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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

39th meeting
Strasbourg, 3-6 December 2019

Possible File

**Follow-up of Recommendation No. 98 (2002)
on the project to build a motorway
through the Kresna Gorge
(Bulgaria)**

- REPORT BY THE GOVERNMENT -

*Document prepared by
The Ministry of Environment and Water, Bulgaria*

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- November 2019 –

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

Progress since February 2019

08 November 2019

I. Introduction

- [1] Struma Motorway is of international importance, being part of the core TEN-T network (the former Trans European Corridor IV, presently Orient/East-Mediterranean Corridor), connecting Sofia and Greece. The largest part of the motorway has been constructed but the most difficult section – Lot 3.2. – passing through the environmentally sensitive Kresna Gorge is still pending.
- [2] For the construction of Lot 3.2., the so called “Eastern Alternative G10.50” was approved in 2017 by an EIA Decision of the minister of environment and water. The EIA Decision was appealed and confirmed by the Supreme Administrative Court in 2018 with a final court decision¹. The judgement confirmed the legitimacy of the EIA Decision on procedure and substance, and its compliance with the national and EU environmental legislation.
- [3] The application for EU funding of Lot 3.2. was submitted to the European Commission on 9 August 2019 and the Commission services are currently assessing the project. Further to the information in the application and the documents enclosed thereto, the Commission requested additional clarifications which will be submitted by the Bulgarian authorities until 15 January 2020 at the latest.
- [4] The Struma Motorway project has been monitored by the Bureau and the Standing Committee to the Bern Convention for years and, as a part of this process, Recommendation No. 98 (2002) has been issued. At its 38th meeting, the Standing Committee decided to leave the file as a “possible file” and to await the application package to EC to be submitted and the evaluation by the Commission services to be made available.
- [5] At its annual meetings for 2019, the Bureau considered a complainant report on the performance of illegal construction works in Natura 2000 sites located in the Kresna Gorge and the authorities’ response on the complainant’s allegations. The Bureau requested additional information on the reported construction of roads in Natura 2000 sites and on the planned and currently implemented mitigation and compensation measures due to these activities.

II. Updated information following the Bureau meeting in September 2019

- [6] In February 2019, it was reported in Bulgarian media that construction works in the area of Kresna Gorge are being performed. After the broadcast, the Regional Inspection of Environment and Waters (RIEW) in the city of Blagoevgrad carried out documental and on-site inspection.
- [7] The inspection revealed that some drilling sites and temporary roads for access thereto have been illegally made in 2018. These activities have been performed without implementation of the

¹ Decision No 6834/23 May 2018 in the administrative case No 13132/2017 of the Supreme Administrative Court.

required environmental and land-use planning procedures. Based on this, financial sanctions have been imposed by both the RIEW and the competent Regional Forest Directorates.

- [8] The Road Infrastructure Agency (RIA) – the assignor of the construction of Lot 3.2. – also confirmed that it has neither permitted, nor contracted and financed the said activities and has not been aware of them until the television broadcast. Up to now, no construction works have been assigned by RIA on the Struma motorway passing through the Kresna Gorge.
- [9] Actually, the prevailing part of the alleged “7 km access roads” are old, existing forest roads that have not been used for many years. The violation consists of slight expansion and slight extension of these roads by removal of plants and bushes. Drilling works have been carried out too. These activities pertain to a geological survey carried out by a private company, on its own initiative, acting in the field of road design and planning of linear sites. For the needs of the geological survey, heavy machinery has been transported on the access roads.
- [10] The offence has been committed during the one-month period from 15 August till 15 September 2018.
- [11] Most of the affected area falls within the approved “Eastern Alternative G10.50”. The authorities have made a detailed assessment of the damage and considered different options of mitigation and compensation measures. As the area of the affected habitats is extremely small, their natural self-restoration, i.e. without on-spot activities, appears to be the most efficient measure. For that purpose, all roads are closed.
- [12] Besides the above described offence, no other works, in particular no construction works have been performed in the area of Kresna Gorge.

III. Conclusion

- [13] At its annual 2019 meetings, the Bureau has discussed the reports of the complainants and the authorities on the alleged construction works in the area of Kresna Gorge. Those activities have been illegally performed and have been in fact stopped in September 2018. All roads are closed to ensure self-restoration of the affected habitats.
- [14] On 9 August 2019, Bulgaria has submitted to the European Commission the application for grant funding of Lot 3.2. and the Commission services are currently assessing the project. By so doing, Bulgaria has implemented the last condition of the 38th Standing Committee.
- [15] With the signing of the contract under the currently ongoing tender procedure, intense monitoring of the populations and road related threats to 2 species of land tortoises and 2 species of colubrid snakes will be ensured before, during and after (for at least 5 years) the project implementation. Such continuous control on the environmental status and empirically grounded planning of corrective measures clearly demonstrates the commitment of the Bulgarian authorities to ensure the protection of species and habitats in this ecologically sensitive area.
- [16] Bulgaria strictly complies with and implements the international, EU and national legislation on species and habitats protection, respecting completely the Bern Convention. Also, all considerations of Recommendation 98 (2002) of the Standing Committee to the Bern Convention have been taken into account during the project development.

Taking into account the above, we ask the honorable Standing Committee to remove this file from the list of possible files.

- August 2019 –

Complaint No. 2001/4 and Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria) (Struma Motorway Lot 3.2)
Progress since November 2018

26 August 2018

1. Introduction

The Struma Motorway project has been monitored by the Bureau and Standing Committee of the Bern Convention for years and as part of this process Recommendation No. 98 (2002) has been issued. Following a complaint from local NGOs, the progress of the project has been reported at the 35th, 36th, 37th and 38th Meetings of the Standing Committee, and reviewed at several meetings of the Bureau.

This report summarises the progress of the environmental procedures and project preparation since November 2018. At its 38th meeting The Standing Committee decided to keep the file as „possible file“ and to wait for the application package to the European Commission to be submitted and the evaluation by the European Commission services is made available. Committee also decided to request for the authorities to report to the Bureau and Standing Committee on the progress.

In this regard, the Bureau at its meeting held on 19 March 2019 asked the Bulgarian Authorities to report on:

- the 7 km access road construction and exploratory drillings in the NATURA 2000 site “Kresna-Illindenci”, their state of execution, relevant permissions and whether these roads are included in the land use planning for the area;
- on the mitigation and compensation measures planned in relation to the alternative chosen for LOT 3.2., as requested by the Standing Committee at its 38th meeting.

2. Project Summary

Struma Motorway is an important road link connecting the capital of Bulgaria, Sofia, and Greece. The largest part of the motorway has been constructed but the most difficult section through the environmentally sensitive Kresna Gorge remains unconstructed. This is Lot 3 of Struma Motorway and is the main priority of Operational Programme Transport and Transport Infrastructure 2014-2020.

There is an existing road (E-79) in the direction of Struma Motorway that passes Kresna Gorge for about 20 km. The gorge hosts two Natura 2000 sites, as well as a number of national protected areas. Due to the difficult terrain and the high volume of heavy loaded vehicles using the existing road there is a very high rate of traffic accidents in the gorge area. The road also passes through Kresna town which increases the exposure of the population to accidents, noise and pollution. The accidents in Kresna town represent serious issue demanding solutions.

There has been an EIA procedure carried out in 2007. New formal EIA procedure was commenced in 2014 and was completed and approved in 2017 with the EIA Decision No 3-3/19.10.2017 of the Minister of Environment and Water for approval of the investment proposal for "Improvement of Lot 3.2 of the Struma Motorway option D 10.50".

Decision No 3-3 / 19.10.2017 of the Minister of Environment and Water was appealed in the Supreme Administrative Court and the Court has lounded administrative case No 13132/2017. The complainant was the Association for the Earth - Access to Justice.

The Supreme Court rejected the appeal and this is the final Court ruling which is not subject to further appeals. By the Court Ruling, the NGO's allegations for illegality of the Judgement, respectively of the EIA Decision 2017, were once again considered by the court and fully rejected.

At present, there are no pending legal proceedings concerning the EIA Decision 2017.

3. Developments

The application package for the project was submitted to the European Commission for comments and approval on 9 August 2019.

Answering the Bureau's questions on the case we provide the following up-to-date information:

- the 7 km access road construction and exploratory drillings in the NATURA 2000 site "Kresna-Iindenci", their state of execution, relevant permissions and whether these roads are included in the land use planning for the area;

During the period the Minister of Environment and Water (MoEW) reacted to the investigation of journalists from the Bulgarian media BTV about starting of construction in the area. After the first report was broadcasted, the RIEW-Blagoevgrad carried out documental and on-site inspection to clarify the exact location of the sites using GPS coordinates. The experts described different habitat parameters and road characteristics. The check revealed that no projects for carrying out geological exploration activities in the area of the Kresna Gorge were submitted to RIEW for coordination. The on-site inspection did not detect availability of vehicles and drilling equipment or temporary roads. However, drilling sites were registered together with some traces of clearing activities leading to construction of forest roads.

There are 9 detected objects in total: object 1 is road with a length of 118 m; object 2 with a length of 124 m; object 3 with a length of 354 m; object 4 with a length of 484 m; object 5 with a length of 240 m; site 6 with a length of 484 m; site 7 with a length of 297 m; object 8_1 with a length of 1262 m and object 8_2 with a length of 967 m. All objects show characteristics of roads for access to drilling sites with a 3 m width of the roadway.

The affected area is approximately 2.9 ha. Part of the sites are within the scope of the Lot 3.2 route of Struma Motorway, considered and evaluated by the EIA and the AA procedure, namely: objects 1 and object 2 are completely within the scope of the ecological documents; object 3 and object 4 fall partially; object 5, object 6 and object 7 are in the tunnel exits range, object 8_1 falls partially within the documentary scope, and object 8_2 does not fall within the scope of Lot 3.2.

The sites do not fall within the boundaries of protected areas, according the national legislation, but fall within the following NATURA 2000 sites: BG0002003 "Kresna" for Conservation of Wild Birds, announced by Order No. RD-748 / 24.10.2008 of the Minister of Environment and Water (SG 97/2008); BG0000366 "Kresna - Iindentsi" for the conservation of natural habitats and of the wild flora and fauna listed as protected zones adopted by Council of Ministers Decision No122/02.03.2007 (SG 21/2007, amended).

In frame of the investigation conducted by RIEW Blagoevgrad the offender was identified and an administrative penalty action was undertaken according to the Environment protection legislation. The offender which is a legal person was subject to respective administrative sanction provided for by the legislation.

MoEW requested relevant information also from Road Infrastructure Agency (RIA). The Agency informed MoEW, that no outsourcing of any activities along the route of Lot 3.2 of Struma Motorway - between Krupnik and Kresna, related to drilling, building of temporary roads or anything related to such activities was permitted, required or performed by the Agency. At present, there are no contractors selected and contracts concluded on the basis of which construction activities will be carried out on the route of the Struma highway through the Kresna Gorge.

- on the mitigation and compensation measures planned in relation to the alternative chosen for LOT 3.2., as requested by the Standing Committee at its 38th meeting.

Currently, RIA is under tender procedure with exact formulation „Realization of monitoring on the populations of two species of land tortoises and two species of colubrid snakes in the section of the first class international road E-79 (I-1), passing through the Kresna gorge”. The monitoring is indicated in the Application form (AF) of the project. Currently, the AF was approved by the Managing Authority of OPTTI 2014-2020 and the JASPERS Action Completion Note was issued only recently (on 09 August 2019). On the same date, via the SFC, the AF was submitted for approval by the EC. In the AF were included the following main parameters concerning the realization of the ecological monitoring:

Contract name	Conduct of monitoring of the populations of two species of tortoises and two types of snakes in the section of the first-class international road E-79 (I-1) passing through the Kresna Gorge
Contract type (works/supplies/services)	Services
Value (actual or expected)	€122,710.05
Body responsible for the contract	RIA
Date of publishing tender (actual or planned)	10.06.2019 actual
Date of completion of evaluation of tenders (actual or planned)	16.09.2019
Date of signature of contract (actual or planned)	16.10.2019
Ref. (Official Journal of the EU etc.) if relevant	2019/S 112-274993

More detailed information is provided in the supporting documents of the AF and we provide here a summary: For the purposes of assessment of the efficiency, improvement and optimization of the function of the defragmentation/fencing systems of the road within the Kresna gorge (right carriageways), during all phases of the project realization an intense monitoring on the populations of the Greek tortoises (*Testudo graeca*), the Hermann's tortoises (*Eurotestudo hermanni*), the Four-lined snakes (*Elaphe quatuorlineata*) and the Leopard snake (*Zamenis situla*) will be performed. These four species were identified as a special subject of protection in the environmental documentation issued for the project. The monitoring will start immediately after the tendering procedures are finished and will last for at least 5 years after the road section becomes operational. The monitoring is designed to provide information concerning the population dynamics of the target species and the degree of fragmentation and isolation of potentially formed sub-populations. The monitoring will provide data concerning the mortality of the target species on the road and some other road related ecological parameters. All information will be collected and analyzed using integrative and interdisciplinary approaches. The efficiency of the protection/defragmentation systems will be assessed annually (within the monitoring period) starting after the second year of commissioning of the right carriageway of the road. In case of proven inefficiency of the implemented mitigation measures, the roads agency will undertake corrective actions.

In that respect the environment and species protections in the region of Kresna Gorge are subject to continuous control and planning.

- February 2019 –



REPUBLIC OF BULGARIA

MINISTRY OF ENVIRONMENT AND WATER

COMPLAINT NO. 2001/4 AND RECOMMENDATION NO. 98 (2002) ON THE PROJECT TO BUILD A MOTORWAY THROUGH THE KRESNA GORGE (BULGARIA) (STRUMA MOTORWAY LOT 3.2)

Progress since November 2018

28 February 2019

4. Introduction

The Struma Motorway project has been monitored by the Bureau and Standing Committee of the Bern Convention for years and as part of this process Recommendation No. 98 (2002) has been issued. Following a complaint from local NGOs, the progress of the project has been reported at the 35th, 36th, 37th and 38th Meetings of the Standing Committee, and reviewed at relevant meetings of the Bureau.

This report shows the state of play of the process in preparation of the application package to the European Commission for the funding of Lot 3.2 construction of Struma Motorway. The 38th Standing committee meeting decided to leave again the case as possible file pending submission of this application.

5. Project Summary

Struma Motorway is an important road link connecting the capital of Bulgaria, Sofia, and Greece. The largest part of the motorway has been constructed but the most difficult section through the environmentally sensitive Kresna Gorge remains unconstructed. It is called Lot 3 of Struma Motorway and is the main priority of Operational Programme Transport and Transport Infrastructure 2014-2020.

There is an existing road (E-79) in the direction of Struma Motorway that passes Kresna Gorge for about 20 km. The gorge hosts two Natura 2000 sites, as well as a number of national protected areas. Due to the difficult terrain and the high volume of heavy goods vehicles using the existing road there is a very high rate of traffic accidents in the gorge area. The road also passes through Kresna town which increases the exposure of the population to accidents, noise and pollution. The accidents in Kresna town are also a serious issue demanding solution.

There has been an EIA procedure carried out in 2007 and a new formal EIA procedure has commenced in 2014 and was completed and approved in 2017 with EIA Decision No 3-3 / 19.10.2017 of the Minister of Environment and Water for approval of the investment proposal for "Improvement of Lot 3.2 of the Struma Motorway option D 10.50".

6. Developments

On 22 October 2018 an initial version of the application form (AF) for Struma MW Lot 3.2 with all additional documents were presented to JASPERS initiative.

On 08 November 2018 comments were received from JASPERS and the documentation was revised accordingly.

On 24 January 2019 the revised AF was sent to JASPERS again. We look forward to JASPERS's remarks or completion note.