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**CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS**

Standing Committee
23rd meeting

Strasbourg, 1-4 December 2003

Specific File

**Construction of a Motorway in the Gorge of Kresna
- Corridor No. 4 of transport: EU PHARE Project –
Connection Bulgaria - Greece**
(Motorway E79 : Sofia-Kulata)

Report by the NGOs

*Secretariat Memorandum
Prepared by
The Directorate of Culture and Cultural and Natural Heritage*

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

September 2003 NGO update on the case following Recommendation No. 98 (2002) of the 22nd Standing Committee.

The undersigned NGOs believe that the information provided in this report will assist the Bern Convention Bureau and Standing Committee in its assessment of the current threats to the Kresna gorge CORINE site protection. Overall progress on the implementation of Recommendation No. 98, as far as the NGOs are able to ascertain in the absence of sufficient transparency, has been so unsatisfactory (especially on the part of the Bulgarian Ministry of Regional Development and Public Works and its Road Executive Agency) that we call for the opening of a file against Bulgaria, involving also the European Commission, in view of their decision to provide priority funding to the Sofia-Kulata motorway and the second railway line between Sofia and Kulata.

This report presents and comments on the activities (or lack of such) undertaken by the two governmental structures responsible for the implementation of Recommendation No. 98 (2002) of the 22nd Standing Committee: Ministry of Environment and Waters (MoEW) and Ministry of Regional Development and Public Works (MRDPW). The main focus is on the Road Executive Agency (REA), which is the implementing agency for the Struma motorway within the MRDPW. NGO recommendations for future steps follow every chapter and at the end of the report they are summarised.

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

1.1 "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 "5. institutionalize dialogue and seek consensus solutions with the different partners concerned..."

The last EIA report on the Struma motorway (January 2002), developed as part of the Phare Cross Border Cooperation project for the motorway design, was assessed as unsatisfactory by the Bern Convention and MoEW, and later returned to the investor for further development. At the beginning of November 2002 the tender for the new consultant for the EIA of the whole Struma (E-79) motorway was announced in the newspapers by the Road Executive Agency (REA). According to REA, the new EIA report should be prepared and finalised within a 2-4 month period. (Please find enclosed the newspaper's quotation at the end of the report).

In December 2002, in a letter to the Ministry of Regional Development and Public Works (MRDPW) and the Road Executive Agency (REA), the Bulgarian Ministry of Environment and Water (MoEW) asked the alternative route to be assessed. (Please find enclosed the quotation at the end of the report).

We were informed that the tender process was delayed and finished only at the end of February, 2003. As of the beginning of September 2003, NGOs and the affected population have not received any official information concerning the new EIA procedure. At the same time several small articles in the press have been appearing, describing REA's desire for a quick conclusion to the EIA report.

Regarding the EIA procedure, Bulgarian legislation requires that the investor (in this case REA) should:

- consult on the scope of the EIA report with MoEW and any concerned groups;
- prepare the EIA report;
- organise public consultation of the EIA report, when MoEW agrees that the quality of the report is satisfactory.

The MoEW role in the EIA procedure is to:

- give recommendations regarding the scope of the EIA report (the investor and EIA experts are obliged to follow the MoEW recommendations);
- review the quality of the EIA report prior to public consultation;
- issue an EIA decision, which is compulsory for starting the detailed design of the project.

At the end of March 2003, three Bulgarian NGOs sent letters to REA (with a copy to MoEW) to request information regarding the new EIA procedure. They also stated their wish to be consulted in relation to the scope of the new EIA report.

No information was provided and no response to the letter has been received.

In a letter of August 6, 2003, the National Museum of Natural History, part of the Bulgarian Academy of Sciences, and 19 NGOs urged REA to assess the NGO's proposed alternative outside the gorge as part of the new EIA report. They also expressed an interest in participating in the consultation regarding the scope of the new EIA report and requested information about the EIA experts. Access to the requested information was denied. No clarification regarding the EIA scope consultation has been given until now.

NGOs consider that the continual lack of transparency concerning the new EIA report and the Struma motorway in general is a clear indication of REA's unwillingness to follow the Convention Recommendations for an "in-depth EIA" and "dialogue with different partners".

Since 1997, REA has systematically refused access to information and participation in the decision-making process of the Struma motorway. Up to now four EIA reports for the Struma motorway have been presented by REA. All of them were of insufficient quality and did not give adequate (in some cases, any) consideration to alternatives outside the Kresna gorge.

NGOs consider that the following steps should be taken to ensure the adequate development of the EIA procedure:

- in regard to the scope of the EIA report, REA, with the support of MoEW, should conduct a thoroughgoing consultation with all parties that express an interest, including: the National Museum of Natural History, other scientific institutes, NGOs and local authorities. Such 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; 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);
- MoEW's decision regarding the quality of the EIA should be consulted 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* and *in appropriate language* prior to its decision;
- Should REA present a further unsatisfactory EIA report, MoEW should then assign an independent EIA report to experts acceptable also to the Bern Convention Bureau, as well as Bulgarian and international NGOs;

- 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.

1.2 "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."

NGOs consider that until now MoEW has accurately followed points 3 and 4 from the Standing Committee's Recommendations. It has already been pointed out that in a letter of December 2002 to MRDPW and REA, MoEW stated: "The new EIA developed for the motorway must include the above alternative (alternative outside the Kresna gorge, developed and presented by NGOs) on equal merits with the proposals already assessed."

However NGOs would have to say that neither MRDPW nor REA have shown any wish to respect these two points from the Recommendations. There have been no responses either to the MoEW letter from December 2000 or to several NGO letters which asked if the alternative outside the gorge would be assessed in the EIA report.

NGOs would like to point out that since 1998, in contravention of MoEW's official requirements, REA has refused to develop and assess alternatives outside the Kresna gorge.

One more alarming feature in this case is that MRDPW has still not revised its decision No RD-02-14-611 from July 23, 2002, approving the technical design and construction of the motorway into the Kresna gorge. The 22nd meeting of the Standing Committee was informed that this decision was taken while the EIA procedure was in progress, in violation of the Environmental Protection Act. This decision contradicts and also makes meaningless the new EIA procedure. NGOs consider that the MRDPW decision from July 2002 should be withdrawn.

Given these circumstances, NGOs consider that the report of the Bulgarian authorities to the Bern Standing Committee on the progress of the implementation of Recommendation No. 98 should include a report from MRDPW as well as one from MoEW.

1.3 "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."

We would like briefly to recap the history of the Kresna gorge legal protection and study. The "Tissata" strict nature reserve (IUCN category Ia), situated in the south part of the Kresna gorge, was created in 1949. Following several amendments, it currently consists of a 574.5 hectares strictly protected area, situated on both slopes of the Kresna gorge and a 625 hectares buffer zone. The existing road and railway line constructed before 1949 pass through the buffer zone. The construction of a motorway through the Kresna gorge would certainly pass through the middle of the reserve territory thus causing irreversible damage to the "Tissata" reserve. All EIA reports prepared by the REA undermine the existence of the Reserve Area and do not mention the buffer zone at all.

Kresna gorge was designated in 1996 as a CORINE Biotops site on the basis of zoological, botanical and habitat criteria (*Spiridonov, G., Meshinev, T., Iankov, P. & Peev, D.: 1996. Kresna Site identification. Report, 40-45*). It is regarded as the seventh most important of the 141 CORINE sites in Bulgaria, making it one of the priority territories for development of the Emerald and NATURA 2000 Networks in Bulgaria. The "Tissata" Reserve Area is recognised as an Important Bird Area of global conservation importance, and a significant representative of the Mediterranean region (*Kostadinova, I.(ed.): 1997. Important Bird Areas in Bulgaria. Bulgarian Society for the protection of Birds, Conservation Series, Book 1. Sponsored by Royal Society for the Protection of Birds according to BirdLife International Programme for Important Bird Areas*). The whole territory of the gorge has also been designated as an Important Plant Area. In 2001 the Bulgarian Museum of Natural History

and Institute of Zoology, parts of the Bulgarian Academy of Sciences, published "Biodiversity of Kresna gorge" providing information on more than 3000 animal species which populate the gorge.

"Balkani" Wildlife Society was officially assigned by MoEW to prepare the documentation for the Protected Territory "Kresna gorge". This organisation has already prepared all the technical information required by law and together with other partner organisations is carrying out intensive consultations with the local population regarding the proposal. The consultation process is supposed to be completed in October 2003. Following this we expect MoEW to finalise the procedure calling for an Official Commission that should approve the designation of all Kresna gorge as a Protected Area.

NGOs hope that the designation of the Kresna gorge as a Protected Territory and preparation of the applications for EMERALD and NATURA 2000 Network will be quickly actioned by the Bulgarian Government. Lack of legal protection for the whole Kresna gorge territory has resulted in several other threats to the gorge's biodiversity, such as: a proposed project for a cascade of small dams in the upper part of the gorge; poachers hunting the territory's protected species in May 2003; and an illegal site for charcoal production.

1.4 European Union funds for the Struma motorway and European Commission responsibilities

On December 11, 2002, Bulgarian NGOs organised a meeting with the EC Delegation in Sofia to present the alternative route bypassing the Kresna gorge and to request that it be assessed thoroughly and seriously during the next stage of the PHARE Cross Border Cooperation (CBC) project, which included the detailed design of the Struma motorway (E-79 feasibility study and detailed design of the Sofia-Kulata motorway). Unfortunately we learned that the project's funds will be not enough to cover the detailed design of the Struma motorway. That is why the EC Delegation in Sofia stated that it would no longer be following the case until "the Bulgarian authorities approach the Commission at some future date in respect of funding for the construction of Struma motorway".

However we consider the EC to be still responsible for the PHARE CBC project outcomes and particularly for the prepared and unsatisfactory EIA report and feasibility study for Struma motorway that did not consider the alternative which preserves the Kresna gorge CORINE site. The history of the case shows that the first appeal from Bulgarian NGOs to the EC with concerns regarding the Kresna gorge dates from January 1999; in March 1999 the Ministry of Environment officially requested alternatives to be designed. Art. 4 of the Bern Convention also contains provisions for alternative assessments. That is why we consider that there are no grounds for the EC Delegation's statement that "studies of alternative alignments for Kresna Gorge outside the existing corridor are not included in the Terms of References for SPEA contract and the Contracting Authority has never requested funding from the Commission to undertake such studies." (We recall that the SPEA contract became active in March 2000.)

Decisions on the Trans European Transport Networks

Sofia – Kulata motorway has been placed in the group of projects (projects from Annex 1, project No 17) that should receive priority funding and support from the EU under the Pre-accession and Cohesion Funds and should start prior to 2010, according to the High Level Group for Trans European Transport Network ("van Miert group") Report to the EC (issued on June 27, 2003). One more project that directly affects the Kresna gorge CORINE site was classified as Annex 1 project – Upgrading and new line of Kulata – Sofia – Vidin railway (project No 6 from Annex 1). Both projects are part of the Corridor N4 development.

Bearing in mind that the European Community is a signatory to the Bern Convention, NGOs consider that the European Commission has to ensure the full compliance of all priority projects with the Bern Convention and EU environmental law. This means that the EC should also advocate for development of the alternative route-bed for the motorway and new railway line that does not harm the Kresna gorge CORINE site. However NGOs are very concerned about the big delays in the designation of the territories part of NATURA 2000 and the Emerald Network in Bulgaria, not to mention the lack of legal mechanisms ensuring Bulgarian government compliance with the Bern Convention and European environmental law.

Therefore, NGOs consider that at its 23rd meeting, the Standing Committee should officially recommend to the EC, in view of its status as a Contracting Party to the Convention, to take measures to follow Recommendations 98 (2002) regarding the proposed project to build a motorway in the region of the Kresna gorge.

NGOs would also recommend that the process to ensure effective protection of biodiversity in the Kresna gorge should be strengthened. The Bulgarian Government, with the support of the European Commission, should allocate adequate resources and prepare an action plan for the protection of the Kresna gorge.

2. Summary of the future steps requested by NGOs

The signed NGOs would like to request the following of the Standing Committee:

- 2.1 The 23rd meeting of the Standing Committee should officially recommend to the EC, as a contracting party to the Convention and future sponsor for construction of the Sofia – Kulata motorway and second railway line, to follow Recommendations 98 (2002) regarding the proposed project to build a motorway through the Kresna gorge, and to report to the Bureau and the Standing Committee in view of its 24th meeting. The Bulgarian Government, with the support of the European Commission, should allocate adequate resources and prepare an action plan for the protection of the Kresna gorge.
- 2.2 With regard to the forthcoming Struma motorway EIA procedure, the 23rd meeting of the Standing Committee should add to points 2 and 5 from Recommendation 98 (2002) the following:
 - in terms of the scope of the EIA report, REA, with the support of MoEW, should conduct a thoroughgoing consultation with all parties that express an interest, including: the National Museum of Natural History, other scientific institutes, NGOs and local authorities. Such 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; 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 consulted 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 assign an independent EIA report to experts acceptable also to the Bern Convention Bureau, as well as Bulgarian and international NGOs;
 - 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.
- 2.3 With regard to MRDPW's Decision No RD-02-14-611 from July 23, 2002, which contravenes Recommendation 98 (2002), the Standing Committee should request the Bulgarian Government to withdraw that decision. The 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 MRDPW as well as by MoEW.

Attachment 1: Quotations

1. Quotation from the MoEW's letter to the Bulgarian Society for the Protection of Birds.

"In connection to the numerous consultations, written statements and requests for official information by a large number of environmental organisations and international institutions, the Ministry of Environment and Water insists that the proposed alternative of the Struma motorway passing outside the Kresna gorge must be assessed. The new Environmental Impact Assessment developed for the motorway must include the above alternative on equal merits with the proposals already assessed. This should also reflect the proposals made during the public consultations of the EIA to divert the originally planned route of the motorway away from the Kresna gorge." December 13, 2002

2. Quotation from the "Civil Construction and the City" newspaper, 4-10 November 2002.

REA announces new tender for Struma motorway EIA

The new procedure was announced because of the version of engineer Kojcho Boiadjiev team's ..., presented at the National Expert Council meeting on Territorial Planning and Regional Development held on 23-24 July this year.

... For about two weeks the list will be prepared with the candidates for the preparation of the EIA report. When the best of them are selected, it will take 2-4 months to prepare the final EIA report for the new Struma motorway roadbeds..."

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