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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November - 4 December 2020

Possible File

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

- REPORT BY THE NGO -

*Document prepared by
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28th October 2020, Sofia

Dear Standing Committee Delegates,

Last year was challenging for all of us but it also became clear that the unprecedented biodiversity loss we are causing is challenging our own resilience. Preservation of ecosystems and a do not-harm approach must be enacted immediately and Europe is expected to show leadership in biodiversity conservation in the eve of the Biodiversity COP in 2021.

In the specific case of Struma Motorway in Bulgaria, which threatens to destroy the unique biodiversity of the Kresna gorge, the clock is ticking faster and lack of action is no longer an option.

The undersigned NGOs **call for opening of a case file on the case** at the 40th meeting of the Standing Committee with a recommendation for immediate implementation of Recommendations 98/2002 and the decision of the EIA/2008-1, which require completion of the Struma Motorway on a route **outside of the sensitive bio-corridor of Kresna gorge**, as well as and downgrading the current international road through the gorge to a local road.

The urgent call to open the case file is motivated by the **lack of implementation of the decision of the 39th Standing Committee and failure to strengthen the monitoring of the construction of the Struma highway in the section of the Kresna Gorge by sending an independent expert visit to the field.**¹

Furthermore, there is lack of action by the Bulgarian government to address the EC recommendation for implementation of the EC "Habitat" Directive 92/43 EC from October 2019 based on the appraisal of the quality of the 2017 EIA/AA report, namely:

- Revision and improvement of the EIA and AA
- Urgent designation of the Special Area of Conservation (SAC) and establishment of conservation objectives and measures
- Addressing pressures of the existing E79 road

As of today, the pressure from the traffic of Struma Motorway on the Kresna gorge NATURA 2000 site remains systematic and damaging. There is no reasonable explanation why the establishment of conservation objectives and measures have not yet started, since this is a prerequisite for implementation of the EU Habitat Directive in the case of the Struma Motorway. The action reported by the Bulgarian government to the Standing Committee and Bureau, namely the expert support expected in March 2021, will only gain more time and preserve the status quo, while going ahead with construction of the selected route **through** the Kresna gorge.

Twenty years after the case file was presented to the Standing Committee of the Bern Convention, we believe that the situation with the conservation of the Kresna gorge site deteriorated dramatically due to lack of action, vision and leadership. Supporting a “business as usual” approach will not only lead to worsening the situation of the NATURA 2000 sites, but will create a precedent for replicating this model to other similar cases in Bulgaria, heavily damaging the trust of citizens and civil society in the effectiveness of the current mechanism to ensure implementation of the EU law and International agreements.

Background

We would like to recall briefly the reasons for the decision on the 39th Standing Committee:

- The Bulgarian government neglected strong available scientific evidences and an array of alternatives for bypassing the gorge, and approved in 2017 the construction of a south-bound line of Struma Motorway through the heart of NATURA 2000 site, a solution that is detrimental for the biodiversity, local communities and opportunities for sustainable tourism in the NATURA 2000 site.

- The NGOs requested the opening of the case at the 38th Standing Committee, but the decision was to await that the application package for funding of the construction of Lot 3.2 of Struma motorway (the Kresna Gorge section) to the European Commission is submitted by the Bulgarian Government, as well as await its evaluation by the European Commission (EC) services taking into account the EU acquis on nature conservation.

- In September and October 2019 the EC issued two documents **that pointed out serious failures in the implementation of the EU acquis on nature conservation in the case of the EIA procedure 2017 and the plans to construct one lane of Struma Motorway through Kresna Gorge** (see Annex with our presentation to the 39th Standing Committee meeting with quotes from EC assessment). The EC also confirmed the NGOs’ concerns about the deterioration of natural habitats and the habitats of species, as well as the disturbance of the species in breach of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”).ⁱⁱ Commissioner on Environment Vella wrote ”It is uncontested that the E79 road constitutes the most important pressure for these Natura 2000 sites, as the intense traffic causes significant mortality of EU protected species and deteriorates the Natura 2000 sites”.ⁱⁱⁱ The EC clearly recommended the involvement of international expertise both in the project monitoring and at the elaboration and monitoring of conservation measures.

- The NGOs request for opening of the case file was supported by several delegates (five countries Germany, France, Hungary, Switzerland and Luxembourg) of the 39th Standing Committee. Compromise was reached to continue monitoring the case as a ‘potential file’. In order to increase the effectiveness of the monitoring, the parties approved the proposal for an on-the-spot expert mission to Bulgaria. This decision enabled the government to take advantage of international expertise in the preparation of the project in line with nature conservation goals, identifying mitigation measures and ways to prevent violations of European legislation in the choice of an alternative route.

- **The Bulgarian Government, in its latest report to the Convention, requested a delay or cancellation of the mission.**^{iv} Meanwhile, the preparation for the construction of the last section of the Motorway is ongoing with own resources from the Bulgarian budget (no EU funds approval is considered) thus avoiding any scrutiny by the EC. On September, 25th the tender for lot.3.2.2 [was opened](#) , offers and contract for the final design and construction could be signed soon.

On-the-spot appraisal of the Bern Convention.

NGOs are concerned by the request of the Bulgarian government^v (3) to delay or cancel the visit by the Bern Convention experts. We understand the decision of the 39th Standing Committee about on-spot-visit as an assistance to Bulgarian government and opportunity of international expertise for defining the nature conservation goals, identifying mitigation measures and ways to prevent violations of European legislation in the choice of an alternative route. The Bulgarian government's report to the Standing committee from September 2020 referring to the planned EC visit for March 2021, states that^{vi}:

- 1) The main goal of the planned EC expert visit would be to assist the Bulgarian government in the design of the project in compliance with the EU legislation. Another important goal of the visit will be support for the development of the conservation objectives for the NATURA 2000 site in Kresna gorge. We are concerned with the suggested approach. The Directive 92/43 considers that the management of the NATURA 2000 sites should consider the social and economic concerns but the conservation objectives could not be subordinated to those. Bundling the development of the conservation goals with the development and financing of the Struma Motorway (section 3.2) is in contradiction with principles of Directive 92/43.
- 2) The Council of Europe and the Bern Convention are independent by the European Union. We understand the need for collaboration, therefore the Convention expert should be working and complimenting the EC expertise and not subordinated to the outcomes of the EC visit.

Recent action of the Bulgarian government in relation to the construction of Struma Motorway

The Bulgarian government is currently planning the budget for transport infrastructure in the period 2020-2023, with EUR 645 million assigned for Struma Motorway lot 3.2. The first payment of EUR 54 million is envisaged to be spent already in 2020 - thus construction of the Motorway through Kresna gorge could start any time.

In 2020 and 2021 there is EUR 1,533 million planned to be spent for mitigation measures for decreasing the negative impact of the Struma Motorway traffic on the protected species. In August, 18th 2020 the tender for selecting an entity to apply biodiversity protection measures was opened. Those measures were requested by the EC in its appraisal of the application form for Lot. 3.2. This is due to the fact that the mitigation measures envisaged in the EIA decision form 2017 were not proven to be effective and were not in line with art.6.3 of Directive 92/43. Furthermore, the tender for mitigation measures is controversial as it is based on the contested EIA 2017 decisions and ignores the EC critiques on the quality of the report and its conclusions.

In February 2020, the Road Agency commissioned monitoring of the 4 reptile species in the NATURA 2000 site (*Testudo graeca*, *Testudo hermanni*, *Elaphe situla*, *Elaphe quatorlinenata*) with a cost of EUR 122 thousands. The consultant failed to implement the monitoring in the first half of 2020 and the purpose of this monitoring is highly questionable as the construction could start any time now, in the beginning of 2021. Thus, the monitoring could not address the critiques of the EC about the inadequacy of the mitigation measures planned under the EIA 2017 decision.

In July 2020, the EU funds Monitoring Committee discussed the shift of funds allocated to Struma Motorway compilation in favour of other two motorways. Thus, the construction of Struma Motorway would remain financed by Bulgarian state budget to avoid further appraisal from the EC services of the EU funding application.^{vii}

Since August 2020 massive protests are ongoing in Bulgaria against the government with allegations of mismanagement, corruption and non-democratic governance. On August 11, 2020 our colleague and founder of the "Save Kresna Gorge" coalition started a hunger strike [pointing](#) to the responsibility of the Prime Minister for "making every effort to destroy this marvelous NATURA 2000 site of

Community interest by planning (and already implementing) the construction of a highway straight through the Gorge”

On September, 25th the tender for lot.3.2.2 [was opened](#) , offers and contract for the final design and construction could be signed soon.

Taking all this into account, we appeal to the 40th Standing Committee to urgently open a file on the Kresna gorge case, send an independent on-the-spot expert commission and prove that it is a guardian of European biodiversity legislation.

Sincerely yours,

Desislava Stoyanova, Environmental association “Za Zemiata” (Friends of the Earth Bulgaria)

Daniel Popov, Environmental association “Za Zemiata” (Friends of the Earth Bulgaria)

Andrey Kovatchev, Balkani Wildlife Society

Anelia Stefanova, CEE Bankwatch Network

ⁱ Page 10, 6.2 Possible files 2001/4: Bulgaria: Motorway through the Kresna Gorge.-PVS(2019)Misc [Misc_e_2019.docx], Standing Committee 39th meeting, List of decision and adopted texts.

ⁱⁱ Road Executive Agency, 14.08.2020, REA will invest 3 mln BGN into protection of wild flora and fauna in the Kresna gorge area <http://www.api.bg/index.php/bg/presentar/novini/api-she-investirablizo-3-mlnlv-v-opazvane-na-divite-zhivotni-i-pticite-v-kresnenskoto-defile1/>

ⁱⁱⁱ Ref Ares(2019)6027843 from 17/09/2019 from Carmenu Vella, Commissioner to Stefanova, Heslop, Blake and Stoyanova on infringement complain CHAP(2017)02186.

^{iv} Ref. Ares (2019) 6378788-15/10/2019

^v <https://www.eufunds.bg/bg/optti/term/382>

^{vi} Strasbourg, 4 September 2020 T-PVS/Files(2020)36 [files36e_2020.docx], Follow-up of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria), Report by the Government.

^{vii} Latest news report from 25th September 2020 on the future of Kresna gorge section https://www.capital.bg/politika_i_ikonomika/infrastructure/2020/09/25/4118298_struma_v_defileto_niama_da_e_magistrala_no_shte_e/?fbclid=IwAR2s6VwYTr-wR5hQ8S9lGM-I4YAEhMza7WVkaouUtLOhoZkC7F0XkEMdmm0