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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

41<sup>st</sup> meeting  
Strasbourg, 29 November - 3 December 2021

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**Possible File: 2001/04**

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

**- TERMS OF REFERENCE FOR A BERN CONVENTION  
ADVISORY MISSION -**

*Document prepared by  
the Directorate of Democratic Participation*

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## 1. BACKGROUND OF THE CASE-FILE

The case concerns the plans for the construction of a 17 km-long motorway (section of the “Struma motorway”) in the Kresna Gorge in the South-west of Bulgaria.

In May-June 2002, a Bern Convention on-the-spot appraisal by expert Mr Guy Berthoud took place. The Bulgarian authorities had not considered any other alternatives to motorway construction and the construction inside the gorge of a full-scale motorway was considered harmful to biodiversity. The Standing Committee adopted [Recommendation No. 98 \(2002\)](#), deciding that the routing of the motorway should be subject to an in-depth environmental assessment (paragraph 2) and that the option of enlarging the current road should be abandoned and alternative routes outside the gorge be studied (paragraph 3).

In the absence of information on the progress of the construction project from the authorities in 2004, a file was opened. The Complainant informed that construction had actually started in the northern sections without a full EIA of the motorway.

By a decree of 14 November 2005, the Ministry of Environment and Water prohibited certain activities which could have adverse consequences for the site, such as the building of hydro-electric power stations. In 2006, the Bulgarian delegation informed the Standing Committee that a new EIA had been initiated, in consultation with all the partners concerned. The European Union delegation informed the Standing Committee that a complaint had been lodged with the Commission.

In 2007, Bulgaria joined the EU. In 2008, the Bulgarian delegation informed the Standing Committee that the decision to construct the Struma Motorway had been issued after intensive consultations. The Bulgarian government had taken into account Recommendation No. 98 (2002) particularly with regard to the stages of preparation and quality of the EIA report and the determination of the motorway route in the Kresna Gorge, which was carried out with the collaboration of relevant institutions, NGOs and scientists. It was decided to avoid the Gorge.

In 2009, the Standing Committee closed the case-file, in the light of the information from the Bulgarian authorities that the decision to avoid the Kresna Gorge had been taken (“tunnel” alternative), although the final technical project for the actual roadbed had not been prepared yet.

In 2010, the Bulgarian authorities informed the Standing Committee that there were no changes in the situation and no decision to construct an alternative route in the Kresna Gorge section. The representative of BirdLife asked the Bureau to continue to monitor the implementation of the recommendation.

Between 2011 and 2015, no new information was submitted on the issue by the Bulgarian authorities, nor was the issue raised at the Bureau or Standing Committee meetings.

In September 2015, eight Bulgarian NGOs informed the Secretariat that the Bulgarian government planned to construct the last section of the Struma motorway through the Kresna Gorge and to reject the “tunnel” alternative. Following the request of the Bureau the authorities reported that no decision had been taken as to an alternative solution, and that an EIA was being conducted in consultation with the public and that any decision would be taken in close cooperation with the EC.

The “tunnel” alternative had been indeed approved by the 2008 EIA. The EIA decision, however, was based on limited environmental information, including for potential Natura 2000 sites proposed in 2007, and lack of detailed technical data and geological surveys. At that time, only the environmental consequences of the tunnel operation and not those of its construction, nor of its maintenance were considered. The EIA decision included further a number of recommendations for improvement of the route on the next stages of research and design. One of the conditions laid down for the design phase required, alongside the development of the tunnel option, additional ways for its improvement and achievement of the best possible environmentally-friendly, technically and economically feasible option to be sought. Actually, studies carried out afterwards revealed a number of potential problems which might occur if this alternative was implemented, such as insufficient public safety and environmental damage to the Kresna Gorge which could not be overcome by compensatory measures. Risks related to the construction of the tunnel had been established given the seismic nature of the region and the presence of radioactive substances, as well as high exploitation and maintenance costs which rendered the tunnel alternative economically unfeasible.

A “backup alternative” was being developed and should be evaluated through a new EIA initiated in December 2014. The “backup alternative” was designed as a dual carriageway in the Kresna Gorge. The “backup” design intended to minimise the footprint of the road and reduce impacts on habitats and species.

In light of the information provided, the 2015 Standing Committee decided to consider this closed file as a possible file at its next meeting. The EC informed that a final decision as to the route had not been taken and that it was following project developments and would intervene in case of possible non-compliance with EU legislation.

In the course of the EIA/AA procedure, three new alternatives were elaborated and assessed together with the “tunnel” alternative and the “backup alternative” developed in 2014. The new alternatives included: an improved variant of the “backup alternative” of a dual carriageway in the Kresna gorge; the Eastern Bypass alternative which envisages the construction of a unidirectional two-lane road going south in the Kresna Gorge and a northbound carriageway to be constructed to the east, outside the gorge; and the full Eastern Bypass, which envisages both carriageways outside of the Kresna Gorge. The revised scope of the new EIA included five options in total and assessed them all on equal footing.

The complainant held that the scope of the EIA/AA was not in accordance with the 2008 EIA decision of the Ministry of Environment approving the “tunnel” alternative, nor with the commitments made by the authorities before international institutions, including the one funding the infrastructure project. They argued that all alternatives should be considered – not only those offered by the investor, but also the ones proposed during the consultation.

The 2016 Standing Committee invited the authorities to report in detail on the current EIA results and ensure alternatives are considered on an equal footing in the present assessment.

In 2017, an EIA/AA Decision was issued choosing the eastern alternative G10.50 featuring the construction of a new unidirectional two-lane road to bypass Kresna Gorge so that traffic in one direction uses the new road and the traffic in the other direction uses the existing road.

The Bulgarian Minister of Regional Development and Public Works announced that the application form for financing the Struma motorway was about to be submitted to the European Commission.

The 2017 Standing Committee took note of the report of the national authorities on the alternative chosen for the development of the section of the Struma motorway passing through the Kresna Gorge, after careful examination of all alternatives studied in the frame of an EIA/AA. It further noted the concerns expressed by the complainant NGO coalition about the objectivity of the EIA. The Standing Committee further requested that the authorities report on the outcomes of the national court appeal of the EIA/AA and the pending submission of an application package to the European Commission for the funding of the construction.

In 2018, the Bulgarian Supreme Administrative Court rejected the complaint against the EIA/AA decision on procedure and substance and the authorities expressed strong opposition to an external review of the EIA/AA study, in view of the Court’s final decision confirming equal treatment of the assessed alternatives and compliance with relevant national and EU legislation. The authorities manifested nevertheless their readiness to continue their reporting to the Bern Convention. The complainant requested an on-the-spot appraisal visit. The 2018 Standing Committee decided to wait until the application package to the European Commission is submitted and the evaluation by the European Commission services is made available, as this will certainly be done taking into account the EU acquis on nature conservation.

In 2019 illegal works alongside the potential route were reported. The works were carried out in Natura 2000 sites without permission, assessment of impact or before the procurement procedure was even launched. In October 2019, the EC issued observations on the application form submitted by the Bulgarian government for EU funding and assessed that the Bulgarian Government had deficits in implementing Article 6.3 of Directive 92/43 in performing the environmental procedures for the Struma highway project since it was not assessed against the site-specific conservation objectives for the affected Natura 2000 sites. The EC requested that the Bulgarian Government ensures the necessary detail of conservation objectives and amend the Appropriate Assessment (AA) accordingly.

The 2019 Standing Committee supported the organisation of an on-the spot appraisal as a means to collect information from the field, from the various assessments, reports and data available and to meet with relevant actors, with the view of formulating recommendations on ways to find a solution that will be acceptable for both the safeguard of the protected wild fauna and flora and for putting in place a safe and effective road connection.

In 2020 after temporarily withdrawing the project from the EC for revision, the Bulgarian authorities took steps to elaborate site-specific conservation objectives, including approaching the EC to provide the financing for two independent experts to ensure compliance with the further steps of the project development within the Environmental Acquis. In addition, a contract was signed which envisages continuous monitoring of the conservation status of 4 priority species. Furthermore the road authorities undertook steps to procure a design and implementation contract for measures to mitigate pressures on the concerned species from traffic in the gorge, as well as to improve road safety of this road section.

The 2020 Standing Committee noted the information of the authorities and of their proposal to defer a Bern Convention OSA until the completion of the European Commission funded expert mission. However, several member states insisted and thus the Committee decided to reiterate its 2019 decision to organise an OSA, which should build on but not duplicate the work of the EC-funded mission.

## **2. OBJECTIVES OF THE MISSION**

On the basis of the instructions by the Standing Committee, the information provided by the authorities and the complainant, and taking into account the European Commission funded expert mission, the objectives of the mission are to:

### **PART I** (could be conducted online)

- 1) Review information for alternatives analysed throughout the development of the project (a total of 20 up to now), and make recommendations to the Bulgarian authorities on actions to ensure that a solution acceptable for both the safeguard of the protected wild fauna and flora and for putting in place a safe and effective road connection will be implemented;
- 2) review relevant scientific and recorded data of the presence and distribution of protected habitats and species in the Kresna Gorge, including that which is available in the NGO community;
- 3) review the implementation by the Bulgarian authorities of Recommendation No. 98 (2002) of the Bern Convention;
- 4) discuss with relevant competent authorities at national and local levels, NGOs, stakeholders and citizens' groups;

### **PART II** (could be conducted online, subject to receiving information from the EC-funded mission)

- 5) collect information on the existing mitigation measures put in place and the newly proposed measures for diminishing the impact of traffic on species and habitats; and assess their potential effectiveness;

### **PART III** (needs to be conducted on-site)

- 6) verify the on-site situation to ensure that no illegal works continue.

## **3. MISSION DELIVERABLES**

Based on its findings and discussions with national and other relevant authorities and stakeholders, the mission shall submit a written report of max. 20 pages, including proposed recommendations to assist national authorities in enhancing the conservation of the Kresna gorge, and in planning and developing the Struma motorway in conformity with the provisions of the Bern Convention. The Recommendations could

be accompanied with a monitoring plan for their implementation and should include proposals for further support by the Bern Convention in their realisation.

#### **4. INTERNATIONAL EXPERT REQUIREMENTS AND COMPETENCIES**

The expert must be fully independent. He/she cannot be a national of Bulgaria. He/she cannot be now or in the past associated with an NGO that has had a stake in the case reviewed. In terms of competencies, the expert should have knowledge and experience in:

- 1) Nature protection and conservation;
- 2) Natura 2000 protected sites management;
- 3) EU environmental legislation and procedures;
- 4) Feasibility studies;
- 5) Mitigation measures;
- 6) Implementing large infrastructure (ideally road) projects;

#### **5. MISSION TEAM PARTICIPANTS, NATIONAL AUTHORITIES AND OTHER STAKEHOLDERS TO BE INVOLVED**

##### **5.1 Mission team**

- International expert
- Bern Convention Secretariat
- Representatives of the European Commission (to be confirmed)
- Other relevant international organisations

##### **5.2 National authorities**

- Ministry of Environment and Water
- Ministry of Regional Development and Public Works
- Other Ministries/agencies/institutions (to be determined)
- State Agency Road Safety
- Road Infrastructure Agency (RIA)

##### **5.3 Other stakeholders**

- Regional and local authorities, when relevant
- NGOs coalition "Save the Kresna gorge"
- Other relevant NGOs

#### **6. FUNDING AND ORGANISATION OF THE MISSION**

The costs of the on-the-spot assessment mission will be borne by the Bern Convention and international logistical arrangements will be coordinated by the Bern Convention Secretariat. These include the hiring of experts, travel and subsistence.

The Ministry of Environment and Water of Bulgaria will be kindly asked to organise and provide local logistics, such as arranging meetings scheduled with all stakeholders, including meeting rooms as

well as local transportation for the mission team. Representatives of the Ministry will also participate in the virtual meetings conducted with relevant stakeholders.

Due to the ongoing consequences of the Covid-19 pandemic notably travel restrictions, a part of the mission can be organised online. The Bern Convention Secretariat will coordinate with the independent expert, national authorities, complainant, and other relevant stakeholders to organise virtual meetings and activities.

## **7. TENTATIVE DATES**

The virtual part of the mission could take place across several time slots in the beginning of 2021, to be agreed between the organisers and relevant stakeholders. The report shall be prepared as soon as possible following the virtual part of the mission to ensure that it is finalised on time for the 41<sup>st</sup> Standing Committee meeting on 30 November to 3 December 2021.

The eventual on-the-spot part of the mission could last 2 days and take place as soon as the Covid-19 pandemic situation will allow for safe travel, hopefully during 2021. The situation will be continuously assessed during the year. Following the eventual on-the-spot visit, the report will be supplemented.