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European Commission  
Berlaymont  
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*By email only*

1 August 2019

Dear Sirs,

**CHAP(2017)02186 – BULGARIA**

This letter was drafted in connection to the complaint (CHAP(2017)02186 – BULGARIA) which was lodged on July 12, 2017 with the European Commission by a group of non-governmental organisations, including CEE Bankwatch Network, Friends of the Earth Europe and Za Zemiata and which concerned the damaging effect of the Struma Motorway on Kresna Gorge Natura 2000 site, in southwestern Bulgaria.

The present letter is also a follow-up to the meeting which was organized by the cabinets of Commissioner Vella and Commissioner Timmermans and which was attended by the said group of NGOs, alongside ClientEarth and WeMove.eu. It supplements the original complaint with most recent information on the situation in Kresna Gorge and calls on the Commission to take urgent measures to prevent further deterioration in the Kresna Gorge area.

This letter focuses on a **failure by Bulgaria to comply with its obligation to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species in breach of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”)**<sup>1</sup>.

These breaches are particularly serious as they not only violate EU and international legislation but also contribute to the **ongoing destruction** of one of Europe’s most unique and valuable natural sites, Kresna Gorge, which is home to a number of protected species.

As the evidence below illustrates, the complainants have made extensive efforts to resolve the issues and have exhausted available domestic remedies. The complainants are also very much alarmed by the recent statement of the Bulgarian Prime Minister concerning further delays in construction of the Kresna Gorge section of the motorway funneling international motorway traffic through the 2-lane road in the Natura 2000 site, potentially in perpetuity.<sup>2</sup>

<sup>1</sup> OJ L 206, 22.7.1992, p. 7–50.

<sup>2</sup> Bulgaria’s Prime Minister statement made at the opening of the Lot 3.1 of Struma Motorway on 23 May 2019 “I will build the motorway until Kresna. The motorway will stop at both sides of the Gorge. Then let us see who will find a few billions to build the motorway through the mountains [bypassing Kresna Gorge]. We have a reasonable project and if it is not accepted [by the Commission] we will just drive on the existing road

This letter provides an overview of the legal framework (Section 1), the facts and procedure (Section 2) and a legal analysis of the breaches (Section 3). Along with the letter we are providing detailed evidence as follows:

- I. a summary of the results of the monitoring of animals killed by traffic at the existing E-79 international route in Kresna Gorge: comparison of the conservation status of Kresna Gorge Natura 2000 site before the start of the construction of the EU funded Struma Motorway (2003) and 2-3 years after the start of construction of Lots 1, 2 and 4 have advanced (2013-2014) (Annex I);
- II. a position paper of the National Museum of Natural History at the Bulgarian Academy of Sciences (Annex II).

## 1. LEGAL FRAMEWORK

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”) came into force on 10 June 1992.

Article 2 para 2 of the Habitats Directive stipulates that:

*“2. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.”*

Article 6 para 2 of the Habitats Directive relate to the protection of Natura 2000 sites and requires that:

*“2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive*

Article 6 paras 3 and 4 of the Habitats Directive provides:

*“3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*

*4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to*

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through the Kresna Gorge”, available at: <https://www.youtube.com/watch?v=7rjbQoIHFFQ> [last accessed on 30.07.2019].

*ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”*

Article 12 of the Habitats Directive provides:

*“1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:*

*(a) all forms of deliberate capture or killing of specimens of these species in the wild;*

*(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;*

*[...]*

*(d) deterioration or destruction of breeding sites or resting places.*

*[...]*

*3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.*

*4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.”*

## **Bulgarian law**

Environmental Protection Act (Promulgated State Gazette No. 86/18.10.1991, SG No 76/2017)

Article 99 par. 7 of the Environmental Protection Act:

*“Final are the decisions of the first-instance court of appeals against decisions of the Minister of Environment and Water on investment proposals, their extensions or amendments, which are defined as sites of national importance by an act of the Council of Ministers and are sites of strategic importance”*

Biological Diversity Act (Amended, SG No. 88/2005, effective the date of entry into force of the Treaty of Accession to the European Union of the Republic of Bulgaria, SG No. 30/2006, SG No. 52/2007)

Article 31 of the Biological Diversity Act:

*“(1) Any plans, programmes, projects and building-development proposals that are not directly related or necessary for the management of the special areas of conservation and that, either individually or in interaction with other plans, programmes, projects or building-development proposals, are likely to have a significant negative impact on the special areas of conservation, shall be assessed as to the compatibility thereof with the protection purposes of the relevant special area of conservation.*

*[...]*

*(4) In respect of any plans, programmes, and building-development proposals falling within the scope of the Environmental Protection Act, the assessment provided for in Paragraph (1) shall be carried out through the environmental assessment procedure, or through the environmental impact assessment procedure respectively, in pursuance of the Environmental Protection Act and in observance of the special provisions of this Act and the ordinance provided for in Article 31a.*

*(5) Outside the cases falling under Paragraph (4), the assessment provided for in Paragraph (1) in respect of any plans, projects, and building-development proposals shall be carried out through the procedure laid down in the ordinance provided for in Article 31a.*

*(6) In the cases falling under Paragraph (4), while carrying out the mandatory environmental assessment or environmental impact assessment, as well as while deciding on the necessity of an environmental assessment or an environmental impact assessment to be carried out in accordance with the Environmental Protection Act, and where it finds that the plan, programme, or building-development proposal is not likely to have a significant negative impact on the relevant special area of conservation, the competent authority shall take into account these findings while delivering the decision required under Chapter Six of the Environmental Protection Act.*

*(7) (Supplemented, SG No. 62/2010, effective 30.09.2010) In the cases falling under Paragraph (5), where it finds that the plan, programme, project, or building-development proposal is not likely to have a significant negative impact on the relevant special area of conservation, the competent authority shall endorse it with a decision, and it may set specific conditions, requirements and measures for protecting the special area of conservation during the implementation of the plan, programme, project, or building-development proposal.*

*(8) In the cases falling under Paragraph (4), while deciding on the necessity of an environmental assessment or an environmental impact assessment to be carried out in accordance with the Environmental Protection Act, and where it finds that the plan, programme, or building-development proposal is likely to have a significant negative impact on the relevant special area of conservation, the competent authority shall deliver a decision for an environmental assessment or an environmental impact assessment to be carried out.*

*(9) In the cases falling under Paragraph (8) and where an environmental assessment or an environmental impact assessment should mandatorily be carried out in respect of the plan, programme or building-development proposal and the competent authority finds that these are likely to have a significant negative impact on any special area of conservation, an evaluation of the extent of impact of the plan, programme, or building-development proposal on natural habitats or on habitats of species subject to protection within the relevant special area of conservation shall be included in the environmental assessment or the environmental impact assessment.*

*(10) In the cases falling under Paragraph (5), where it finds that the plan, programme, project, or building-development proposal is likely to have a significant negative impact on the relevant special area of conservation, the competent authority shall deliver a decision for an evaluation of the extent of impact of the plan, programme, project, or*

*building-development proposal on natural habitats or on habitats of species subject to protection within the relevant special area of conservation to be carried out.*

*(11) The evaluation provided for in Paragraph (10) shall be finalised by a decision of the Minister of Environment and Water or of the Director of the relevant Regional Inspectorate of Environment and Water. If, within a period of five years reckoned from the date of issue of the decision, the contracting authority does not undertake any activities on implementing the building-development proposal or project or approving the plan or programme, the decision provided for in Item 1 of Paragraph (12) shall automatically be cancelled.*

*(12) With the decision provided for in Paragraph (11) the relevant competent authority shall:*

*1. endorse the plan, programme, project or building-development proposal referred to in Paragraph (5) and set specific conditions, requirement and measures for protecting the special area of conservation in the course of implementation of the plan, programme, project, or building-development proposal;*

*[...]"*

#### Article 32 of the Biological Diversity Act:

*“(1) The competent authority shall endorse under Item 1 of Article 31 (12) any plan, programme, project, or building- development proposal only where the findings of the evaluation provided for in Article 31 (10) are to the effect that the subject of protection within the special area of conservation will not be adversely affected to a considerable extent.*

*(2) The extent of damage referred to in Paragraph (1) shall be evaluated at least as a ratio between the area of habitats subject to protection that is to be affected and the area thereof within the relevant special area of conservation and within the overall network of special areas of conservation.*

*(3) The requirements of Paragraphs (1) and (2) shall also apply to the cases where the assessment provided for in Article 31 (1) is carried out through environmental assessment and/or environmental impact assessment in pursuance of the Environmental Protection Act.”*

#### Article 33 of the Biological Diversity Act:

*“(1) A derogation from the provision of Article 32 (1) herein shall be admissible solely by reasons of overriding public interest and in the absence of an alternative solution.*

*(2) If the special area of conservation hosts a priority natural habitat type and/or a habitat of a priority species, the only considerations which may be raised for making the exception referred to in Paragraph (1) are those relating to human health or public safety, or to beneficial consequences for the environment, and where there are no such considerations, a derogation pursuant to Paragraph (1) may be granted only upon receipt of a positive opinion from the European Commission.”*

## 2. FACTS AND PROCEDURE

Kresna Gorge is situated in south-west Bulgaria. The narrow and fragile ravine is only 17 km long but extremely rich in terms of animal and plant diversity.

Kresna Gorge is part of the Natura 2000 network. It is a nature site and protected haven for some of the EU's most threatened species and habitats. It is home to hundreds of rare and threatened animal, insect and plant species which have used the Gorge as a refuge and a bio-corridor for many hundreds of years. Among others, it hosts 35 EU protected habitats and 92 EU protected species including the European wolf and brown bear, designated by EU law as requiring strict protection. The site is unique for its location on the border between Mediterranean and continental climatic zones and its functional use for seasonal and multi-annual migration of species included in Annex II of the Habitats Directive (such as: *Testudo graeca*, *Eurotestudo hermanni*, *Rhinolophus ferrumequinum*, *Rhinolophus euryale*, *Rhinolophus hipposideros*, *Myotis emarginatus* and *Elaphe quatorlineata*, *Zamenis situla*). The Natura 2000 site is therefore key to the coherence and integrity of the entire Natura 2000 network in Bulgaria and Europe. The Gorge has the highest concentration of biodiversity in Bulgaria, and one of the highest in Europe. It is also an area where local people have the potential to develop tourism and sustainable agriculture.

Unfortunately, Kresna Gorge is located in a strategic position, from the point of view of the construction of the Struma Motorway - a fast international road connection (Trans-European Corridor 4) aimed at improving the road network in Southeastern Europe. The motorway aims to strengthen links between the main cities in the region as well as between ports on the Mediterranean, Ionian, Aegean and Black Seas and the heart of the EU.

The Bulgarian government has been planning the construction of the Struma Motorway since early 2000s. The initial route of the motorway was supposed to go directly through the Kresna Gorge, a Natura 2000 site, and the town of Kresna.

In 2002, an alternative routing plan was designed by independent engineers. It was supposed to pass outside the Gorge and avoid inhabited areas, arable lands, the most precious natural habitats and biological corridors, and the mineral springs in the region.

After intervention of the European Commission and the Standing Committee of the Bern Convention, the Bulgarian government initiated a new Environmental Impact Assessment (EIA) in 2006 to ensure that all proposed variants for the motorway were properly studied.

In 2008, as a result of the final EIA, locals, road authorities, non-governmental organisations relevant ministries, the European Commission and Bern Convention Standing Committee agreed on a concrete route for the motorway outside of the Kresna Gorge routing the road via a tunnel. The 2007 Appropriate Assessment (AA) report concluded that main mitigation measure to avoiding negative impact on the Natura 2000 site is the construction of Kresna Gorge section (i.e. outside the Gorge) with priority. The attached comparative analyses (see: Annex I) show that already in 2004 the international 2-lane road through Kresna Gorge was causing adverse impact on Natura 2000 site<sup>3</sup>.

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<sup>3</sup> See also: I. B., Bekker, G.J., Cuperus, R., Dufek, J., Fry, G., Hicks, C., Hlavac, V., Keller, V. B., Rosell, C., Sangwine, T., Torslov, N., Wandall, B. le Maire, (Eds.), *Wildlife and Traffic: A European Handbook*

The Struma Motorway construction started in 2011 from Lot 1 of the Motorway which was technically more advanced and the European Commission made it conditional that the funding for the rest of the Struma Motorway ('Lots 2' and 'Lot 4') will be provided only once the design and construction of the EIA 2008-preferred tunnel through Kresna Gorge will be implemented. But this plan was abandoned in 2014 under the pressure of construction companies. Consequently the Bulgarian government reopened the discussion on alternative routes for the Kresna Gorge section and on 19 October 2017 the government decided that it will construct the last remaining segment ('Lot 3') of the European highway along its preferred route: traffic will flow in one direction down the length of the Gorge with an opposite flow of traffic outside of the Gorge ('G10.5' plan). In the meantime, the construction of the other sections of the motorway led to increased traffic within the Kresna Gorge.

Importantly, the decision favouring the 'G10,5 Eastern' alternative violates the EIA/AA outcome of 2008 without presenting adequate new evidence which would justify such a change.

In 2017 and 2018 the Bulgarian government and parliament changed laws and rules restricting democratic civil rights in the country to allow special 'fast-track approval' of strategic projects like the Struma Motorway. **The proceedings concerning projects of 'strategic importance' are decided now in the first instance and the complainants are not entitled to bring an appeal.** It is now impossible to challenge this type of activity.

In response to the effects of the Struma Motorway construction in the Kresna Gorge, on July 12, 2017, a group of non-governmental organisations, including CEE Bankwatch Network, Friends of the Earth Europe and Za Zemiata, submitted a complaint to the European Commission, informing it about the damaging effect of the project. Since then, the above organisations have regularly informed the Commission on the situation in Kresna Gorge and asked for action to be taken.

In November 2018 the Bulgarian authorities have opened a public tender for section 3.2 – northbound route, passing on the eastern side of the Gorge.

In reply to the submissions from the NGOs who brought the 2017 complaint, the Commission invited them to a meeting that was attended by representatives of the cabinet of Commissioner Vella and Commissioner Timmermans. The meeting took place on May 7, 2019.

The present letter is a follow-up to this meeting and to other actions undertaken by the said group of NGOs. It supplements the original complaint with most recent information on the situation in Kresna Gorge. It also calls on the Commission to act urgently in respect of the ongoing breach of the Habitats Directive being caused in the Gorge.

## **2. LEGAL ANALYSIS**

This letter concerns a failure by Bulgaria to provide for compliance with Article 6(2) of the Habitats Directive as Bulgarian authorities allow for an ongoing violation of this Directive in Kresna Gorge by advancing construction of the motorway routed to either end of the Gorge and, therefore, increasing transit and trans-national traffic.

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*for Identifying Conflicts and Designing Solutions. COST 341, Habitat Fragmentation due to Transportation Infrastructure, 2003, p. 5 (table 3.1) and p. 6 (fig. 3.6).*

## **Breach of Article 6(2) of the Habitats Directive –continuation of adverse impact of G10,5 and no opportunity for habitats restoration**

Article 6(2) of the Habitats Directive requires Member States to take two types of preventive action, that is, to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species.

In Kresna Gorge only very limited initiatives, such as building small barriers between the road and the nature sites have taken place, with limited impact. Meanwhile, the traffic continuously contributes to deterioration of the habitats through air pollution, noise, dust, and water runoff. Moreover, there is a serious problem with a rapid increase of road killings connected to the increase in road traffic – which has eliminated, disturbed, and affected the populations of species for which these areas have been designated. The monitoring activities already in 2003-2004 showed adverse impact on protected species caused by daily traffic (4,500 vehicles/day). In the years following, due especially due to the construction of the other sections of the Struma Motorway, the traffic in the Gorge has doubled. Monitoring carried out in 2013-2014 showed a significant decrease of the species killed on the road: this is explained by significant deterioration or abandonment of key habitats along the bottom of the valley where the road is situated. The overall impact is significant deterioration of the conservation status of the protected species and especially the ones that were key for the designation of the protected area.

The road traffic bisects the daily migrations that animals constantly make across the Gorge to reach the river and habitats on the slopes. The increase in traffic is clearly visible: in 2003 there were around 4,000-4,500 vehicles per day while in 2013-2014 this number raised to almost 8,500 vehicles per day. As was already emphasised in the supplementary information sent to the Commission on November 15<sup>th</sup>, 2017 to complement the original complaint, any increase in traffic going beyond the levels of 2003-2004 may exceed the thresholds of the adaptation of populations and lead to their full extinction. As it was also stressed in the 2008 EIA/AA report the option to maintain the current road for international traffic (the so called ‘zero alternative’) should be deemed not in compliance with the EU Habitats Directive because of the detrimental impacts on the protected biodiversity and habitats that could not be mitigated.

The traffic in the Gorge has been found to have led to a significant disturbance to a number of species listed in annexes to the Habitats Directive, including reptiles from Annex II and Annex IV to the Directive, such as: *Elaphe situla*, *Elaphe quatuorlineata* (currently in danger of extinction), *Testudo hermanni*, *Testudo graeca*. For the above reptiles there has been a 2-3 times decrease in relative abundance of their populations. This adverse effect has also taken toll on bat species included in Annex II to the Directive: *Barbastella barbastellus*, *Myotis bechsteini*, *Myotis emarginatus*, *Rhinolophus Euryale* and *Rhinolophus hipposideros* (see: Annex II). For these bat species there has been a 13-fold decrease in relative abundance of the populations in Kresna Gorge as a consequence of road mortality. These are only a few examples and the actual list of affected species is longer (see: Annex I).

It should be noted that the Habitats Directive distinguishes between two main pillars of protection: 1<sup>st</sup> pillar targeting conservation of habitats of species (Annex II to the Directive includes a list of species for whom special areas of conservation should be designated) and 2<sup>nd</sup> pillar establishing a system of strict protection (Annex IV lists species under this protection). All the above reptile species are protected under Annexes II and IV which means that protection

extends both to their habitat and to the species itself. There is, therefore, also a failure to provide a system of strict protection by Bulgaria. As to the bat species, they are protected under Annex II which requires SACs to be designed for these species. Their protection ought to be, therefore, very strong.

It needs to be noted that Article 6(2) of the Habitats Directive has the precautionary and prevention principles as its starting point. It puts emphasis on the anticipatory nature of the measures to avoid deterioration of natural habitats and the habitats of species. According to the Commission's Interpretation Guide to Article 6 of the Habitats Directive: *'It is not acceptable to wait until deterioration or disturbances occur before taking measures.'*<sup>4</sup> **Unfortunately, the situation in Kresna Gorge is deteriorating quickly and damage is already visible. It is therefore imperative that action to halt this degradation is taken immediately.** If the current situation continues or worsens with further increases in traffic intensity, the level of deterioration could be irreversible. This would also be contrary to the preventive aim of the provision of Article 6(2) of the Habitats Directive.

It has been established in CJEU case-law that, under the Habitats Directive, Member States must take appropriate protective measures to preserve the characteristics of sites which host priority natural habitat types and/or priority species.<sup>5</sup> This means that Member States cannot authorise interventions where there is a risk that the ecological characteristics of those sites will be seriously compromised as a result. Particularly, where there is a risk that intervention of a particular kind may bring about the extinction of priority species present on the sites concerned.<sup>6</sup> The CJEU stated that: *"[it] is required by Article 6(2) of the Directive, that all natural habitats and habitats of species found within SACs [special areas of conservation] are protected against acts liable to deteriorate them."*<sup>7</sup> The importance of this provision of the Habitats Directive has been also emphasised in CJEU's case-law regarding the protective status of Special Protection Areas (SPAs) introduced in the Birds Directive: *"[...] by virtue of Article 6(2) of the Habitats Directive, the protective legal status of SPAs must guarantee the avoidance therein of the deterioration of natural habitats and the habitats of species as well as significant disturbance of the species for which those areas have been classified."*<sup>8</sup> The reference to the Article 6(2) provision in case-law regarding the Birds Directive only underlines its general systemic importance in protection of species and habitats. Unfortunately, it appears that, **in the case of Kresna Gorge, the protective legal status of SACs is disregarded and does not fulfil its primary role.**

As indicated by the CJEU, a breach of Article 6(2) may be found where deterioration of a habitat or disturbance of the species for which the area in question was designated has been established.<sup>9</sup> **Such deterioration and disturbance have happened and are still taking place in Kresna Gorge.**

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<sup>4</sup> European Commission notice "Managing Natura 2000 sites The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC", C(2018) 7621 final, 21.11.2018, p. 26, par. 2.6.

<sup>5</sup> See: Case C-404/09 *European Commission v Kingdom of Spain*. ECLI:EU:C:2011:768, par. 163.

<sup>6</sup> See: Case C-244/05 *Bund Naturschutz in Bayern eV and Others v Freistaat Bayern*.

ECLI:EU:C:2006:579, par. 46. See also: Case C-404/09 *European Commission v. Spain* ECLI:EU:C:2011:768, par. 163.

<sup>7</sup> Case C-75/01 *Commission v Luxembourg*. ECLI:EU:C:2003:95, par. 42.

<sup>8</sup> Case C-404/09 *European Commission v. Spain* ECLI:EU:C:2011:768, par. 127.

<sup>9</sup> *Ibidem*, par. 121.

Moreover, it appears that there is also a violation of the Article 12(1) of the Habitats Directive requiring Member States to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range prohibiting, among others, deterioration or destruction of breeding sites or resting places. As indicated in the CJEU's jurisprudence, the transposition of that provision requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures.<sup>10</sup> Consequently, a collection of legal instruments does not constitute a comprehensive legislative and regulatory framework when those instruments do not prevent breaches of the Article 12 of the Directive.<sup>11</sup> In the present case, it appears that the **protection required by the strict protection framework is non-existent as the authorities continue to progress construction of the motorway up to both ends of the Natura 2000 area and to route increased traffic into the site** even though they are aware that Kresna Gorge is a site of strict protection of species from Annex IV to the Habitats Directive.

The complainants have sought repeatedly to limit the damage in the area through campaigns, which date back to 1997. In 2002, on behalf of Save the Kresna Gorge coalition, an alternative route was designed on the eastern side by independent engineers proving possible alternative there.<sup>12</sup> As a result of NGO campaigning, letters and information submitted to the European Commission and the Bern Convention, a case file was opened by the Standing Committee of the Bern Convention<sup>13</sup> and in 2008, the EIA decision concluded an alternative bypassing the Gorge via a long tunnel. This alternative, accepted by all relevant Bulgarian and European authorities, was unfortunately annulled by the 2017 EIA decision.<sup>14</sup>

It is not possible in Bulgarian law to initiate a judicial review procedure, if activities and construction works are carried out without an EIA and/or an Article 6(3) of Habitats Directive decision, or in violation of such a decision - i.e. the EIA and Article 6(3) decisions are not enforceable and omissions of authorities to implement the EIA and Habitats directives are not subject to judicial control. Therefore, national remedies are not available to resolve the ongoing deterioration under Article 6(2) or failure to provide a system of strict protection under Article 12.

The case described above demonstrates that there is a failure by Bulgaria to comply with its obligation to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated under Article 6(2) of the Habitats Directive as well as for the species under the strict protection regime under Article 12 of the Habitats Directive.

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<sup>10</sup> See: Case C-340/10 *Commission v Cyprus*. EU:C:2012:143, par. 60.

<sup>11</sup> See: Case C-504/14 *Commission v. Hellenic Republic*. ECLI:EU:C:2016:847, par. 141.

<sup>12</sup> CEE Bankwatch Network video on the history of the Kresna gorge campaign until 2010.

<https://www.youtube.com/watch?v=ZbSOauC6quw>

<sup>13</sup> Texts Adopted by the Standing Committee of the Convention on the conservation of European Wildlife and Natural Habitats 2001-2004, Nature and Environment 142, p. 45-47.

[https://books.google.bg/books?id=-Zzw45g6UGsC&pg=PA45&lpg=PA45&dq=standing+committee+kresna+gorge+recommendation+98&source=bl&ots=0z18h8Bu1M&sig=ACfU3U311gBph4xekj8\\_456MmAt86YiTag&hl=en&sa=X&ved=2ahUKFwjUvMvZ7NnjAhWKw6YKHdf7AccQ6AEwBnoECAkQAQ#v=onepage&q=standing%20committee%20kresna%20gorge%20recommendation%2098&f=false](https://books.google.bg/books?id=-Zzw45g6UGsC&pg=PA45&lpg=PA45&dq=standing+committee+kresna+gorge+recommendation+98&source=bl&ots=0z18h8Bu1M&sig=ACfU3U311gBph4xekj8_456MmAt86YiTag&hl=en&sa=X&ved=2ahUKFwjUvMvZ7NnjAhWKw6YKHdf7AccQ6AEwBnoECAkQAQ#v=onepage&q=standing%20committee%20kresna%20gorge%20recommendation%2098&f=false)

<sup>14</sup> CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, 39<sup>th</sup> meeting, Strasbourg, 3-6 December 2019, Follow-up of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge, Report by NGOs, 1 March 2019, <https://rm.coe.int/possible-file-follow-up-of-recommendation-no-98-2002-on-the-project-to/1680933f07>.

### 3. CONCLUSION

In light of the above, we consider that, by failing systematically to take **appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated as required by 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, Bulgaria is in breach of its obligations under Article 6(2) and Article 12 of the Habitats Directive.**

Evidence shows that Kresna's wildlife is already alarmingly deteriorating as a result of the failure to uphold previous EU requirements. Every day a number of protected species are killed on the roads by increasing numbers of vehicles moving through Kresna Gorge between the two parts of the motorway which have been already built. Also, the construction works put species in danger as they contribute to destruction of their breeding sites and resting places. If motorway traffic in the Gorge continues to build up, it will have a devastating effect on the nearby wildlife. This situation is particularly alarming, because there is available an array of alternatives which could be beneficial both for the nature and for local people. These alternatives were not given sufficient consideration by the authorities, which has brought a risk of imminent deterioration of habitats and species.

The valley of Kresna Gorge is home to protected species of snakes, tortoises and golden eagles and is a crucial north-south migratory corridor for bears and wolves. It is a spectacular nature haven in southwestern Bulgaria, home to twice as many butterfly species as the whole of the UK. Meanwhile, Bulgarian authorities allow the construction of Struma Motorway, or the routing of its traffic, through the heart of this narrow valley, which endangers the nearby wildlife.

It is necessary to stress that, by continuing the construction, Bulgaria is not only violating EU and international legislation but also destroying some of Europe's rarest nature.

We therefore ask the Commission to treat the situation in Kresna Gorge as a matter of urgency and to open an infringement procedure to ensure observance of EU law.

Yours faithfully,

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