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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Bureau of the Standing Committee

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Strasbourg

New complaint: 2022/7

**Possible negative impact of mining activities in Trstionica –
Gornja Bukovica and Vareš (Bosnia and Herzegovina)**

- GOVERNMENT REPORT -

*Document prepared by
The Federal Ministry for the Environment and Tourism*

Response to the New Complaint: 2022/07, Possible Negative Impacts of Mining Activities in the Trstionica - Gornja Bukovica and Vareš Area (Bosnia and Herzegovina) TPVS/Files (2022) 76

1. Bosnia and Herzegovina (BiH) is committed to the goals and implementation of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), ratified on 15. 09. 2008.
2. Considering the territorial jurisdiction within BiH regarding the consideration of the New Complaint: 2022/07, *Possible Negative Impacts of Mining Activities in the Trstionica - Gornja Bukovica and Vareš Area (Bosnia and Herzegovina) TPVS/Files (2022) 76* (hereinafter referred to as "complaint") filed by Hajrija Čobo on 20. 10. 2022, the Federal Ministry of Environment and Tourism (FMOiT) provides this response.
3. After a detailed analysis of all allegations in the complaint, FMOiT has concluded that the claims pertaining to the violations of the provisions of the Bern Convention are both incorrect and unfounded, as will be elaborated below.
4. **Regarding the response to question 1** of the complaint, the complainant cites, *inter alia*, "a violation of Articles 4, 5, 6, 7, and 8 of the Bern Convention because local, cantonal, Federation, and state authorities have not taken the necessary legislative and administrative measures to protect the area, which is a forest with high biodiversity (Trstionica - Gornja Bukovica), a lack of public involvement, and violation of laws, and the concession agreement between the institutions of Bosnia and Herzegovina/Federation of Bosnia and Herzegovina/Zenica-Doboj Canton and 'Adriatic Metals Plc/Eastern Mining' and 'Balkan Mining and Minerals Limited' companies for the exploration and exploitation of minerals in the biologically diverse area of Trstionica - Gornja Bukovica and Vareš and 'Triassic Resources' d.o.o. and the concession agreement with hunting societies for the designated area."
5. As a preliminary observation, it should be noted that two of the three cited companies, namely "Balkan Mining and Minerals Limited" and "Triassic Resources" d.o.o., have not submitted requests to FMOiT nor do they, based on available information, operate in the Federation of Bosnia and Herzegovina (FBiH).²
6. As for the concession contracts, which were concluded by the Government of Zenica-Doboj Canton and were mentioned in the complaint, as evident from the Decision on granting the concession that the complainant enclosed, the same Decision was brought by the Government of that Canton pursuant to Article 11.2 of the Concession Law.³ In relation to this, FMOiT emphasizes that the conclusion of Concession Agreements within legally prescribed procedures cannot constitute a reason to file a complaint with the Secretariat of the Bern Convention for an alleged violation of the Convention.
7. FMOiT is aware that the company Adriatic Metals d.o.o. Vareš (formerly Eastern Mining) signed a Concession Agreement with the Government of Zenica-Doboj Canton: No. 04-18-23189-1/13 dated 12. 03. 2013, and Annex III to the Concession Agreement: No. 04-18-23189-3/18 dated 14. 01. 2018. That agreement was a prerequisite for conducting geological research, as well as obtaining all other permits the company received.
8. Regarding the Concession Agreement with hunting associations mentioned by the complainant in the complaint, it is important to note that hunting in the Federation of Bosnia and Herzegovina is regulated by the Hunting Law⁴, which is aligned with the provisions of the Bern Convention.
9. **With regard the part of the complaint related to public participation**, it is important to state that, on 13. 04. 2020, Adriatic Metals BH d.o.o. Vareš filed a request with FMOiT for the

¹ According to the BMM company's website, it has no projects in BiH <https://www.balkanmin.com/>

² https://bizreg.pravosudje.ba/pls/apex/f?p=183:30:343944854557726::NO:RP:P30_FIRSTTIME:TRUE

³ <https://www.zdk.ba/budzet/item/2204-zakon-o-koncesijama-pre%C4%8Dil%C5%A1%C4%87eni-tekst>

⁴ FBiH Official Gazette 4/06, 8/10 and 81/14

assessment of the environmental impact of underground exploitation of complex ore deposits of lead, zinc, barite, and associated mineral components in the Rupice deposit, Vareš municipality, in accordance with the provisions of the then-applicable Environmental Protection Law⁵.

10. By the FMOiT's Decision number UPI 05/2-02-19-5-60/20 dated 10.08. 2020 the Expert Commission was appointed to conduct a review and assessment of the Environmental Impact Assessment Study⁶, drafted by the Rudarski institut d.d. Tuzla (Tuzla Mining Institute), authorized by the FMOiT to conduct an environmental impact assessment as well as other expert tasks.⁷ For public involvement, in accordance with Article 61 and 62 of the Environmental Protection Law, a public hearing was held on 31. 8. 2020. Fifty-eight participants attended the public hearing. The invitation for the public hearing was published on FMOiT's website on 10. 8. 2020, and in the daily newspaper "Oslobođenje" on 14. 8. 2020.
11. Following the report of the members of the Expert Commission, the FMOiT requested a supplement to the Environmental Impact Assessment Study. After its publication, the Supplement to the Environmental Impact Assessment Study was available to the public at the Ministry's premises and on its website from 9. 12. 2020 onwards.⁸
12. On 21. 1. 2021, FMOiT posted the Draft Environmental Permit on its website for public review.⁹ Within the legally specified period, there were no comments, objections or complaints from the interested public.
13. Based on the above, FMOiT, in accordance with Articles 68, 71, and 27 of the Environmental Protection Law, issued Decision UPI 05/2-02019-5-60/20 dated 5. 2. 2021 ("Decision of 5. 2. 2021")¹⁰, granting an environmental permit to Eastern Mining d.o.o. (now Adriatic Metals BH d.o.o. Vareš).
14. The above -mentioned facts clearly indicate that all procedural and material prerequisites for issuing the decision of 5. 2. 2021, were satisfied, and the public was adequately involved in the procedure. Moreover, the decision of 5.2. 2021, was not challenged in an administrative dispute case, which is a regular legal remedy, and therefore became legally binding.
15. **Regarding the response to questions 2 and 6 and 7 of the complaint**, it is important to state that the Supplement to the Environmental Impact Assessment Study, which preceded the issuance of the decision of 5. 2. 2021, provided an overview of identified habitat types and a review of fauna species, concluding that there is no data on the existence of endangered or protected plant species. It was also planned to conduct a detailed field survey of flora and fauna in the Rupice project area, which was carried out in the Biodiversity Study from June 2021¹¹ and the Biodiversity Action Plan from December 2022.¹²
16. Concerning specific species in the cited documents, species from Appendix I of the Bern Convention were not registered in the project's impact area; Species from Appendix II of the Bern Convention registered in the project's impact area include: *Bombina variegata*, *Rana dalmatina*, *Bufo viridis*, *Lacerta viridis*, *Podarcis muralis*, *Coronella austriaca*, *Vipera ammodytes*, *Erithacus rubecula*, *Nucifraga caryocatactes*, *Coccothraustes coccothraustes*,

⁵ FBiH Official Gazette 33/03 and 38/09

⁶<https://www.fmoit.gov.ba/upload/file/Studija%20o%20procjeni%20uticaja%20na%20okoli%25%A1%20podzemne%20eksploatacije%20u%20jami%20Rupice%20-%20Netehnicki%20rezime.pdf>

⁷<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffmoit.gov.ba%2Fupload%2Ffile%2F2020%2F0koli%25C5%25A1ne%2520dozvole%2FElektronski%2520registar%2520ovla%25C5%25A1tenika%252007.7.2023..docx&wOrigin=BROWSELINK>

⁸ <https://drive.google.com/file/d/16Tkk2APG6bqExvxygrLGmc77n1kCH7D9/view>

⁹ <https://www.fmoit.gov.ba/bs/okolisne-dozvole/javne-rasprave-i-javni-uvidi/javni-uvid-nacr-okolisne-dozvole-za-operatora-eastern-mining-d-o-sarajevo>

¹⁰ https://drive.google.com/file/d/1LIW_LEY6qxVsZYN0HGpqaonQTDmx-9gO/view?usp=sharing

¹¹ https://drive.google.com/file/d/14k9gLiZZ9u-8fCNukr00LKw9_UhUM4K_/view?usp=sharing

¹² <https://drive.google.com/file/d/1QY3W9PqyGFMffiUTtMnTArMs3Lj53rrz/view?usp=sharing>

Luscinia megarhynchos, Falco subbuteo, Falco peregrinus, Phoenicurus ochruros, Serinus serinus, Eremophila alpestris, Canis lupus, Ursus arctos; Species from Appendix III of the Bern Convention registered in the project's impact area include *Garrulus glandarius, Passer domesticus, Columba palumbus, Pica pica, Corvus monedula, Corvus cornix, Sturnus vulgaris, Mustela nivalis, Martes martes, Martes foina, Meles meles*.

17. On the basis of the documents cited in the text above, at the request of the investor, FMOiT issued Decision UPI 05/2-19-5-60-2/20 on 28. 3. 2023, amending and supplementing the final Decision of FMOiT dated 5. 2. 2021.¹³ This cited decision was amended, *inter alia*, in the part referring to the measures to protect the flora and fauna and to mitigate and preserve flora and fauna, especially in relation to the protection of Vrući potok and Trstionica streams, which have high biodiversity values, as well as the protection of endangered, vulnerable, and protected large species of mammals, birds, and plants in accordance with the goals and measures of the Biodiversity Action Plan and the provisions of the Nature Protection Law. Additionally, FMOiT stipulated the investor's obligation to recover (remediate) any damage to streams, ecological conditions, and aquatic habitats in the shortest possible time, as well as to plan and implement remediation and restoration measures for the Vrući potok habitat, in accordance with a developed plan for remediation and restorative management under the supervision of an appropriate competent expert. It was also stipulated that “*within the measures for the restorative management of the spruce forest habitat for the purpose of compensating the net losses caused by the project, plan and implement measures to avoid the impact of project activities on the area planned for protection as special nature reserves 'Gornja Trstionica-Bukovica' due to the pronounced diversity and uniqueness of the habitat within this area, which extends north of the Rupica area in the Kakanj Municipality.*”
18. Finally, the duty of regular monitoring and supervision of the state of biodiversity was prescribed, in accordance with the Biodiversity Protection Action Plan, with a view to determining net losses/gains and the requirement to undertake additional measures to protect and improve/restore biodiversity, including measures to avoid and minimize negative impacts on biodiversity, as well as protective, restoration, and restorative management measures.
19. In the aforementioned documents, detailed study on the impact of the project on wild species and natural habitats was conducted, with a special focus on species listed in Appendices I, II, and III of the Bern Convention. The Biodiversity Protection Action Plan, which includes a hierarchy of measures with the ambition of having no net losses, demonstrates the project's compliance with the requirements of the Bern Convention and other applicable international instruments.
20. Furthermore, reptiles are not registered in the area of the Rupice mine location. Some reptile species were registered in certain parts of the road construction route. All locations suitable for reptiles have been inspected immediately prior to the commencement of any construction works to verify the presence and possible trans-location of protected reptiles in accordance with the Biodiversity Action Plan.
21. Additionally, some species of birds, depending on their idio-environmental conditions, do use parts of the respective area for overflights and searching for food and water, but their nests were not registered in the project areas.
22. The project areas are not active habitats for mammals (bear, wolf, deer, badger, etc.), but these species (wolf and bear) occasionally use, and others more frequently use parts of the project area for local movements in search of food and water.
23. Regarding the location, the allegations of the complaint are incorrect, as it is in the Municipality of Vareš, outside the areas designated for protection in accordance with national regulations and in line with the Spatial Plan of the Vareš Municipality (2018-2038) and the Spatial Plan of the Zenica-Doboj Canton (2009-2029).

¹³ https://drive.google.com/file/d/1hLq89mU6l0bNc691zGA_hp9yngeidJV/view?usp=sharing

24. Although the construction and operation of the mine project caused the loss of acidophilic spruce forest on an area of 57 hectares (Class III forest), in accordance with the Action Plan, restoration and restorative management of an area of 115 hectares of existing degraded spruce forest near the project area is planned for compensation.
25. **Regarding the response to question 3 of the complaint**, it is important to note that the aforementioned cited species are spread across a wide area and are maintained in preserved habitats, and it has been estimated that the project activities **will not have any negative impact on the cited species and/or their habitats**. With the implementation of mitigation measures (mentioned above), as planned by the Biodiversity Action Plan and Decision of FMOiT dated 28.03. 2023, the avoidance and minimization of the project's impact on the mentioned species and their habitats are ensured. Therefore, the allegations of the complaint in question 3 are inaccurate. Also, concerning the allegations related to Trstionica and Vručí potok, we refer to the provisions of FMOiT's decision cited under point 17 of this response.
26. **Regarding the response to question 4 of the complaint**, none of the areas in the project fall into the habitats supporting wild species within the scope of other international conventions (Ramsar, CMS, Accobams, Barcelona Convention, etc.). Similarly, the project areas are not identified as areas of the NATURA 2000 or Emerald networks.
27. **In response to question 5 of the complaint**, as the complainant herself states, she did not initiate proceedings before the courts or state authorities in Bosnia and Herzegovina that were available to her. Furthermore, it is incorrect that the legal system in Bosnia and Herzegovina does not provide adequate legal protection for wildlife and habitats. In Bosnia and Herzegovina, namely in the FBiH, there is adequate criminal, civil, administrative, and constitutional protection of environment, including legal protection for wildlife and habitats, as evidenced by the court practice.¹⁴
28. The respective complaint should, therefore, be considered in context of the usual practice of international bodies and institutions that accept complaints only after domestic remedies available have been exhausted.
29. Based on all the above, we propose that the Secretariat of the Bern Convention dismisses the complaint.

MINISTER

dr. sc. Nasiha Pozder

¹⁴ <https://vsud-fbih.pravosudje.ba/vstvfo-api/vijest/download/124509>