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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

43rd meeting

Strasbourg, 27 November - 1 December 2023

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**Follow-up of Recommendations 98 (2002) and 212 (2021)
on the project to build a motorway through the Kresna
Gorge
(Bulgaria)**

- REPORT BY THE GOVERNMENT -

- October 2023 -



REPUBLIC OF BULGARIA

MINISTRY OF ENVIRONMENT AND WATER

Complaint No. 2001/4 and Recommendations No. 98 (2002) and 212 (2021) on the project to build a motorway through the Kresna Gorge (Bulgaria) (Struma Motorway Lot 3.2)

Progress after the February 2023 Progress Reports and additional reports from March, June and August 2023

24 October 2023

Progress towards the implementation of Recommendation 212 (2021):

1. Introduction

Struma Motorway is a road of international importance, part of the core TEN-T network (the former Trans European Corridor IV, presently Orient/East-Mediterranean Corridor) and a top priority infrastructure project for the EU.

Struma Motorway Lot 3.2 is a complex project facing technical and environmental challenges. It is of great economic and strategic importance but more importantly, further delay of the implementation of this last section of the Motorway will have irreversible detrimental effect on the species and habitats.

The Bulgarian authorities are determined to finalize this strategic part of the TEN-T network, thus ensuring connectivity of Europe in the South-North transport corridor. In this respect, the implementation of Lot 3.2 is being and will remain a priority.

2. Project history and environmental procedures

In 2015-2017, a new EIA studied five equally detailed project alternatives the long tunnel and four new options. Three were evaluated as incompatible, and two – the long tunnel option and a new Eastern Alternative G10.50 (“G10.50”) – as compatible with the Natura 2000 sites. The latter (G10.50 option) envisages the construction of a new carriageway bypassing Kresna Gorge from the east, so that one direction of the traffic would use the new carriageway and the other would use the existing road (with measures for biodiversity conservation and eastern bypass of Kresna town on a new terrain). The EIA decision prescribes mandatory measures to be implemented at all stages of the project, including design, construction and operation.

The G10.50 demonstrated the advantage over the long tunnel option in 8 environmental components and factors - atmospheric air, surface and groundwater, geology, landscape, soil, waste, noise, cultural heritage and risk on human health – 5 of them significantly advantageous for G10.50. G10.50 provides a reasonable balance between environmental and biodiversity protection, economic efficiency, technical feasibility and safety.

In October 2017, G10.50 was approved by the Minister of Environment. The EIA Decision requires implementation of specific mitigation measures to reduce the impact on the protected species from the traffic on the existing road that will be used in one direction only, thus significantly reducing also traffic volume.

The EIA Decision is confirmed by the Supreme Court with a final judgement, which is in force and legally binding. The judgement confirmed the legitimacy of the EIA Decision on procedure and substance, and its compliance with the national and the EU environmental legislation.

3. The development of site-specific conservation objectives (SSCOs)

Having in mind the environmental sensitivity and the unique biodiversity in the area, the Bulgarian authorities have taken the necessary steps to ensure the elaboration of the Site-Specific Conservation Objectives (SSCOs) for the two affected Natura 2000 sites - “Kresna” and “Kresna-Ilindentsi”, and a Review of the conclusions of the Appropriate Assessment report for Lot 3.2. of Struma Motorway in the light of the adopted SSCO (AA review) has been initiated. These actions have been taken following the guidelines and recommendations of the EC given in the Observation Letter, October 2019, as our understanding is that they are also in full compliance with point 3 of Recommendations No. 212 (2021), adopted on 3 December 2021 by the Standing Committee of the Bern Convention.

The development of SSCO began in 2020. Ministry of Environment and Water (MOEW) assigned their preparation to a team of biodiversity specialists from the Bulgarian Academy of Science and the academic community in Bulgaria, with the participation of international experts contracted by the EC.

The key task of the international experts was to provide methodological and technical assistance to the State in the elaboration of the SSCO for the two sites and as a result establish a general approach in the development of SSCO for all Natura 2000 sites in Bulgaria. Thus, the international experts’ assistance focused in detail on the development of the necessary methodology, data requirements and structure of the SSCO in accordance with EC’s recommendations and best practices.

The draft SSCO were approved by the MOEW in October 2021. The adopted approach was evidently also satisfactory to the EC, having in mind that in consultations in September 2021 it instructed that the same methodology to be followed for the elaboration of the SSCO for all protected sites in the country.

The actual adoption of the SSCO was subsequently delayed following the efforts of the Bulgarian Authorities to fully implement the recommendations of the Bern Convention to closely cooperate with environmental NGOs and stakeholders in the development of the project. Due to long and detrimental process, the SSCO were promulgated in October 2022.

The approved SSCO for the two Natura 2000 sites were appealed by the NGOs. It is necessary to point out that several complaints on the part of NGOs were filed making various allegations and arguments concerning the illegality, respectively, invalidity of the acts issued by the Minister of Environment and Water, which acts approved the SSCO. Even though filing complaints is a legally recognized right of each individual and entity, it is worth noting that such actions can and should be taken by citizens and organizations whose rights, liberties and legal interests have been violated or jeopardized by the respective administrative act or for whom this act imposes legal obligations. In its final decision the Supreme Administrative Court holds that the SSCO approval order issued by the Minister of Environment and Water does not in any way affect the rights of the complainants, furthermore, in the course of issuing the SSCO approval order the requisite procedural and substantive requirements of the law have been complied with.

As already stated in the reports of the Standing Committee of the Bern Convention the final Decision of the Supreme Administrative Court overrules all arguments against the orders for approval of the SSCO and confirmed them as valid. This makes it possible to assess fully the impact of the implementation of plans, programs, projects and investment proposals on the subject of protection in the protected sites.

4. Review of the Appropriate Assessment report for Lot 3.2. (AA review)

The AA review has been initiated following the adoption of the SSCO and in line with the EC’s observation on the need to verify the 2017 AA conclusions against them. The AA review was commissioned in January 2023.

The AA review is already done, based on methodology consulted and approved by Jaspers and taking into account the comments of both JASPERS and the EC on the initial drafts. During the consultation process on the methodology of the review key aspects as prioritization of habitats and species, assessment of cumulative impacts, effectiveness of the mitigation measures, etc. were thoroughly analyzed taking into account the relevant good examples from other projects.

The AA review was sent for comments to the Commission services on July 25, 2023. The results of the review reconfirm the conclusions of the 2017 EIA/AA Decision that G10.50 is the most environmentally preferable also in the light of the SSCOs for Lot 3.2.

The AA review has been announced for public discussion on 25 July 2023 and is publicly available at: <https://api.bg/bg/am-struma-lot-3-2.html>

On 29 August 2023 the AA review has been presented Working Group 2. The AA review has been discussed by all WG members and they presented their opinions, statements, comments and questions.

We would kindly like to remind that the Bulgarian authorities are not legally entitled to initiate a “revised AA” and such a procedure would infringe fundamental legal principles such as the stability of administrative acts and the supremacy of law. In addition, it would clearly breach EU law. Under EU law, it is inconceivable to challenge EU procedures ex post under procedures that EU law does not foresee. Such an approach would violate the environmental legislation and endanger the entire process.

Following the observations of the European Commission on the 2019 Application form for the project, the Site specific conservation objectives (SSCOs) for the “Kresna” and “Kresna-Ilindentsi” Natura 2000 sites were developed and adopted. A review of the conclusions of the AA report for Lot 3.2. of Struma Motorway in the light of the adopted SSCOs has also been drawn up. These steps were taken outside of any procedure with the conviction that the sensitivity of the area warrants greater efforts and persuasion of the stakeholders that the authorities are taking the necessary legal and administrative steps to ensure protection of wildlife. This, however, should not lead to disregard of legal principles and procedure.

5. Working Group 2 - "Environmental Aspects"

Recommendation 212 (2021) of the Standing Committee of the Bern Convention invites closer cooperation with all stakeholders in the finalization of the project. To that end, the Joint Report related to the File from 16.11.2021 stipulated establishment of a working group to develop a consensual scientific analysis of the compliance of the conclusions of the AA Report for project "Improvement of the route of Lot 3.2 of the Struma Motorway" with the SSCOs adopted by MoEW for the two affected Natura 2000 sites (WG 2).

The scope of work and tasks of WG 2 follow the objectives established in the Joint Report and aim to ensure the maximum degree of transparency, awareness, and expediency in the AA Review, as well as subsequent development of the project according to the environmental legislation and considering the sensitive biodiversity in the area.

The first meeting of WG 2 was held on February 15, 2023, at which the members of WG2 and the Rules of Procedure, as well as the approach and methodology for developing the AA Review, were presented and discussed. Since then the team of experts elaborated the AA review strictly following all the comments and recommendations provided by Jaspers and EC.

On August 29th, 2023 a second meeting of WG 2 was held, at which the AA Review was presented.

The meeting was attended by representatives of state institutions, scientific organizations and representatives of the non-governmental sector, as follows: Ministry of Regional Development and Public Works, Ministry of Environment and Water, State Agency for Road Safety, Ministry of Transport and Communications, Institute for Green Policy, Institute for Biodiversity and Ecosystem Research, Bulgarian Academy of Sciences, Institute of Forestry, Sofia University "St. Kliment Ohridski" - Faculty of Biology, Institute of Forestry, National Natural History Museum, Environmental Information and Training Center and JASPERS representatives. An agreement was not achievable on the presented analysis, thus according to the Rules and Procedures of WG2 all opinions are to be presented to the authorities.

Nevertheless, after a discussion at the meeting, a consensus was reached among the members of the WG 2 that there is a need to initiate a new feasibility study to identify options for additional routes to secure transport corridor from Sofia to Kulata outside the Kresna Gorge. Planning the next meeting of WG 2 and also WG3 is ongoing.

6. Urgent measures

Notwithstanding the choice of a route for Lot 3.2., the European Commission requires urgent implementation of interim measures to mitigate the impact of the existing traffic on the protected habitats and species in the gorge.

The NGOs, appealed against the MoEW's allowance of these measures. It is noteworthy that the court held that the complaint was inadmissible, respectively, the court decided to not take further action on their appeal and terminated the case. The court ruling entered in force on June 14, 2023 and RIA is currently proceeding further with the measures.

Their implementation is envisaged to be finalized by March 2024.

7. Construction of a roundabout near Kresna

At the extraordinary Bureau meeting in June 2023, the allegation by the complainant about starting the construction of Lot 3.2. has been discussed.

The completion of the Kresna road junction was assessed in the 2017 EIA/AA. This road junction is needed for a safe and conflict-free connection between road I-1 /E-79/ and Lot 3.3 regardless of the Lot 3.2 alternative chosen.

We would like to stress once again that it is only the road junction near Kresna town that was under construction. It is located south of Kresna town and more than 4 km away from Kresna Gorge. The road junction neither affects, nor predetermines the choice of alternative for Lot 3.2. It provides safe connection of the existing part of Struma motorway (Lot 3.3.) with the existing road E79.

8. General overview

Recommendation 212 (2021) of the Standing Committee of the Bern Convention invites closer cooperation with all stakeholders in the finalization of the project with a view to establishing a fundamental cooperation relationship with the complainants and ensuring a functional and transparent engagement mechanism with the complainants and other relevant stakeholders (scientific bodies, NGOs, civil society including representatives of the local communities). It is also worth recalling that the Recommendation called on the cooperative spirit on both sides.

Throughout the years, the Bulgarian Authorities have tried to involve in a constructive and productive way the civil society and stakeholders - setting up committees, working groups, meetings, reports - going above and beyond all administrative procedures the environmental legislation requires.

We would like to assure you that the new Bulgarian government is determined to implement the Bureau recommendations in their efforts and attempt to reach synergy, dialogue and consensus with the non-governmental organizations. After all, the state should protect and safeguard the public interest, security and health of its population, as well as to put in place conditions for economic stability and prosperity.

The Bulgarian government continues to actively and consistently make efforts in the search for dialogue and cooperation with all stakeholders, especially the complainants, in order to finalize the project. This is evidenced by the proposal of the Bulgarian authorities made at the second meeting of WG 2 in August, 2023.

Fully aware of the increasing traffic, the authorities have made yet another proposal to engage the NGOs constructively - to initiate feasibility studies to identify additional connectivity between Sofia and Kulata in order to further reduce the pressure from the right lane traffic in the gorge while the already approved alternative is under implementation. This will allow the construction of the new left lane, which will then relocate the entire traffic outside of the Gorge, while the rehabilitation of the existing road is ongoing. The latter is in urgent need of major reconstruction regardless of how it will be used in the long run. On the one hand, bridges, tunnels and other structures on the road are identified as dangerous and their reconstruction needs to be started urgently in order to prevent collapsing and serious accidents. On the other hand, such reconstruction would allow the implementation of defragmentation and fencing facilities which will protect the species.

In conclusion, we would like to point out that generally, we accept the proposal to convene a Workshop in Kresna in 2024 but we would like such an initiative to be discussed additionally and in greater detail, including

in terms of time periods, subject matter and ways to conduct it. The Bulgarian authorities reserve the right to weigh up the advantages and disadvantages of such an initiative taking into account the public attitudes, the wide public response, opinions and viewpoints of a wide circle of stakeholders in the course of the project implementation.

We would like to remind that the project has received a wide public support from the local citizens and various professional organizations, with the result that the Bulgarian authorities need to conform their actions with these and not to allow public tension, conflicts and opposition among various groups, viewpoints and positions on the subject. We would like to point out that a major part of the locals (more than 6,000 local citizens) have signed declaration in support of the implementation of G10.50. Various organizations and stakeholders, such as Rafting.org (one of the most active rafting clubs at Struma river), Association "Future for Man, Sports and Tourism in the Kresna Gorge" and the Bulgarian Association of the Victims of Accidents, also recognize the need for the project and insist on its rapid implementation. Due to the above and in the light of the foregoing, it is important to take into account the public interest as a whole and to find a balanced and reasonable decision in the implementation of such an initiative. Following analysis of the proposal we will notify the Bureau in a greater detail concerning the approach and possible options for its conduct.

- August 2023 -

Complaint No. 2001/4 and Recommendations No. 98 (2002) and 212 (2021) on the project to build a motorway through the Kresna Gorge (Bulgaria) (Struma Motorway Lot 3.2)

Progress after the February 2023 Progress Reports and additional reports from March and June 2023

11 August 2023

Progress towards the implementation of Recommendation 212 (2021):

The Bulgarian authorities are determined to finalize this strategic part of the TEN-T network, thus ensuring connectivity in Bulgaria. In this respect, the implementation of Lot 3.2 is being and will remain a priority.

Having in mind the environmental sensitivity and the unique biodiversity in the area, the Bulgarian authorities have taken the necessary steps to ensure the elaboration of the Site-Specific Conservation Objectives (SSCOs). A review of the conclusions of the Appropriate Assessment report for Lot 3.2. of Struma Motorway in the light of the adopted SSCOs has also been developed. These tasks were implemented especially to ensure full compliance with the environmental acquis and best practices.

9. Review of the conclusions of the Appropriate Assessment report for Lot 3.2. of Struma Motorway in the light of the adopted SSCOs (AA review)

As already reported, the AA review has been initiated following the adoption of the SSCOs and in line with the EC's observation on the need to verify the 2017 AA conclusions against them. The AA review was commissioned in January 2023. The review is already done, based on methodology consulted and approved by Jaspers and taking into account the comments of both JASPERS and the EC on the initial drafts. During the consultation process on the methodology of the review key aspects as prioritization of habitats and species, assessment of cumulative impacts, effectiveness of the mitigation measures, etc. were thoroughly analyzed. The review was sent to the Commission services on July 25, 2023 and we are currently expecting their feedback. The results of the review confirm the conclusions of the 2017 EIA/AA Decision that G10.50 is the most environmentally preferable in the light of the SSCOs for Lot 3.2. The final AA review is publicly available at: <https://api.bg/bg/am-struma-lot-3-2.html>

On 29 August 2023 the AA review is to be presented and discussed by Working Group 2 (see it. 2 below).

As already stated, further development of the project for the implementation of Lot 3.2 through Kresna Gorge is entirely dependent on the outcome of the review and will only continue once it is accepted by the Commission services.

We recall once again that the 2017 EIA/AA decision is legitimate, valid and legally binding, i.e. any further steps in the project necessitate its observance.

10. Working groups

Recommendation 212 (2021) of the Standing Committee of the Bern Convention invites closer cooperation with all stakeholders in the finalization of the project. To that end, the Joint Report related to the File from 16.11.2021¹ stipulated establishment of a working group to develop a consensual scientific analysis of the compliance of the conclusions of the 2017 Appropriate Assessment Report conclusions with the adopted SSCOs for the two affected Natura 2000 sites (WG 2). The scope of work and tasks of WG 2 follow the objectives established in the Joint Report and aim to ensure the maximum degree of transparency, awareness, and expediency in the AA Review, as well as a subsequent development of the project according to the environmental legislation and considering the sensitive biodiversity in the area.

¹ <https://rm.coe.int/files82e-2021-bulgaria-kresna-joint-report-following-osa/1680a47ec2>

The first meeting of WG 2 was held on February 15, 2023, at which the members of WG2 and the Rules of Procedure, as well as the approach and methodology for developing the AA Review, were presented and discussed. Since then the team of experts elaborated the AA review meeting all the comments and recommendations provided by Jaspers and EC. On August 29, 2023 the AA review is to be presented and discussed by working group 2 where all the WG members can present their opinions, statements, comments and questions.

The composition of the Working Group 3 with the task of road safety and needs of local communities according to item 9 of the recommendation (WG 3) and the Rules of Procedure was also updated and will start work soon. The need of involvement of additional representatives of the local community and NGOs as members of the WG3 is under consideration due to declared high interest on the project. A major part of the locals (more than 6,000 local citizens) have signed declaration in support of the implementation of G10.50. Various organizations and stakeholders, such as Rafting.org (one of the most active rafting clubs at Struma river), Association "Future for Man, Sports and Tourism in the Kresna Gorge" and the Bulgarian Association of the Victims of Accidents, also recognize the need of the project and insist on its rapid implementation. More information can be obtained at the following links of national media:

<https://www.24chasa.bg/bulgaria/article/14920753>

<https://www.focus-news.net/novini/Bylgaria/Izpratiha-podpiska-do-Ursula-fon-der-Laienza-zavurshvane-na-AM-Struma-1773587>

11. Urgent measures to mitigate the impact of the existing traffic in the gorge

Notwithstanding the choice of a route for Lot 3.2., the European Commission requires urgent implementation of interim measures to mitigate the impact of the existing traffic on the protected habitats and species in the gorge. The NGOs, despite their objective to protect nature, appealed against the MoEW's allowance of these measures. Thereby, the NGOs delayed the implementation of the measures, although they are fully aware that the measures are urgently needed and long overdue. The court decided to not take further action on their appeal and terminated the case. The court ruling entered in force on June 14, 2023 and RIA is currently proceeding further with the measures. Their implementation is envisaged to be finalized by March 2024.

12. Extraordinary Bureau meeting

At the extraordinary Bureau meeting in June 2023, the allegation by the complainant about starting the construction of Lot 3.2. has been discussed. We would like to stress that only the road junction near Kresna town is under construction. It is located south of Kresna town and more than 4 km away from Kresna Gorge. The road junction neither affects, nor predetermines the choice of alternative for Lot 3.2. It provides safe connection of the existing part of Struma motorway (Lot 3.3.) with the existing road E79.

4. Conclusion

In conclusion, the Bulgarian authorities welcome the progress achieved in the implementation of Recommendation 212 (2021) and will continue to support the constructive partnership and good cooperation with all stakeholders, including in relation to the work of the second and third working groups.

- June 2023 -



REPUBLIC OF BULGARIA

MINISTRY OF ENVIRONMENT AND WATER

**Complaint No. 2001/4 and Recommendations No. 98 (2002) and 212 (2021) on the project to build a motorway through the Kresna Gorge (Bulgaria)
(Struma Motorway Lot 3.2)
Following-up Letter by the Complainant from 22nd May 2023**

June 21th, 2023

The present report replies to the complainant's letter of 22nd May 2023 and addresses the forthcoming extraordinary meeting of the Bureau that will take place on 26th June 2023.

Bulgarian government does not agree with the view of the complainant. With regard to present all the taken measures please find below the procedures that have been carried out so far including the ones with regard to the mitigation measures.

In their effort to stop the project, in the last few months the NGOs have filed many claims and alerts against different steps towards its implementation. They even appealed against the allowance of urgent mitigation measures for the several herpetofauna species, thus hindering their immediate implementation (s. item 2 below).

Their current report is focused on the construction of the road junction Kresna and implies that the construction the G10.50 alternative for Lot 3.2 has commenced.

As already reported, following the observations of the European Commission on the 2019 Application form for the project, the Site specific conservation objectives (SSCOs) for the "Kresna" and "Kresna-Ilindentsi" Natura 2000 sites were developed and adopted. Despite their participation in the process, the NGOs filed complaint against the SSCO which was overturned by the Court.

A review of the 2017 EIA/AA report against the adopted SSCO was commissioned in January 2023. The review is currently under way, based on methodology approved by Jaspers and taking into account the comments of both Jaspers and the EC on the initial draft. Further development of the project for the implementation of Lot 3.2 is entirely dependent on the outcome of the review and will only continue once it is finalized and accepted by the Commission services. The Bulgarian Authorities have committed not to move ahead with the implementation of the G10.50 option before this analysis is finalized and intend to honor that commitment.

We recall once again that the 2017 EIA/AA decision is legitimate, valid and legally binding, i.e. any further steps in the project necessitate its observance.

1. Actions taken by the Government

On April 5th, 2023, RIA has notified MEW of the investment proposal „Optimization of the route of Struma Motorway, Lot 3.2“. The procedure under the environmental legislation is pending. **MoEW will decide on the notification only after the AA review is completed.**

On April 6th, 2023, agreements for design and construction of Lots 3.2.1 and 3.2.2 of Struma Motorway were signed.

The signed contracts were annexed introducing a limitation condition that the project implementation will continue **only in case the approved alternative (G10.50) is confirmed, after completion of the AA review.** The execution of the contracts is also conditional on the completion of the environmental procedure for the investment proposal “Optimization of the route of Struma Motorway, Lot 3.2” with a legally binding act and available funding is secured.

The signing of the contracts will ensure that, if the AA review confirms the findings of the 2017 EIA/AA report, timely and immediate technical actions can be taken to avoid further delays of the implementation of Lot 3.2.

On April 19th, 2023, a Detailed Spatial Development Plan – Parcel Plan (DSDP-PP) was also approved by the Minister of Regional Development for the completion of the road junction at Kresna town².

On May 3rd, 2023, a building permit was issued and, on May 16th, 2023, the construction works for completion of the road junction began. The said junction is situated south of the town of Kresna and is more than 4 km away from the Kresna Gorge.

Road connections Nos. 1, 2 and 3 are ready and the construction of road connections No. 4, 5 and 6 is necessary to provide a conflict-free and safe traffic of the vehicles in direction Sofia-Kulata in the complicated section where the traffic switches from the two-lane gauge of road I-1 into the motorway gauge of Lot 3.3.

The road junction Kresna is an independent phase of Lot 3.2³. It neither affects, nor predetermines the choice of alternative for Lot 3.2. The road junction in phase 1 provides connection of the existing part of Struma motorway – Lot 3.3. with all the technical solutions for Lot 3.2.

The completion of the road junction Kresna was assessed in the 2017 EIA/AA but is needed for a safe and conflict-free connection between road I-1 /E-79/ and Lot 3.3 regardless of the Lot 3.2 alternative chosen.

2. Urgent measures to mitigate the impact of the existing traffic in the gorge

Notwithstanding the choice of a route for Lot 3.2., the European Commission requires urgent implementation of interim measures to mitigate the impact of the existing traffic on the protected habitats and species in the gorge. The NGOs appealed against the MoEW’s allowance of these measures⁴. Despite their objective to protect nature, the NGOs delayed the implementation of the measures, although they are urgently needed and long overdue. Now the measures cannot be applied before the court delivers a final judgement.

On June 1st, 2023, the court decided to not take further action on their appeal and terminated the case. **Once the court ruling enters in force, RIA will commence the implementation of the measures.**

3. Non-motorway road

It is not clear what the complainant actually claims with the statement that the route will not be a motorway but a first-class road. All of the assessed options for Lot 3.2 provide the necessary traffic permeability to eliminate the bottleneck currently forming in this section of the route. There is no legal obligation under the TEN-T Regulation (Regulation (EU) 1315/2013 of the European Parliament and the Council on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU) to ensure that the Network is entirely formed of motorways as long as the roads comprising it are able to handle the traffic. 39% of the road type on the TEN-T network and 15% of the Core Network is non-motorway. Moreover, not only the G10.50 alternative but also the so called “full eastern alternative” and

² “Completing the road junction “Kresna“ /road connections Nos 4,5 and 6/ at km 401+691.90 on the mileage of Struma Motorway at Lot 3.2. =397+000 on the mileage of Struma Motorway, Lot 3.3“.

³ See annex 1: Map of the Kresna junction.

⁴ As reported in our addendum for the Bureau meeting in April 2023.

the long tunnel alternative (both addressed by the complainant) are designed with a non-motorway gauge and speed limit of 80 km/h.

4. Conclusion

The complainant’s report has been provided to the Bureau and promptly scheduled to be addressed at an extraordinary meeting. The Bureau, however, rejected the additional government report provided for the meeting in March 2023, in response to the complainant’s report, due to expiry of the deadline. It is our belief that both parties of the case-file should be treated equally and fairly, incl. upon consideration of their reports.

The complainants further imply that the construction of the road junction has been protested against by local citizens and rafters. It is a fact that only few people have participated in the protests and that many locals and stakeholders embrace the project.

A major part of the locals (more than 3,000 local citizens) have signed to support the implementation of G10.50. Various organizations and stakeholders, such as Rafting.org (one of the most active rafting clubs at Struma river) and the Bulgarian Association of the Victims of Accidents, also recognize the need of the project and insist on its rapid implementation. More information can be obtained at the following links of national media:

<https://trud.bg/%D0%B6%D0%B8%D1%82%D0%B5%D0%BB%D0%B8-%D0%BD%D0%B0-%D0%BA%D1%80%D0%B5%D1%81%D0%BD%D0%B5%D0%BD%D1%81%D0%BA%D0%BE%D1%82%D0%BE-%D0%B4%D0%B5%D1%84%D0%B8%D0%BB%D0%B5-%D1%81-%D0%BF%D0%BE%D0%B4%D0%BF%D0%B8%D1%81%D0%BA%D0%B0-%D0%B2-%D0%BF%D0%BE%D0%B4%D0%BA%D1%80%D0%B5%D0%BF%D0%B0-%D0%BD%D0%B0-%D0%B4%D0%BE%D0%B2%D1%8A%D1%80%D1%88%D0%B2%D0%B0%D0%BD%D0%B5%D1%82%D0%BE-%D0%BD%D0%B0-%D0%B0%D0%BC-%D1%81%D1%82%D1%80%D1%83%D0%BC%D0%B0/>

<https://trud.bg/%D1%80%D0%B0%D1%84%D1%82%D1%8A%D1%80%D0%B8-%D0%BF%D0%BE%D0%B4%D0%BA%D1%80%D0%B5%D0%BF%D1%8F%D1%82-%D0%B8%D0%B7%D0%B3%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D0%B5%D1%82%D0%BE-%D0%BD%D0%B0-%D0%BC%D0%B0%D0%B3%D0%B8%D1%81%D1%82%D1%80%D0%B0%D0%BB%D0%B0-%D1%81%D1%82%D1%80%D1%83%D0%BC%D0%B0-%D0%BF%D1%80%D0%B5%D0%B7-%D0%BA%D1%80%D0%B5%D1%81%D0%BD%D0%B5%D0%BD%D1%81%D0%BA%D0%BE%D1%82%D0%BE-%D0%B4%D0%B5%D1%84%D0%B8%D0%BB%D0%B5/>

<https://www.focus-news.net/novini/Bulgaria/Asociaciya-s-pismo-dofon-der-Laien-zaloshite-putishta-i-zabavyaneto-na-AM-Struma-1690267>

In conclusion, the Republic of Bulgaria strictly implements and applies the international, European and national legislation for protection of species and habitats, including Recommendations 98 (2002) and 212 (2021) of the Standing Committee.



- February 2023 -



REPUBLIC OF BULGARIA

MINISTRY OF ENVIRONMENT AND WATER

Complaint No. 2001/4 and Recommendations No. 98 (2002) and 212 (2021) on the project to build a motorway through the Kresna Gorge (Bulgaria) (Struma Motorway Lot 3.2)

Progress after the October 2022 Progress Reports and 42nd meeting of the Standing Committee

17 February 2023

Progress towards the implementation of Recommendation 212 (2021):

Following the established good practice from previous reports to the Standing Committee, the MOEW invited again the representatives of the complainants to elaborate a joint report on the progress in the implementation of Recommendation 212 (2021). Given the reluctance of the complainants to submit a joint report the Bulgarian authorities prepared independently the present updated information on the progress of the implementation of Recommendation 212 (2021).

The Bulgarian authorities are determined to finalize the Struma motorway as strategic part of the TEN-T network, ensuring connectivity in Bulgaria. In this respect the implementation of Lot 3.2 is and will remain a priority.

Having in mind the environmental sensitivity and the unique biodiversity in the area, the Bulgarian authorities have taken the necessary steps to ensure the elaboration of the Site-Specific Conservation Objectives (SSCOs), and a Review of the conclusions of the Appropriate Assessment report for Lot 3.2. of Struma Motorway in the light of the adopted SSCOs (AA review) has been initiated. This task needed to be implemented precisely to ensure full compliance with the environmental acquis and best practices.

13. Scope of the Review of the conclusions of the Appropriate Assessment report for Lot 3.2. of Struma Motorway in the light of the adopted SSCOs (AA review)

The AA review has been initiated following the adoption of the SSCOs and in line with the EC's observation on the need to verify the 2017 AA conclusions against them. The scope of the review, as required by the Terms of Reference (ToR), is based on examples and methodology for similar AA reviews provided by JASPERS. The draft ToR for commissioning the review have been provided to JASPERS and adapted to their comments. This analysis is very important and will demonstrate whether the AA conclusions conform with the SSCOs. The review will consider the alternatives that were initially subject to the assessment – Eastern G10.50, the Long Tunnel alternative, and Eastern G20. The implementation of this task is organized by Operational programme "Transport and transport infrastructure" (OPTTI) through a public procurement, and an external consultant has been appointed. The contract was signed in January 2023.

The in-depth analysis of the effects on Natura 2000 sites in the light of the newly adopted SSCOs, will include:

- ❖ Data for the Natura 2000 sites affected by the Project (Name and identification code);
- Date of designation of Natura 2000 sites;
- Habitats and Species for which Natura 2000 sites has been designated (name and code, according to the SDF);

- Date of adoption of SSCOs and information for the act for their adoption;
- ❖ Description of the natural habitat types and habitats of species affected by the project and its alternatives (code and name) - indication of their location in relation to the project and its alternatives; highlight priority habitats and species as per the Habitats Directive;
- ❖ Source of data (e.g. SSCOs documents, existing maps, site visits reports etc.);
- ❖ Detailed project information - GIS/CAD files of alternatives to be assessed;
- ❖ Description of the methodology used: How is the level of significance assessed/determined, are both qualitative and quantitative assessments integrated in the estimation of significance;
- ❖ Description of available data used on species and habitats in the Natura 2000 sites: age, source, coverage; incl. description of the elements/themes that could not be covered due to lack of data, established intermediate SSCOs, etc.; if needed/possible - include suggestions for bridging the gaps;
- ❖ References to available EU guidance on appropriate assessments - for example: Commission notice 28.09.2021: "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC"; the annex to the notice: "Annex to the Commission notice to the Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC";
- ❖ Coherence of the EIA/AA conclusions, in the light of the SSCOs for the affected target features in the two Natura 2000 sites, considering each objective of the affected natural habitats/habitats of species, following the link between:
 - subject of protection in the two Natura 2000 sites - the mentioning of priority species and habitats;
 - conservation status of the target features on BGR level (according art. 17 and art. 12 Reporting for the period 2013-2018) and degree of conservation on site level (according SDFs for the two Natura 2000 sites);
 - adopted site-specific conservation objectives (incl. parameters, measure unit for each parameter, target values) for each target feature affected by the project;
 - the parameters as defined for each habitat and species that are likely to be affected by the project (incl. direct and indirect impacts), during all its stages (construction, operation)- a quantitative assessment of the extent of the impact (if applicable); indication of the potential impact (by degree - significant/insignificant), as well as an justification for the significance of the expected impact; justifications of the likely effects during all project stages;
 - identification of other implemented/permitted or planned plans and projects that may have cumulative impacts on the SSCOs of the affected target features in the concerned Natura 2000 sites;
 - indicating the specific mitigation measures (such as the number and description of the measure) included in the EIA Decision, which are determined to reduce the impact;
 - effectiveness of prevention and mitigation measures to avoid/reduce the identified negative effects;
 - indication of the residual effects on the integrity of the Natura 2000 sites after the implementation of the mitigation measures.
- ❖ Comparison of the conclusions for the different alternatives.

The draft analysis will have to be considered, inter alia, by the Contracting Authority and JASPERS. In case the Contracting Authority has comments or notes on the submitted documents, the contractor has to adapt them and provide a final report. The final analysis is subject to assessment by the competent authority which will also take into account the opinion and recommendations of the working group on environmental issues agreed upon with the stakeholders at the Berne Convention (see p. 2).

14. Working groups

Recommendation 212 (2021) of the Standing Committee of the Bern Convention invites closer cooperation with all stakeholders in the finalization of the project. To that end, the Joint Report related to the File from 16.11.2021⁵ stipulated establishment of a working group to develop a consensual scientific analysis of the compliance of the conclusions of the Appropriate Assessment Report for project "Improvement of the route of Lot 3.2 of the Struma Motorway" with the SSCOs adopted by MoEW for the two affected Natura 2000 sites (WG 2). The scope of work and tasks of WG 2 follow the objectives established in the Joint Report and aim to ensure the maximum degree of transparency, awareness, and expediency in the AA Review, as well as a

⁵ <https://rm.coe.int/files82e-2021-bulgaria-kresna-joint-report-following-osa/1680a47ec2>

subsequent development of the project according to the environmental legislation and considering the sensitive biodiversity in the area.

WG 2 was established by the Minister of Regional Development and Public Works in March 2022. In February 2023, the Minister of Regional Development and Public Works updated the composition of WG 2 and introduced changes in the Rules of Procedure (RoP) of WG2.

The changes in the RoP aim to ensure that all opinions and positions have been considered. In carrying out its tasks, the WG 2 strives to form consensus which, as currently defined in the RoP, exists when there are no substantiated negative opinions expressed on the discussed materials. The WG 2 is not expected to take decisions by voting and its role is to advise the institutions and authorities on environmental issues related to Lot 3.2 of the Struma Motorway. In doing so, if consensus is impossible to reach, the majority opinion will be presented to the relevant authorities together with the motivated dissenting opinion/s. In addition, in order to provide maximum transparency of the deliberations, the RoP stipulate that the WG deliberations will be streamed online. Attached as Appendix 1 herein are the current Rules of Procedure of the WG.

Regarding the selection of the WG's members, they were nominated by the institutions and stakeholders listed in the Joint Report submitted to the Berne Convention in November 2021. It includes representatives of state institutions, the scientific community, non-governmental organizations and JASPERS.

The first meeting of WG 2 was held on February 15, 2023, at which the members of WG2 and the RoP, as well as the approach for developing the AA Review, were presented. The WG 2 will continuously monitor and discuss the AA Review.

The composition of the Working Group 3 with the task of road safety and needs of local communities according to item 9 of the recommendation (WG 3) and the Rules of Procedure was also updated and will start work soon.

3. Conclusion

In conclusion, the Bulgarian authorities welcome the progress achieved in the implementation of Recommendation 212 (2021) and will continue to support the constructive joint work and good cooperation with all stakeholders, including in relation to the work of the second and third working groups established by orders of the Minister of Regional Development and Public Works.

We still consider that Bern Convention Mediation procedure could improve the cooperation and common understanding of this case and we will welcome such support.

Appendices: Appendix 1 – Rules of Procedure of the Working Group on environmental issues

Appendix 1

To Order RD-02-14-144/02.02.2023

Rules of Procedure of the Working Group on “Environmental Issues of the Struma Motorway Project Lot 3.2” (EISMP)

Chapter one

General provisions

Object

Art. 1. (1) These rules govern the structure, operation and work of the working group on “Environmental Issues of the Struma Motorway Project Lot 3.2”

(2) The working group is determined to carry out a public beneficial activity

Name of the working group

Art. 2. The name of the working group is “Environmental Issues of the Struma Motorway Project Lot 3.2”

Venue of the working group meetings

Art. 3. (1) The venue of the working group meetings is Republic of Bulgaria, Sofia 1606, 3, Macedonia Blvd.

(2) If necessary and at the discretion of the chairman, the meetings of the working group can be held in another place or in an online platform suitable for the purpose.

Duration of the working group's activity

Art. 4. (1) The working group is appointed and amended by order of the Minister of Regional Development and Public Works.

(2) The working group ceases its activities upon commencement of construction on Lot 3.2 of Struma Motorway.

Aims and objectives of the working group

Art. 5. The work of the working group aims to ensure the maximum degree of transparency, awareness and expeditious in the successful development of the project.

Art. 6. (1) During the meetings of the working group, the members will be informed about the progress of the project implementation.

(2) The tasks of the working group are:

Task 1. Development of a consensus scientific proposal to carry out an analysis of the conformity of the conclusions of the assessments made in the Environmental Impact Assessment Report for the investment proposal "Improvement of the route of Lot 3.2 of the Struma Motorway" with the specific nature conservation objectives introduced by orders of the Minister of the Environment and Water for protected sites BG0000366 “Kresna-Ilindentsi” and BG0002003 “Kresna”.

Task 2. To discuss the results of the implementation of Task 1 and if necessary to prepare opinions in relation of determining the scope of a subsequent Appropriate Assessment.

Chapter two

Management and powers of the working group

Art. 7. (1) The composition of the working group is determined by order of the Minister of Regional Development and Public Works.

- (2) The working group is represented and led by a chairman. In the absence of the chairman of the working group, his functions are performed by a vice- chairman.
- (3) The powers of the working group are related to the tasks it performs.
- (4) The working group cannot take over the functions of the competent decision-making authorities, but should present to them consensus and substantiated opinions and proposals for the development of the project.

Convening and conducting meetings of the working group

Чл. 8 (1) Only the members have the right to attend the meetings of the working group and, if necessary, other persons designated by the chairman. The chairman, vice-chairman and secretary are also considered members of the working group.

- (2) The presence of the members of the Working Group at the meetings is documented with an attendance list.
- (3) Meetings are convened by the chairman or at the written request of at least one third of the members.
- (4) The secretary of the working group sends an invitation to all members of the working group, containing information about the date, time and agenda, within 5 (five) working days before the meeting.
- (5) The invitation under para. 4 also contains the draft opinions and/or proposals on the topics included in the agenda of the meeting, as well as supplementary materials.
- (6) The members of the working group can submit questions for inclusion in the agenda and draft proposals and/or opinions, no later than 2 (two) working days before the meeting. Questions and proposals that are not included in the agenda cannot be discussed.
- (7) Each member of the working group may appoint its alternate by notifying the chairman and the secretary in writing no later than 1 (one) working day before the meeting.
- (8) The meetings are chaired by the chairman of the working group, and in his absence by the vice- chairman. In the absence of the vice-chairman, the meetings are chaired by a member of the working group designated by the chairman or the vice-chairman.
- (9) When the meetings are held, the possibility of online streaming of the discussion is provided.
- (10) For each meeting, the secretary prepares minutes, which are made available for review by all attended members of the working group within 15 (fifteen) working days after the meeting.

Art. 9 (1) During the meeting, the chairman strives to give opportunity for speaking on the discussed matters to all willing members of the working group.

- (2) The statements of the members of the working group are substantive, on the topics under consideration and are limited to no more than 3 minutes. If a longer presentation is needed, the members of the working group can present it in advance in written form.

Quorum and decision-making

Art. 10 (1) The meeting of the working group is held if more than half of the members are present. In absence of quorum, the meeting is postponed for one hour and is held at the same place and with the same agenda, regardless of the number of members present.

- (2) In carrying out its tasks, the working group strives to form consensus opinions and/or proposals. Consensus exists when the presented members do not express motivated negative opinions on the discussed materials.
- (3) Consensus opinions and proposals of the working group are part of the minutes of the meeting and should be provided to the responsible institutions or competent authorities.

(4) In case of impossibility to reach a consensus, the opinions or proposals discussed in the working group are presented to the responsible institutions together with the motivated negative opinions on them.

(5) A working group makes decisions by voting only on procedural issues with a majority of the members present. When voting, each member of the working group (except for JASPERS representatives who are observers only) is entitled to one vote.

Rights and obligations of the members of the working group

Art. 11 (1) Each member of the working group has the right to become familiar with the rules for the working group's activities.

(2) Each member of the working group has the right to take part in the meetings of the working group.

(3) Each member of the working group has the right to be notified of the holding of the meetings of the working group.

(4) Each member of the working group has the right to be informed about the complete documentation prepared and related to the activity of the working group.

(5) Each member of the working group has the right to receive a copy of documents prepared in respect to the activity of the working group.

(6) Each member of the working group has the right to ask questions and make proposals in accordance with Art. 8 (6) concerning the activity of the working group.

(7) Each member of the working group has the right to express his opinion regarding the questions and proposals raised during the meetings of the working group.

(8) Each member of the working group undertakes to contribute to the activity of the EISMP, as well as to the resolution of problems that have arisen and their elimination.

(9) Each member of the working group undertakes to express his opinion in a motivated manner.

(10) Each member of the working group undertakes to provide the working group with data (including the methodology for their collection) and information at his disposal, which are related to the work of the working group.

(11) Each member of the working group is obliged promptly to notify the chairman of the working group of any circumstances that prevent his membership in the working group.

(12) Each member of the working group is obliged promptly to notify the chairman of the working group about the occurrence of circumstances representing a conflict of interest within the meaning of the Prevention of Corruption and Confiscation of Illegally Acquired Property Act and, upon proof of the same, to terminate his membership in the working group
