



Ref. No. 1606/13.10.2023 of BALKANI Wildlife Society

To

Mr. Virginus Sinkevičius

European Commission

Commissioner for the Environment, Oceans and Fisheries

Ms. Celine Gauer

European Commission

Director General of the Recovery and Resilience Task Force (RECOVER)

Mr. Maarten Verwey

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European Commission, Directorate-General for the Environment, Directorate ENV.D.3 Nature Conservation

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Mrs. Ramona Strugariu
Mr. Pascal Canfin

Members of the European Parliament
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Re: non-compliance with Community law, in particular Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC, when planning and implementing Reform 1 (C5.R1) and Investment 1 (C5.I1) of the Biodiversity Component of the Bulgarian National Recovery and Resilience Plan (RRP)

Dear ladies and gentlemen,

This is a signal for non-compliance with Community law, in particular with Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC, in the planning and implementation of Reform 1 (C5.R1) and Investment 1 (C5.I1) of the Biodiversity Component of the National Recovery and Resilience Plan (RRP) of the Republic of Bulgaria. The main conclusion of the report is that the planned reform and investment do not comply with the latest decisions of the Court of Justice of the European Union (CJEU) concerning those articles, such as:

- do not provide for setting priorities for the protection of NATURA 2000 sites, as required by art. 4, par. 4 of Directive 92/43/EEC, and
- do not guarantee the immediate adoption of measures for these sites, as required by art. 6, par. 1 of Directive 92/43/EEC, as well as the immediate taking of measures addressing the priorities established considering the threats to the sites according to Art.

4, par. 4 and in the light of Art. 6, par. 2 of Directive 92/43/EEC, which require that no damage to these areas be allowed.

The above problems make Reform 1 (C5.R1) and Investment 1 (C5.I1) ineffective and not fulfilling the requirements of these articles of Directive 92/43/EEC. In addition, the overall implementation of the RRP and a number of Investments in the plan are directly affected - due to the relation of Art. 4, par. 4 and Art. 6, par. 1 with the procedure of Appropriate Assessments of all Investments requiring preliminary assessment and agreement pursuant to Art. 6, par. 3 of Directive 92/43/EEC.

In view of the above, in this signal we insist that the EC services, in their role of guardians of the Community law according to the Treaty on the Functioning of the EU, guarantee compliance with Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC with the necessary clarity and predictability. This is also of key importance regarding compliance with Art. 6, par. 2 and Art. 6, par. 3 and regarding the principle of providing Community funds against guaranteed compliance with Community law.

The detailed justification and asks are given below.

I. Inadequate transposition of Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC following amendments to the Biodiversity Act adopted in order to implement the Recovery and Resilience Plan (RRP) reform.

1. Description of the Parliament's decision

Government proposal for amendments of the Biodiversity Act on NATURA 2000 and RRP

On October 5, 2023, the National Assembly of the Republic of Bulgaria adopted an amendment to the national Biological Diversity Act (BDA), proposed by the Council of Ministers on April 13, 2023. The motives for the amendments repeat the descriptions in the operational agreement of Reform 1 (Seq.number 126) in the Biodiversity component of the RRP and indicate that they are implementing reform Reform 1 (C5.R1) of the RRP - to adopt legal texts including tools for effective management of NATURA 2000 for:

- establishment of NATURA 2000 management bodies;
- setting conservation objectives of NATURA 2000 sites;
- adoption of mandatory management plans.

In the motives, the proposal state that these changes address violations of Art. 4, par. 4, Art. 6, par. 1 and Art. 6, par 2 of Directive 92/43/EEC and the case brought against Bulgaria in the Court of Justice of the European Union (infringement 2018/2352 according to the inventory of

the European Commission (EC) for non-compliance with these articles). The government claims that these changes effectively meet the requirements of the Directive under these articles.

A draft law of the "Green Movement" Party, prepared on the basis of proposals of environmental protection NGOs in connection with the violations of Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC

Within the same voting procedure, on first reading (session on September 18, 2023), the National Assembly rejected a draft law of the "Green Movement" party, developed on the basis of proposals from environmental NGOs. The main reason put forward for the rejection of the draft law is that it is not in execution with the RRP. The rejected draft law provided for the transposition of Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC, which also aimed to strengthen the implementation of these articles. The proposals included transposition of:

- the term "priority" of NATURA 2000 sites from art. 4, par. 4, as well as transposition of the definition of art. 4, par. 4 with the content of this term (requirements for determining the priorities and the preceding conservation objectives of NATURA 2000 sites) - by making the "priorities" a mandatory element of the designation orders of the NATURA 2000 sites (as required by Art. 4, par. 4). Currently, the term "priorities" is completely missing and has not been transposed into the Bulgarian legislation.
- the requirement to immediately determine measures for the NATURA 2000 sites according to Art. 6, par. 1 of Directive 92/43/EEC, defining and describing the scope of the measures in the law. One specific national decision proposed in the draft law is the restrictive regimes of site designation orders - to acquire the status of preventive measures under Art. 6., par. 1 and in fulfilment of Art. 6., par. 2. If they get included in the site designation orders, the determination of the most urgent preventive measures under Art. 6.1 and Art. 6.2. happens immediately, they are systemic and should fully reflect the threats to the sites defined in the priorities under Art. 4, par. 4. **Currently, with the latest amendments to the BDA, even with the introduction of the mandatory management plans, there is no obligation in the Bulgarian legislation to immediately determine systemic measures for all sites and such determination is postponed for an indefinite future when preparing future management plans.**

2. Violations of the RRP

The approved amendments to the BDA, do not have provisions which would transpose and guarantee with the necessary legal certainty the application of Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC. This leads to a contradiction with Regulation 2021/241 on the establishment of a Recovery and Resilience Mechanism, more specifically with the objectives of this Regulation in paragraphs 10, 11, 23, 24, 32, 39, 42 of the Preamble and the provisions of

Art. 2, par. b), Art. 3, par. a), Art. 4, par. 1 and Art. 18, par. 4, par. d) and par. e). This should lead to a negative assessment by the Commission according to Art. 19, par. 3, par. d), par. e) and par. g) and Appendix V, par. 2.4 and 2.5 of the Regulation.

The provisions of Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Bulgaria 8091/22 and specifically par. 23-26, par. 29, are also violated.

Our motives are as follows:

2.1. Reform C5.R1: and Investment C5.I1: (Seq. numbers 126 and 127) of the Annex to the Operational Agreement for the RRP, set the following results (key milestones and objectives):

- adoption of legal obligations to establish NATURA 2000 management bodies (C5.R1);
- adoption of statutory obligations for mandatory management plans (in the indefinite future) (C5.R1);
- definition and adoption of detailed and specific objectives of the NATURA 2000 sites (C5.R1 and C5.I1).

2.2. The above milestones and targets, as well as the reform carried out through the changes in the Biological Diversity Act (BDA), do not take into account several recent decisions of the Court of Justice of the European Union (CJEU) regarding Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC. The last of these decisions of the CJEU is from 21 September 2023 (case C-116/22 EC v. Germany), and it was preceded by a number of other cases of this court on the subject (Case C-849/19, Case C -241/08, Case C-90/10). Below are summarized only the most important findings and the conclusions of the court, valid for all MS s including Bulgaria:

- Art. 4., par. 4 of Directive 92/43/EEC requires determination of conservation priorities for NATURA 2000 sites, in line with the listed requirements of the article, and this is the final obligation of the member states under this article. **The conservation objectives of the NATURA 2000 sites are directly related to the priorities and are a preliminary stage for their determination. Therefore it is only when there are approved priorities when we have a final application of Art. 4., par. 4. This means that Reform C5.R1: (Seq. number 126) and Investment C5.I1 (Seq number 127), as well as the changes in the BDA, do not reflect the requirements of Art. 4., par. 4, insofar as they only provide for the definition of the site conservation objectives;**
- The Court confirms that the measures for the management of NATURA 2000 sites under Art. 6, par. 1 of Directive 92/43/EEC, should be adopted and available at the same time as the objectives and priorities - for Bulgaria in 2014 and the deadline for their adoption was not met. This means that Reform C5.R1: (Seq number 126) as well as the changes in the BDA, do not reflect the requirements of Art. 6., par. 1, insofar as there will be management plans with conservation measures included in them, but

this is not bound by the terms under Art. 4., par. 4, accordingly, and this is postponed for an undetermined future.

- **Setting priorities and conservation objectives is not subject to the requirement that they necessarily be quantifiable, as claimed by the EC services;**
- The determination of priorities and conservation objectives under Art. 4., par. 4 Directive 92/43/EEC is directly related to the obligations under Art. 6, par. 3 to carry out Appropriate Assessments - the latter should be done against these priorities and objectives - i.e. inadequacy in objectives and priorities lead to inadequacy in Appropriate Assessments.

2.3. The lack of reflection of the requirements of Art. 4, par. 4 and Art. 6, par. 1 of Directive 92/43/EEC in Reform C5.R1: (Seq. number 126) and Investment C5.I1 (Seq. number 127) of the RRP and in the changes of the BDA leads to a violation of the following objectives and provisions laid down in Regulation 2021/241 and Decision 8091/22:

- **the objective for measures receiving support from the RRP to effectively contribute to the ecological transition, including biological diversity, or to overcome the challenges arising from them, is violated;**
- **the "Do Not Significant Harm" principle** has been violated insofar as there are no priorities, objectives and measures of the sites from NATURA 2000, meeting the standards of the Union in the field of the environment and specifically of Art. 4, para. 4 and Art. 6, par. 1 of Directive 92/43/EEC, and this leads to violation in the Appropriate Assessment procedures according to Art. 6, para. 3 of Directive 92/43/EEC (case C-116/22) for all plans, programs and projects requiring such assessment. This directly affects a large number of programs and measures from the RRP to be established in accordance with Union environmental standards. RRP measures, for which procedures under Art. 6, para. 3 of Directive 92/43/EEC potentially are required, are: 36-38, 41-46, 50-62, 98-104, 107-112, 122-125, 128-130, 131-136, 161, 169-171, 180, 193-195, 209-210.
- **the Regulation's objective of contributing to the integration of actions in the field of biological diversity into Union policies is not achieved.**

II. **Additional violations of the requirements of Art. 4, par. 4 of Directive 92/43/EEC as a result of incorrect application in determining the so-called detailed and specific conservation objectives of NATURA 2000 sites (Reform C5.R1: (Seq. Number 126) – incorporation into the law and Investment C5.I1 (Seq. number 127) – supporting the development of such objectives.)**

NGOs have established a number of violations of Art. 4, par. 4 of Directive 92/43/EEC when defining the so-called "detailed and specific objectives" of NATURA 2000 sites, and a complaint will be prepared to the EC services in this regard:

- The methodology approved at the national level for developing the "detailed and specific conservation objectives" includes only the determination of "Favorable Conservation Status" (FCS) parameters and is only a partial fulfilment of the requirements of Art. 4., par. 4 of Directive 92/43 on setting priorities:
 - **does not reflect the role of the sites for the coherence of the NATURA 2000 network,**
 - **does not reflect the threats to the sites,**
 - **does not prioritize objectives (no priorities in essence).**
- The requirement of the **methodology for the "detailed and specific conservation objectives"** is that **all parameters for FCS** included in the objectives **should be quantified** - it is non-reciprocal and does not meet the requirements of Art. 4., par. 4 of Directive 92/43. The CJEU categorically rejects this requirement. The inclusion of this requirement in the Bulgarian methodology for determining the "detailed and specific conservation objectives" led to **drastic deficiencies** for each species and habitat and for each site. As a large number of **essential parameters from the point of view of the ecology of species and habitats**, which cannot be quantified at present, **are excluded from the objectives defined so far.**

This problem is horizontal, affecting all the "detailed and specific conservation objectives" defined so far, and this problem can not be solved without adoption of "priorities", or it would be extremely difficult and expensive to solve.

III. Our asks

The Commission's services should ensure with the necessary clarity and certainty that the Union's requirements and standards in the field of the environment will be complied with in the implementation of the RRP, in accordance with the principle of providing Community funds against guaranteed compliance with Community law, and specifically:

- a) Reform C5.R1: (Seq. Number 126) and Investment C5.I1 (Seq. number 127) of the RRP to be implemented according to the requirements of Art. 4, par. 4, Art. 6, par 1 and Art. 6, par. 2 of Directive 92/43/EEC, and in light of recent decisions of the CJEU, ensuring;
- inclusion of priorities of NATURA 2000 sites according to Art. 4, par. 4 of the Directive in the Biological Diversity Act under Reform C5.R1: (Seq. Number 126);

- the practical description and the inclusion of priorities in the site designation orders of each site as part of Investment C5.I1 (Seq. number 127) of the PPU;
- immediately, without any further delay, determination of measures in NATURA 2000 sites according to Art. 6, par. 1 of the Directive by including the relevant texts in the Biological Diversity Act. This should at least include the urgent preventive measures in fulfilment of Art. 6, par. 2 of Directive 92/43/EEC for the protection of sites from the threats identified exhaustively in the priorities of the sites.

b) Measures 36-38, 41-46, 50-62, 98-104, 107-112, 122-125, 128-130, 131-136, 161, 169-171, 180, 193-195, 209-210 of the RRP to be implemented according to the ‘DNSH’ principle”, for which purpose it is necessary to ensure compliance with Art. 6, para. 3 of Directive 92/43/EEC and in connection with Art. 4, para. 4 and Art. 6, para. 1 of this, through adequate implementation of Reform C5.R1: (Seq. number 126) and Investment C5.I1 (Seq. number 127) of RRP in accordance with these norms.

This letter and signal is sent on behalf of an informal nature protection NGO coalition "For the nature in Bulgaria". Technically, it is sent from the email address of BALKANI Wildlife Society on behalf of all organizations. The letter is specifically supported by listed organizations and their representatives. All organisations and persons who specifically supported the letter should receive related correspondence at the indicated e-mail addresses.

We ask that we receive timely information from the EC services regarding the actions and the decisions taken in relation to our signal, taking into account the tight deadlines related to the RRP and taking into account the objectives and principles of the Community Law for the publicity of decisions related to the environment.

Date: November 13, 2023

Best regards,

BALKANI Wildlife Society - represented by Mr. Petko Tsvetkov - Chairman of the Board and Mr. Andrey Kovatchev - Expert

Association of Parks in Bulgaria - represented by Mr. Simeon Arangelov - Chairman of the Board and Mr. Toma Belev - Expert

Bulgarian Biodiversity Foundation - represented by Ms. Romyana Ivanova - Executive Director
"Greenpeace" - Bulgaria Foundation - represented by Ms. Meglena Antonova - Chairperson
"Green Laws" initiative of the Association for Research Practices - represented by Ms. Vera Staevska, Chair of the Management Board

Bulgarian Association for Alternative Tourism - represented by Ms. Eleonora Yosifova - Chairman of the Board



Ecological Association "For the Earth/Za Zemiata" represented by Ms. Danita Zarichinova and Ms. Iva Dimitrova - Members of the Board

Institute for Green Policy - represented by Mr. Petko Kovachev, Executive Director

Green Balkans - Stara Zagora NG - represented by Ms. Elena Tilova - Chairman of the Board

Bulgarian Society for the Protection of Birds - represented by Ms. Vanya Ratarova-Georgieva - Executive Director

WWF Bulgaria - represented by Ms. Veselina Kavrkova, Executive Director, for contacts – Ms. Katerina Rakovska, Senior Expert "Biodiversity policies"