

21 October 2004  
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T-PVS/Files (2004) 20

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

*Standing Committee*  
24<sup>th</sup> meeting

Strasbourg, 29 November-3 December 2004

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**Possible New file**

**Construction of the Struma motorway (Motorway E79: Sofia-Kulata) through the Kresna Gorge, Bulgaria.**

Report by the NGOs

*Document prepared by*

Wilderness Fund, Environmental Association "Za Zemiata" (For the Earth), BirdLife International (represented by the Bulgarian Society for the Protection of Birds and the Royal Society for Protection of Birds (BirdLife in the UK)), BALKANI Wildlife Society, Centre for Environmental Information and Education, Association "ECOFORUM" and CEE Bankwatch Network/Friends of the Earth International.

# October 2004 NGO update on progress on implementation of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria)

## 1. Introduction

Wilderness Fund, Environmental Association "Za Zemiata" (For the Earth), BirdLife International (represented by the Bulgarian Society for the Protection of Birds and the Royal Society for Protection of Birds (BirdLife in the UK)), BALKANI Wildlife Society, Centre for Environmental Information and Education, Association "Ecoforum" and CEE Bankwatch Network/Friends of the Earth International, hereafter referred to as 'the NGO partners', call on the 24<sup>th</sup> Meeting of the Bern Convention's Standing Committee (29 November-3 December 2004), to:

- Note the almost total lack of progress made by the Bulgarian government in implementing Recommendation No. 98 in the two years since its adoption, and thus
- Open a case file, to strengthen the signal to the Bulgarian government about the need urgently to take the necessary action to implement Recommendation No. 98 (2002).

## 2. NGO monitoring of the implementation of Recommendation No 98 (2002)

### 2.1 Environmental Impact Assessment procedure for Struma Motorway and study of the alternatives (recommendations 2, 3,4)<sup>1</sup>

Points 2,3 and 4 of Recommendation No. 98 (2002) have been directly disregarded:

- There has been no official revision of the July 2002 decision of the Ministry of Regional Development and Public Works (MRDPW) to construct the motorway through the Kresna Gorge and Tisata Reserve, taken on the basis only of technical criteria, without any EIA or public consultations and rejecting consideration of any alternative routes. The MRDPW asserts that their decision is fully legitimate and in accordance with the Bulgarian Territory Organization Act and thus they envisage no further development and discussion of the alternatives (official letter of the MRDPW on 18.03.2004).
- Since 2002 there has been no progress on developing a reliable Environmental Impact Assessment of the Struma motorway taking into account the status of the Kresna Gorge as a candidate Emerald network and NATURA 2000 site and considering alternative routes outside the gorge.

The NGO Partners wish to highlight the urgent need for additional pressure via the Bern Convention Standing Committee to encourage the Bulgarian Government to implement Recommendation No 98 of the 22<sup>nd</sup> Standing Committee and specifically:

- to reconsider the motorway routing (brown alternative passing through the gorge)
- to conduct a comprehensive environmental assessment (which should include at least one field season) etc.

If the small amount of remaining time will not be used for these purposes, political and financial pressure will easily overcome the Bern Convention Recommendations.

The urgency is because the Bulgarian government should complete the Sofia-Kulata Motorway, including the part through the Kresna Gorge Area, by the end of 2010<sup>2</sup> as agreed with the EC in relation to further development of the Trans European Transport Network. As construction of the motorway will take at least 4 years, the application for EU funds should be submitted no later than the first half of 2005. Thus the Bulgarian Government is expected to undertake urgent steps to finalize all these procedures within the next few months.

Furthermore, given that accession is due to take place in 2007, the design and start of the construction of the Sofia-Kulata Motorway will take place before the establishment of the NATURA 2000 network in Bulgaria, and prior to the implementation of Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive). At present, there are no binding requirements, nor any practice of the precautionary principle, for potential Natura 2000 sites to be identified and taken into account during

<sup>1</sup> "2. ensure that the decision on the routing of the motorway is taken on the basis of an in-depth environmental impact assessment (EIA)..." and "3. ...continue studying alternative routes located outside the gorge that would respect the natural constraints as far as possible and provide for the integration of engineering works and compensate for environmental impact." and "4. ensure that the choice of alternative is based not only on technical, legal and economic criteria but also on social and ecological criteria."

<sup>2</sup> The inclusion of the Struma motorway in the list of priority projects part of the new Community guidelines on the TEN-T (COM (2003) 564 final, project 7 from the Annex, page 24 from the TEN-T proposal) was accompanied by the condition that 2010 is the date of completion of all sections of the motorway.

the design of development projects. Moreover, the Ministry of Environment and Waters (MoEW) has officially refused to consider the Kresna Gorge as a future Emerald and NATURA 2000 site in the course of any EIA procedures. In their letter to the NGOs MoEW stated that: "at the moment the NATURA 2000 network is not under development in Bulgaria, because we are not a member of the European Community".. therefore your request: 1.ToR to EIA reports to correspond to the requirements of the guidelines for assessment of documents related to NATURA 2000; and 3. Kresna Gorge to be treated equally as Special Protected Area; are not legally grounded by the currently existing environmental legislation. (MoEW, Ref. number 26-00-752 from 31.03.2004

Meanwhile the part of the Sofia – Kulata motorway that will pass through the region of the Kresna gorge (between Dupnica – Kulata) is under development. It is also of note that a 40 km part (Sofia – Dupnica) of the motorway is already under construction, supported by EU funds despite inadequate EIA:

- Construction of the Sofia-Daskalovo section (so called Ljulin Motorway) is just about to start, using a grant obtained from the EU pre-accession funds ISPA<sup>3</sup> in November 2002. The EIA procedure for that section was not carried out according to the provisions of the EU EIA Directive (85/337/EEC) and although the Commission requested revision of the EIA procedure, the MoEW refuses to do so.
- Construction of the Daskalovo – Dupnica (first part of the Struma Motorway) has started with a loan from the European Investment Bank (EIB) in 2002. No proper EIA report and no public consultation were undertaken but EIB deny that there is a serious violation of the Bulgarian and EU EIA legislation.

## 2.2 Adequate legal protection of the whole gorge<sup>4</sup>

Point 9 of Recommendation No. 98 (2002) has been rejected:

In 2004, the MoEW has stalled the process of creation of the protected area and has officially refused to ensure protection of the Kresna Gorge as a future EMERALD and NATURA 2000 site:

- undermining efforts of the NGOs on creation of the Protected Area encompassing the whole Kresna Gorge site (this task was officially assigned to BALKANI Wildlife Society NGO in 2001) by denying to consider the territory as future EMERALD and NATURA 2000 site when assessment of the economical activities in the gorge is made.
- refusing to support NGOs activities to hold public consultation with local people on creation of the Protected Area.
- canceling any official communication with NGOs on these issues in 2004, after disregarding the NGOs request for a meeting covering the topic (the Ministry pledged to organize the meeting itself, but the meeting never happens (see attachment Translation of the MoEW response).
- the Bulgarian NGOs understand that MoEW do not want to proceed with the designation of the Kresna gorge until approval of the Struma Motorway route, as requested by the MRDPW: "The decision on designating the Kresna Gorge a Protected Area to be taken after the discussion of the EIA on the preliminary study for the route of the Struma motorway. (Statement of the MRDPW regarding designation of the Kresna gorge as protected territory, February 2002)

Furthermore in 2004 the Ministry permitted construction of three small hydropower plants in the gorge that will directly affect protected species and habitats; two of these were approved without public consultations and without EIA and the EIA report for the third did not consider the conservation status of the gorge. It is expected that significant negative cumulative impact will result, affecting: about 70-80 % of the site's Helleno – Balkanic riparian plane forests and Alluvial forests with *Alnus glutinosa* and related species listed in the Bern Convention appendices and Habitat Directive of the EU (such as Leopard snake *Elaphe situla*, four-lined snake *Elaphe quatorlienata*, otter *Lutra lutra*), agricultural lands and development of eco tourism in the region. The decision of the MoEW from September 2004 stated that there are no affected protected areas, species and habitats and that no objections on the project are received (although they received advice against proceeding from many experts including from their own Regional Inspectorate). Four additional hydropower plants of this type on the Struma river inside of the gorge are in the process of adoption by the MoEW.

## 3. Future steps requested by NGOs

The NGO Partners call on the 24<sup>th</sup> meeting of the Standing Committee to:

- a) open a file to assist Bulgaria to fulfil its obligations regarding protection of the Kresna gorge.
- b) request the Bulgarian Government, having allocated adequate resources, to prepare an action plan for the protection of the Kresna gorge and the enforcement of the Recommendation No 98 (2002).
- c) with regard to the forthcoming Struma motorway EIA procedure, add to points 2 and 5 of Recommendation 98 (2002) the following:
  - in terms of the scope of the EIA report, Road Executive Agency (REA), with the support of MoEW, should conduct a

<sup>3</sup> Instrument for Structural Policy for Pre-accession (ISPA)

<sup>4</sup> "8. select the zone concerned for the Emerald Network..." and "9. ensure that adequate legal protection is given to the whole of the gorge site and its development areas."

thoroughgoing consultation with all parties that express an interest, including: the National Museum of Natural History, other scientific institutes, NGOs and local authorities. Such a consultation can be accepted as thoroughgoing only when: a) full and timely access to the EIA related documents is provided; b) the consulted parties have a clear understanding of how their statements are taken into account; and c) the possibility for input is also given to international experts (for example experts appointed by the Bern Convention, as well as experts from international NGOs);

- the MoEW decision regarding the quality of the EIA should be made in consultation with the Bern Convention Bureau, and Bulgarian and international NGOs. Therefore MoEW should provide the above-mentioned interested parties with a copy of the EIA report *in sufficient time* prior to its decision;

- should REA present a further unsatisfactory EIA report, MoEW should then commission an independent EIA report from experts acceptable also to the Bern Convention Bureau, as well as to the NGO Partners;

- MoEW should provide the Bern Convention Bureau and Standing Committee with regular information regarding the EIA procedure development, including copies of the drafts of: the approved requirements about the scope of the EIA report; the EIA report, statements expressed during the public consultations; and the final EIA decision.

- d) request the Bulgarian Government to withdraw the MRDPW's Decision No RD-02-14-611 of July 23, 2002.
- e) Request that reporting by the Bulgarian Authorities to the Bern Convention Bureau and Standing Committee should include reporting on the progress of the implementation of the Bern Convention Recommendations by the MRDPW as well as by the MoEW.

## Contact details of the NGO Partners:

Wilderness Fund  
Geko Spiridonov  
Sofia 1612, 7 bul. "Gotce Delchev"  
tel: + 359 888 7828 167, e-mail: wild\_fund@mbox.cit.bg

Environmental Association "Za Zemiata" (For the Earth)  
Anelia Stefanova  
Sofia 1000, PO box 975  
tel./fax: + 359 2 851 86 20, e-mail: anelias@bankwatch.org, zemiata@iterra.net

Bulgarian Society for the Protection of Birds (BirdLife in Bulgaria)  
Irina Kostadinova  
Sofia 1111, PO box 50  
tel./fax: + 359 2 72 26 40, e-mail: irina.kostadinova@bspb.org

Royal Society for the Protection of Birds (BirdLife in the UK)  
Nicola Crockford  
The Lodge, Sandy, Bedfordshire, SG19 2DL, United Kingdom  
Tel: 01767 680551, e-mail: [nicola.crockford@rspb.org.uk](mailto:nicola.crockford@rspb.org.uk)

BALKANI Wildlife Society  
Andrey Kovatchev  
Sofia 1164, 8 Dragan Tzankov St.  
tel: + 3 592 9631470, e-mail: akovatchev@intech.bg

Centre for Environmental Information and Education  
Petko Kovatchev  
Sofia 1303, 17-A Sofroniy Vrachanski, 3 fl., ap. 9  
tel./fax: + 359 2 9892785, e-mail: petkok@bankwatch.org, ceie@iterra.net

Association "ECOFORUM"  
Prof. Radi Radev  
Sofia 1113, p.box 6  
Tel./ fax: +359 2 8705379, e-mail: [radev@mgu.bg](mailto:radev@mgu.bg)

CEE Bankwatch Network/Friends of the Earth International  
Magda Stoczkiwicz, Accession project coordinator  
1000 GD Amsterdam, Netherlands, PO Box 19199  
phone: +31 20 622 13 69, fax: +31 20 639 21 81, email: [magdas@foeeurope.org](mailto:magdas@foeeurope.org)

REPUBLIC OF BULGARIA  
MINISTRY OF THE ENVIRONMENT AND WATERS

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Ref. number 26-00-749

Sofia, 31 March 2004

To: Mr. Petko Kovachev  
Center for Environmental Information and Education

To: Wildlife Society "Balkani"  
Sofia 1421, 8, "Dragan Cankov" Bulv.

Regarding: Protection of the Kresna gorge and compliance with the Recommendations 98 (2002) of the Bern Convention Standing Committee

Dear Sirs,

We would like to inform you in regards to your exposition about the Kresna gorge protection and compliance with the Recommendations 98 (2002) of the Bern Convention Standing Committee that the Ministry of Environment and Waters (MoEW) inform regularly the Bern Convention Standing Committee on the "Struma" Motorway project. In 2003 MoEW sent letters to the Bern Convention Standing Committee respectively on April 11 and September 10....

The MoEW' position of the raised questions is following:

....(page 2)

- According to the art.45 of the Protected Territory Act the Minister could prohibit or limit use or construction in territories, proposed for designation as protected territory. However, these activities should be specifically pointed. MoEW is not obligated and could not prohibit activities that, as You consider, in principal "are contradictory of the protection objectives and could affect the integrity of the Kresna gorge". The act for designation of the protected territory will describe the activities that are non consistent with the protection status of the territory.
- The MoEW abides the procedure for designation of the protected territories, while does not surpass its competency according to the existing legislation. In that respect we are informing you that in the plan of the Central Management of the MoEW regarding legislative norms, strategies and programs in 2004, is envisaged preparation of the Act for modification and amendment (AMA) of the Protected Territories Act. When the draft of the AMA is ready the document will be send to you for comments, including proposals about the responsibilities of the monistry and other stakeholders in the process of designation of protected territories.

**You will be informed separately regarding the day and hour of the requested from you meeting.**

Deputy Minister:  
Fatme Iiliz