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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

41<sup>st</sup> meeting  
Strasbourg, 30 November – 3 December 2021

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**New complaint: 2020/8**

**Alleged threat to biodiversity due to draft  
amendment of hunting legislation (Bulgaria)**

**- COMPLAINT FORM -**

*Document prepared by  
Bulgarian Society for the Protection of Birds*

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**Convention on the Conservation of  
European Wildlife  
and Natural Habitats**



**COMPLAINT FORM**

***NB: Complaint forms must be submitted in electronic word format, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis.***

Please, fill in this form and send it to the attention of:

**Bern Convention Secretariat**

Directorate of Democratic Participation  
Council of Europe  
F-67075 Strasbourg Cedex

E-mail: [Bern.convention@coe.int](mailto:Bern.convention@coe.int)

**Ref. 131/16.10.2020**

First name: Vanya

Surname(s): Ratarova

On behalf of (if applicable): BULGARIAN SOCIETY FOR THE PROTECTION OF BIRDS (BSPB)  
partner of BirdLife International in Bulgaria

E-mail: [bspb\\_hq@bspb.org](mailto:bspb_hq@bspb.org)

Web site: [www.bspb.org](http://www.bspb.org)

Date : 16.10.2020

Electronic Signature

**1. Please state the reason of your complaint (refer also the Contracting Party/es involved and the Articles of the Convention which might be violated).**

The Bulgarian Council of Ministers has started a procedure for public consultation on a draft amendment and supplement of the Hunting and Game Protection Law in Bulgaria. The proposed amendments pose a significant threat to Bulgarian fauna and ecosystems, as they suggest **legalization the use of poison baits, narcotics and explosives, traps, snares and other illegal and non-selective methods and means of hunting** in nature. All these practices strongly violate the Bern Convention (as per Art.1, Art. 2, Art. 3.1, Art. 6a, Art. 7.1, Art. 8, Art. 10.1, and Appendices II, III and IV).

**2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)**

# Geographic scope: National level, with potential impact at regional level (i.e. impact on the populations from neighboring countries, such as Greece, North Macedonia, Serbia, Romania, and the populations of bird migratory species from Central and Northern Europe, as Bulgaria lies along the East Mediterranean Flyway).

# List of prohibited means and methods of killing and capture as per **Appendix IV** of the Bern Convention that will be used:

Snares; explosives; traps; poison and poisoned or anaesthetic baits

# List of fauna species (strictly protected) under **Appendix II** of the Bern Convention that will be affected:

Mammals: *Canis lupus*, *Ursus arctos*, *Felis silvestris*, *Lynx lynx balcanicus* ;Birds: *Accipiter brevipes*, *Aegypius monachus*, *Aquila chrysaetos*, *Aquila clanga*, *Aquila heliacal*, *Aquila pomarina*, *Buteo rufinus*, *Circus aeruginosus*, *Circus cyaneus*, *Circus macrourus*, *Circus pygargus*, *Falco peregrinus*, *Gyps fulvus*, *Haliaeetus albicilla*, *Hieraetus pennatus*, *Milvus migrans*, *Milvus milvus*, *Neophron percnopterus*, *Pyrrhocorax graculus*

# List of fauna species (protected) under **Appendix III** of the Bern Convention that will be affected:

Mammals: *Meles meles* ; Birds: *Corvus corone*, *Corvus frugilegus*, *Corvus monedula*, *Pica pica*

**3. What might be the negative effects for the specie/s or habitat/s involved?**

Severe population decline with high risk of extinction for some endangered species (e.g. vulture species due to deliberate use of poison baits).

**4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald network site?**

The suggested amendments of the Hunting and Game Protection Law in Bulgaria would have a devastating impact on the populations of many protected and endangered species falling under the scope also of the Bern Convention on the Conservation of European Wildlife and Natural Habitats, Birds Directive 2009/147/EC and Habitats Directive 92/43/EEC. Moreover, the proposed amendments (especially concerning the use of poison baits) are in direct conflict with officially adopted Species Action Plans for the conservation of rare and endangered bird species in Bulgaria (such as the Griffon Vulture, Cinereous Vulture and Egyptian Vulture under Annex 1 of Bird Directive and subject of concern under the CMS Multi-species Action Plan to Conserve African-Eurasian Vultures). These amendments will jeopardize the long-term efforts of many environmental NGOs and institutions to conserve the natural heritage of Bulgaria, and waste EU money invested, including under a number of EU-funded LIFE projects (e.g. LIFE10 NAT/BG/000152, LIFE11 NAT/BG/000363, LIFE14 NAT/BG/000649, LIFE14 NAT/NL/901 and LIFE16 NAT/BG/000874).

The suggested amendments are at national level and thus will directly affect the whole Natura 2000 network in Bulgaria.

**5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?**

We are not aware of this.

**6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)**

All the information and documentation (in Bulgarian) is available on the formal online portal (<http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5458>). There is a preliminary impact assessment where evaluation on the impact on the environment and biodiversity is lacking.

F.Y.I. annexed is a technical report with additional information.

ANNEX to letter Ref. 131/16.10.2020

To: Bern Convention Secretariat  
Directorate of Democratic Participation  
Council of Europe  
F-67075 Strasbourg Cedex  
E-mail: [Bern.convention@coe.int](mailto:Bern.convention@coe.int)

## POSITION

### Of the Bulgarian Society for the Protection of Birds / BirdLife Bulgaria

**On the draft amendment of the Hunting and Game Protection Law in Bulgaria aiming to legalize the use of poison baits, narcotics and explosives, traps, snares and other illegal methods and means of hunting in nature, and thus creating huge risk on biodiversity**

In connection with the procedure for public consultations under Art. 18a, Art. 26(2) of the **STATUTORY INSTRUMENTS ACT** and Art. 85(1) and Art. 85(2) of the **RULES OF PROCEDURE of the Council of Ministers and its administration** in connection with the **Draft Decision of the Council of Ministers for approval of a draft Law for the amendment and supplement of the Hunting and Game Protection Law (HGPL)**, and on the basis of the information and expertise we have, we would like to state the following opinion in connection with the envisaged amendments to the HGPL:

#### I. POINTS OF PRINCIPLE

The proposed amendments to the HGPL pose a significant threat to biodiversity and nature's ecosystems. The proposed text would **legalize the use of poisons, narcotics and explosives, traps, snares and other illegal methods and means of hunting in nature**. This type of non-selective hunting methods would lead to the uncontrolled destruction of protected species, environmental pollution of the nature and unpredictable disturbance of the balance in natural ecosystems.

The use of poisonous baits in particular would pose a threat to a large number of animal species, incl. protected and endangered ones, which is prohibited under international, European and national law, incl. conventions, directives, regulations, laws and bylaws. The proposed amendment in this option would practically legalize administrative and bureaucratic chaos and the inability of the state to exercise control over compliance with the following legal acts: **Biological Diversity Act (BDA), Veterinary Medicine Act (VMA), Animal Protection Act (APA), Criminal Code (CC), Law on Protection from the Harmful Impact of Chemical Substances and Mixtures (LPHICSM), Plant Protection Act (PPA)**.

The HGPL draft would be in direct conflict with officially adopted action plans for the protection of endangered bird species in Bulgaria. The amendments to the HGPL would pose most serious negative impact on the vulture species of birds found in the country – Griffon vulture, Cinereous vulture and Egyptian vulture. Their long-term conservation in Bulgaria has been regulated by the implementation of four strategic documents – **the Multi-species Action Plan to Conserve African-Eurasian Vultures** (Vulture MsAP, adopted by Bulgaria as a CMS party during the CMS COP12), and the National **Species Action Plans** for conservation of Griffon vultures, Egyptian and Cinereous vultures officially adopted by the Ministry of Environment and Water (MoEW). The main threat to the three species of birds is the use of poisons. As a result, many of the conservation activities developed in these documents are aimed at reducing the threat and effect of poisons on target species. In this regard, in September 2020, a draft proposal of an action plan for combating poisons in Bulgaria was submitted to the MoEW, which had been developed and had been undergoing public consultations for one year. Similar strategic documents have been developed, and specific activities are currently being implemented in all of Bulgaria's neighboring countries, with the exception of Turkey. Some of the activities to combat the illegal use of poisonous baits have been developed, tested and are currently used in a **number of projects funded by the EU LIFE programme**, implemented by environmental NGOs in Bulgaria and officially supported by the MoEW.

**A significant omission in the proposed amendment and its subsequent argumentation is the impact it would have on biodiversity and the natural environment.** The use of poisonous substances carries a huge risk for all members of the vertebrate fauna, including humans. These could come into contact, swallow the baits and thus become victims of poisoning. The wild boar is a polyphagous and is widespread throughout the country, inhabiting a variety of habitats. The placement of poisonous baits in this case, and in general, would mean that a large number of protected species would be in danger of falling victim to this practice. The use of poisonous substances would cause damage, only comparable to vicious practices of the past, which have been proven to have led to the extinction of a number of endangered animal species and have significantly dropped the populations of many others in the country. Most vulnerable in this respect would be the birds of prey (all species are protected by the BDA). Many of the latter, and especially vultures, are at the brink of extinction in Bulgaria as a result of a similar policy implemented in Bulgaria in the 1950s–1970s.

**The rationale for the proposal lacks a description of which these substances are, how they would be controlled under existing legislation, who would be authorized to work with them and who would ensure that the baits set in this way would not be consumed by other animal species, including vultures.** Therefore, the proposed amendment could be classified as a criminal act, which would not justify the purpose of their introduction nowadays. Setting baits in the wild would lead to mass mortality of wild and domestic animals and birds, which would come across the poisons in search of food. The effect would have catastrophic consequences for vulture species, which can travel more than 100 km to feed, including between countries (e.g. griffon vultures from Greece and North Macedonia often feed in Bulgaria and individuals from Serbia and Croatia sometimes settle for a while in Bulgaria as well). Therefore, the proposed amendments to the HGPL could practically go beyond the national scale, turning the problem into a regional scale.

## II. DETAILED COMMENTS ON THE INDIVIDUAL TEXTS

**The main argument for the proposed amendments to the HGPL - the African Swine Fever (ASF) - essentially opposes the proposed new text.** The failure to fulfill the indicators set out (the number of the wild boars shot and the number of wild boars infected with the ASF that have died or have been shot) cannot be a good argument when the expected amendment has to be measured by the same approach that has not been working so far. The proposal states that the Plan for Control and Prevention of the Spread of ASF in the Republic of Bulgaria has imposed a number of measures and incentives, incl., financial concessions, stating the *“omissions and non-compliance with the measures imposed to limit the spread of epizootics can only be identified but not sanctioned, which hinders the achievement of the objectives set by the measures”*. However, this finding does not provide a resolution to the main issue in the attached argumentation *“that the current legislation does not contain a mechanism through which to engage all game managers to apply measures to limit the spread of diseases in wild animals”*. On the contrary, the proposed option of action does not offer any adequate and lawful solution, but creates an opportunity for administrative disorder, violation of the existing and approved legislation and irreversible negative consequences in its possible implementation by imposing functions and obligations that in their essence cannot be controlled.

The proposed amendments to the HGPL are in direct violation of the international treaties ratified under the constitutional procedure, promulgated and entered into force for the Republic of Bulgaria, that are part of the country's domestic law. They have priority over these domestic law norms that contradict them (Article 5(4) of the Constitution). In the same sense is Art. 15(2) of the Statutory Instruments Act: *“Should a normative act contradict a regulation of the European Union, the regulation shall apply.”*

**The proposed amendment to the Law to amend and supplement the HGPL does not comply with two Directives and one Regulation:**

1. **COUNCIL REGULATION (EEC) No 3254/91** of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

The proposed amendment practically ignores the prohibitive effect of this Regulation, which

CANNOT BE DEROGATED and HAS DIRECT EFFECT on Bulgarian territory and its implementation by the Bulgarian authorities is mandatory.

**2. DIRECTIVE 2009/147/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 November 2009 on the conservation of wild birds, Article 8.**

**Bulgaria may NOT comply with THIS PROHIBITION, however NOT in the manner proposed by the draft law but in accordance with the following rules (transposed in Articles 48, 49 and 51 of the BDA):**

Article 9

1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:
  - a) in the interests of public health and safety, in the interests of air safety, to prevent serious damage to crops, livestock, forests, fisheries and water, for the protection of flora and fauna; .....
2. The derogations referred to in paragraph 1 must specify:
  - a) the species which are subject to the derogations;
  - b) the means, arrangements or methods authorised for capture or killing;
  - c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
  - d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
  - e) the controls which will be carried out.
3. Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.
4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of the derogations referred to in paragraph 1 are not incompatible with this Directive. It shall take appropriate steps to this end.”

**3. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Article 15.**

**Bulgaria may NOT comply with THIS PROHIBITION, however NOT in the manner proposed by the draft law but in accordance with the following rules (transposed in Articles 48, 49 and 51 of the BDA):**

Article 16

1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):
  - a) in the interest of protecting wild fauna and flora and conserving natural habitats;
  - b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
  - c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment; .....
2. Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.
3. The reports shall specify:
  - a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;

- b) the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;
- c) the circumstances of when and where such derogations are granted;
- d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;
- e) the supervisory measures used and the results obtained.

In its essence, the draft law contradicts Art. 38, 40, 41, 44, 45, 46, 48, 49 and 51 of the Biological Diversity Act and leads to non-compliance with Art. 37 and Art. 45, because the implementation of non-selective catching and killing methods will lead to uncontrolled killing of species of animals that are subject to protection according to Art. 37 and Art. 45 of the BDA.

1. For the species subject to strict protection (according to Art. 37) and all bird species other than those under Art. 37 (Art. 45), it is prohibited to capture or kill specimens with any devices, means and methods (Art. 38 and Art. 46, item 1). The use of non-selective methods for capturing and killing animals leads to causing damages to the populations of protected species and species of wild birds in general, which is inadmissible under this law.
2. The ban on the use of non-selective methods of capturing and killing animals stems precisely from the fact that such methods can destroy a large number of specimens of non-hunted species that may be endangered, and thus contribute to their extinction. The ban was introduced by Art. 44 of the BDA: (1) When catching or killing specimens of species listed in Annex No. 4, the use of non-selective devices, means and methods set out in Annex No. 5 shall be prohibited; (2) The prohibition under para. 1 shall also apply to the animal species under Annex No. 3 and the bird species under Art. 45 in the cases of permitted exception under the procedure of Art. 49.

**None of these methods, included in Annex 5 of the BDA for capture or killing of animals, should be legalized by another normative act on the territory of the country, as it will affect species of animals subject to protection under the BDA.**

3. Exceptions to the application of the prohibitions are regulated by Art. 48 of the BDA, with Art. 41, para. 1 clearly stating: *“Exceptions to the prohibitions under Art. 38, 40, Art. 41, para. 3, Art. 44, 46 and Art. 47, para. 1 shall only be allowed when there is no other alternative solution and provided that the populations of the affected species are not damaged in the field of their natural distribution and are in a favorable condition.”* This text clearly shows that in order to allow an exception, each individual case needs to be considered individually and it needs to meet certain conditions specified in Art. 48, para. 2. According to Art. 48, para 2, item 3, exceptions from the prohibitions for the instances *“in the interest of the public health and safety”* are allowed, but it must be explicitly emphasized that according to Art. 48, para. 4, this condition does not apply when it comes to wild birds. In this sense, it is clear that non-selective methods of killing or capture *“in the interests of public health and safety”* cannot be allowed where those methods pose a risk of catching or killing wild birds.
4. The individual approach in approving each exception is described in Art. 49 of the BDA and according to para. 2 of Art. 49. *“In the permit under para. 1 shall determine the types, the number of specimens, the time and place, the devices, the means and the methods, the manner of disposing of the specimen and other conditions under which the exception is allowed, as well as the body or person responsible for monitoring compliance with the conditions.”*

**For all exceptions**, a register is kept, which is reported to the European Commission (EC) and is available to the public. Guidelines from international institutions such as the EC and the Bern Convention on the application of their legislative acts state that when exceptions are applied responsibly, first the absence of other alternative methods of capture and killing is demonstrated, before considering the use of non-selective methods. The procedures thus established aim precisely at avoiding and limiting damage to species and specimens which are not the subject of the requested exception. The proposed amendments to Art. 54 of the Hunting and Game Protection Act allow the use of non-selective methods for catching and killing animals as a legal norm, which eliminates the need to prove that all alternative methods have been exhausted, without specifying the species and number of specimens of animals to be caught/killed. In this way, the illegal killing of all other species



of animals that have become indirect victims of the persecution in question is legalized. The registration of all these cases of unauthorized killing of wild animals (including birds) in the application of the non-selective methods in question is also thus avoided.

**In summary**, any legalization of the prohibited means of capturing and killing wild animals will lead to: **(1)** Failure to transpose the EU legislation in this part and non-compliance with international treaties and agreements, as a result of which **criminal proceedings will be initiated**, in particular by the EC and the Bern Convention, which implement such procedures; **(2)** Damage to wild animals – mammals, birds, which are not subject to the fight against the ASF, but which, due to the non-selectivity of the proposed methods and means for catching and killing wild boars, will become an indirect victim. **Killing protected species is a criminal offense under the Criminal Code.** The control over such encroachments is unachievable, and the responsibility for bearing the consequences is practically unprovable. **(3) Creating a direct danger to human life and health** by introducing poisons, poisonous substances and mixtures into nature by including them in the water cycle.

**In conclusion of the above, we insist on the withdrawal of the proposal made for an amendment to the HGPL, on searching alternative solutions that exclude the planned amendments to § 5, item 7, and adoption of legal methods and means to combat the ASF on the territory of Bulgaria in accordance with the current international, European and Bulgarian legislation.**