heliaca, Buteo rufinus, Calandrella brachydactyla, Caprimulgus europaeus, Ciconia nigra, Circaetus gallicus, Coracias garrulus, Dendrocopos syriacus, Emberiza hortulana, Falco cherrug, Falco subbuteo, Falco tinnunculus , Falco vespertinus, Ficedula semitorquata, Hieraaetus pennatus, Lanius collurio, Lanius minor, Lanius nubicus, Lullula arborea, Melanocorypha calandra, Merops apiaster, Milvus milvus, Picus canus, Sylvia nisoria*;

· Changes in the permeability of the motorway lanes for large carnivores **Ursus arctos, *Canis lupus* and for reptiles *Elaphe situla, Elaphe quatorlineata, Testudo graeca, Testudo hermanni*

B.2.3 Mitigation measures not evaluated in the AA, but included in the amended project announced by the MoEW on December 15, 2023.

In the document/project announcement published by the MoEW on December 15, 2023 describing the amended project[13], on page 13, item 5, it is stated that the route of the motorway was shifted by 200 meters compared to the project approved in 2017 in order to protect the habitats of Triturus karelinii. As in the document is written: "the habitats of the species have a small area in the site, therefore the route affects them unacceptably compared to the SSCOs".

In line 26 of the table in Annex “Annex 8.2_A&R_Ass_SSCO” of the “Document of Compliance”, which analyzes the impact of the alternative approved in 2017 on SSCOs in tabular form, the same mitigation measure is recorded. It states that "*Habitat loss of 4.31% of the total area of suitable habitat of the species in the area is expected*" and the final conclusion about the significance of this impact is that after mitigation measures are taken the impact will be negligible . On page 102 of the main document of the “Document of Compliance”[14]it is written: “*In Triturus karelinii s.l. it is recommended that the new highway route be shifted so that it does not affect the species' habitats*.'

B.2.4 Conclusions

The changes made to the 2017 project, as presented in the amended project proposals of 7 April 2023 and 15 December 2023 submitted to the MoEW - suggest the possibility of significant changes to the negative impacts compared to the original project from 2017, both due to the new construction in Kresna Gorge and because of the changes to the motorway lanes outside the Gorge. This requires carrying out an Appropriate Assessment according to the requirements of Art. 6, Par.3 of HabD and the consistent practice of the ECJ on this matter In the " Document of Conformity " and in the announcement for the amended project from December 15, it is clearly stated that **measures are planned to mitigate significant damage to the habitats of Triturus karelinni - a fact that puts out of the discussion the need to conduct an Appropriate Assessment of the amended project. This is a conclusion that is imposed regardless of the need for such a new revised Appropriate Assessment of all meaningful alternatives - from the violations of Art. 6, Par.3 of HabD established in 2019.**

Failure to conduct an Appropriate Assessment, which can be expected after the statements of the Minister of Regional Development to the Bulgarian Parliament on January 17, 2024 - will be a clear circumvention of the requirements for conducting such an assessment according to Art. 6, Par.3 of HabD and the constant practice of the ECJ on it. This will also be a typical case of the "salami approach" with creeping progress of construction inside the Kresna Gorge along the current road with gradual small projects adding new and new construction elements and avoiding the implementation of the Appropriate Assessment.

C. Design of second motorway lane outside the Kresna Gorge announced by the Bulgarian Government in 2023 again avoiding Appropriate Assessment procedure

C.1 Chronology of the facts and events that became known to the public

In 2023, the Minister of Regional Development and Public Works made repeated public announcements that a second lane of the Struma motorway in the direction of traffic Sofia - the Greek border (according to the approved 2017 project, the traffic in this direction moves along the current road through Kresnenski Prolom) will be designed outside Kresna Gorge[15]. In his speech before the Bulgarian Parliament on **January 17, 2024,** in connection with the Struma highway in the Kresna gorge area (see link to the video recording above), the same minister indicated: "*There is an investment initiative for the study of a new route outside the gorge. A public contract for the preparation of such options is pending*."

On **November 24, 2023**, the Ministry of Regional Development and Public Works of Bulgaria held a first meeting of Working Group 3 established according to Recommendation 212/2021 of the Standing Committee of the Bern Convention. The working group discussed the assignment prepared by the Road Infrastructure Agency for "making a pre-investment study and design to ensure the Sofia-Kulata road, outside the Kresna gorge" (we attach the assignment in Bulgarian in Attachment 6). The NGOs made detailed proposals to improve the assignment (see Attachment 7) - all of them were rejected by the head of the Road Infrastructure Agency and not discussed at all, on the grounds that **this assignment is independant project having no relationship with the Struma motorway project.**

NGOs have no information if the European Commission services are informed about this project.

C.2 Violation of Art. 6, Par.3 of Directive 92/43/EEC in the new project for independent design of second motorway lane outside the Kresna Gorge – but not part of current motorway project and thus avoiding Appropriate Assessment for the mtorway project as a whole with all its components.

The assignment presented on **November 24, 2023** for the design of the second lane of the Struma motorway outside the Kresna Gorge is a legal, administrative and engineering absurdity:

- In fact, the assignment nowhere states that the second lane in the Sofia-Greek border direction will be a motorway and is related to the Struma motorway project in any way. In the assignment it is pointed out as an "alternative"/local path. Thus, REA proposes to convert the existing route within the gorge and suitable for a local alternative road into part of Struma motorway and instead to construct a completely new local alternative route outside the gorge. Stupid enough – the road through the Gorge does not cover basic requirements for a motorway according to Regulation (EU) No. 1315/2013 (it directly serves local areas and farmland and is used by pedestrians, slow vehicles and animals) !

- The assignment does not foresee any connection and integration of this second lane with the already planned eastern motorway lane outside the gorge (direction Greek border - Sofia) according to the motorway alternative approved in 2017.

- The assignment has no deadline and is conditional - it will still clarify whether there are any feasible options outside the corridor of the eastern route of G10.5. It will look for some new theoretical route outside the gorge provided that after 25 years of design it is clear that the only possible corridor for a motorway route outside the gorge is this eastern route of the G10.5.

In other words, the Road Infrastructure Agency has drawn up a design brief for a second route outside the gorge, which is programmed to be unworkable and which is programmed to be anything but a "secondary motorway".

C.2.3 Conclusions

The announced new project for the design of a second main/alternative lane outside the Kresna Gorge can be viewed in two ways:

- As an irrevocable part of the motorway lanes (this should be the essence of the assignment according to its meaning and common sense) – a project for the second lane of the motorway in the direction of Sofia-Greek border.

- As an alternative road to the motorway (**this is how the task is formally formulated**) but still part of the measures for the construction of the motorway.

Regardless of which of these 2 interpretations will be accepted as reliable the conduct of an Appropriate Assessment according to Art. 6, Par.3 of HabD of the entire project with all its components, before starting construction is an imperative obligation of the Bulgarian authorities. It is also an obligation according to Regulation (EU) No. 1315/2013 that all these components be built by 2030. And vice versa - the failure to carry out such an Appropriate Assessment, the division of the project into 3 parts – 1. "compliance document", 2. Project to amend the project from 2017, 3. Re-design project of the 2017 project with adding a new second lane, in order to start construction without such a comprehensive Appropriate Assessment is a clear and drastic violation.

D. Exchanging questionaries and answers between the Bulgarian Government and the European Commission services.

D.1 Chronology of the facts and events that became known to the public

On **January 17, 2024**, [16]the Minister of Regional Development, in his speech in front of the deputies of the Bulgarian Parliament, said that, that soon after sending the “Document of compliance” to the European Commission, the government received **a letter from DG Environment that a new EIA was needed**. But that at **a subsequent meeting with DG Regio**, an agreement was reached with the services of the European Commission that the case should be managed by closing questions, i.e. the EC sends questions, and the ministry answers. The

minister said: "We received the questionnaire before Christmas. The response deadline has been extended to Friday at our request. We will send the answers to the EC and I hope that after holding a technical and political meeting, a final decision will be reached". So, it seems that DG Regio took the initiative and simply throw in the trash bin the request of DG Environment for a new EIA – if the words of Minister Tzekov reflect the real facts.

On January 22, 2024, a member of the Bulgarian Parliament asked the various ministries to provide public access to the questionnaire cited by the Minister of the Regional Ministry and to the answers of the Belarusian Government. So far, the Ministries of Regional Development and the Ministry of Transport have not responded. On February 6, 2024, a response was received from the Minister of the Environment and Waters, in which it was explicitly stated that the Minister and the Ministry did not receive such a questionnaire sent by the EC and did not take a position on it. According to them, the minister only participated in an informal meeting with the EC in November (probably referring to a meeting on November 30). In Attachment 8 we provide a copy of the Minister's response.

D.2. Conclusions

NGOs cannot comment on documents that have not been made available to the public and are **classified**. If there is correspondence between the EC and the Bulgarian government it is not clear for the NGO what exact procedure is followed and how it is related to the procedures of Art. 6, Par.3 of Directive 92/43/EEC, which the Bulgarian government should implement. It is even more unclear for NGOs how correspondence regarding Art. 6, Par.3 of Directive 92/43/EEC would even theoretically be possible to be conducted not by the responsible Bulgarian ministry for the implementation of this legislation (in this case the Ministry of Environment and Water), but by an obscure or some other government institution without any responsibilities under it.

We must say in conclusion: we have presented numerous facts and reasons that any start of the construction of AM Struma in the area of Kresna Gorge without a new/revised legal procedure under Appropriate Assessment, complying with the requirements of Art. 6, Par.3 of Directive 92/43/EEC and covering all aspects of the project will be a gross, clear and deliberate violation of European law.

List of attachments:

Attachment 1 - A copy of the import note of the Representation of the European Commission in Bulgaria for submission a complaint on 3 August 2023

Attachment 2 - A copy of the entire original complaint from 3 August 2023 (to be available in case of absence of the original document)

Attachment 3 - Two written opinions of NGOs to Working Group 2 established according to Recommendation 212/2021 of the Standing Committee of the Bern Convention and regarding the "Document of Compliance"

Attachment 4 - A map in Bulgarian with an analysis of changes in the project approved in 2017 according to sumbitted in April 2023 new project proposal in the Ministry of Environment (in pdf) and free GIS of the same information (Google Earth format)

Attachment 5 - Original letter of the MoEW to REA from 22 December 2023 regarding starting screening procedures of both projects amending the adopted in 2017 project – those from 7 April 2023 and from 15 December 2023. The letter was hidden from the public.

Attachment 6 - Assignment prepared by the Road Infrastructure Agency for "making a pre-investment study and design to ensure the Sofia-Kulata road, outside the Kresna gorge"

Attachment 7 – NGO proposals to assignment for design to ensure the Sofia-Kulata road, outside the Kresna gorge. All rejected without discussion by the Road Infrastructure Agency on the grounds that this assignment is indipendant project having no relationship with the Struma motorway project.

Attachment 8 – MoEW's response of 6 February 2024 to a question from a member of the Bulgarian Parliament regarding the EC's questionnaires regarding the Appropriate Assessment of the motorway project. The response said the ministry did not receive and comment on such questionnaires.

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[1] https://www.api.bg/files/91a13fa52c33c322bb823e9ac134fd04.pdf

[2] See paragraph 5.6 of our initial complaint from 3 August 2023.

[3] see video recording, after 3 hours, in Bulgarian https://www.parliament.bg/bg/parliamentarycommittees/3205

[4] Ref.Ares(2019)6378788-15/10/2019

[5] Ref. Ares(2022)5760255 - 16/08/2022

[6] Ref. Ares(2022)5760255 - 16/08/2022

[7] Ref. Ares 2019)6378788-15/10/2019

[8] Реф.Ares(2019)6378788-15/10/2019

[9] https://www.moew.government.bg/bg/optimizaciya-na-traseto-na-am-struma-lot-3-2/?fbclid=IwAR2c7ZXDqRUktjnAc-bOWpO-hzgLbVbTD0wkko3VPvZcgFyWqrEIlQjWs3I (in Bulgarian – public register of investment notices of MoEW before EIA and AA screening, link to submitted in MoEW documentation by the REA)

[10] https://www.moew.government.bg/bg/izmenenie-na-investicionno-predlojenie-za-podobryavane-traseto-na-lot-3-2-na-avtomagistrala-struma-po-iztochen-variant-g-10-50/ (in Bulgarian)

[11] https://www.moew.government.bg/bg/otgovor-na-uvedomlenie-za-investicionno-predlojenie-za-izmenenie-na-investicionno-predlojenie-za-podobryavane-traseto-na-lot-3-2-na-avtomagistrala-struma-po-iztochen-variant-g-10-50/ (in Bulgarian)

[12] See video recording from January 17, 2024, in Bulgarian, after the 3rd hour - https://www.parliament.bg/bg/parliamentarycommittees/3205

[13] https://www.moew.government.bg/static/media/ups/articles/attachments/%D1%81%D1%8A%D0%BE%D0%B1%D1%89%D0%B5%D0%BD%D0%B8%D0%B5%20%D0%9E%D0%92%D0%9E%D0%A1-21af998bdf85d3534b0b9de4dc318f3747.pdf

[14] https://www.api.bg/files/91a13fa52c33c322bb823e9ac134fd04.pdf

[15]https://www.segabg.com/hot/category-economy/ministur-cekov-otpisa-posledniya-variant-za-struma-prez-kresna

https://www.economic.bg/bg/a/view/mrrb-iznasja-edno-ot-platnata-na-struma-izvyn-kresnenskoto-defile

[16] See video recording from January 17, 2024, in Bulgarian, after the 3rd hour - https://www.parliament.bg/bg/parliamentarycommittees/3205