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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

24th meeting

Strasbourg, 29 November - 3 December 2004

Specific File

**Construction of the Struma motorway (Motorway E79:
Sofia-Kulata) through the future Emerald and
Natura 2000 site of Kresna Gorge (Bulgaria)**

Report by the NGOs

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Secretariat Memorandum

Prepared by

The Directorate of Culture and Cultural and Natural Heritage

March 2004 NGO update for the April meeting of the Bern Bureau regarding Bulgarian implementation of Recommendation No. 98 (2002) of the 22nd Standing Committee.

The NGOs believe that the information provided in this report will assist the Bern Convention Bureau in the assessment of urgent action, which should be undertaken in order to guarantee implementation of Recommendation No. 98 (2002) of the 22nd Standing Committee and real protection of the Kresna Gorge Site. In particular we urge the Bern Bureau at their meeting in April 2004 to:

- Open a file on the Kresna Gorge case due to the blatant failure of the Bulgarian Government to implement Recommendation No.98 (2002) regarding the proposed construction of a motorway through the Kresna Gorge
- Ensure the case is on the agenda of the 24th Standing Committee meeting.

During the meeting of 23rd Standing Committee the NGOs raised concerns that the Struma motorway is going to be included as a priority project under **the European Community guidelines for the development of the Trans-European transport network. Thus the Struma motorway will receive public funding¹, although no guarantees for the protection of the Kresna gorge are in place. TEN-T guidelines require compliance with EU environmental legislation only for the Members States, but not for accession countries such as Bulgaria.**

The discussions at the 23rd meeting of the Standing Committee revealed lack of sufficient information amongst the Delegates, including the misleading information from the inadequately briefed representative of the European Commission that DG Environment had not approved the Proposal. This was reflected in the decisions of the 23rd Standing Committee regarding the Kresna Gorge, as included in the report of the meeting (T-PVS 24 (2003)):

'The Standing Committee instructed the Bureau to re-examine this question and asked the Secretariat to gather all the necessary documents and approach the European Commission with a view to clarifying the funding issues. In the light of the follow-up given, the opening of a file could be envisaged by the Bureau at its next meeting.'

Since the 24th Standing Committee meeting, the NGOs have carefully studied this issue and revealed several important circumstances:

- The final proposal of the European Commission on revision of the TEN-T [COM (2003) 564 final], was adopted on 1 October 2003, a month before the 23rd Standing Committee, and presented for the Decision from the European Parliament and from the Council.
- The Proposal for TEN-T revision was discussed during the EU Summit in December 2003 and approved in principal by the European Council.
- The European Parliament accept legislative resolution on the proposal in the begging of March 2004 (P5_TA-PROV(2004)0173) and negotiation on some amendments in the Proposals are currently in place between the European Parliament and the Council.
- One of the obligatory conditions for inclusion of a particular project in the list of priority projects, was guarantees given, by the respective government that the construction of all sections of the project will start no later than 2010 (TEN-T Proposal art.19, paragraph 2 "The priority projects on which work is due to start before 2010, the sections thereof and the dates agreed for completing the work referred to in paragraph 1 (c) are identified in the Annex III)
- The inclusion of the Struma motorway in the priority list (project 7 from the Annex, page 24 from the TEN-T proposal) was accompanied, by the condition that 2010 (the year is indicated in the brackets) is the date of completion of all sections of the motorway. Additionally the second railway line between Sofia and Kulata on the Greek/ Bulgarian border is supposed to be completed

in 2015 how its indicated in the same document (project 22 from the Annex, page 25 from the TEN-T proposal)

- The Initial Commission proposal from 2001[COM/2001/0544 final] state in Article. 8 several obligations **ONLY** to member states regarding the need of execution of environmental impact assessments pursuant to Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora Directive 2001/42/EC on the assessment of the effects of certain plans and programs on the environment.
- The Commission proposal for revision of the TEN-T don't address in any way the common responsibilities of member states and negotiating countries to comply the projects with the provisions of the Bern Convention.

The implications of the above pointed circumstances to the Kresna Gorge are following:

1. The Bulgarian government should complete Sofia-Kulata Motorway, including its part through the Kresna Gorge Area to the end of 2010 and this will be ensured through the agreement between the Bulgarian Government and the EC and through the provided financial assistance. This mean that design and the start of the construction of the Sofia-Kulata Motorway will take place before the establishment of the NATURA 2000 network on the territory of Bulgaria, and prior to the implementation of Directives 79/409/EEC (Birds Directive) and 92/43/EC (Habitats Directive) such as the submitting of a list of proposed Sites of Community Interest (pSCIs) and Special Protection Areas².

At present, there are no binding requirements, neither there is any practice, following the precautionary principle, for potential SCIs and SPAs to be identified and taken into account during the design of development projects.

The stage of the Sofia – Kulata motorway is as following:

- a) Around 40 km-part of the route is already under construction with the support from the EU funds (Sofia – Dupnica).
 - Construction of Sofia-Daskalovo section of the Motorway (so called Ljulin Motorway) is just in about to start. The project got grant from the EU pre-accession funds ISPA³ in November 2002. The EIA procedure for that section was no carried according to the provisions of the EU EIA Directive (85/337/EEC) and although the Commission requested revision of the EIA procedure, the Ministry of Environment and Waters denies doing so.
 - Construction of the Daskalovo – Dupnica (first part of the Struma Motorway) started with a loan from the European Investment Bank (EIB) in 2002. No proper EIA report and no public consultation were done for that part of the Sofia-Kulata motorway. EIB deny acknowledging that there is serious violation of the Bulgarian and EU EIA legislation in that case.
- b) Another part that will pass in the region of Kresna gorge (between Dupnica – Kulata) is under development.
 - There is adopted, by the Ministry of Regional Development and Public (MRDPW), preliminary motorway route passing through the Kresna Gorge and Tisata reserve (brown alternative proposed after the Bern Convention mission in 2002). It was adopted without an EIA assessment and all other alternatives including, those outside of the gorge were rejected. According to the MRDPW the decision is fully legitimate and in accordance with the Bulgarian Territory Organization Act. Therefore no further development and discussion of the alternatives are envisaged (official letter of the MRD on 18.03.2004)

² Both designations must take place prior to the agreed date of accession, which is only in 2007.

³ Instrument for Structural Policy for Pre-accession (ISPA)

- The approved brown alternative passes completely through the Kresna gorge, through the key territories of the future Emerald and Natura 2000 site, through the territories of the strict reserve "Tissata" and its buffer zone. It includes extensive construction works on the slopes of the gorge (providing of the road with supporting walls 30-40m high on both sides of the motorway) and in the river valley (a correction of the Struma river in the territory of the "Tissata" reserve). The impact of that alternative on the site will be much stronger than of the variant for widening the existing route.
- There is no adopted EIA decision. The new EIA procedure which was promoted by the MRDPW in the beginning of 2003 is still frozen.

Following we expect that the Bulgarian Government will undertake urgent steps to finalize all these procedures in this year. The Struma Motorway will require at least 4 year of construction work. Therefore the application for EU funds should be submit no later than end of 2004 – beginning of 2005.

All this means that there is no sufficient time for fulfillment of the Recommendation No 98 of the 22nd 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, finally political and financial pressure will easily overcome the Bern Convention Recommendations.

2. The European legislation and Revised Guidelines on TEN themselves do not give any guarantees for the conservation of the Kresna Gorge.

Bulgarian NGO's sent a letter to DG Environment in February 2004, with several questions/statements (see attached copy) concerning the implementation of EU Directives in environmental assessments of TEN's projects in Bulgaria and the important role which should play in the approval of projects the Bern Convention and its provisions.

A short answer received by fax in BALKANI Wildlife Society in the beginning of March (see attached copy) only confirmed NGOs fears. As non member states the only guarantee for countries such as Bulgaria, that EU legislation will be applied for potential NATURA 2000 sites, is a general position of DG Environment that procedures SIMILAR to those from EU Directives SHOULD be applied. This has been already proved to be insufficient guarantee, referring to the misused possibility to design the alternatives passing outside the Kresna Gorge and to prepare a comprehensive EIA report under the already "successfully" finished EU PHARE Cross Border Cooperation project. Everything this happened despite the number of written positions of the DG Environment that such alternatives should be developed and equally assessed.

No comments were received on the common obligations of Bulgaria and EU Commission in front of the Bern Convention.

Therefore we, the involved in the Save Kresna Gorge Campaign NGOs, Appeal to Bern Convention Bureau to open a file on the implementation of Recommendation No 98 of the 22nd Standing Committee, thus giving a strong signal to Bulgarian Government.

We also would like to put on discussion the following question:

- **How the Bern Convention provisions will be implemented during the approval of projects from Trans-European transport network**

3. **Finally**, we would like again to stress your attention to our report from September 2003 where we pointed out lack of real efforts from Bulgarian government to implement and even important decisions contradictory to Recommendation No. 98.

As follow up from the 23rd Standing Committee and taking into account the urgent needs for action in implementation of the Recommendation No 98, Bulgarian NGO's sent in the middle of February letters to both Ministry of Environment and Ministry of Regional Development (see attached copies). We asked them for particular activities in this direction and namely:

1. Ministry of Regional Development was once again asked to revise its decision to construct the motorway through the Kresna Gorge as soon as possible, thus ensuring an objective and free from political pressure new EIA procedure.
2. Ministry of Environment was asked for urgent meeting in order to discuss several topics:
 - What will be the requirements of the Ministry of Environment to the scope of the new EIA and would like the Ministry to cooperate closely with the NGOs and National History Museum on their preparation? Shall the Ministry consider the Kresna Gorge as a potential Emerald and NATURA 2000 Site and shall it made its own assessment of the project if the EIA report will be again of insufficient quality?
 - Shall the Ministry really support the efforts of the NGOs to conduct public discussions, with local people on the proposal for the Kresna Gorge Protected Area or it will undermine them, thus practically undermining the proposal itself?
 - Shall the Ministry undertake activities to prevent destruction of the Kresna Gorge Site from some actual threats (construction of hydro-power-plants and others)?

NGOs did not receive response from the both institution within the legal deadline of one month, which we consider as lack of intentions of our government to implement really the Recommendation No 98.

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