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AND NATURAL HABITATS

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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 COMPLAINANT -

*Document prepared by
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NGOs FOLLOW UP TO THE CASE

This Report reflects the latest developments in the Kresna case after November 2023.

1. In Appendix 1, we give the NGO update sent to the European Commission regarding the complaint for violation of Art. 6, par. 3 of Directive 92/43. In this update, there are several important developments in the case also from the perspective of the Bern Convention, which we will list here very briefly (for a more detailed description, see Appendix 1):

1.1. The Bulgarian government intends to start construction of the Struma motorway in April 2024 – without a new revised EIA of the motorway and a new assessment of meaningful alternatives and mitigation measures.

This was unequivocally stated on 17 January 2024 by the Minister of Regional Development and Public Works of Bulgaria, Mr. Andrey Tzekov, in his speech at the Committee of Regional Development, Public Works and Local Self-governance in the Bulgarian Parliament¹. The Minister said that the "Document of Compliance" was sent for approval to the Commission in July 2023. The Minister pointed out to the Bulgarian MPs that after that a letter was received from DG Environment demanding a new EIA procedure. A questionnaire was quoted in statements by the Government, which was sent by the European Commission. According to statements by Minister Tzekov, they are waiting for approval from the EC offices for the quick start of construction of the Struma Motorway in April 2024 without the need of a new EIA.

These actions by the government show a disregard for the recommendations and decisions of the Convention's Standing Committee of the recent years and unfortunately may render meaningless the recommendations of the Kresna Technical Workshop on “Challenges & Opportunities for the conservation of reptiles and large carnivores during linear infrastructure development in south-east Europe” in line with Recommendation 212 (2021) being organized by the Convention in April 2024.

1.2. The government has launched amendments to the motorway project, which already include construction activities inside the Kresna gorge - with the clear intention that they will not be subject to an EIA.

In December 2023, the Ministry of the Environment and Water (MoEW) announced that new information about the investment intention from April 2023 (reported in our previous reports in 2023) had been submitted to the Ministry and a procedure to assess the need for an EIA had begun in December. This project has two components:

- There are changes to the routes and facilities of the motorway in the eastern new lane, which bypasses the Kresna gorge - the approval of these changes by the MoEW is mandatory in order for construction to begin.
- There is also the planned new construction of road facilities and road widenings in the Kresna gorge - which were not subject to any assessment and completely missing in the EIA 2017.

Judging by the statements of the Minister of Regional Development that construction will begin in April (if the European Commission approves such a decision) - this means that these significant changes to the project are going to be approved without an EIA by the MoEW in March 2024.

¹ see video recording, after 3 hours, in Bulgarian <https://www.parliament.bg/bg/parliamentarycommittees/3205>

1.3. Top government officials continue to make statements² that a 2nd alignment of the motorway will be designed and built to accommodate north-south traffic - but there is no documentary evidence or facts for such an action.

In their 2023 reports, the NGOs pointed out that the Bulgarian government had prepared Terms of Reference for the design of a north-south road - but that these ToR only defined the possible scope of a 2nd lane of the motorway. In essence, the ToR do not contain a design of the new road and is not connected in any way to the motorway project through official documents or procedures. It is unclear where this new road will pass and why it should be done and not moving the whole motorway outside the gorge. **Despite statements from top government officials, we are not aware of any facts that this assignment was changed to actually include the design of a 2nd lane of a north-south motorway.**

1.4. In 2024, the non-public contacts between the government and the European Commission (EC) continued, in which the Bulgarian government is trying to get permission from the EC to quickly start construction of the highway according to the 2017 EIA decision and without providing a new revised EIA.

The Bulgarian public understands about these contacts only from the already quoted statements of senior government officials. Judging by the statements of these officials, the European Commission is about to approve 'as soon as possible' the start of such construction despite the violations of Art. 6, par 2. and on Art. 6, par. 3 of Directive 92/43 in the EIA of 2017 (established in 2019 by the Commission's services) and the Recommendations of the Bern Convention.

If that becomes a fact, the European Commission was misled by the Bulgarian government and would take decisions in violation of its duty to be "guardian of the EU law" and Contracting Party to the Bern Convention.

2. In January and February 2024, two important decisions were issued by the Bulgarian Supreme Administrative Court regarding the Kresna case.

2.1. In the first decision of January 15, 2024, the court returned to the Administrative Court of Sofia for consideration of the first instance the case with which the NGOs contested the decision on the approval by the Ministry of Environment and Waters (MoEW) the construction of a road junction part of lot 3.2, which took place in May 2023. The disputed decision of the MoEW is an informal letter stating that there is no need to conduct a Strategic Environmental Assessment of the detailed plan for the construction of this motorway section (the SEA of detailed plans in this case replace the EIA procedures according the Bulgarian law). The NGOs appealed precisely because the letter was informal and did not constitute a legal decision. On the basis that informal letters cannot be appealed, the Administrative Court of Sofia quashed the appeal and refused to accept the fact that the letter should have been formal under a formal SEA screening procedure. The Supreme Court did not accept the arguments of the first instance court and ruled that since it is mandatory to have an SEA act and it is appealable in the court - this letter should be considered as such and its legality should be determined by the first instance court. Dismissal of this letter would mean that all construction in May 2023 was illegal and that the 5 year validity period of the 2017 EIA decision has undeniably expired.

² Public statement of the Prime Minister of February 20, 2024. <https://www.investor.bg/a/523-transport-i-infrastruktura/389651-denkov-predlozhili-sme-reshenie-za-doizgrazhdane-na-am-struma-sled-simitli>

2.2. The second case also addressed the expiration of the 2017 EIA decision. In it, two citizens (complainants in the Bern Convention case) argued that the 2017 EIA decision expired as early as November 2022, while the government claims that the deadline expires in May 2023 and that with the construction of the road junction in May 2023 - it was implemented on time. First, the first-instance Administrative Court of Sofia refused to consider the arguments of the NGO on the merits. With a decision of February 8, 2024, the Supreme Court did not accept these arguments here, and returned the case to the first instance with the request that all arguments be examined on the merits.

The issue of the validity of the 2017 EIA decision from the point of view of its duration has not been resolved and is yet to be decided in court. This does not prevent the Bulgarian government from basing all its decisions on the 2017 EIA and asserting that the EIA deadline issue has been resolved and the 2017 EIA is valid and effective.

NGOs consider and ask:

- That the Secretariat of the Bern Convention re-informs the Bulgarian authorities that a revised EIA decision needs to be prepared and all reasonable alternatives reevaluated.
- That the Bulgarian government takes into account the outcomes of the Workshop in April 2024 when preparing the revised EIA.
- And that before this is implemented, no construction of the motorway section 3.2 should start.

We further would like to ask the Secretariat, that it notifies the European Commission (EC) services of these recommendations and that it is important to get a feedback from the EC what the Commission has done to ensure compliance with all the Recommendations of the Bern Convention before construction begins (taking into account serious flaws in EIA decision from 2017 later confirmed and recognised by the Commission in 2019).

On behalf of the complainants:

On behalf of BALKANI Wildlife Society:

Mr. Petko Tzvetkov – chairmen of the management board

Mr. Andrey Kovatchev - representative of the society in the case

On behalf of Za Zemiata/For the Earth:

Ms. Desislava Stoyanova – representative of the society in the case

On behalf of CEE Bankwatch Network:

Mr. Andrey Ralev - biodiversity campaigner

[Appendix](#)