



Strasbourg, 26th October 2023



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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

43rd meeting

Strasbourg, 27 November - 1 December 2023

Possible File: 2001/4

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

- REPORT BY THE COMPLAINANT -

Document prepared by

*BALKANI Wildlife Society, Environmental Association "Za Zemiata" (For the Earth)/Friends of the
Earth Bulgaria, Bulgarian Society for the Protection of Birds, Green Policy Institute, Vlahi Nature
School, CEE Bankwatch Network*

- October 2023 -

24 October 2023

**CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS**

Possible file 2001/04: Motorway through the Kresna Gorge (Bulgaria)

COMPLAINANTS' REPORT ON THE CASE

Document prepared by:

BALKANI Wildlife Society, Environmental Association "Za Zemiata" (For the Earth)/Friends of the Earth Bulgaria, Bulgarian Society for the Protection of Birds, Green Policy Institute, Vlahi Nature School, CEE Bankwatch Network.

This Report is produced **only** by the NGO complainants and **not a joint report** due to continuous disregard by the government of Recommendation 212 (2021). This report should be read in conjunction with the [update reports to the Bureau sent in February, May and August 2023](#).¹



Start of the construction works, 16th May, 2023. Photo credit: Stratospheric productions

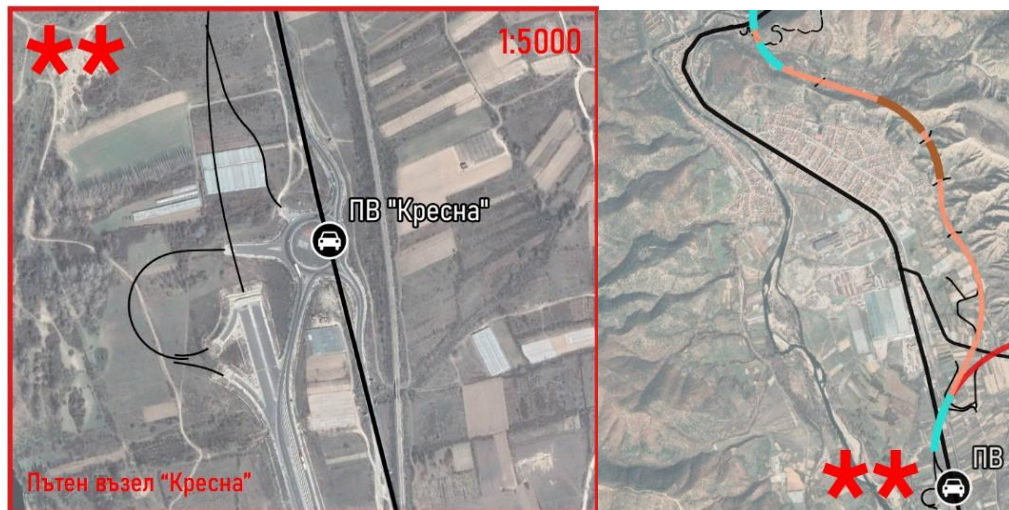
¹ <https://rm.coe.int/files22e-2023-bulgaria-kresna-ngo-report/1680aa906d>

1. The construction works on Lot 3.2 through the Kresna Gorge started - without implementation of Art. 6, par. 3 (Appropriate Assessment) of the Habitats Directive and disregarding the Bern Convention recommendation to not start construction prior to proper assessment of the project.

In the period March-May 2023 the Bulgarian government started construction of Lot 3.2 (the section through the Kresna town and Kresna Gorge) of the Struma Motorway. Here we list only the most important facts:

- The Government signed the contracts for the construction of the entire Lot 3.2 with the private contractor companies selected in 2019 - the subject of the construction is only the route approved in the 2017 EIA procedure.
- In May 2023, construction began on the southernmost part of Lot 3.2 – a road junction with Lot 3.3. Financing was ensured under one of the signed construction contracts for Lot 3.2., so this construction also started the implementation of this contract).
- The started construction is fully part of Lot 3.2 – the official DMP documentation states that it is part of lot 3.2 as approved by the 2017 EIA decision .
- Although based on the 2017 EIA decision, the abovementioned DMP was not assessed in the 2017 EIA as at that stage in 2017 the assessment was on the preliminary planning of the project, when detailed master plans and detailed design did not exist. In this case, this DMP was approved without any Environmental Assessment (EIA or SEA) nor Appropriate Assessment (AA) under the Habitats Directive, nor screening for EIA/SEA/AA.
- The construction of the junction predetermines the impossibility of choosing an alternative route (outside the Kresna Gorge) other than the G10.5 already approved in 2017. On one hand, the construction contracts (one of which started implementation in May 2023) include only the G10.5 Eastern alternative as adopted in the 2017 EIA and nothing else. On the other hand, it is impossible to make corrections to the motorway route once this junction is constructed - even if such corrections are needed according to a new EIA. For example with the aim to avoid the Natura 2000 site and to decrease the slope of a route outside the gorge, the junction should be further south. □ In August 2023, NGOs filed a complaint with the offices of the European Commission - for violation of Art. 6, par. 3 of Habitats Directive 92/43 due to: 1. the lack of revision of the EIA from 2017 violating Art. 6, par. 3 in more than 7 different violations and attempts of the Government to present an informal document called “AA review” as a satisfactory approach to resolve these violations in EIA 2017, without providing real revision of the EIA decision from 2017; 2. The started construction without the DMP of this construction having carried out the procedure under Art. 6, par. 3 of Directive 92/43 (the complaint is attached to [the Bureau update](#) from August²).

² <https://rm.coe.int/files22e-2023-bulgaria-kresna-ngo-report/1680aa906d>



Map 1: the junction that is under construction (narrow black lines); Map 2: the junction and the G10.5 route through the Kresna Gorge as predetermined if the junction is completed. Sources: Road Infrastructure Agency and Google Earth

- NGOs are preparing a complaint to the committee of the Aarhus Convention related to the fact that the Bulgarian court refuses to recognize the right of NGOs to appeal the decision to approve the DMP of the road junction without an EIA and AA.

2. Second meeting of the Working Group 2 – on the need of revision of the EIA and scope of new EIA (measure in implementation of p.2 of Recommendations 212 (2021))

On 29.08.2023 the second meeting of the Working Group 2 was held. There were 2 topics in the agenda.

- First topic was discussion of the informal document, so-called "AA review" - aiming to compare the EIA 2017 decision with the newly formally adopted Site Specific Conservation Objectives (SSCOs). The "AA review" was not approved by the working group - representatives of NGOs and scientific institutions objected against this document due to the lack of a legally valid revision of the EIA 2017. This "AA review" does not constitute a revision of the 2017 EIA through a procedure with legal consequences and is an informal document. NGOs and scientific institutions 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 Habitats Directive found by the EC services.

The aforementioned report emphasizes that it is "taking into account the comments of both JASPERS and the EC on the initial drafts". These comments have been requested from the Chair of the Working Group before, during and a third time after the meeting, but were never disclosed to the Complainants and the other members of the Working Group. Therefore we cannot assess if these comments were really taken into account nor the quality of the JASPERS intervention.

- Second topic was discussion on conducting a new EIA and a new AA. The group for the first time reached a consensus about the fundamental need to make a new EIA and AA in order to find a route that would completely take transit traffic out of the Kresna Gorge. Despite this promising development, discussions began as to whether such a new EIA could begin without delay, which was the position of the NGOs, or on the contrary, its preparation could be postponed indefinitely in order to make new motorway projects, while in the meantime to continue with the construction of

the approved 2017 alternative. This second vision was the position of government representatives. It was discussed to have a next meeting as early as September 2023 - but up to 24 October there has been none and again there is silence and lack of communication from the government.

3. Working Group 3 on local social and economic issues and road safety(measure in implementation of p.2 of Recommendations 212 (2021) –

This working group has never had meetings so far.



Protest in the town of Kresna, May 2023, photo credit Alexander Popov.

4. Revision of EIA – as concluded by the 2022 Standing Committee and as asked by the EC services

No real actions have been undertaken by the Government to start a revision of the 2017 EIA through a legally-meaningful procedure.

5. Working Group 1 - Designation of “Conservation Priorities” and Conservation Objectives of NATURA 2000 sites (measure in implementation of p.2 of Recommendations 212 (2021))

In June 2022, Working Group 1 adopted with scientific consensus both - the "Conservation Priorities" and the SSCOs (Site Specific Conservation Objectives) of the two NATURA 2000 sites in Kresna Gorge, as required by article 4, par. 4 of the Habitats Directive. So far, this was the only action to implement Recommendation 212 (2021) undertaken by the Bulgarian Government. These "Conservation Priorities" reflected the role of the NATURA sites for the coherence of the network, as required by article 4, par. 4 and, more precisely, the role of the biocorridor through the Kresna Gorge - a key issue for an objective EIA and AA of the Struma motorway project (SSCOs methodologically do not reflect the role of the zones for the network coherence).

However in Oct 2022, the new caretaker Government rejected completely the results of Working Group 1 and the developed scientific consensus about the "Conservation Priorities" of the sites. The Government officially adopted other SSCOs, developed without the participation of the Working Group 1 (in violation of Recommendation 212 (2021)) and with unreliable scientific information included in them.

The current government, regularly elected in 2023, did nothing to revise the decisions of the previous one and comply with the results of Working Group 1 and with Recommendations 212 (2021).

In October 2023, at the proposal of the government, the Parliament of Bulgaria adopted changes to the Law on Biological Diversity, which introduced SSCOs into the law - changes aimed at obtaining the EU funds under the National Recovery and Resilience Plan (RRP). At the same time, the parliament rejected another proposal for the same law by 4 members of parliament, with which the term "Conservation Priorities" would be transposed into the law according to article 4, par. 4 of the HabD. Their proposal was grounded on the scientific consensus and results of Working Group 1 according to Recommendation 212 (2021) and on the recent decisions of the Court of Justice of the European Union (CJEU) indicating that SSCOs are only a prerequisite for setting "Priorities" and that article 4, par. 4 of the Habitats Directive specifically requires the determination of "Conservation Priorities". The proposals of the "Green Movement" were rejected by all other parties on the grounds that "Conservation Priorities" such a change is not necessary from the point of view of receiving and approving RRP funds from the European Commission.

There is not only a lack of compliance with Recommendation 212 (2021), but also a systemic approach of disregarding the EU environmental legislation requirements and respect of the EU fundamental rights. We are attaching a report/complaint submitted by an NGO on 13 October 2023 to the European Commission on this issue.

6. Proposal of the Bureau of the Standing Committee to the Bern Convention to hold a Workshop in Kresna in 2024 in order to bring together a wide range of interested parties from Bulgaria, but also from all over Europe and create an opportunity to improve the relationship between the government and civil society.

NGOs fully support this proposal and hope that the Bulgarian Government will also support it, while stopping the construction of the motorway that started in May 2023.

We would like to remind you of the debates on the Kresna case during the 2022 Committee. A few votes were missing to open the file and the final decision was changed after pressure from the Bulgarian authorities from *“revise the EIA/AA including a thorough analysis of all reasonable alternatives outside the Kresna Gorge, thus, respecting Recommendation 98 (2002) and the request from the European Commission”*

to *“revise the EIA/AA report, following the advice of the European Commission, on the potential impact of the motorway, thus respecting Recommendation 98 (2002)”*

As we warned, the government had intention to start construction in the Kresna gorge before May 2023 and absolutely no will to revise the Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) from 2017 which were found violating the Habitats Directive and the Bern Convention. This problem was very well spotted by some delegates when the word 'report' was added

to the final decision and '*alternatives outside*' was excluded. Currently, there is no ongoing legal procedure that includes analysis of reasonable alternatives outside the Kresna gorge.

NGOs ask for:

- **an official opening of the file on the case, as we see started construction of the route through the gorge, signed contracts with building companies for the whole Lot 3.2. motorway section and no respect to and implementation of Recommendations 98 (2002) and 212 (2021). The protection of the Kresna gorge is again under imminent threat and keeping the case as a Possible File has not helped in solving it for 7 years.**
- **the Standing Committee to request from the Bulgarian government to stop construction until a new EIA decision on the motorway in line with EU legislation is provided.**
- **the Standing Committee to request from the Bulgarian government to revise the EIA/AA including a thorough analysis of all reasonable alternatives outside the Kresna Gorge.**

Appendices:

[Signal](#) from 13 October 2023 of the NGO to the offices of the European Commission about the lack of transposition and application of Art. 4, par. 4 of Habitats Directive.

- August 2023 -

Mr. Mikaël Poutiers - Secretary of the Bern Convention

Mr. Eoghan Kelly - Project Assistant

Ms. Nadia Saporito - Project Officer

Report by the complainants: Complaint No. 2001/04: Bulgaria: Motorway through the Kresna Gorge

DEAR MR. POUTIERS,

DEAR MR. KELLY,

DEAR MS. SAPORITO,

Hereby we send you an update by the complainants relevant to the Possible file 2001/04: Bulgaria: Motorway through the Kresna Gorge.

Construction at the Kresna gorge continues and no revision of the EIA/AA foreseen!

During the debates on the Kresna case at last year's Standing Committee of the Bern Convention, a few votes were missing to open the file and the final decision was changed after pressure from the Bulgarian authorities from "*revise the EIA/AA including a thorough analysis of all reasonable alternatives outside the Kresna Gorge, thus, respecting Recommendation 98 (2002) and the request from the European Commission*"

to "*revise the EIA/AA report, following the advice of the European Commission, on the potential impact of the motorway, thus respecting Recommendation 98 (2002)*"

The word '*report*' was added to the final decision and '*alternatives outside*' were excluded. As expected by the complainants and some of the delegates, the government didn't start any legal procedure in 2023 to revise the Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) from 2017 which were found violating the Habitats Directive and the Bern Convention. Moreover, the government started construction of the south junction part of lot 3.2 near the Kresna town, which connects lot 3.2 (Kresna) with lot 3.3 on 16 May 2023 in order to save the 2017 EIA/AA which, according to the government, was to expire seven days later - on 23 May. The official ceremony by the Minister of Regional Development, vice ministers and the mayors of the towns of Kresna and Simitli *de facto* gives a start to the construction of the G10.5 alternative of the Struma motorway that would destroy the Kresna gorge. At present, construction works continue.

The construction works were preceded by a decision by [the Ministry of Regional Development for approval of a Detailed Spatial Plan \(DSP\) on Kresna junction of Struma motorway](#) and preliminary execution of its construction works. The DCP was approved without any Appropriate Assessment thus violating Article 6, Par. 3 of the HabDir (see the attached complaint to the EC from 2 August 2023. It contradicts the decision between DG Regio and the OP Transport Management authorities agreed at Technical meeting on 07 July 2017 (Ref. Ares(2018)1804674 - 04/04/2018). The consensus was not to proceed with the approval and construction of the road junctions at Simitly and Kresna (connecting Lot 3.2 to Lot 3.1 and Lot 3.3. respectively) before a final decision on the Kresna Gorge alternative is approved.

Unfortunately, the new government with Prime Minister Nikolai Denkov that took office in June 2023, didn't do anything to stop the ongoing construction, nor to complete any of the points of Recommendation No.212 (2021). The complainants sent several requests to the new ministers of environment and waters and of regional development, but no legal actions were taken by their side to revert the previous government's decisions, as the deadline for this was July 2023. Currently, construction continues and there is no ongoing legal EIA/AA procedure that includes analysis of reasonable alternatives outside the Kresna gorge.

Working groups inactive and Recommendation No.212 (2021) completely neglected

As noted by the [Spring Bureau report](#), a core problem appeared to be the ongoing lack of good communication and collaboration between parties. In spite of many requests from the complainants the working groups aiming to find consensus solutions for the Kresna gorge are inactive and the current government is not improving the situation:

Working group and scope	Hosted by	Steps taken	Latest developments
WG 1 for designation of Site Specific Conservation Objectives (SSCOs) of NATURA 2000 sites in Kresna	Ministry of Environment and Waters	The working group finished successfully its tasks in 2022 and produced a consensus SSCOs	The consensus SSCOs were ignored by the Ministry of Environment and Waters and alternative SSCOs were approved without any consultation.
WG 2 for analysing the correspondence of the 2017 Appropriate Assessment with the adopted SSCOs and propose the scope of the new Appropriate Assessment (AA) of the Struma motorway	Ministry of Regional Development and Public Works	There was only one initial meeting in February 2023 with no real work done. The government presented a proposal for an approach to preparing an analysis of the conformity of the conclusions of the 2017 EIA/AA with the SSCOs. 2 representatives of the NGOs complaints and 3 representatives of scientific Institutions objected as this would not be a legal procedure they requested new AA. The rules for decision-making were changed - decisions were not taken by consensus.	No new meetings. Requests by NGOs to discuss starting new EIA/AA procedures were ignored.
WG 3 on road safety	Ministry of Regional	The government hasn't	None

and socio-economic issues related to local community and local business	Development and Public Works	still initiated the working group.	
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This is in clear violation of point 3 of Recommendation No.212 (2021):

3. As a priority, initiate a concrete cooperation with complainants and other relevant stakeholders for the finalisation of the Site-Specific Conservation Objectives for the two Natura 2000 sites, as well as in the review of the 2017 EIA/AA report/study on the potential impact of the motorway and in its potential revision, which should be done in light of the newly set SSCOs.

Government avoiding the revision of the 2017 EIA/AA by any means

Caretaker and current government started an approach to preparing an analysis of the conformity of the conclusions of the 2017 EIA/AA with the SSCOs (see attached complaint to the EC). **This analysis is not a legal procedure according to the Bulgarian legislation, doesn't allow public participation and cannot be appealed in front of any court.** Moreover, this analysis aims only to prove that the SSCOs (also approved without public participation) are in line with the G10.5 alternative, saving the 2017 EIA/AA and allowing the government to move forward with the construction in the Kresna gorge (for which contracts with construction companies are already signed).

This analysis does not constitute a revision of the 2017 EIA/AA and does not meet the requirements of Art. 6.3 of Directive 92/43, as even screening for AA is missing. It doesn't allow the evaluation of all alternatives of the Struma motorway following procedures accepted by Bulgarian nor EU law. This analysis in no way resolves the deficiencies of the 2017 EIA/AA – as established in 2019 by the European Commission. NGOs again asked for the development of a new revised EIA/AA and for discussion of its ToR in the Working Group 2, but up to date have not received any answer from the government.

This is in clear violation of point 7 of Recommendation No.212 (2021):

7. Assess all motorway alternatives during the additional review/analysis of the EIA/AA report/study and during the potential revision of the EIA/AA, in order to fulfil the basic requirements of the Habitats, Birds and EIA Directives;

European Commission infringement complaint submitted

21 representatives of civil-society organisations submitted a complaint on 2 August 2023 to the European Commission for the construction works of Struma motorway that started. The complaint is on the violations of the procedures and requirements of Art. 6, para. 3 of Directive 92/43/EEC during the construction of the Kresna section of the motorway and the more general violation of Art. 6, para. 2 of the same Directive. The cumulative impacts, resulting from the construction and operation of the other motorway sections 1, 2, 3.1, 3.3 and 4, financed by the EU, deteriorate the integrity and conditions in the NATURA 2000 sites affected by the motorway section in Lot 3.2.

The complaint is attached as an annex.

Mediation process needed

As discussed before and in a situation of lack of cooperation within the three Working Groups, we think that mediation between the government and the complainants is highly needed. We welcome a

conference in Kresna in 2024 to be initiated by the Bern Convention. We also believe that such a conference should not be organised by the government, but by an independent international group (IENA or similar).

Because of all the above, we request the Bureau to:

- 1. Instruct the government to stop immediately the ongoing construction of the Struma motorway;**
- 2. Instruct the government the government to initiate a new EIA/AA;**
- 3. Instruct the government to resume the cooperation with NGOs and scientific community through all three working groups, including WG1 whose results were ignored;**
- 4. To recommend to the Standing Committee to open the file;**
- 5. To recommend to the Secretariat to organise the conference in Kresna in 2024.**

Best regards,

Annex



EUROPEAN COMMISSION

Complaint – Infringement of EU law

Before filling in this form, please read '*How to submit a complaint to the European Commission*':

https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/

All fields with * are mandatory. Please be concise and if necessary continue on a separate page.

The Commission can receive emails from a 'certified email service' (e.g. ...@pec.it), but for technical reasons we cannot send replies to a certified email address. You should therefore provide a standard email address and/or postal address in the complaint form, so that we can reply to you.

1. Identity & contact details

	Complainant 1	Complainant 2	Complainant 3	Complainant 4
Title Mr/Ms/Mrs	Mr.	Mr.	Mr.	Mr.
First name*	Petko	Andrey	Daniel	Dimitur
Surname*	Tzvetkov	Kovatchev	Popov	Vassilev
Organisation:	BALKANI Wildlife Society	BALKANI Wildlife Society	Environmental association Za Zemiata - Friends of the Earth Bulgaria / CEE Bankwatch Network	School for Nature Vlahi And Local Citizen Initiative Committee
Address*	8 Dragan Tsankov Blvd, Faculty of Biology of Sofia University "St. Kliment Ohridski", P.O. of BALKANI	8 Dragan Tsankov Blvd, Faculty of Biology of Sofia University "St. Kliment Ohridski", P.O. of BALKANI	zh.k. Lozenets, 12 Midjur St., 3rd floor	Village of Vlahi, Municipality of Kresna, Blagoevgrad district,
Town/City*	Sofia	Sofia	Sofia	Kresna
Postcode*	1164	1164	1164	2841
Country*	Bulgaria	Bulgaria	Bulgaria	Bulgaria
Telephone	+359 88 752 2206	+359 88 778 8218	+ 359 2 943 11 23	+359 88 758 4853,
E-mail	petko.tzvetkov@gmail.com	kovatchev6@gmail.com	dpopov@bankwatch.org	vassilevdimitur6@gmail.com
Language*	English, Bulgarian	English, Bulgarian	English, Bulgarian	English, Bulgarian
Should we send	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

correspondence to you or your representative*:				
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	Complainant 5	Complainant 6	Complainant 7	Complainant 8
Title Mr/Ms/Mrs	Mr.	Ms	Ms.	Ms.
First name*	Petko	Zornitza	Fidanka	Nataliya
Surname*	Kovachev	Stratieva	McGrath	Dimitrova
Organisation:	Green Policy Institute	Personally, member, expert and volunteer in Association of parks in Bulgaria	CEE Bankwatch Network	For Blagoevgrad Association
Address*	-	-	31 Shar planina	7 Doiran Str.
Town/City*	Sofia	Pernik	Blagoevgrad	Blagoevgrad
Postcode*	-	2300	2700	2700
Country*	Bulgaria	Bulgaria	Bulgaria	Bulgaria
Telephone	+359 88 842 0453	+359 898 717 361	+359 87 730 3097	+359 88 836 6803
E-mail	kovachpetko@gmail.com	zoristata.stratieva@gmail.com	fidankab@bankwatch.org	natoto@gmail.com
Language*	English, Bulgarian	English, Bulgarian	English, Bulgarian	English, Bulgarian
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Complainant 9	Complainant 10	Complainant 11	Complainant 12
Title Mr/Ms/Mrs	Ms	Ms	Ms	Mr
First name*	Eleonora	Zlatka	Daniela	Yurii
Surname*	Yosifova	Nikolova	Bozhinova	Kornilev
Organisation:	Bulgarian Association for Alternative Tourism	Green Balkans NGO	Personally	Personally, herpetologist
Address*	bul. Al. Stamboliiski 20V	1, Skopie Str.,office10	41 Han Asparuh Str	Saikogasse 6/25/8
Town/City*	Sofia	Plovdiv	Burgas	Vienna
Postcode*	1000	4004	8000	1220
Country*	Bulgaria	Bulgaria	Bulgaria	Austria

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E-mail	eleonora@baat.bg.org	znikolova@greenbal.kans.org	daniela.bozhinova@gmail.com	yukornilev@gmail.com
Language*	Bulgarian, English	Bulgarian	English, Bulgarian	English, Bulgarian
Should we send correspondence to you or your representative*:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Complainant 13	Complainant 14	Complainant 15	Complainant 16
Title Mr/Ms/Mrs	Mr.	Mr.	Mr.	Ms
First name*	Simeon	Toma	Borislav	Vera
Surname*	Arangelov	Belev	Sandov	Staevska
Organisation:	Association of parks in Bulgaria	Association of parks in Bulgaria	Personnally, former Minister of MoEW and vice-prime minister	Society for Investigation Practices and Initiative „Zeleni Zakoni”
Address*	Han Asparuh Str. 26, ap. 1	Han Asparuh Str. 26, ap. 1	-	Zona b-5, bl. 11, ap. 11
Town/City *	Sofia	Sofia	Sofia	Sofia
Postcode*	1000	1000	-	1303
Country*	Bulgaria	Bulgaria	Bulgaria	Bulgaria
Telephone	+359 885 511 011	+359 888 100 373	+359 887 096 757	+359885989593
E-mail	apb@parks.bg	apb@parks.bg	Borislav.Sandov@gmail.com	sip.bulgaria@gmail.com
Language*	English, Bulgarian	Bulgarian, English	English, Bulgarian	English
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Complainant 17	Complainant 18	Complainant 19	Complainant 20
Title Mr/Ms/Mrs	Ms	Mr.	Mr.	Mr
First name*	Desislava	Anton	Georgi	Borislav
Surname*	Aleksova	Drachev	Ivanov	Paunovski
Organisation :	Personnally, Chief assistant professor in	Local Citizen Initiative	Local Citizen Initiative	Bulgarian Rafting Federation

	International Business School, individual member of Bulgarian Tourist Chamber and Association of the parks in Bulgaria	Committee – town of Kresna	Committee – town of Kresna	
Address*	14 Gurko Str.	-	-	92 Oborishte Str.
Town/City *	Botevgrad	Kresna	Kresna	Sofia
Postcode*	2140	2841	2841	1505
Country*	Bulgaria	Bulgaria	Bulgaria	Bulgaria
Telephone	+359886347274	+359 886 844 468	+359 887 244 606	+359 888 15 4392
E-mail	desi_alexova@abv.bg	anton_drachev@abv.bg	gii_62@abv.bg	borislavpaunovski1@gmail.com
Language*	English, Bulgarian	Bulgarian	Bulgarian	English, Bulgarian
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Complainant 21	Complainant 22	Complainant 23	Complainant 24
Title Mr/Ms/Mrs	Mr			
First name*	Vasil			
Surname*	Todev			
Organisation:	Assosiation Bikearea			
Address*	42 Balgarska Morava Str.			
Town/City *	Sofia			
Postcode*	1303			
Country*	Bulgaria			
Telephone	+359 885 18 4342			
E-mail	vasiltodev@gmail.com			
Language*	English, Bulgarian			
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

2. How has EU law been infringed?*

	Authority or body you are complaining about:		
Name*	Ministry of the Environment and Water (MoEW)	Ministry of the Regional Development and Public Works (MRDPW)	Road Infrastructure Agency (REA)

Address	Sofia, 22 Mariya Luiza Blvd., https://www.moew.government.bg/	Sofia, № 17-19 Sv. Sv. Kiril i Metodii str., https://www.mrrb.bg/	Sofia, 3 Makedonia Blvd., https://www.api.bg/
Town/City	Sofia	Sofia	Sofia
Postcode	1000	1000	1606
EU Member State*	Bulgaria	Bulgaria	Bulgaria
Telephone	+359 2 94 060 00	+359 2 94 05 900	+359 2 94 060 00 +359 2 9173 468 +359 2 9173 298 +359 2 9173 408 +359 2 9173 488
Mobile			
E-mail	edno_gishe@moew.government.bg	e-mrrb@mrrb.government.bg	y.yordanov@api.bg gpress@api.bg

2.1 Which **national measure(s)** do you think are in breach of EU law and why?*

1. On 16 May 2023 ³construction works of lot 3.2 of Struma Motorway (Pan-European Corridor IV) in the area of the Kresna Gorge and the town of Kresna started. This was done without the necessary preceding Appropriate Assessment of the Detailed Spatial Plan (adopted on 19 April 2023⁴) and construction permit (issued on 3 May 2023⁵). The construction started based on the approved EIA decision No 3-3/2017 by the Ministry of Environment and Waters, which selected the route alternative “G10,5 eastern” with one lane of the motorway passing through the Kresna gorge, and the other – on the other – east from the gorge. The construction works started with the junction between lot 3.2 and lot 3.3, which is not included and evaluated by the 2017 EIA. Overall, the 2017 EIA does not include detailed planning of none of the route alternatives, and thus, does not evaluate the environmental impacts when having such detailed planning.

³ <https://www.mrrb.bg/bg/ministur-shishkov-doi-zgrajdaneto-na-puten-vuzel-kresna-ne-predopredelya-traseto-na-am-struma-no-pravi-procesa-po-zavurshvaneto-neobratim/> (in Bulgarian – media release of the Ministry of Regional Development MRDPW from 16 May 2023)

⁴ <https://www.mrrb.bg/bg/publicchen-registur-po-chl-3-al-4-ot-zut-na-izdadenite-aktove-za-odobryavane-na-ustrojstveni-planove-i-na-tehnite-izmeneniya-prez-2023-g/> (in Bulgarian – public register with link to order from 19 April 2023 of MRDPW for adoption of Detailed Master Plan DMP „Completion of the road junction “Kresna” (road connection No. 4, 5 and 6) at km 401+691.90 along the mileage of AM “Struma” LOT 3.2 = km 397+000 along the mileage of AM “Struma” LOT 3.3, falling within the scope of AM “Struma” LOT 3.2 in the land of the town of Kresna, Kresna municipality“)

<https://www.mrrb.bg/static/media/ups/tiny/%D0%A3%D0%9F%20%D0%9E%D0%B4%D0%BE%D0%B1%20-%202023/51.rar> (in Bulgarian, public register with link to the electronic copy of adoption Order No RD-02-15-51/19 April 2023 of DMP and DMP itself issued by MRDPW)

⁵ <https://www.mrrb.bg/static/media/ups/tiny/%D0%A0%D0%A1-2023/%D0%A0%D0%A1%2036.pdf> (in Bulgarian, construction consent RS-36/03 May 2023 of MRDPW for final adoption of construction of „Completion of the road junction “Kresna” (road connection No. 4, 5 and 6) at km 401+691.90 along the mileage of AM “Struma” LOT 3.2 = km 397+000 along the mileage of AM “Struma” LOT 3.3”)

2. On 7 April 2023 the Road Infrastructure Agency (RIA) submitted an EIA and AA screening procedure for a project entitled "Struma Motorway route optimization, Lot 3.2" to the Ministry of Environment and Waters (MoEW)⁶. The project provides detailed planning and amendments to the previously adopted "G10,5 Eastern" route with the EIA decision No 3-3/2017. In 2019⁷ European Commission services, in comments to the submitted application form by the relevant Bulgarian authorities for funding of lot 3.2, listed more than 7 breaches of Article 6, par. 3 of the Directive 92/43/EEC and required a new revised Appropriate Assessment (AA) of all meaningful alternatives⁸. Following this sequence of actions, it is evident that the project mentioned above gives a start of a process for screening of only one selected alternative, disregarding the findings and requirements of the EC services.

3. On 6 April, 2023, the Road Infrastructure Agency signed the contracts for the construction of Lot 3.2.1 and 3.2.2 of Struma motorway⁹. The contracts refer only to the construction of "G10.5 eastern" route alternative approved by the EIA decision No 3-3/2017. However, the project "Struma Motorway route optimization, Lot 3.2" for AA and EIA screening on the amended route of this alternative is submitted to the MoEW one day later, on 7 April, 2023. At the moment of the signature of contracts and to date of this complaint, there is no outcome or decision regarding the AA screening, neither there is any new revised EIA/AA decision, which looks at all meaningful alternatives (see point 2).

4. On 26 July, 2023, the Governmental Programme of the new regular government of Bulgaria was approved¹⁰. On page 32 of the document, which refers to the construction of lot 3.2 of Struma Motorway, it is stated that the implementation of the project should start three months after the receipt of the final "document of conformity". This document does not exist officially, has not been presented to the public so far and is entirely non-formal with no legal relevance to Art. 6, par. 3 of Directive 92/43/EEC. However, it is often referred to in public statements by officials (see point 5, paragraph 6).

Nowhere in the program is there any reference or connection of the construction of Lot 3.2 of the Struma Motorway with the implementation of a new revised EIA/AA on all meaningful alternatives (see point 2). The governmental program does not provide for the implementation of Article 6, par. 3 of the Directive 92/43/EEC, and instead, plans to carry out a fraudulent appearance of actions and documents, which would claim to be in line with Article 6, par. 3 and with the comments of the EC from 2019 (see item 2), but in practice would breach the EC legislation and would not fulfil the legal requirements.

⁶ <https://www.moew.government.bg/bg/optimizaciya-na-traseto-na-am-struma-lot-3-2/?fbclid=IwAR2c7ZXDqRUktjnAc-bOWpO-hzgLvTD0wkko3VPvZcgFyWqrEIIQjWs3I> (in Bulgarian – public register of investment notices of MoEW before EIA and AA screening, link to submitted in MoEW documentation by the REA)

⁷ Ref.Ares (2019)6378788-15/10/2019

⁸ See also Ref. Ares(2022)5760255 - 16/08/2022 – letter of Commission services to the MRDPW

⁹ <https://ted.europa.eu/udl?uri=TED:NOTICE:280139-2023:TEXT:EN:HTML&tabId=0>

<https://ted.europa.eu/udl?uri=TED:NOTICE:284812-2023:TEXT:EN:HTML&tabId=0>

¹⁰ https://www.gov.bg/files/common/2023-07-26_Programa_za_upravlennie-odobrena-ot-SR-i-prieta-ot-MS-final_2.pdf (in Bulgarian)

2.2 Which is the EU law in question?

Article 6, par. 3 of the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora – Habitats Directive (shortly here referred as HabD)

Article 6, par. 2 of the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora – Habitats Directive (shortly here referred as HabD)

2.3 Describe the problem, providing facts and reasons for your complaint* (max. 2000 characters):

The construction of "G10.5 Eastern" alternative of Lot 3.2 of the Struma Motorway was approved with an EIA decision No 3-3/2017¹¹ of the MoEW. In their observations to the application form for Lot 3.2 of AM Struma from 2019¹², the European Commission indicates more than 7 serious violations of Article 6, par. 3 of the Directive 92/43/EEC in the EIA decision 3-3/2017. In a letter from the EC dated July 2022 to the MRDPW¹³, the Commission states that the violations of Article 6, par. 3 of the Directive 92/43/EEC established with the observations of 2019, require a new Appropriate Assessment (AA) and that the EC services are still waiting for a revised EIA and AA from the Bulgarian authorities, including their in-depth analysis of all reasonable alternatives for Lot 3.2.

The decisions and actions of the government that we appeal ignore the EC's findings of these violations of Article 6, par. 3 of the Directive 92/43/EEC and lead to the construction of the alternative "G10.5 Eastern" without revision of the EIA and AA of Lot 3.2 and any new assessment of the alternatives. Once built according to the G10.5 alternative route, which passes through the Kresna gorge, the environmental consequences and impact, would be irreversible.

In addition to this, Article 6, par. 3 of the Directive 92/43/EEC, requires a separate AA of the Detailed Spatial Plan and of the construction permit. However, such AA has not been even initiated.

Moreover, violations of the procedures and requirements of Art. 6, para. 3 of Directive 92/43/EEC during the construction of this section of the motorway, lead us to a more general violation of Art. 6, para. 2 of the same Directive. The cumulative impacts, resulting from the construction and operation of the other motorway sections 1, 2, 3.1, 3.3 and 4, financed by the EU, deteriorate the integrity and conditions in the NATURA 2000 sites affected by the motorway section in Lot 3.2.

2.4 Does the Member State concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?

☒ Yes, please specify below ☐ No ☐ I don't know

1. Lot 3.2 of the Struma motorway is included for co-financing with European funds in the Transport Connectivity Programme 2021-2027¹⁴. The programme was adopted by the European Commission on 3 October 2022¹⁵. The SEA of Transport Connectivity Programme 2021-2027 Consent No 4-

¹¹ Public register of the EIA procedure <https://registers.moew.government.bg/ovos/lot/8766> (in Bulgarian)

EIA Decision 3-3/2017 https://registers.moew.government.bg/ovos/file?fileKey=1ba8e0c0-a349-414f-961a-891b6cead894&fileName=Reshenie-OVOS_3-3-2017.pdf (in Bulgarian)

¹² Peф.Ares(2019)6378788-15/10/2019

¹³ Ref. Ares(2022)5760255 - 16/08/2022

¹⁴ <https://www.eufunds.bg/bg/optti/node/10926>

¹⁵ https://ec.europa.eu/regional_policy/en/newsroom/news/2022/10/10-03-2022-cohesion-policy-in-bulgaria-the-

3/2021 from 21 July 2021¹⁶ provides obligatory mitigation measure I.B.5.18 for Lot 3.2 of the Struma Motorway, which states: “assign an additional environmental assessment of the alternatives and possibilities for construction of the two lanes of Lot 3.2 (G10.5 and G20) of the Struma Motorway outside the gorge, including with regard to the Site Specific Conservation Objectives (SSSOs) and conservation measures for the NATURA 2000 sites (independently from the activities for designation of SSCOs), with a view to and in strict compliance with the recommendations of the European Commission (objective assessment of alternatives, application only of mitigation measures with proven effectiveness, assessment of cumulative effect, compliance with Article 6.3 of Directive 92/43 / EEC)”.

All of the above-mentioned decisions and actions lead to violation of mitigation measure I.B.5.18 for Lot 3.2 of Struma Motorway from SEA Consent No 4-3/2021, which is integral part of Transport Connectivity Programme 2021-2027.

2. Lot 3.3. of the Struma Motorway is co-financed by European funds under the Operation Programme “Transport and Transport Infrastructure 2014-2020” by contract No 137/25.09.2015. The amount of EU co-financing is 275 631 576,72 BG.

We would like to provide reference to a letter from a Technical Meeting Struma Motorway Lot 3 on July 7 2017¹⁷, which assess the interdependence of the junctions construction with the choice of the Lot 3.2 route and says: ‘The Commission informed the Managing Authority that the application form was reviewed and needs to be returned for modification.

The main reason cited was the connectivity between Lots 3.1 and 3.2. In the application form the split of the motorway connecting Lot 3.1 to Lot 3.2 started from km 373+300. This was predetermining that Lot 3.2 would have to follow the 10.5 Eastern alternative, while both the Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) procedures for Lot 3.2. are still on-going and there is no final decision on the selected alternative. Consequently, the Commission asked that the sections km 373+300 up to the end of Lot 3.1 at km 376+000 are removed from the scope of the application form. The same was asked for km 397+000 up to km 397+600 covered by Lot 3.3. The consensus was that those sections should be considered in the future application form covering Lot 3.2 after the alternative for Lot 3.2 has been selected.’

3. All remaining Lots of Struma motorway – 1, 2, 3.1 and 4 were co-financed by EU funds and their functioning leads to deterioration the integrity of the affected NATURA sites in Kresna Gorge. In the EC observations from 2109 on the Application, chapter IV of the Annex states: “IV. Addressing pressures of the existing road E79 (points F.4 of Annex II of Implementing Regulation (EU) 2015/207 and 6.8 of Annex II of Commission Delegated Regulation (EU) No 48012014)

The existing road E79 causes high pressure from a passenger safety and environmental perspective due to the lack of mitigating measures in the "Kresna gorge" site (preventing dangerous overtaking and animal crossings) and the increasing traffic coming from the other lots of the motorway. “

2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights? The Commission can only investigate such cases if the breach is due to national implementation of EU law.

☐ Yes, please specify below

☒ No

☒ I don't know

[first-2021-2027-programme-adopted](#)

¹⁶ Public register of MoEW for SEA procedure of Transport Connectivity Programme 2021-2027 <https://registers.moew.government.bg/eo/lot/34433> (in Bulgarian)

SEA consent https://registers.moew.government.bg/eo/file?fileKey=b4ebcdc9-7524-4eeb-9ee3-a3de00420d8c&fileName=St_EO+4-3-2021.pdf (in Bulgarian)

¹⁷ Ref. Ares(2018)1804674 - 04/04/2018



3. Previous action taken to solve the problem*

Have you already taken any action in the Member State in question to solve the problem?*

IF YES, was it: ☐ Administrative ☐ Legal ?

3.1 Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

1. Signal to MRDPW from July 13, 2023 and asking for revision of the decision/order for approval the DSP. There is no reaction so far on the signal.
2. Proposal of NGOs send to MRDPW from July 28, 2023 asking да се свика заседание на работната група към Препоръка 212/2021 на Бернската конвенция и да се вземе решение за започване на нов ревизиран ОВОС and АА, които да включват всички изпълними алтернативи. There is no reaction so far on the signal.

3.2 Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?*

1. NGO's court appeal from 26th of April, 2023 to Administrative Court of Sofia City against MoEW letter No. EO-8/13.03.2023 – NGOs claimed that the letter No. EO-8/13.03.2023 of the MoEW is not a decision/administrative act according SEA and AA. With letter of the MoEW No. EO-48-00-520/10.05.2023 the appeal was submitted to the court (the procedure is to file the appeal through the body that issued the appealed decision). After May 10, 2023 - for 3 months now there is no procedural movement to start a case. In essence, the court simply does not move this appeal as if it does not exist.
2. NGO's court appeals from 4th of April and 25th of April, 2023 Supreme Administrative Court SAC against Order RD-02-15-51/19.04.23 for the approval of the Detailed Spatial Plan (DSP) of the Ministry of Regional Development and Public Works (MRDPW) and against the "prior execution" included in it, by which the order takes effect immediately and begins to be applied independently of appeals in court. By decision No. 6773 of 22.06.2023 of the SAC in administrative case No. 5455/2023, the complaint against was left without consideration and the proceedings in the case were terminated on the grounds that the Bulgarian Law on Territorial Planning does not provide for a legal interest for NGOs to appeal the order.

In conclusion - in this case, NGOs were practically deprived of the right to appeal the two documents in the court

4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

⊗ Petition to the European Parliament – Petition 0527/2018

⊗ European Commission – Ref. Ares(2023)4286649 - 21/06/2023; Infringement complaint CHAP(2017)02186

⊗ European Ombudsman – case 194/2019/TM

○ Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

1. For violations of Art. 6, par. 3 of Directive 92/43/EEC and for other violations committed by the care taker government in the period September 2022 - May 2023 - the commission's offices were informed with a letter dated May 29, 2023 from Environmental association Za Zemiata/ Friends of the Earth Bulgaria/ CEE Bankwatch Network. The Commission responded to the letter on June 21, 2023¹⁸. The NGOs returned their letter with additional information on July 17, 2023.

2. The EIA decision 3-3/2017 procedure was subject to an infringement complaint CHAP(2017)02186 in July 2017 – submitted by NGOs prior to issuing the final EIA decision in October 2017. In March 2021¹⁹ the Infringement Unit of EC informed us that our Complaint will be closed as “In December 2020, Bulgaria received a final warning (reasoned opinion under Article 258 TFEU) for systematically not taking into account cumulative impacts of existing and authorised plans and projects and for authorising developments, including the Struma motorway Lot 3.2, representing significant threats to the Natura 2000 sites.”, “The claims raised in your complaint are covered by the above procedures” and “we consider that your complaint has been sufficiently addressed, in accordance with the priorities set by the Commission, including by infringement action targeting the key structural problems of the nature protection in Bulgaria, which lay at the roots of your complaint.” The complaint was finally closed on June, 3th 2021²⁰.

The final results of the approach chosen by the Commission in 2021 - to close the individual infringement procedure and cover the case with horizontal procedures such as those in the horizontal complaint INFR (2018) 2352 - is clearly ineffective and has not prevented further violations of Art. 6, para. 3 of Directive 92/43/EEC during the construction of Lot 3.2 of the "Struma" motorway. In addition, violations of the procedures and requirements of Art. 6, para. 3 of Directive 92/43/EEC during the construction of this section of the motorway, lead us to a more general violation of Art. 6, para. 2 of the same Directive, as the cumulative impacts resulting from the construction and operation of the other motorway sections financed by the EU deteriorate the conditions in the NATURA 2000 sites affected by the motorway section in Lot 3.2.

3. On 30 Jan 2019 an NGO complaint to the European Ombudsman was submitted. The complaint was registered as case 194/2019/TM on how the European Commission is dealing with an infringement complaint about a motorway in Bulgaria that may infringe EU environmental law. The case was closed with decision on 10 March 2020. The one of Ombudsman findings is: “14. It is the task of the Commission, as the guardian of the Treaties, to ensure that EU law is upheld within the Union. The infringement procedure is a mechanism for ensuring that Member States are brought into compliance with EU law..”; “21. The Ombudsman’s understanding is that the Commission’s approach to this case is the following: in order to reach a decision on the infringement complaint (concerning lot 3), it needs to assess the compliance of the specific lot, passing through the protected area (lot 3.2), in the context of the Bulgarian authorities’ application for EU funding. Given the

¹⁸ Ref. Ares(2023)4286649 - 21/06/2023

¹⁹ Ref. Ares(2021) 2015735 - 22/03/2021

²⁰ Ref. Ares(2021)3655310 - 03/06/2021

Commission's wide discretion in how it investigates a Member State's potential infringement of EU law, it is not for the Ombudsman to call this manner of proceeding into question."

4. On 28th April 2018 in PETI Committee of the European Parliament was submitted a Petition No 0527/2018 by Dimitar Vasiliev on behalf of the Kresna town local citizen's initiative. The petition was on the impact of Struma motorway on Kresna Gorge and the region, Bulgaria. The EU Commission has submitted its information to the case on 22 February 2019²¹. Hearing of the petition 0527/2018 on the Kresna gorge case in Bulgaria, which was held 2nd December 2019²². The case was closed as the PETI Committee was satisfied by the written information provided by the EC on 22 Feb 2019 and by oral presentation provided on 2 Dec 2019²³. The representative of the European Commission at the hearing said: *"In any case, we would like to assure this committee and the petitioner that the Commission has made very clear on several occasions the Bulgarian authorities that it would only approve the project on the condition that all the legal, technical and environment aspects are duly taken into account during the preparation but also during the implementation of the construction in order to make sure the preservation of the unique biodiversity in this area. So, we remain and we stick to that position: we will only approve the project if and when we have assurance that all the rules are complied with."* The written information provided by the Commission on 22 Feb 2019 stated:

"The Commission will be able to assess the project's compliance with EU legislation, including EU environmental legislation, after receiving the official application form including all necessary documentation from the Managing Authority. The Commission may approve an application for construction of Lot 3.2 only once it is ensured that the project is in full compliance with the provisions of EU legislation."

The following conclusions can be drawn:

1. The previous approach of the European Commission of not addressing the case, through clear, explicit and quick infringement procedures directed to the specific case, leads to a permanent non-fulfillment of the requirements of Art. 6, par 3. of Directive 92/43/EC during the implementation of the Struma Motorway project in Lot 3.2., and hence to cumulative damage and deterioration to NATURA 2000 sites, violation of Art. 6, par 2. of Directive 92/43/EC due to the functioning of the other sections of the same motorway co-financed with European Union funds.
2. We urge the European Commission to fulfill its obligations stemming from Article 191 of the TFEU. Based on the provision of Article 191 paragraph 2 sentence 2 of the TFEU the EU environmental protection shall be based on the precautionary principle and on the principles that preventive action should be taken. In addition, the financial interest of the Union shall be protected in accordance with the principle of sound financial management set in Article 56 of Regulation (EU, Euratom) 2018/1046.

5. List any supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

²¹ https://www.europarl.europa.eu/doceo/document/PETI-CM-636165_EN.pdf?redirect

²² <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vl1h5rt7r5u6?ctx=vg9hjllgxmz&tab=2&n=38>

https://multimedia.europarl.europa.eu/en/webstreaming/peti-committee-meeting_20191202-1500-COMMITTEE-PETI

²³ <https://www.europarl.europa.eu/committees/bg/peti/meetings/minutes>

Here we provide only evidences, which has no internet link or other reference in the text.

1. NGOs developed its own analyzes regarding the changes in alternative "G10.5 eastern" in the optimization project of this alternative from April 7, 2023 compared to the same option in 2017 approved in EIA decision No. 3-3/2017. The identified changes include widening/straightening of the lane and new retaining walls under and above the road on the current road E79 through Kresna Gorge (the EIA of 2017 assumed no construction on the road E79, as an argument for no impacts), changes to the route and facilities on the new lanes outside the gorge and in the road connections to the other lots. There is a map with some of the changes in the project at this link (in Bulgarian): https://kresna.org/wp-content/uploads/2023/04/am-struma-1_30000.pdf

2. Letter of the Ministry of Environment and Waters (MoEW) No. EO-8/13.03.2023

Order RD-02-15-51/19.04.23 for the approval of the Detailed Spatial Plan (DSP) of the Ministry of Regional Development and Public Works (MRDPW) was aproved with a letter of the MoEW. No. EO-8/13.03.2023. This letter does not represent any official procedure and/or decision conducted/taken according to Bulgarian legislation, including it does not represent any part of procedure for Appropriate Assessment according to Art. 31 of the Law on Biological Diversity, which in turn transposes Art. 6, par. 3 of Directive 92/43/EEC. In this sense, this letter has no legal connections, relevance and legal consequences in relation to the requirements of Art. 6, par. 3 of Directive 92/43/EEC. In conclusion, Order RD-02-15-51/19.04.23 for approval of the DSP has not passed an assessment under Art. 6, par. 3 of Directive 92/43/EEC.

3. Letter of the MoEW No. EO-48-00-520/10.05.2023

With this letter MoEW submits to the Administrative Court of Sofia City an appeal received against its letter No. EO-8/13.03.2023. In the submitting letter, the MoEW makes an express declaration of the nature of letter No. EO-8/13.03.2023/. Here we quote verbatim sentences 2 and 3 of paragraph 1 of the letter: *"Letter, with ex. No. EO-8 of March 13, 2023 of the Ministry of Environment and Water does not have the characteristics of an individual administrative act defined in the provisions of Art. 21, para. 1-4 of the Administrative Procedure Code."*

Although the letter is not a decision/conset within the meaning of the country's legislation, and this is unequivocally confirmed by the statement of the MoEW, it is clearly used in an attempt to create a deceptive appearance that such a legal decision exists, and in the cited letter, the MoEW then says verbatim: *„With the contested letter, the Minister of the Environment and Waters ruled on the documentation submitted with a notification for a project of a Detailed Spatial Plan - Plot Plan (DSP-PP) for the project: "Completion of the "Kresna" Highway/Road connection N 4, 5 and 6 /per km 401+691.90 according to the odometer of AM Struma Lot 3.2=397+000 according to the odometer of AM "Struma", Lot 3.3. falling within the scope of AM "Struma", Lot 3.2", in the land of the town of Kresna, EKATTE14492, having confirmed that the project does not require an Strategic Environmental Assessment procedure in the sense of Chapter Six of the Law on Environmental Protection, combined with an Appropriate Assessment in accordance with Art. 31 of the Biodiversity Act."*

4. NGO's court appeal from 26th of April, 2023 to Administrative Court of Sofia City against MoEW letter No. EO-8/13.03.2023

In the appeal NGOs give evidences that letter No. EO-8/13.03.2023 of the MoEW is not a decision/administrative act according SEA and AA and that on the web-page of the MoEW there are no any references for SEA and/or AA procedures carried out regarding letter No. EO-8/13.03.2023 of the MoEW and Order RD-02-15-51/19.04.23 of the MRDPW for the approval of the DSP.

5. NGO's signal to MRDPW dated July 13, 2023

The signal requests the resumption of the procedures for issuing Order RD-02-15-51/19.04.23 due to the violations of the law and the lack of a decision on reconciliation according to the SEA and AA procedures – and provides detailed review of relevant facts and evidences.

6. Evidences related to so called "document of conformity"

For the first time such a report appeared in a public official document of the government in the cited in para. 4 in point 2.1 governmental program. Furthermore, this document/assessment/analysis has not undergone any public consultation – moreover, its content and its preparation procedure are kept secret from the public so far. Also, no traces of official procedures related to this document can be found on the MoEW website, including procedures related to it under the application of Art. 6, par. 3 of Directive 92/43/EEC. Apart from these facts, the existence of such a document has been mentioned several times in public statements of MoEW and MRDPW ministers, which we will quote below:

In response to the question of members of the national parliament from the 48th National Assembly, the Minister of the Ministry of MoEW on December 22, 2022²⁴ and January 16, 2023²⁵ stated: "*The contracting authority, the Road Infrastructure Agency, should assign a team of experts with knowledge and experience in the field of biological diversity, carrying out a **review of the conclusions of the EIA procedure and an assessment of the project's compatibility with the defined specific and detailed conservation objectives for the two protected areas***"

On December 13, 2022, when asked by a member of the national parliament from the 48th National Assembly, the Minister of the MRDPW stated²⁶: "***We are currently finalizing an analysis of the measures in relation to the completion of the procedure with the analysis of the measures***". In response to a question from a member of the national parliament from the 48th National Assembly, on January 12, 2023, the Minister of the MRRD stated²⁷ that a **review/analysis of the conformity of the conclusions of the compatibility assessment, respectively the decision of the EIA from 2017, with the approved detailed and specific objectives is being carried out** of the protected areas of the NATURA 2000 network

²⁴ <https://www.parliament.bg/pub/PK/53058748-254-06-279.pdf> (in Bulgarian)

²⁵ <https://www.parliament.bg/pub/PK/54468348-354-06-21.pdf> (in Bulgarian)

²⁶ See the transcript of the plenary session <https://www.parliament.bg/bg/plenaryst/ns/58/ID/10723> (in Bulgarian)

²⁷ <https://www.parliament.bg/pub/PK/54395948-354-06-22.pdf>

6. Personal data*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

☒ Yes ☐ No

 *In some cases, disclosing your identity may make it easier for us to deal with your complaint.*

Date: 2 August 2023

On behalf of all the complainants

Sincerely yours,

Petko Tzvetkov
BALKANI Wildlife Society

Andrey Kovatchev
BALKANI Wildlife Society

- May 2023 -



It is not a motorway that is being constructed through the Kresna Gorge, but a one-way expressway that violates the law and endangers lives

22nd May 2023, Sofia

On Tuesday morning, 16th May, [the diggers entered the Kresna gorge valley](#) [1], under the blessing of the caretaker government in Bulgaria, marking the start of the last unfinished section of the Struma motorway, part of Trans-European corridor IV, linking Sofia with Thessaloniki. The works gave a green light of an obsolete and [criticized by Environmental Commissioner Sinkevičius Environmental Impact Assessment](#), allowing for the motorway to pass through the Kresna gorge, which clearly violates European environmental legislation and was rejected for funding by the Commission already back in 2019.

[An alternative route](#) that bypasses entirely the gorge is possible but for more than 20 years, the road authorities and Bulgarian institutions systematically failed to develop them and compare them equally - either through a long 13-km tunnel, which was selected in 2008 and then rejected, or through the so called “full eastern alternative”, which takes both lanes of the motorway outside of the gorge. [2]

The gross violation of Bulgarian and European legislation with the opening of the construction works for the Struma motorway through the Kresna Gorge sparked weeks of protests in April and May 2023 from the environmental coalitions [For the Nature](#) and [Save Kresna Gorge](#), local people and rafters, citizens, in front of the Presidency in Sofia, the National parliament, in the town of Kresna, and against the diggers as they entered the gorge.

Despite claims that this road connection does not predetermine the route of the future motorway section, the authorities hurried to “save” the EIA decision, which would expire on 23rd May 2023, and signed contracts with two road construction companies already back on 6th April for nearly 600 million euros. It is unclear yet who will fund this project, with Bulgarian authorities hoping again for EU funds.

This start of works validated the deadly route for the motorway both for people and nature, and namely, **the lane towards Greece through the Kresna Gorge, and the one in the opposite direction - east of the gorge.**



On May 11, 2023, after protests in front of the Ministry of Regional Development and Public Works, the Minister of Regional Development Ivan Shishkov said that the start of construction activities does not predetermine the choice of an alternative for the construction of the Struma motorway in the area of Kresna and the Kresna Gorge and that this choice is to be made by the Minister of Environment and Waters.

However, the Minister failed to mention that as early as April 6, 2023, in a complete media blackout - 35 days before the protests on May 11 - the Road Infrastructure Agency (RIA) had signed the contracts for the construction of the entire motorway at a cost of nearly 600 million euros. These contracts, concluded under the leadership of the Ministry of Regional Development, completely and finally predetermined that the illegal and dangerous alternative proposed in 2017 would be built.

Moreover, this route **would not be a motorway, but a first-class road**, setting one-way traffic through the Natura 2000 protected area of the Kresna Gorge. Furthermore, it makes it difficult for local residents to access the regional center of Blagoevgrad (north from Kresna), does not meet explicit European requirements for a compatibility assessment and does not meet European standards for a motorway.

A route through the Kresna gorge will not only destroy the habitat and unique biodiversity, but will even endanger the safety of traffic through the gorge, it is in sharp contradiction with the interests of the local residents for access to administrative and health services in the regional centre north - Blagoevgrad, as well as it will destroy established livelihoods in the Kresna Gorge - adventure tourism, winemaking and agriculture.

In addition, the Road Infrastructure Agency, one day after the signatures of the contracts, submitted a **project for "optimization" of the Struma motorway route** [1] in the area of Kresna and Kresna Gorge, submitted by the RIA to the Ministry of Environment on 5 April 2023. The Agency's project

includes only the "alternative" from 2017, which is dangerous for the life and health of people as well as the surrounding nature.

On 27 April 2023. The RIA and the contractors agreed to start the construction of the motorway after the Ministry of Environment and Water approves the "optimized" alternative. Minister Shishkov's response of 15 May 2023 to a question from Green Movement/ PP-DB Member of Parliament Daniela Bojinova makes it clear that the Ministry of Environment and Water had given such approval, stating that there was no need for environmental impact assessments and for compatibility with the European environmental protected areas network Natura 2000.

On July 7, 2017 Bulgaria agreed with the European Commission (EC) to receive the funds for the construction of the Struma motorway lots north and south of the Kresna gorge (lots 3.1 and 3.3) - **with the explicit condition from the EC not to build the road junctions** to the lot in the area of Kresna and the gorge in order not to predetermine the choice of an alternative.

Environmentalists and local citizens demand an immediate halt to construction activities and remind that:

- In October 2019, the European Commission (EC) pointed out 7 violations of the Habitats Directive in the selection of the alternative and in the EIA (Environmental Impact Assessment) decision issuing for the project from 2017.
- In July 2022, the European Commission stated in a letter to the Ministry of Regional Development

"the Commission services are still awaiting from the Bulgarian authorities a revised EIA and Compatibility Assessment, including an in-depth analysis of all meaningful alternatives for Lot 3.2" and

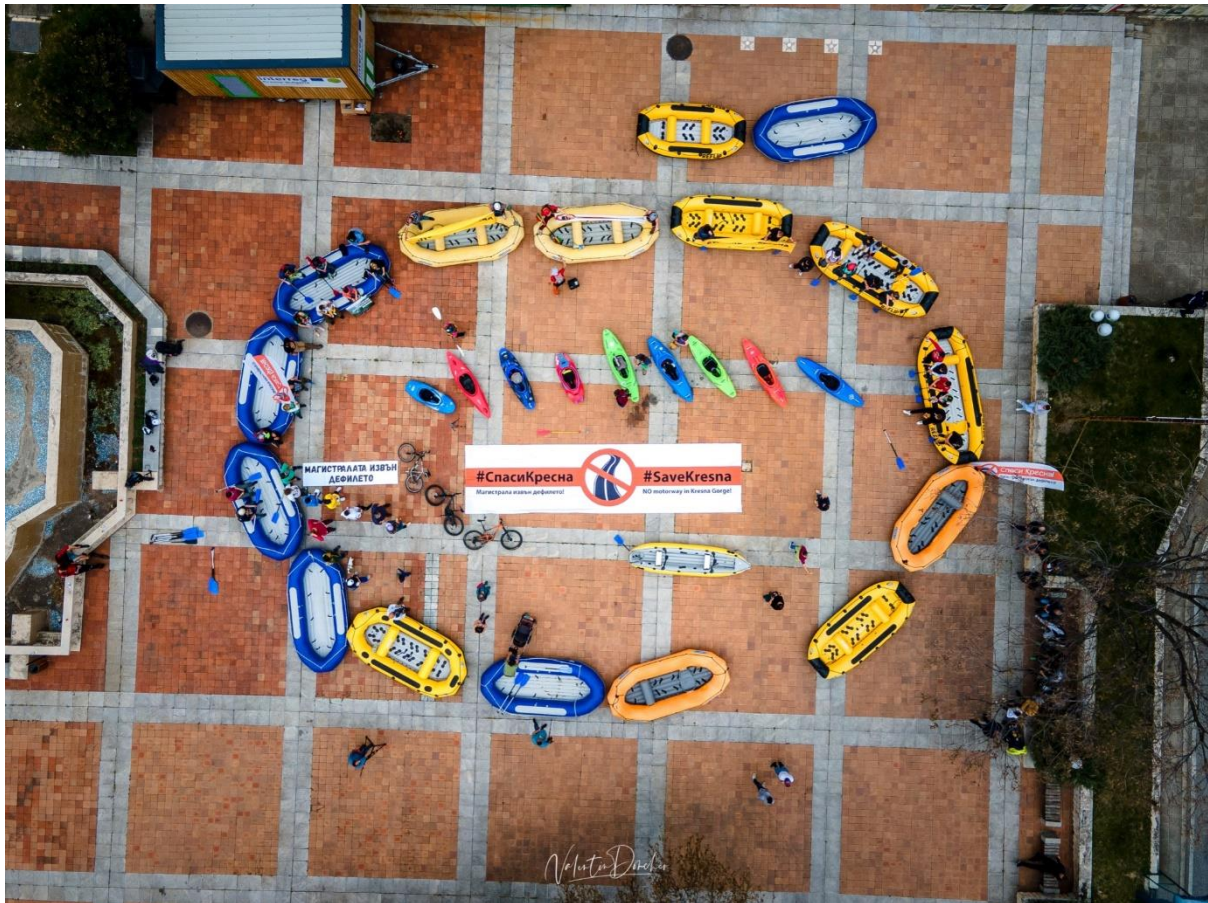
"regardless of whether the project is resubmitted in time to the EU for co-financing in the current period, the Commission services are certainly closely monitoring each and every implementation on the spot to ensure compliance with environmental legislation and to take the necessary measures if required".

They further ask the European Commission to act immediately and stop the destruction of nature, livelihoods and the violation of European legislation.

Notes for editors:

1. First dig photos, photo credit: Stratospheric Productions.
2. [Map of the possible alternatives](#) prepared by NGO coalition Save the Kresna gorge.
3. [map, which compares the new proposal with the approved EIA in 2017](#); the map is prepared by NGO coalition Save the Kresna gorge]

On the campaign to save Kresna Gorge:



Saving the Kresna Gorge is a more than 20-year-old campaign - a cause behind which have stood biologists, environmentalists, nature lovers and NGOs. Public figures, such as the alpinist and biologist Boyan Petrov and former Prime Minister Kiril Petkov.

Kresna Gorge is the place with the highest biodiversity in Bulgaria within a very small area - for example, there are 122 species of butterflies per square kilometer.

A total of 3,500 species of flora and fauna can be found. The Gorge is a highly vulnerable and fragile ecosystem on the border of temperate and Mediterranean climates and a very narrow corridor for connection between the two zones. Protected species from both zones live in them along the valley and slopes of the gorge. The gorge is also an important migration route for bears and wolves between the Pirin Mountain and the mountains on the border with North Macedonia.

For local people, the selected alternative in 2017 and carving one-way of the motorway, or rather, the first-class route, will result in **no safe local road to the villages of Stara Kresna and Oshava, to farmland and pastures**. All vineyards, gardens and pastures inside the Kresna Gorge under the Road Traffic Act will become completely inaccessible for local people. Kresna's most valuable agricultural land will be destroyed. It will become impossible for tourists to practice rafting and visit the gorge.

For both people and wildlife, the intense transit traffic on the road through the gorge leads to death and accidents - a problem that can only be solved by moving the transit traffic on a motorway route (with all the requirements and qualities of a motorway) out of the gorge, and keeping the road through the gorge as a local one.



Protest in the town of Kresna, May 2023, photo credit Alexander Popov.



Protest in front of the Presidency of the Republic of Bulgaria, photo credit Alexander Popov, 27th April 2023.



Start of the construction works, 16th May, 2023. Photo credit: Stratospheric productions



Kresna gorge and the current railway route, and the international E-79 route. Photo credit: Stratospheric productions



Construction works, South junction of the Kresna gorge, connecting lot 3.2 with lot 3.3, 25th May 2023

- February 2023 -

This Report is a product **only** by the NGO complainants and **not a joint report** in collaboration with the relevant authorities. This is due to the continuous disregard for Recommendation 212 (2021) by the care-taker government. Since August 2022, the complaints have had no response to requests for dialogue, therefore also constituting a lack of participatory, inclusive and transparent decision-taking, **We insist that Bulgaria is urged to fully implement Recommendations 212 (2021) and 98 (2002) and:**

- **not start any actions on the construction of the Struma motorway in the Kresna gorge region before reaching universal agreement on alternative solutions and mitigation measures;**
- **participate, including financially, in mediation procedures conducted by the Bern Convention in order to reach consensus on solutions.**

Content:

1. Systematic violation by the Bulgarian government of art. 4 of the Convention as part of the decision-making processes for the construction of the Struma Motorway with direct impacts on the deterioration of protected habitats and species in the Kresna gorge NATURA 2000 site.
 - 1.1. The beginning of construction work in the Kresna gorge without a revision of the deficient Environmental Impact and Appropriateness Assessments (EIA/AA) from 2017 - Statements by the Ministers that construction in the gorge should start before May 2023
 - 1.2. Illegal construction of the side-routes in the Kresna gorge (update)
 - 1.3. First meeting of the Working Group 2 (measure in implementation of p.2 of Recommendations 212 (2021))
2. Expiration of the Decision on the EIA/AA approval from 2017 allowing construction of the Struma Motorway through Kresna gorge.
3. Follow-up actions by NGOs after the rejection by the authorities in October 2022 of the adopted consensus scientific proposal of Working Group 1 of NATURA 2000 conservation objectives and priorities in Kresna Gorge
4. Mediation procedure

1.1 The beginning of construction work in the Kresna gorge without a revision of the deficient Environmental Impact and Appropriateness Assessments (EIA/AA) from 2017 - Statements by the Ministers that construction in the gorge should start before May 2023

We would like to recall that at the 42 Standing Committee meeting, 12 Parties of the Convention voted in favour of opening the case file. The conclusion from the discussion were: “The Standing Committee appealed to the Government, together with the Complainants, to **fully implement Recommendation 212 (2021) and to revise the EIA/AA report**, following the advice of the European Commission, on the potential impact of the motorway, thus respecting Recommendation 98 (2002). **It reminded Bulgaria not to start any construction before the Recommendation was fulfilled.**

Now we have seen that the government intends **to start construction in the Kresna gorge before May 2023 and no intention to revise the deficient Environmental Impact Assessment (EIA) and Appropriate Assessment (AA) from 2017**, which were found in violation of EU Directives and the Bern Convention.

On December 9, 2022 the Minister of Regional Development and Public Works gave an official position to the Parliament of the Republic of Bulgaria (<https://www.parliament.bg/bg/video/ID/1582>) and made a number of statements in the media in which he said:

- That the EIA 2017 is valid until May 2023 and that the construction of the Struma motorway in Kresna Gorge will begin by then;
- That by the end of January 2023, the Ministry of Environment and Water (MoEW) and the Minister of Regional Development and Public Works (MRDPW) will complete the assessment of the conclusion of the EIA/AA report from 2017 and definition of mitigation measures for starting construction in the Kresna gorge.

This action would "save" the 2017 EIA decision from expiring and avoid new EIA/AA procedure or revision of the deficient EIA/AA report.

Similar positions in media and in the parliament were expressed by the Minister of Environment and Water (written answer to a parliamentary question from 16 January 2023 https://www.parliament.bg/bg/topical_nature/ID/48179).

On January 6, 2023, SDP BALKANI (one of the NGO complainants) submitted a request to the MoEW (the responsible Bulgarian institution for the EIA and AA procedures) to receive detailed information about the announced assessment and declared a legal right to be part of the procedure for assessment of the compliance of the adopted conservation objectives of NATURA 2000 sites in Kresna Gorge with the Struma Motorway project. So far there is no reaction and no response – MoEW ignores the NGO complainants without any communication.

Additional quotes by the Minister of Regional Development and Public Works, Ivan Shishkov, are translated in Annex 1 to this report.

Surprisingly for NGOs, the same assessment of the compliance of the adopted conservation objectives of NATURA 2000 sites in Kresna Gorge with the alternatives of the Struma Motorway project appeared on the agenda of the first meeting of the Recommendation 212 (2021) working group 2 on 15 February 2023 (see the point about the meeting of the group). But again, with no information or documents provided.

1.2. Illegal construction of the side-routes in the Kresna gorge

The construction activities in the Kresna Gorge impacting the protected habitats was reported during the 42nd Standing Committee. Follow up research and requests for information led us to the conclusion that the construction work in the gorge was not in line with the Bulgarian law. Our findings have been formulated and submitted as a complaint to the responsible institution for construction control - Directorate for National Construction Control. The summary of the facts and actions of the authorities are described briefly below and in more detail in Annex II to this report.

After a request from the “Save Kresna Gorge” Coalition, a site visit inspection with representatives of the Regional Environmental Inspection – Blagoevgrad and Regional Road Management Department – Blagoevgrad was held on 26.10.2022.

Protocol №21-16/26.10.2022 confirmed that at five spots of the (I-1) E-79 national road in Kresna gorge, the following information was discovered:

- Complete eradication of tree and shrub vegetation;
- Removal of the topsoil;
- Compaction and levelling of the soil;
- Disposal into the Struma riverbed of removed old asphalt cover and levelling;
- Covering with finely crushed pavement.

On December 23, 2022, the Regional Environmental Inspection - Blagoevgrad sent its final findings after the inspections, which stated that the destroyed terrains are habitats of the following species

protected in NATURA 2000: *Testudo hermanni*, *Testudo graeca*, *Elaphe situla*, *Elaphe quatorlineata*. **It is clear from the document that the actions that led to the damage to these habitats have not passed an assessment under Art. 6(3) of Directive 92/43/EEC.**

According to the response of the Regional Road Management Department the construction works were **part of the mitigation measures** of the traffic impact on wild animals and birds **designed in the deficient EIA/AA report from 2017**. The construction permit for those works, however, was not issued and therefore they were carried out illegally.

1.3 First meeting of the Working Group 2 (measure in implementation of p.2 of Recommendations 212 (2021))

On 15.02.2023, the first meeting was held on the Working Group 2, which was established in 2022 as one of the measures for functional and transparent involvement of stakeholders according to Recommendations 212 (2021). The main task of the Working Group 2 was to develop an agreed scientific proposal for the scope and terms of reference of a the revised EIA / AA report for the Struma Motorway in Lot 3.2 (Kresna Gorge) (see more details in Annex III).

At the 42nd Standing Committee meeting the Bulgarian government reported that Working Group 2 will start to function before the end of 2022. In the last half a year the NGOs made several efforts to request a meeting with competent authorities about the revision of the EIA/AA report, however no official response was received.

After the public statements were made about the forthcoming constriction in Kresna gorge (see 1.2), the NGOs have made requests to receive information about the planned analysis, but received from the authorities only refusals of their demands without justification. The invitation for the working group meeting was sent on 6.02.2023 with an agenda, but no draft documents were available for the issues planned to be discussed. Even during the meeting of the working group, no documents were presented to the public - only incomplete and short presentations.

On 13.02.2023 in accordance with the Rules of the Working Group, we submitted a written request for an agenda point to be added to the meeting, which was rejected by the Chair of Working Group. Our request aim to ensure that the Working Group members are provided with sufficient information to allow discussion and a consensus-based decision of the working group (see Annex III for more details).

At the meeting held on February 15, 2023, the government presented a proposal for an approach to preparing an analysis of the conformity of the conclusions of the 2017 EIA/AA with the adopted specific and detailed conservation objectives. **The 2 representatives of the NGOs complaints and 3 representatives of scientific institutions in the working group objected to this proposal.**

The NGOs stated the following reasons:

- **This analysis does not constitute a revision of the 2017 EIA/AA and does not meet the requirements of Art. 6.3 of Directive 92/43. NGOs again asked for the development of a new revised EIA/AA and for discussion of its ToR in the Working Group 2**
- **This analysis in no way resolves the deficiencies of the 2017 EIA/AA of Art. 6.3 of Directive 92/43 – as established in 2019 by the European Commission**
- **The Working Group mandate for consensus decision making was not respected and the government is seeking formal approval of its decisions through the Working Group.**

As a conclusion:

- After failing to consider the consensus results of the Working Group 1 on SSCOs of NATURA 2000 and their substitution with low quality ones and approval without taking into account our written proposals,

- After failing to answer our requests for a meeting with Road Infrastructure Agency, Ministry of Regional Development and Ministry of Environment - the three responsible institutions,
- After the questionable construction activities at the Kresna Gorge from October,
- And after the above mentioned refusal of the Chair of Working Group 2 to work and provide input for a quality revision of the AA/EIA,

We are convinced that currently, the only goal of the responsible institutions is to proceed as soon as possible with the validation of the approved option through the Kresna Gorge without any quality or legally grounded process of revision and consultation of the project with the Complainants or with any other affected or interested party.

2. Expiration of 2017 EIA/AA

On October 19, 2022, the 2017 EIA/AA decision automatically lost its legal effect. The reason is that 5 years have passed since its entry into force in 2017 (the decision in 2017 was made with a special provision for immediate entry into force regardless of the fact that it can be appealed in court) without it being applied in practice. According to the Bulgarian laws a new EIA/AA procedure is needed. The Bulgarian authorities and mainly the Ministry of Environment and Water and the Ministry of Regional Development and Public Works in their public statements in December 2022 and January 2023 completely ignore this fact and the need to prepare a new revised EIA/AA (thus also ignoring the decisions of the Standing Committee).

3. Follow-up actions by NGOs after rejection by the authorities in October 2022 of the adopted consensus-based scientific proposal by Working Group 1 of NATURA 2000 conservation objectives and priorities in Kresna Gorge

What we already reported in October 2022 is that the new caretaker government rejected the decisions of Working Group 1. The Group achieved consensus and in July 2022 adopted scientific proposal for setting NATURA 2000 conservation objectives and priorities in Kresna Gorge

In January, NGOs began preparing analyses of the weaknesses and incompleteness in the NATURA 2000 conservation objectives officially approved in October 2022. On February 8, 2023, such an analysis was completed and sent to the European Commission by NGOs with the support of leading experts. in relation to the 4 reptile species: *Testudo hermanni*, *Testudo graeca*, *Elaphe situla*, *Elaphe quatorlineata*. We provide this analysis to the secretariat in an Annex IV to this report.

A similar analysis is currently being prepared for the two priority species of large carnivores: *Ursus arctos* and *Canis lupus*. The emphasis in the analyses is on the species of reptiles and mammals having the most significant conservation priority in the Kresna Gorge and whose conservation priorities are mostly affected by Struma Motorway.

After the completion of these top priority analyses, a further summary of weaknesses and incompleteness in conservation objectives of all habitats and species will be prepared and made available to the European Commission and the Convention Secretariat.

4. Mediation procedure

The NGOs insist on holding an urgent mediation procedure as was discussed and proposed during the last Standing Committee. We believe that the internal mechanism for reaching consensus-based solutions with NGOs is failing because of a lack of political will in the official government to seek such solutions. It is worrying that Bulgaria does not pay its membership fees to the convention - although for 2022, such funds specifically for the contributions to the Bern Convention have been allocated in the budget of the Ministry of Environment and Waters - but they have not been paid.

For all these reasons, we insist that Bulgaria is urged:

- **not to start any actions on the construction of Motorway Struma in Kresna Gorge region before reaching consensus-based solutions on alternatives and mitigation measures;**
- **Bulgaria to assist, including financially, in conducting a Bern Convention mediation procedure in order to find consensus-based solutions.**