For the Commission		
		Member State:

REQUEST FOR SUPPLEMENTARY INFORMATION
(For Site Related Aspects of Nature Conservation issues)

I would be grateful if you would complete this request for supplementary information. The purpose of this request is to help the Commission to more fully and accurately identify and evaluate the essential site-based nature conservation issues raised by your letter.
The provision of the requested information may be decisive for a proper handling of the environmental issue brought to the attention of the Commission, and, where appropriate, the making of representations to the national authorities.
I look forward to hearing from you within the next month.

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Member States concerned: Bulgaria

Regions concerned : Blagoevgrad, CODE BG413

1) Does the case have any direct link to Community nature conservation legislation?

Yes X

2) If yes to which directive ?

Articles 6 (2) and 6 (3) of the Directive 92/43 **92/43[1] (the Habitats Directive)**

3) Give a clear description of the subject of the environmental issue brought to the attention of the Commission (max. 1/2 page)

Kresna Gorge Natura 2000 site, a spectacular natural conservation haven in Bulgaria is a habitat for 92 EU-protected species, such as land tortoises, Leopard and Fourlined snakes, 12 species of bats, golden eagles, griffon vultures, peregrine falcons, and a hotspot containing 35 EU protected habitats. It is also a crucial migratory bio-corridor for bears, wolves and other species, and a geographical border of distribution and/or very narrow migration corridor for many other species. The steep 15.6 km-long north-south Gorge covers an area equal to 14 000 ha, it is the richest biodiversity site in Bulgaria, as well as being part of a network of bigger and complex Natura 2000 sites.

Kresna Gorge is threatened by the construction of the E79 Struma motorway, part of the Trans-European Corridor 4 linking Hamburg with Thessaloniki. The Motorway project design started in 1997. An Appropriate Assessment (AA) in 2008 approved the construction of the Motorway, however with a number of specific conditions to avoid damage to the integrity of Kresna Gorge. The AA decision[2] (below referred as "EIA/AA decision 1-1/2008") concluded that the construction of a motorway through the Gorge, or even an increase of trans-national motorway traffic routed through the existing small Gorge road, would have adverse impacts on the integrity of the Natura 2000 site and on species of EU importance, which would be impossible to mitigate – and thus *must* be avoided. The sole possible mitigation measure identified in the AA, was to divert all traffic outside of the Gorge.

However, as this complaint will make clear, despite the 2008 AA ruling:

1) the Bulgarian Government has presided over a significant deterioration of the Natura 2000 protected natural habitat and designated species, and has failed to take appropriate avoidance steps, in violation of Article 6(2) of the Habitats Directive;
2) the Bulgarian Road Agency on 20 April 2017 decided to advance the design of motorway construction routed partially through the Gorge (Lot 3.2)[3], without giving equal weight to assessing alternative solutions fully outside of the Gorge. It thus pre-empts the results of a new EIA/AA (currently being carried out – itself lacking clear legal grounds to avoid legal uncertainties vis-à-vis the existing AA 2008), and pre-empts the decision on the selection of the motorway routing based on economic and technical criteria without regard to impacts on Natura 2000 – this is a prospective violation of Article 6(3) that would contravene the AA 2008 decision and would likely have very negative effects on the Natura 2000 site and protected species, that could not be mitigated;
3) the actions of the Bulgarian Government have increased trans-national motorway traffic routed through the Gorge, by completing other connecting sections of the Struma motorway first, creating a bottleneck

1O.J. n° L206/7 of 22.07.1992

2EIA/AA decision 1-1/2008 of the Minister of Environment and Waters from 15.01.2008

3Road Infrastructure Agency: "The Proposal of Patproject 2000 Ltd. is Ranked First in the Competition for Elaboration of an Extended Conceptual Design of Struma Motorway in the Krupnik – Kresna Section", 20.04.2017, http://www.api.bg/index.php/en/prescentar/novini/proposal-patproject-2000-ltd-ranked-first-competition-elaboration-extended-conceptual-design-struma-motorway-krupnik--kresna-sec/

through the Gorge, and this is in violation of the compulsory AA 2008 mitigation measure to divert all motorway traffic outside the Gorge and to complete the Kresna section (Lot 3) before other sections in order to avoid an increase in traffic on the existing road – thus a violation of Article 6(3).[4]

The consequences of the first and third of these breaches of the Habitats Directive for Kresna's wildlife have been grave. Over the past ten years, measured road killings of protected species have rapidly increased in line with the 44% (from 4000-4500 vehicles per day in 2003 to 7 969 vehicles in 2013[5]) increase in motorway traffic through the Gorge, resulting in a significant adverse effect on 4 reptile species (2-3 times decrease in relative abundance of the populatuions in Kresna Gorge measures as level of road mortality): *Elaphe situla, Elaphe quatuorlineata (possible extinction), Testudo hermanni* and *Testudo graeca* and at least 5 Annex 2 bat species *Barbastella barbastellus, Myotis bechsteini, Myotis emarginatus, Rhinolophus euryale, Rhinolophus hipposideros* having breeding habitats in Kresna Gorge (13 times decrease in relative abundance of the populatuions in Kresna Gorge measures as level of road mortality). The consequence of the second prospective violation would very likely be even worse deterioration.

We are therefore asking the European Commission to launch an infringement procedure.

4Article 6- Managing and protecting Natura 2000 sites. **Paragraphs 6(3) and 6(4)** lay down the procedure to be followed when planning new developments that might affect a Natura 2000 site. Thus: Any plan or project likely to have a significant effect on a Natura 2000, either individually or in combination with other plans or projects, shall undergo an **Appropriate Assessment** to determine its implications for the site. The competent authorities can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned (Article 6(3))

5see more in point 8

4) Have you already contacted the responsible administrative authorities of your Member State concerning your case
Yes Which one:

The responsible authorities have been systematically informed about the infringement of environmental legislation that their actions can cause. We have established NGO coalition "Save Kresna Gorge" (the Coalition), which acts through its members: BALKANI Wildlife Society, Wilderness Fund, Za Zemiata (Friends of the Earth Bulgaria), Bulgarian Society for the Protection of Birds (BSPB), Green Policy Institute (GPI), Centre for Environmental Information and Education (CEIE), Association "ECOFORUM", and CEE Bankwatch Network. Whenever we refer to an specific NGO sending a letter or attending a meeting it is done on behalf of the Coalition. The letters can be found in the Annexes.

On 27.12.2007, during the EIA/AA process, the CEIE sent a letter to all responsible authorities – Ministry of Transport, "National Road Infrastructure" Fund (NRIF), Ministry of Environment and Waters. It recommended additional studies of the 15km-tunnel-option in order to bypass the Gorge for sub-section Krupnik-Kresna (Lot 3.2) to be designated for priority implementation during 2007-2013 financial period. These recommendations followed the NRIF 2007 AA report and became part of the EIA/AA decision 1-1/2008.

On 26.09.2007 in a meeting with the Ministry of Transport a proposal for Struma Motorway Steering Committee (SC) was put forward by the Coalition. The SC should have involved all relevant stakeholders and ensure effective discussion on the project progress and implementation of the EIA/AA decision. The Coalition believed that the SC could be the most effective mechanism to guarantee the implementation of the relevant environmental legislation and in the period 2007-2011 substantial amount efforts were made for launching the SC.

On 02.11.2009 the association Za Zemiata sent a letter to all responsible authorities asking for the establishment of the SC and opposing the decision to shift Lot 3 implementation to the next financial period 2014-2020. It also expressed concerns that this decision can infringe on the implementation of the legal requirements of EIA/AA decision 1-1/2008. Namely the shift will result in bottleneck of traffic in the Gorge (pt. 3.2 of the EIA/AA decision 1-1/2008.) and the pressure to finalise the motorway could lead to the abandonment of the approved tunnels alternative. We received an answer only from the Road Infrastructure Agency who expressed general support for the SC establishment and did not respond to the concerns about potential infringement of the EIA/AA decsion.

On 19.11.2010 at a meeting with Mr. I. Moskovski (Minister of Transport), Mrs. N. Nikolova (Minister of Regional Development) Mrs. G. Vassileva (responsible for the Operational program "Transport and Transport Infrastructure"), five NGOs representatives of the Coalition raised the above mentioned concerns again. In response Ministry of Transport acknowledged they need to have the whole motorway project ready when applying for EU funds. However the Ministry expressed its concern about implementing point 3.2 of EIA/AA decision 1-1/2008, which requires the Krupnik-Kresna sub-section route design to have priority over others as at that time the route design has not even started which may block the project on legal grounds.

In 2011 the Coalition had number of meetings with the Bulgarian authorities about setting up the SC, but also discussing project development. We laid down a road map how the authorities can speed up and improve the work on Kresna Gorge sub-section. This was in relation to the governmental newly announced efforts to design and construct the motorway applying the best environmental standards and respecting Bulgarian and EU environmental law. We also declared our commitment to help authorities in meeting that goal.
The SC was finally establishment in 2011 with Decision of Ministry of Regional Development. However its operation began only in April 2013.

Between 2013 and July 2014 the Coalition expressed its views on multiple occasions during the SC meetings. At that time Bulgarian authorities were still claiming to follow EIA/AA decision 1-1/2008 and were working on the long tunnel design. During the 5th meeting held on 14.01.2014 both Mr Antov the director of the project developer (National Company Strategic Infrastructure Projects (NCSIP) and its environmental consultant Mr Nachev confirmed that the current traffic is already serious and it is expected to grow even more when the whole motorway is built. This confirmed our concerns that the delay of Lot 3 will result in higher traffic through the Gorge and increased pressure on biodiversity. During the 7th meeting on 30.04.2014 the director of NCSIP confirmed that despite some information published in the media NCSIP is working on the tunnel in order to bypass the Gorge and not on other routes for the Kresna section. Until the end of July 2014 we were convinced Bulgarian authorities had no intention to change the route.

However on 18.09.2014 NGOs were concerned to learn that Dnevnik newspaper reported that the vice-premier and minister of Regional Development Ekhaterina Zaharieva announced that "the dangerous, expensive and damaging to the environment long tunnel will not be constructed" and its alternative is under development. In addition Mr Antov (NCSIP director) stated that a new alternative, following as best as possible the current road, is planned. At that time it became apparent that Bulgarian authorities intend to violate EIA/AA decision 1-1/2008, article 6(3) and Bern Convention recommendation. In response on 24.10.2014 at the 9th SC meeting the Za Zemiata, CEIE and Balkani Wildlife, members of the SC, submitted to SC Secretariat and RIA a request for information about the outcomes of the studies for preliminary design of tunnel alternative in Kresna Gorge. In January 2015 on the 10th SC meeting, this information was requested again, along with any studies, technical documentation or scientific information that can backup the newly initiated design of route. Some documents were provided on 28th January 2015.

In December 2015, in response to the scooping procedure for EIA of Lot 3.2 CEIE, Balkani Wildlife, Bird Life and Za Zemiata submitted comments in a letter to Ministry of Environment. The main demands of the Coalition were that the EIA/AA should also assess a fully eastern alternative, which does not contradict EIA/AA decision 1-1/2008, article 6(3) and Bern Convention recommendation.

On 11.05.2016 NGOs sent a letter to Ms Pavlova minister of Regional Development asking that the next 15th meeting of the SC is scheduled as soon as possible. This meeting was held on 04.07.2016.

Due to insufficient information for the new project developments on 17.09.2016 the Coalition sent a letter to the Director RIA and SC members requesting regular information in the form of studies, analysis and other project related information to be sent to SC members. With the same letter NGOs shared an alternative proposal for a fully eastern alternative (developed and submitted back in 2002) that would avoid the risk of violating the Habitats Directive.

On 28.02.2017 at the meeting with Mrs. Malina Krumova, temporary Minister of European Integration, the Coalition members shared a written position paper of the Coalition about the next steps that need to be taken to ensure successful completion of Struma Motorway in compliance with the Habitats Directive. The coalition first demand was for "dedicated efforts for detailed design and analyses of the missing information for the alternatives outside the Kresna Gorge – which are the only appropriate alternatives according to the EIA/AA decision and Bern Convention recommendations"

On 08.03.2017 Balkani Wildlife society sent a letter (No 1356/08.03.2017) to RIA requesting on the basis of national legislation urgent consultations on the scope of EIA and AA reports so the final reports meet the requirements of the environmental legislation and other already issued decisions (i.e. EIA/AA decision 1-1/2008).

In May and June 2017 representatives of the Coalition had several meetings with Ministers, deputy ministers and other officials, in which the Coalition raised concerns about the ongoing and prospective breaches of

Article 6(2) and 6(3) - however besides general assurances that our concerns are being heard we received no assurances for actions to actually address them.

Answer/Results in brief

In response to the Coalition's 2009-2011 communications, responsible administrative authorities assured us that they were fully engaged to work on an alternative bypassing the Gorge (the tunnel) in line with the EIA/AA decision 1-1/2008, but they informed the Coalition that since the other parts of the motorway are much more advanced in planning they considered the best option to proceed with those sections and leave Lot 3 construction for the next financing period 2014-2020. At a meeting with the Ministry of Transport and Ministry ot regional development held on 19.11.2010 the Coalition advised the authorities that this would likely lead to a breach of the EIA/AA decision 1-1/2008. These concerns were reiterated publicly via the Coalition's position sent to the media on 26 April 2011 and given to the RIA at a meeting held the same day.

From 2014 onwards authorities have publicly stated on several occasions that the 15km-tunnel variant approved by the EIA/AA decision 1-1/2008 to bypass the Gorge is not possible due to financial and time constraints. Authorities informed The Coalition and the press that they are re-considering alternatives such as routing the whole motorway though the Gorge; or a new option of using the current road in the Gorge for motorway traffic in one (southerly) direction and constructing a route east of the Gorge for the other (northerly) direction. The latter – referred to here as the "semi-eastern alternative" is the authorities' currently preferred option, and the only option for which the Road Agency has advanced a construction design[6]. However The Coalition has not received nor seen a single written document from the authorities directly answering our questions on the legality of these proposed routes vis a vis article 6 (3).

So far there hasn't been any response to Balkani's letter **1356/08.03.2017.**

Please add if possible copies of the correspondence.

letter_NAPI_MinTransport_Kresna_steering_com_October_2009_BG_v2.pdf (in Bulgarian)
resp_API-Kresna_steering_com_11-09-2009.pdf (in Bulgarian)
letter_MRRB_Kresna_steering_com_February_2010_BG_v2.pdf (in Bulgarian)
RR 2 KRESNA Public statement Coalition_April_2011_final.pdf
Protocol 5 of Steering Commitee meeting
Protocol 9 of Steering Commitee meeting
Protocol 10 of Steering Commitee meeting and its ammendment sent by the coalition (iskane 23 01 2015_Protocol_10_SC.doc in Bulgarian)
NGO statements on EIA/AA 2015-2016 scope (in Bulgarian)
Balkani's letter 1356/08.03.2017.

5) Have national court proceedings addressing the matter been commenced or are they envisaged?

X **No**

We are waiting for the results and procedural decisions from the current EIA/AA process in order to address the matter in a Bulgarian court.

6Road Infrastructure Agency: "The Proposal of Patproject 2000 Ltd. is Ranked First in the Competition for Elaboration of an Extended Conceptual Design of Struma Motorway in the Krupnik – Kresna Section", 20.04.2017, http://www.api.bg/index.php/en/prescentar/novini/proposal-patproject-2000-ltd-ranked-first-competition-elaboration-extended-conceptual-design-struma-motorway-krupnik--kresna-sec/

5.1. Are you aware if any EC financing is directly involved (e.g. structural funds, Life, etc.) :
Yes X

5.2. If yes please give details :

In total the Struma motorway – encompassing the Kresna Natura 2000 site in question – received and will expected to receive around EUR 756 million of EC funding through structural funds between 2007 and 2021.

The Struma motorway (Sofia-Kulata) follows the existing transit road E-79 that runs along the Struma River in Southwest Bulgaria. The initial feasibility study and the design of the motorway were financed by the EU PHARE – Cross Border Co-operation Programme Bulgaria – Greece. With financial memoranda '98 and '99 the Bulgarian government, represented by the Ministry of Regional Development and Public Works (MRDPW) received from the EU budget the total amount of EUR 3,342,450 for the project.

Since the EU accession of Bulgaria in 2007 Struma motorway project has been officially part of the indicative list of major transport projects for consideration under Operation Programme on Transport 2007-2013 supported by EU Structural and Cohesion funds under Reg. (EC) 1083/2006. The project consists of 4 Lots. From 2007 until 2011 when the application form for EU financial assistance was submitted, Bulgarian authorities conducted different studies and procedures such as EIA and Appropriate Assessment (2008), procurement of Lots 1, 2 & 4.

On 9.06.2009 the Monitoring Committee of OP Transport took a decision to decrease the amount reserved for the programming period 2007-2013 for the construction of the Struma Motorway by shifting "the most controversial and difficult to construct part of the motorway, Lot 3 through the Kresna Gorge" to the next financial period 2014-2020. (Za Zemiata 148/23.07.2009 see also EC Answer - REGIO I2/JVO/vg/D(2009) 930292*7882 from 07.09.2009)

On 26.09.2011 Bulgarian Council of Ministers gave their consent to the Managing Authority of Operational Programme for Transport to **sign the contract for providing financial grant** to Road Infrastructure Agency for implementation of the activities under Struma Motorway project, Lot 1, 2 and 4. The funds shall be provided by the budget of the Republic of Bulgaria until the final approval of the application form by EC. (Decision of the Council of Ministers No. 712/26.09.2011). The grant contract with the RIA was signed on 01.12.2011(Contract № ДОПТ-18/01.12.2011 based on Decision of OPT-38/28.11.2011). **The application form for Cohesion Fund** co-financing of the Major Project 'Construction of Struma Motorway lots 1,2 and 4, and preparation of lot 3' (CCI n 2011.BG.161.PR.006) was submitted **only 19.12.2011** to the European Commission.

The Commission services started apprising the project but shortly interrupted the approval procedure as referred to in Art. 41 (2) of Reg. (EC) 1083/2006. The EC first interruption letter to the Minister of Transport Moskovski "contain[s] serious reservations by the Commission services on several issues, notably on the quality of the environmental assessments in this Major Project application" and stress about "needs to be absolute assurance that lot 3 of the Struma Motorway will be realised by means of one or more tunnels bypassing the Kresna Gorge. The tunnel option is a prerequisite for financing of lot 2 and lot 4, yet the lack of progress on the technical preparation of the construction of the tunnel(s) does not provide sufficient confidence that this option might not be abandoned at some point in the future."(Ref. Ares(2012)226301 – 28/02/2012, p.1)

The Managing Authority of OP Transport 2007-2013 approved the project BG161PO004-2.0.01-0019-C0001 for the planning and design of Struma motorway Lots 1,2 and 4 and preparation of Lot3 (Decision № ОРТ-29/22.05.2013 г.; Contracts № ДОПТ-19/10.06.13; ДОПТ-30/01.10.13; ДОПТ-17/04.08.14)

Approved budged 7 776 928 BGN (EUR 3.97 mln) and the beneficiary is The National Company Strategic Infrastructure Projects (NCSIP).

On 17.12. 2013 the European Commission approves EU financial grant of EUR 274.297 mln, including a EUR 4 mln grant for technical preparation and design of the Lot 3 – 62km, which includes the design of the tunnel in the Kresna Gorge section (C(2013)9009). .

The Managing Authority of Operational program "Transport and Transport Infrastructure" 2014-2020 (OPTTI) approved BGN 739.245mln (EU co-financing 85%) (Decision № ОПТТИ-2 от 24.09.2015) for the project Struma motorway – Lot 3.1, Lot 3.3 and Zheleznitsa Tunnel **prior submitting application for major project that need to be approved by EC**. OPTTI also signed the financial contract with the NCSIP (later tarsfered to RIA) (UMIS Number: BG16M1OP001-2.001-0001-C02 http://2020.eufunds.bg/en/2/0/Project/Details?contractId=7eDm9VE5gBk%3D).

6) Location

6.1. GENERAL DESCRIPTION OF THE SITE(S) AFFECTED

Name of Site(s): SCI Kresna–Ilindentsi

Next big city close by : Blagoevgrad

Surface area (ha) : 48 596.428 ha

Special Protection Area[71] : Yes X Name : Kresna BG0002003

Proposed site of community importance[82] : Yes X Natura 2000 Code : BG0000366

Is the area already under national protection X No ⇔ Yes : Partially (about 2%) as a "Tissata" Strict Nature Reserve and protected area "Moravska".

Scientific description :
It hosts 35 EU protected habitats and 92 EU protected species. The SCI site has several separate biological "cores" (see map in section 6.2) connected by river valleys and mountain slopes in a single site. Here the Pirin Mountain has the best ecological connection with the mountains on the border between Bulgaria and Macedonia.

First "core" is situated in the eastern part and forms a buffer zone to the west of Pirin National Park (lowest part about 500 metres (above sea level), highest part 2100 m.). Second "core" is the deep Kresna Gorge situated along the riverbanks of the Struma River and in the upper part reaches the lower slopes of Pirin (from 180 to 850 m.) and Vlahinska/Maleshevska Mountains (to 1500 m.). The third "core" is the western part - the highest parts of Maleshevska and Vlahina Mountains towards the border with Macedonia (lowest part about 830 m., highest part 1900 m.). The forth "core" is the southern section of the BG0000366 site – the low slopes of Pirin and Maleshevska Mountains (from 150 to 600 m.).

The birds site (SPA BG0002003) mostly cover the first and forth "core" (Kresna Gorge and low slopes of Pirin and Maleshevska Mountains south of it) of the SCI site (see maps in section 6.2.).

The area of SCI Kresna –Ilindentsi includes natural and semi-natural ecosystems of sub-alpine level in Pirin (2100m.) and Vlahina(1900 m.) mountains (oro sub-Mediterranean level), through supra sub-Mediterranean level reaching at lower parts the areas with vegetation typical of the continental sub-Mediterranean and in the south of the upper meso-Mediterranean climate (according to Rivas - Martinez[9]).

Functionally different cores have diverse and different biodiversity significance and role.

1. The Kresna Gorge "core" is a former CORINE Biotops Site and a hotspot of magnificent and irreplaceable Bulgarian and European biodiversity – it is recognised as an important bird, herpetological, lepidopterological and plant area. In the Gorge is situated border between the

7[1] Special Protection Area according Article 4 Birds Directive

8[2] proposed Site of Community Importance according Article 4 Habitats Directive

9www.globalbioclimatics.org

continental and Mediterranean climatic zones - there is very high climate gradation from north to south: over the 18 km of the valley the average annual temperature differs by 1 degree in mean annual temperature. Simultaneously, the 17 kilometres-long deep and narrow Kresna Gorge is a highly vulnerable biological corridor ("bio-corridor") with very narrow front of migration for the migration of species and habitats in south and north direction and for many of them this is their northern or southern border of distribution. The area of the Kresna Groge is also biological refuge for many species - there are representatives of preglacial Mediterranean vegetation and fauna in the site, as well as relict glacial species in the higher parts. All these factors leading to compression of species and high biodiversity to the small size of the Gorge.

The Kresna Gorge "core" (SCI and SPA) in the site is particularly important and vulnerable for preserving regional coherence of the Natura 2000 network (see maps in section 6.2) – it hosts the northern border of distribution of number of habitats and species in south western Bulgaria and Struma valley basin. The vulnerability of the Kresna Gorge comes from the combination of northern border of distribution of these habitats and species and the very narrow migration bio-corridor placed in a deep narrow Gorge with very sharp climatic gradients between north and south. Once destroyed such a natural structure could not be replaced or restored elsewhere. There are a vast number of species and habitats for which the Kresna Gorge plays this crucial functional bio-geographical role. Many of them are protected by the EU Directives and Natura 2000 sites (see maps below in section 6.2):

- Habitats from Annex1 of Dir 92/43 with northern border of distribution in the Kresna Gorge: 9560 Endemic forests with *Juniperus* spp.; 92C0 *Platanus orientalis* and *Liquidambar orientalis* woods (*Platanion orientalis*); 92D0 Southern riparian galleries and thickets (*Nerio-Tamaricetea* and *Securinegion tinctoriae*);
- Species from Annex 2 of Dir 92/43 with northern border of distribution in the Kresna Gorge: *Elaphe quatorlineata quatorlineata*, *Elaphe situla*;
- Species from Annex 4 of Dir 92/43 with northern border of distribution in the Kresna Gorge (maps not available): *Cyrtopodion kotschyi*, *Lacerta trilineata, Telescopus falax*, *Eryx jaculus*, *Pelobates syriacus*;
  Species listed in Annex I of Directive 2009/147/EC: *Hippolais olivetorum*, *Lanius nubicus*.

For a number of other habitats and species Kresna Gorge is not a biogeographical border, but still plays sensitive bio-geographical role as both: a stepping stone and a narrow bio-corridor. For some of them it is a stepping stone, but for migratory species it is also an area along their annual migrations (all bats and many birds). Protected species and habitats for which Kresna Gorge is both a "stepping stone corridor" and very narrow migration bio-corridor are (see maps below in section 6.2):

- Habitats from Annex1 of Dir 92/43: 92A0 *Salix alba and Populus alba galleries*;
- Species from Annex 2 of Dir 92/43: *Lycaena dispar*, *Lutra lutra*, *Rhinolophus ferrumequinum*, *Rhinolophus euryale*, *Rhinolophus hipposideros*, *Myotis emarginatus*, *Emys orbicularis*; *Testudo graeca*, *Testudo hermanni (*both species of tortoises are also found in marginal valleys and mountain foothills, but because of the steep Gorge slopes in the area of the Gorge a local very narrow migration bio-corridor is formed inside of it for these 2 species*)* ;
- Species from Annex 4 of Dir 92/43 (maps not available): *Podarcis erhardii, Podarcis taurica, Coluber caspius, Coluber najadum*.

The habitats of species in this narrow bio-corridor are highly vulnerable because the home ranges of most small species - invertebrates, amphibians, reptiles, birds and mammals – are located in the narrow strip along the Kresna Gorge valley and particularly in the narrow spaces between the Struma River and the steep slopes of the Gorge. There they utilize diverse key habitats important for different stages of their lifespan and often have crucial local seasonal or short term or even daily

migrations from sunny/stony/rocky dry slopes to wet shadow forested bottom of valley and the available sources of water there. This very narrow migration bio-corridor forms a linear "ecotone" between the bottom of river valley and sunny slopes for number of protected species.

Besides more rare Mediterranean habitats and species in the Kresna Gorge core some more spread and common sub-Mediterranean habitats and species could be found – 91AA *Eastern white oak woods* (most common to 500-600 m and at patches on steep southern slopes at higher attitudes), 9170 *Galio-Carpinetum oak-hornbeam* forests (above 500 m. with *Quercus petraea*, *Carpinus betulus*), 91E0 *Alluvial forests with Alnus glutinosa* (*Alnion incanae*) (in southern part of the Kresna Gorge above 92C0 at 300-600 m., in northern part of the Gorge where 92C0 disappear from the bottom of the valley at 250 m.), 6210 *Semi-natural dry grasslands and scrubland faces on calcareous substrates (Festuco-Brometalia)*, 6220 *Pseudo-steppe with grasses and annuals of the Thero-Brachypodietea* etc.

Kresna Gorge is also a biological corridor connecting high mountain habitats from both sides of the Gorge through deep wet and cool marginal river valleys and also connecting habitats of populations of large mammals from both sites of the Gorge including species as *Canis lupus*, *Ursus arctos* (Annex 2 of the Dir. 92/43).

There are 12 inhabitant fish species – most of them inhabiting Struma river or low parts of its tributaries (Kresna Gorge "core") and only 1 species living at higher altitudes. 3 of those species are included in Annex II of Directive 92/43/EEC

2. The forth "core" - the low slopes of Pirin and Maleshevska Mountains south of the Gorge, has similar upper meso-Mediterranean conditions as low southern sections of Kresna Gorge and protect the same species and habitats which further north have their northern border of distribution in the Gorge. Here some other upper meso-Mediterranean communities appear such as *Quercus coccifera* low woods/tickets and 62A0 – Eastern sub-Mediterranean dry grasslands.

3. The second and third "cores" are mountain areas above the Kresna Gorge preserving habitats from Supra sub-Mediterranean (from about 500 m. to about 1600 m.) to Oro Continental Belt (from about 1600 m. to 2100 m).

At lower altitudes – the supra sub-Mediterranean belt semi natural and natural habitats could be found in a mixture. Mixture of dry pastures (6210, 6220) and various shrubby vegetation of "shibljiac" type including habitat of evergreen red juniper matorral **(**5210) are characteristic for grazing areas. Species abundant forests are also characteristic – oaks (91M0, 9170, 91AA), beech (9150, 91W0), black pine (9530), limes (91Z0, 9180) etc. Several small mountain villages are spread in this belt – in the past mostly occupied with shepherd activities, now predominantly abandoned or with aging population.

At higher altitudes predominate natural habitats: beech (9110, 9130), pine (95A0, 91CA, 4070), fir (91BA), spruce (9410) forests and there are semi-natural grasslands (6520).

The remote mountain wilderness areas in both opposite mountains Pirin and Vlahina/Maleshevska protect breeding and feeding habitats of large carnivores from Annex 2 of the Dir. 92/43 such as *Canis lupus*, *Ursus arctos* (the last species occurs in Vlahina/Maleshevska mountain only occasionally despite suitable habitats, because of higher accessibility of habitats and high level of poaching). Often feeding carnivores utilize habitats at 500-600 m.

"Zandana" cave complex is situated here, consisting all together 3 caves with breeding colonies of horseshoe bats and migratory groups/colonies of other bat species.

The second and third “cores” biogeographically play role of stepping stones (not in population sense) – they are important for the overall coherence of the network, by ensuring the continuity in the distribution of the habitats and species protected in these cores – all of them could be found also in SCIs north and south of SCI Kresna –Ilindentsi.

Please find here below a table summarising the bio-geographical role and the role for the coherence of the Natura 2000 network (according official data of the Ministry of Environment http://natura2000.moew.government.bg/Home/Map) of the BG0000366 SCI “cores” affected by the motorway construction (see relevant maps in section 6.2.). Particularly, the Kresna Gorge “core” and the supra- altitudinal belt of the first “core” - buffer zone between Pirin National Park and Kresna Gorge.

Hab., spec.	SCIs south of Kresna Gorge (presence with “+”)				SCI Kresna –Ilindentsi BG0000366		SCIs north of Kresna Gorge (presence with “+”)								
	1023	167	224	1028	Kresna Gorge "core"	1st "sore" supra- alt. belt	1022	1013	1011	294	1012	298	1017	308	113
5210	+		+	+	Stepping stone.	Stepping stone.	+	+	+	+	+				
6210	+	+	+	+	Stepping stone.	Stepping stone.	+	+	+			+	+	+	+
6220	+		+	+	Stepping stone.	Stepping stone.	+	+			+	+			
9150				+		Stepping stone.	+	+	+			+			+
9170		+	+	+		Stepping stone.	+	+	+	+	+	+	+	+	+
9180			+	+		Stepping stone.	+	+	+	+	+	+	+	+	+
91AA	+		+	+	Stepping stone.	Stepping stone.	+	+	+						
91E0	+	+	+	+	Stepping stone.	Stepping stone.	+	+	+	+	+	+	+	+	+
91M0	+	+	+	+		Stepping stone.	+	+	+	+	+	+	+	+	+
91W0		+	+	+		Stepping stone.	+	+	+	+	+	+	+	+	+
91Z0					***Southern border of distribution!***										
92A0	+				**Very narrow migration bio-corridor.** Stepping stone.			+							
92C0	+	+	+	+	***Northern border of distribution!*** **Very narrow migration bio-corridor.**										
92D0	+				***Northern border of distribution!*** **Very narrow migration bio-corridor.**										

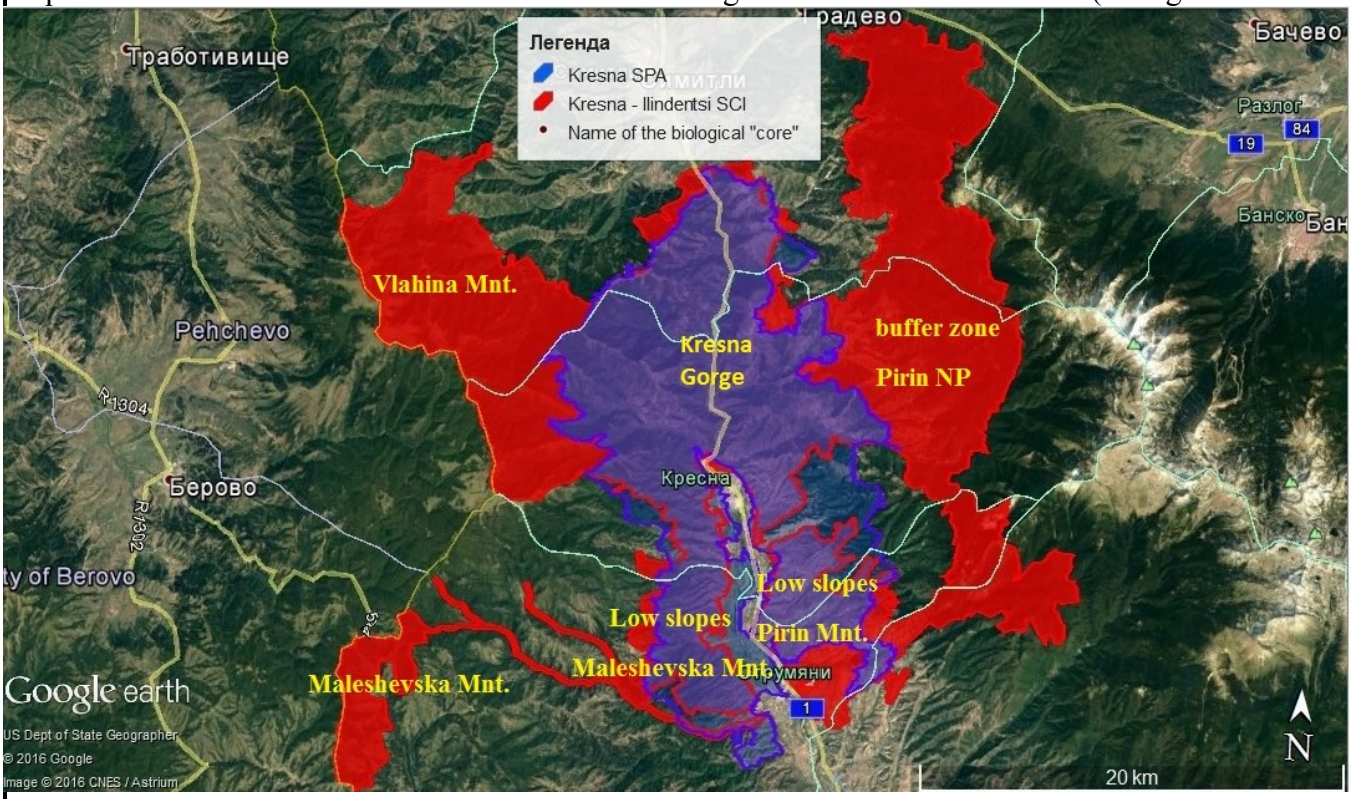
9560			+		***Northern border of distribution!*** **Very narrow migration bio-corridor.**										
9530				+		Stepping stone.	+	+	+						
Euplagia quadripunctaria	+	+	+	+	Stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+		+				+
Rosalia alpina	+	+	+	+		stepping stone, breeding habitat	+	+	+	+	+	+	+	+	+
Lucanus cervus	+	+	+	+	Stepping stone, **breeding habitat.**	Marginal breeding habitat.	+	+	+	+	+	+	+	+	+
Morimus funereus	+	+	+	+	Stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+	+	+
Paracaloptenus caloptenoides		+		+		stepping stone, breeding habitat									+
Cerambyx cerdo	+	+	+	+	Stepping stone, **breeding habitat.**		+	+	+	+	+	+	+	+	+
Ophiogomphus cecilia	+		+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Marginal breeding habitat.	+								+
Eriogaster catax	+				***Northern border of distribution!*** **Breeding habitat.**	***Northern border of distribution !*** Potential habitat.									
Bombina variegata	+	+	+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+	+	+
Triturus karelinii	+	+	+	+	Stepping stone, **breeding habitat** (localities).	Stepping stone, potential habitat.	+	+	+	+	+	+	+	+	+
Elaphe quatuorlineata	+	+	+	+	***Northern border of distribution!*** **Very narrow migration bio-corridor**, **breeding habitat.**										
Elaphe situla	+	+	+	+	***Northern border of distribution!*** **Very narrow migration bio-corridor**, **breeding habitat.**										

Emys orbicularis	+	+	+	+	**Very narrow migration bio-corridor**, stepping stone, potential habitats.	Marginal habitat, potential habitats.	+	+	+	+	+	+		+	
Testudo graeca	+	+	+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+			
Testudo hermanni	+	+	+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+			+
Barbastella barbastellus	+	+	+	+	**Very narrow migration bio-corridor**, seasonal migration, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+	+	+
Myotis bechsteinii	+		+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		
Myotis blythii	+		+	+	**Very narrow migration bio-corridor**, seasonal migration.	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		+
Myotis emarginatus	+		+	+	**bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		+
Myotis myotis	+		+	+	**Very narrow migration bio-corridor**, seasonal migration.	Stepping stone, breeding habitat.	+	+	+		+	+	+		+
Rhinolophus euryale	+		+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		
Rhinolophus ferrumequinum	+	+	+	+	**bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		+
Rhinolophus hipposideros	+	+	+	+	**Very narrow migration bio-corridor**, stepping stone, **breeding habitat.**	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		+
Lutra lutra	+		+	+	**Very narrow migration bio-corridor**, stepping stone, breeding habitat.	Stepping stone, breeding habitat.	+	+	+	+	+	+	+		+
Canis lupus	+	+	+	+	Bio-corridor between high mountains.	Bio-corridor between high mountains, breeding habitat.	+	+	+	+	+	+	+	+	+

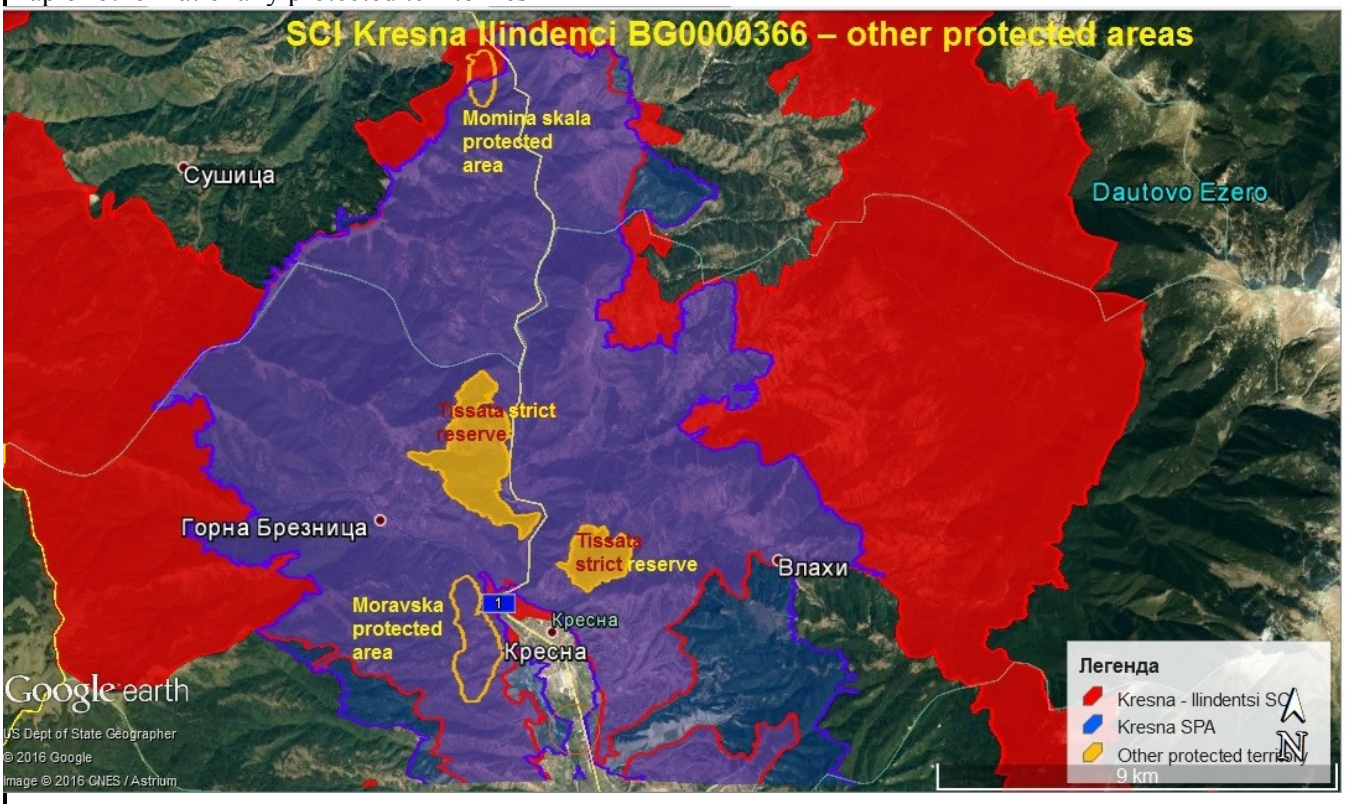
Ursus arctos				+	Bio-corridor between high mountains.	Bio-corridor between high mountains, breeding habitat.	+	+	+	+	+	+	+	+	+

6.2. MAP OF THE SITE OR SITES AFFECTED[10]

Map of NATURA sites and different ecological areas in them (biological "cores")

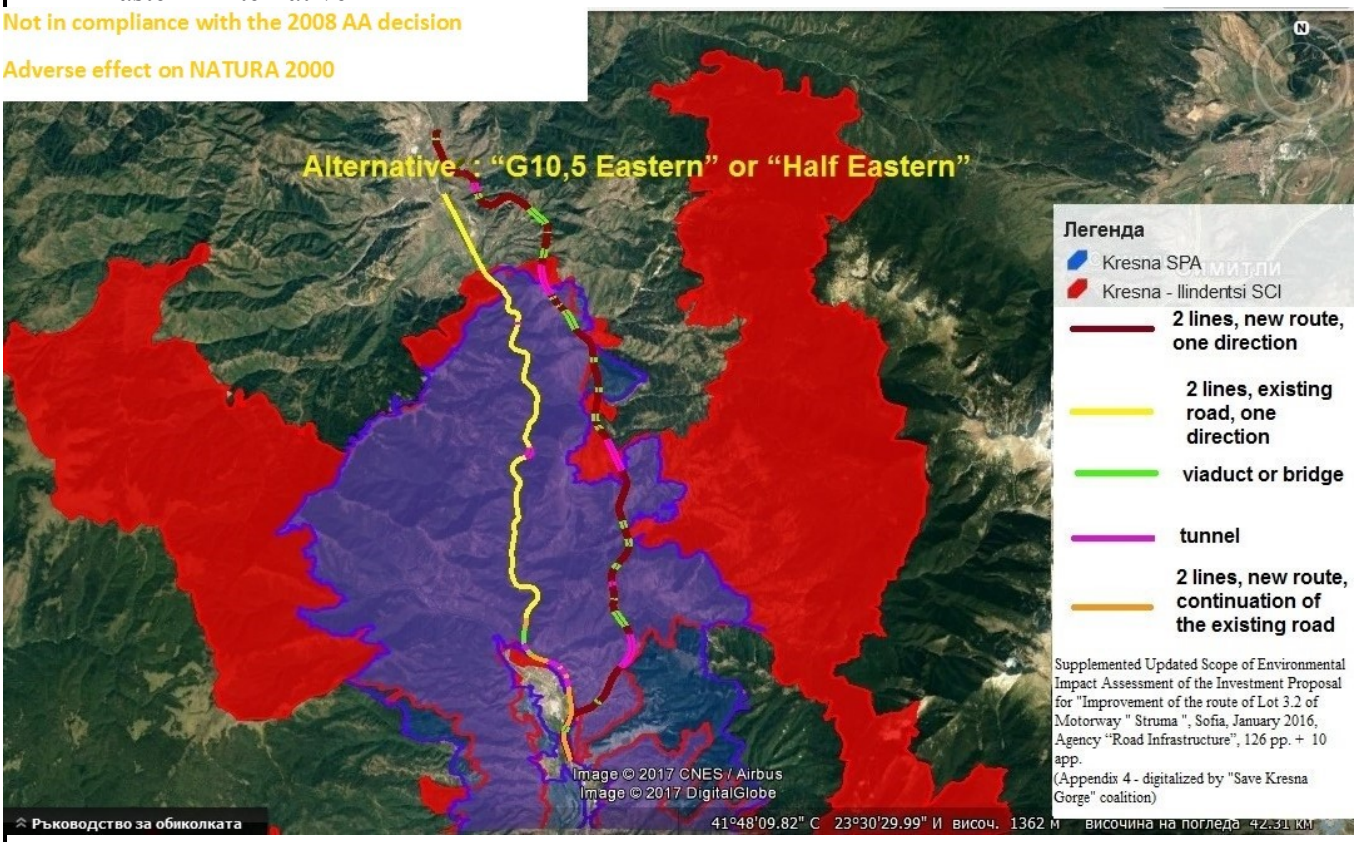


Map of other nationally protected territorries

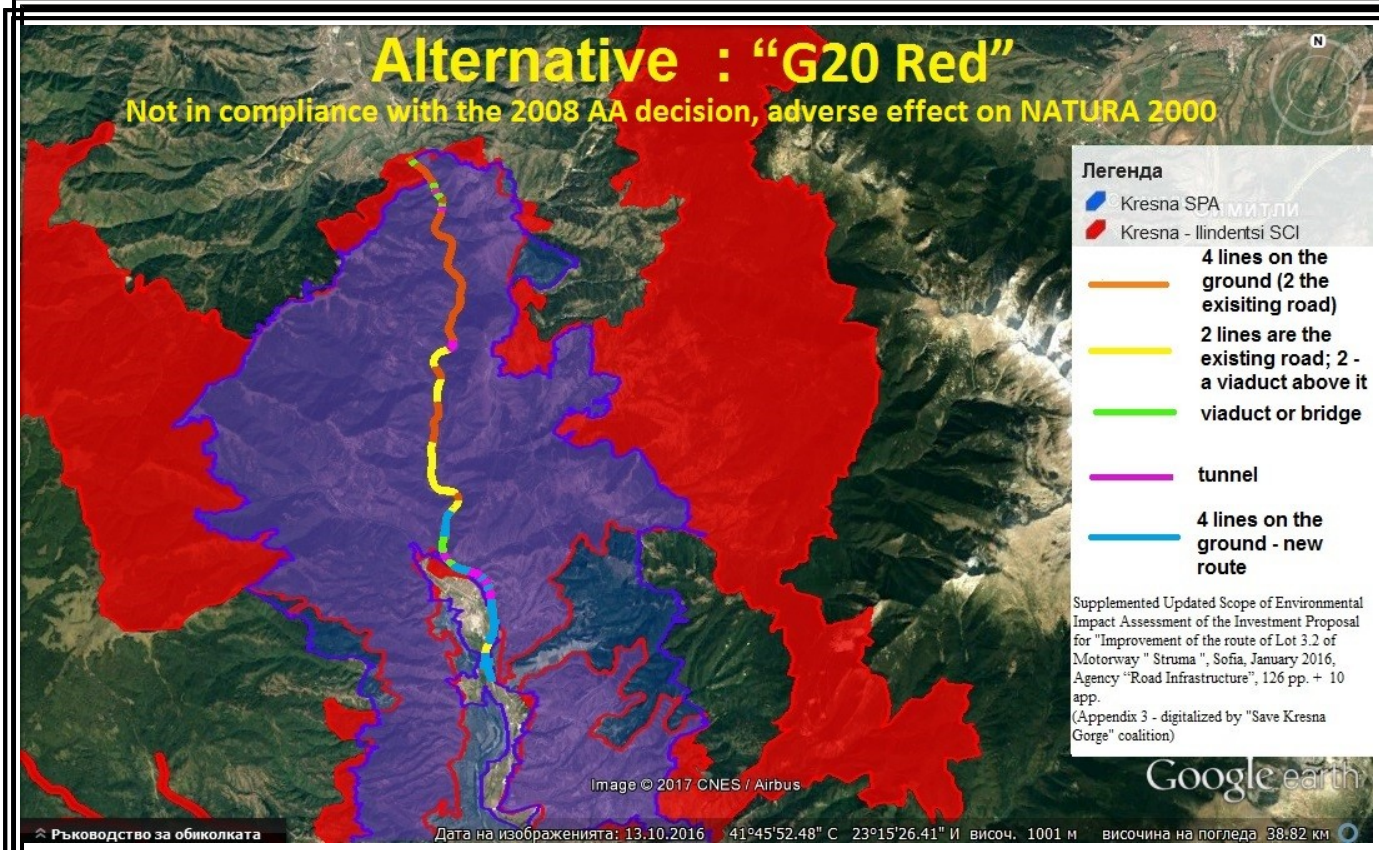


10 See additional maps of species in Appendix 1

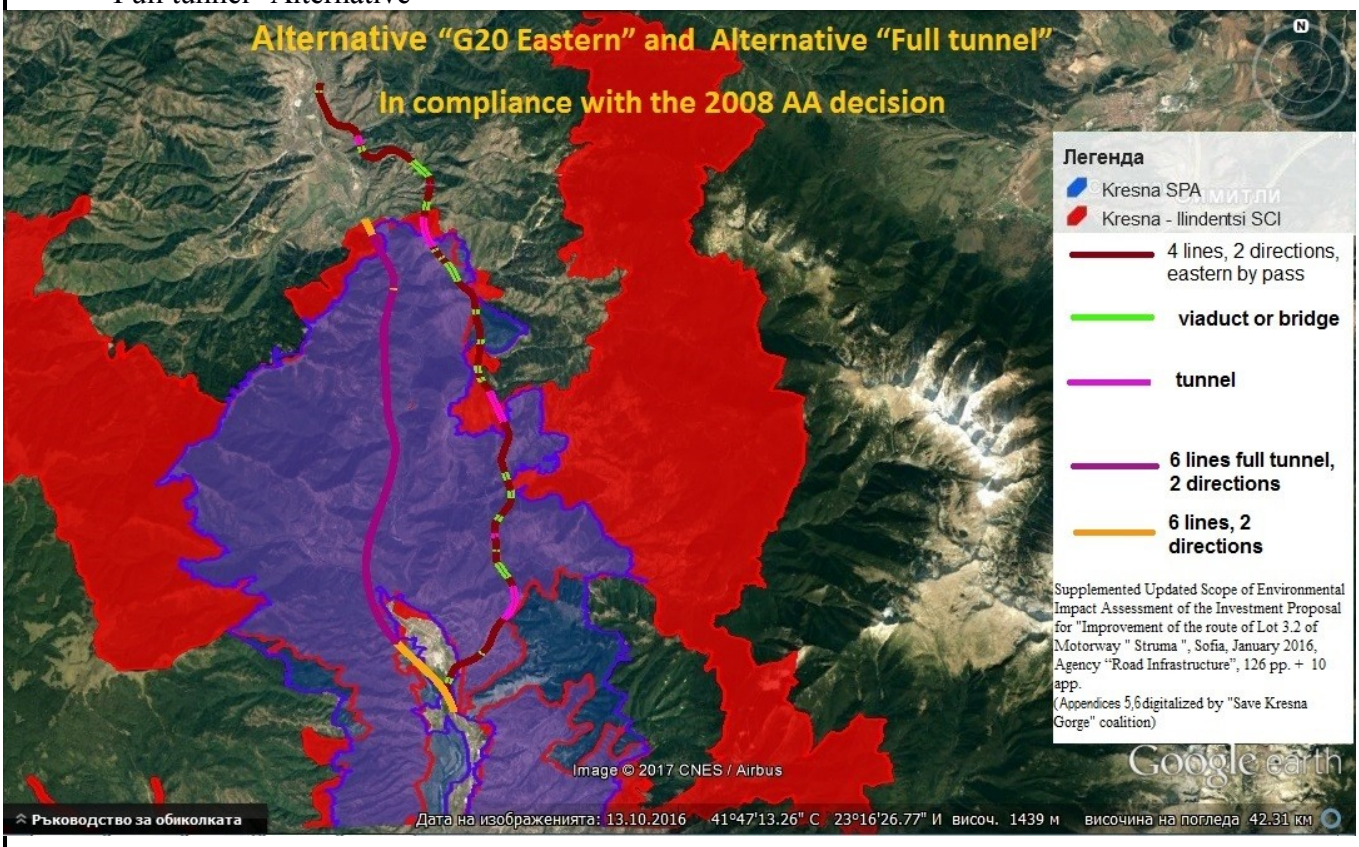
Map of alternatives included in the scope of the "New EIA/AA" – the "G10,5 Eastern" or "Half Eastern"Alternative



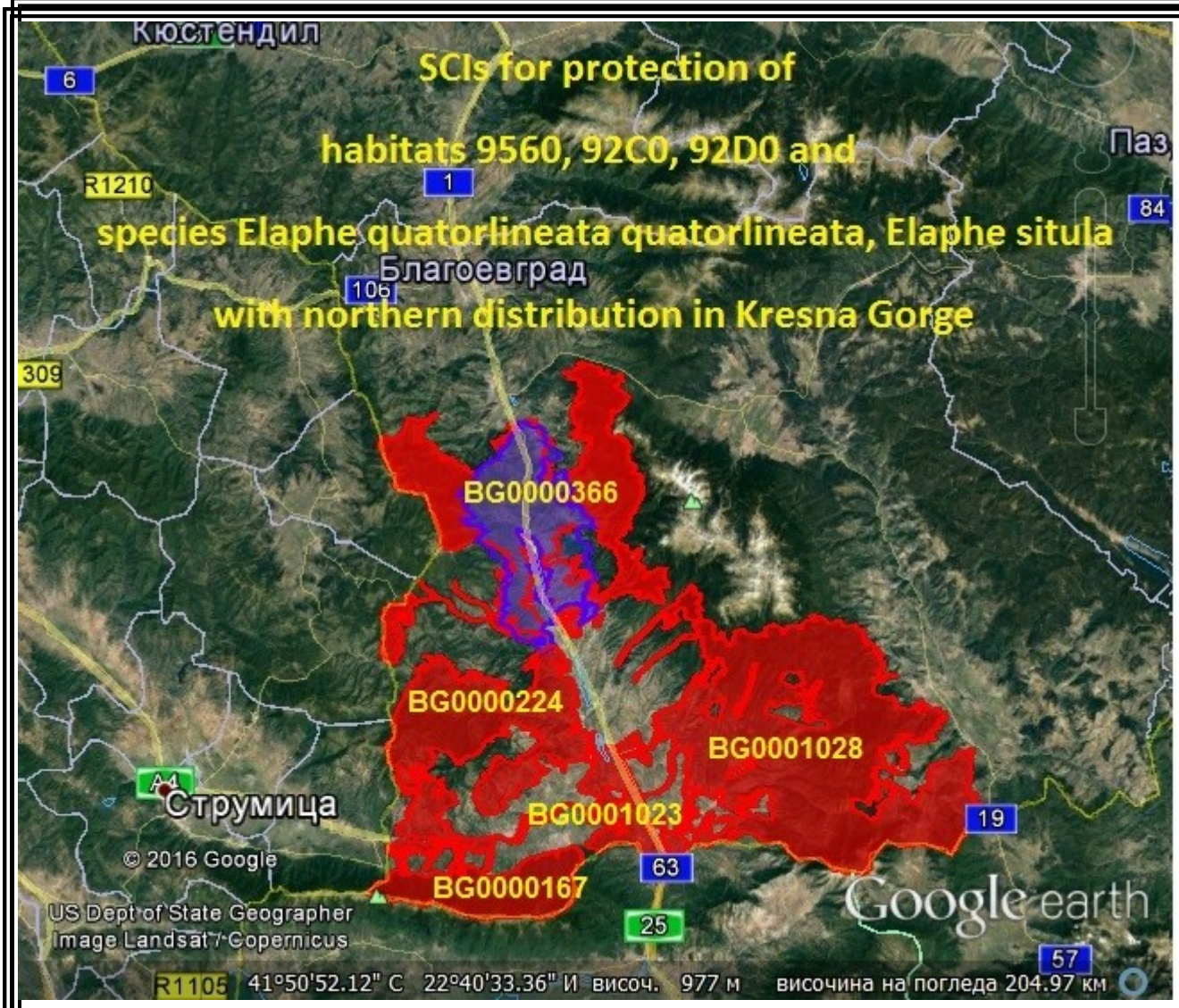
Map of alternatives included in the scope of the "New EIA/AA" – the "G20 Red" Alternative



Map of alternatives included in the scope of the "New EIA/AA" – the "G20 Eastern" Alternative and the "Full tunnel" Alternative

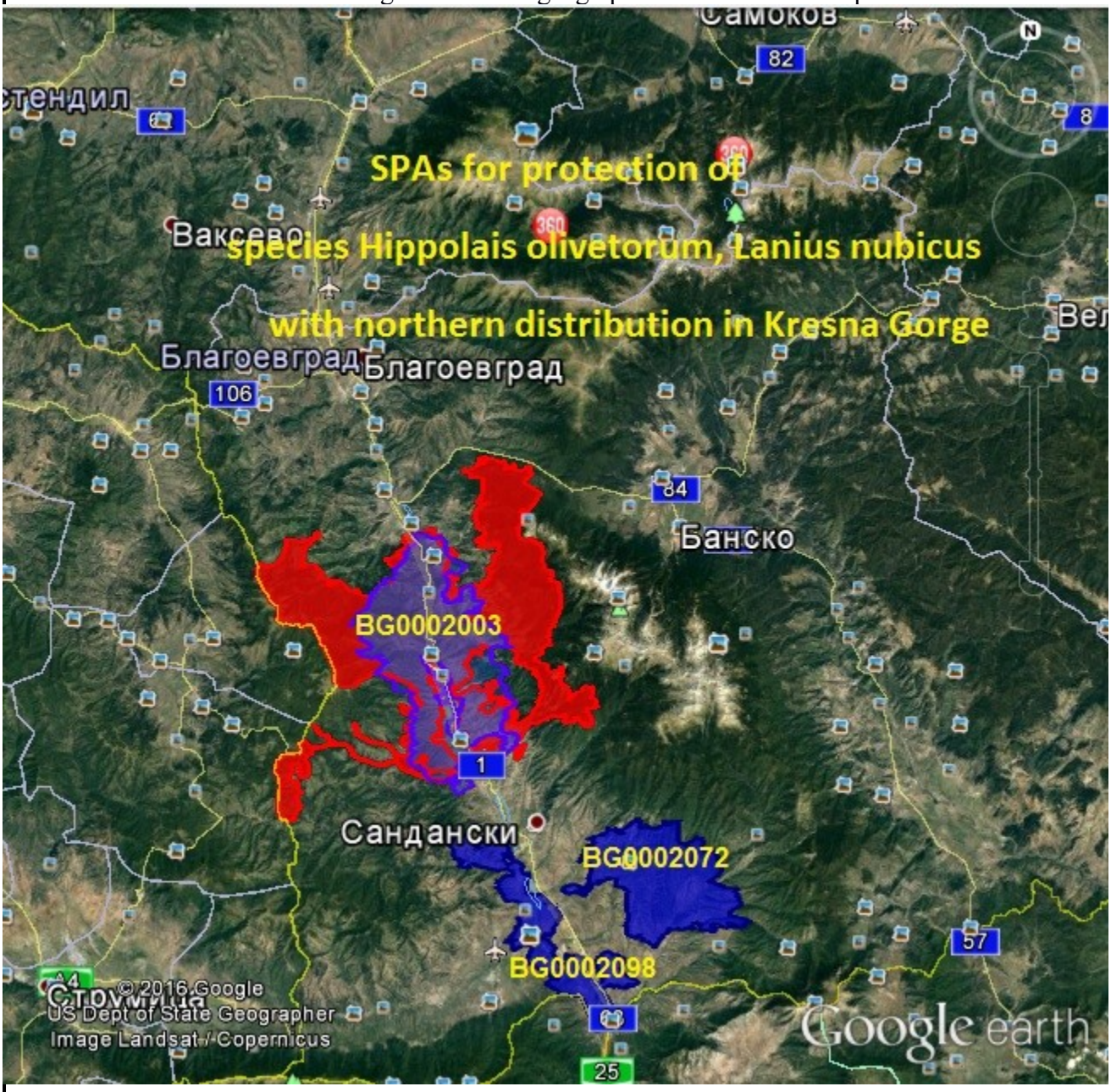


Map showing the role of Kresna Gorge SCI (Kresna – Ilindentzi BG0000366) for NATURA 2000 network integrity and coherence – the Kresna Gorge as northern geographical border for habitats and species



Map showing the role of Kresna Gorge SPA (Kresna BG0002003) for NATURA 2000 network integrity and

coherence – the Kresna Gorge as northern geographical border for bird species



Additional maps are presented in Appendix 1

7. PRINCIPAL HABITATS DIRECTIVE ANNEX I HABITAT TYPES DIRECTLY AFFECTED

** :* *Tick if the habitat type is a priority one according to Annex I of the Habitats Directive*
Code : *Refer to the Habitats Directive*
Name : *Name of the habitat type according to the Habitats Directive*

*	Code	Name	Surface area for the site ha
*	6110	*Rupicolous calcareous or basophilic grasslands of the Alysso-Sedion albi*	0.97192
	6210	*Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia)*	1943.86
*	6220	*Pseudo-steppe with grasses and annuals of the Thero-Brachypodietea*	2915.79
	62A0	*Eastern sub-Mediterranean dry grasslands (Scorzoneratalia villosae)*	48.5964
*	91AA	*Eastern white oak woods*	3989.77
*	91E0	*Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*	2.6242
	92A0	*Salix alba and Populus alba galleries*	0.04859
	92C0	*Platanus orientalis and Liquidambar orientalis woods (Platanion orientalis)*	35.6212
	92D0	*Southern riparian galleries and thickets (Nerio-Tamaricetea and Securinegion tinctoriae)*	1.21491
*	9560	*Endemic forests with Juniperus spp.*	597.736

8. HABITATS DIRECTIVE ANNEX II SPECIES DIRECTLY AFFECTED

G	*	SCIENTIFIC NAME (IN LATIN)	POPULATION SIZE FOR THE SITE(S)				
			Unit	Resident	MIGRATORY		
					BREED	WINTER	STAGE
M		*Lutra lutra*	**Individuals**	**7-15**			
M	*	*Canis lupus*	**Individuals**	**12-13**			
M	*	*Ursus arctos*	**Individuals**	**6**			
M		*Barbastella barbastellus*	**Individuals**	**219-363**			
M		*Rhinolophus hipposideros*	**Individuals**		**51-100**		
M		*Rhinolophus ferrumequinum*	**Individuals**		**1000-1500**	**101-250**	
M		*Rhinolophus euryale*	**Individuals**	**101-250**			
M		*Myotis emarginatus*	**Individuals**		**1200-1700**		
M		*Myotis bechsteini*	**Individuals**	**101-201**			
M		*Miniopterus schreibersi*	**Individuals**	**51-100**			
R		*Elaphe situla*	**localities**	**1**			
R		*Elaphe quatuorlineata*	**localities**	**9**			
R		*Testudo hermanni*	**localities**	**25**			
R		*Testudo graeca*	**localities**	**23**			
A		*Bombina variegata*	**localities**	**23**			

We would here like to present field monitoring data – which demonstrates that there has been a significant disturbance of priority species for which the Natura 2000 area has been designated, as a direct consequence of increased motorway road traffic through the Gorge between 2003-2014. It shows significant adverse effects – including a -92% and -58-100% deterioration of bat and reptile species along the road – and this is a direct result of the failure to uphold mandatory mitigation measure I.3.2. of the EIA/AA 2008 decision 1-1.

The below data – monitoring road kills along the existing road in Kresna Gorge - shows strong adverse impacts on 4 reptile species: *Elaphe situla*, *Elaphe quatuorlineata*, *Testudo hermanni* and *Testudo graeca;* and at least 5 Annex 2 bat species: *Barbastella barbastellus, Myotis bechsteini, Myotis emarginatus, Rhinolophus euryale, Rhinolophus hipposideros* – all with breeding habitats in Kresna Gorge.

The populations of these species – their relative abundance – have deteriorated over a 10 year period in the habitats situated along the 15.6 km long bio-biocorridor in Kresna Gorge. For *Elaphe situla* and *Elaphe quatuorlineata* there has been a retreat of their northern border of distribution in Bulgaria (see chapters 6.1 and 6.2.).

These species populations have experienced a cumulative adverse impact as a result of increased motorway traffic on the existing Gorge road. This is a consequence of construction and operation of the other connecting sections of the Struma motorway (Lots 1, 2 and 4 outside the Kresna Gorge) in 2012 (see section 10.4) prior to section 3, containing Lot 3.2 (Kresna Gorge) which has so far remained as the existing road/zero alternative – creating a bottleneck effect of motorway traffic feeding into the Gorge from north and south.

1. Data from road kill monitoring.

Two studies of road kills along the existing road were carried out across a10 year period. Both studies had practically the same methodology, thus providing comparative monitoring data for changes of road kills intensity – and related to this, the relative abundance of the populations[11] – along the existing road in the Kresna Gorge, before and after the operationalization of Lots 1, 2 and 4 feeding motorway traffic into the Gorge. Both studies used full reporting of all killed individuals each week and their locality.

The first study was carried out voluntarily in warm seasons of 2003-2005 (from April to November) by the National History Museum of Bulgarian Academy of Sciences, Bulgarian Herpetological Society, BALKANI Wildlife Society and Environmental Society Tetida. The data-base of this study was used in preparation of NRI 2007 AA report[12]. Preliminary results from this study were presented to 23th Bern Convention Standing Committee[13]. In the table below, summary data from 2003 are shown (the full data-base is kept by the organizers of the

11 An example of relation intensity of traffic – level of animal road deaths is given on Page 24 of "Cost 341 Habitat Fragmentation due to Transportation Infrastructure. Wildlife and traffic. A European Handbook for Identifying Conflicts and Designing Solutions." http://www.iene.info/wp-content/uploads/COST341_Handbook.pdf

12 See in appendix 1 some translations of the NRI 2007 AA report chapter - "exisitnig road", pages 91-94.

13 Strasbourg, 16 September 2015, T-PVS/Files (2015) 39. Follow-up of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria) Construction of the Struma motorway (Motorway E79: Sofia-Kulata) through the Kresna Gorge, Bulgaria. Report by the NGOs. CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS. 12 pp. (Reported monitoring data from period 4.4.2003 to 29.9.2003)

study, available if requested). Unlike the monitoring from 2014-2014, this monitoring from 2004 and 2005 didn't cover all weeks (only 50% coverage in 2004).

The monitoring from 2013 [5] and 2014[6] allows a comparison of the change over ten years – after the construction of Lots 1,2 and 4; it was initiated by the road authorities – the National Company strategic infrastructure projects.

Here below is the summary table of road kill monitoring results:

Number of specimen deaths detected on the road					
	04.04.2003-08.12.2003 (in brackets data reported to Bern Convention[4])	15.03.2013-31.01.2014[14]	15.03.2014-31.01.2015[15]	Average number of road kills per year (period 2014-2015)	Decrease in relative abundance of species over 10 year period in % (2003 - 2013/2014)
Elaphe quatuorlineata	5	0	0	0	**Possibly extinct -100% decrease**
Zamenis situla	12	0	10	5	**58 % decrease**
Testudo graeca and *Testudo hermanni* (together)	60 (57)	12	24	18	**70% decrease**
Testudo sp.	42 (41)	9	16	13	**69 % decrease**
Testudo graeca	16 (14)	2	4	3	**81% decrease**
Testudo hermanni	2	1	4	3	**-50%**

14March 2014, "Monitoring, analysis and assessment of the mortality of the species in the section of road E-79 (I-1), passing through the protected zones" Kresna"and" Kresna - Ilindentsi – Final Report, Period March 2013 – February 2014", National Company strategic infrastructure projects, 86 Pp. + 7 Ap. (see attachments, in electronic form, in Bulgarian)

15March 2015, "Monitoring, analysis and assessment of the mortality of the species in the section of road E-79 (I-1), passing through the protected zones" Kresna"and" Kresna - Ilindentsi – Final Report, Period March 2014 – January 2015", National Company strategic infrastructure projects, 118 Pp. + 3 Ap. (see attachments, in electronic form, in Bulgarian)

***Chiroptera* (all species)**	195	6	23	15	**92% decrease**
All vertebrates	3345 (3055)	213	874	544	**84%**

This data shows that the population abundance of all Chiroptera (bats) decreased by a factor of **13 (92%)** and all vertebrates by a factor of **6,1 (84%**) over the period 2003/4 to 2014/15 and therefore that there has been a very significant disturbance of species of EU importance and deterioration of the Natura 2000 site. This coincides with the increase in motorway traffic through the Gorge after sections 1, 2 and 4 of the motorway feeding traffic into the Gorge were completed and operationalized in 2013.

Prior to 2014 there are no reliable official data on the intensity of the road traffic in the Kresna Gorge. In that period authorities used only extrapolation and modelling data. NGOs made in 2003 their own monitoring of vehicles number in the gorge in several days in June and July during the light hours – 8AM-18PM. The rough assessment of the traffic in that period (June-July 2003) was 4000-4500 vehicles per day.

According to the first official monitoring of the traffic carried out in 2014 by the National Company "Strategic Infrastructure Projects" (NCSIP) the mean daily traffic in Kresna Gorge was 7 969[16]. According to model data in "cost - benefit" analysis for Lot 3 of "Struma" made by the NCSIP in 2013 the traffic in the Kresna Gorge was 9 862 [17].

The monitoring study from 2003-2005 also made a detailed assessment of existing culverts and bridges along the existing road and their suitability for adaptation as underpasses. It also assessed fragmentation of slopes for wildlife crossing and possibilities for defragmentation. See the results in the below table. They show that 78.6 % of the length of the existing road in the Kresna Gorge (12 229 metres) are not suitable for building of functional underpasses or for other effective measures for mitigating the adverse impact of road kills or blocked paths on populations of amphibians, reptiles and small mammals. The rest 21.8% (3 391 m) were mitigation of road kills with effective underpasses (new ones or re-designed culverts) are spread on small fragmented section and did not provide sufficient defragmentation for the habitats of those species in the Kresna Gorge. Those findings were reflected on pages 91-94 of the NRI 2007 AA report where the impacts of the existing road and possible mitigation measures are assessed (see point 2 below and some translations of this section of the NRI 2007 AA report in appendix 1). Digitalised data (free Google Earth format) are attached to the complaint – here is presented summarized table of these data.

This data shows that the Bulgarian Government has presided over a significant deterioration of the Natura 2000 protected natural habitat and designated species between the years 2003-2014, and has failed to take the appropriate measures to avoid the deterioration of natural habitats and the habitats of species and the disturbance of the species for which a site had been designated. This constitutes a breach of Article 6(2) of the Habitats Directive.

Used abbreviations:

16 Page 17. Monitoring of the vehicle traffic in Kresna Gorge -2014. Second redaction. Version 15 06. 2015g. National Company "Strategic Infrastructure Projects". 25 pp.

17 Update traffic forecast and "cost - benefit" analysis for Lot 3 of "Struma". Report to update the forecast traffic. Version 01 29.12.2014g. OP Transport 2007-2013. National Company "Strategic Infrastructure Projects". 111 pp.

PL - Percentage of length; **L** – length in meters; **NR** – Number of road sections

SRS- Steep road sides above the road (>30°) OR no widenings (<4m wide). Functional underpasses – 1,5 metres high and with entrances no more than <30° steep - not possible.

NSRS-NH - Road sides above the road are not steep (<30°) or there are big widenings (>4 wide or wider), natural key habitats of protected species in widening or slopes. Not possible construction of functional underpasses.

NSRS-AH - Road sides above the road are not steep (<30°) or there are big widenings (>4 wide or wider), there are no natural key habitats of protected species in widening or slopes. Possible construction of underpasses. Distance for guiding structures (guiding walls) to entrances up to 15 metres form entrances (half of "mean daily movement distance"of *Testudo hermanni*, *Testudo graeca* and *Elaphe* sp.) (**SF** - steep (80-90°) fragmented road sides, naturally too steep for regular wildlife crossing; **AW** - artificial concrete walls fragmenting access to road side habitats, necessary defragmentation of road sides and deconstruction of walls; **NSF** - Non-fragmented steep (30-80) road sides, regular wildlife crossing possible)

EC – Existing culverts, bridges, tunnels - functional as under/over passes. Not steep road sides (<30°) or widenings (>4m). Distance for guiding structures (guiding walls) to entrances up to 15 metres form entrances (half of "mean daily movement distance"of *Testudo hermanni*, *Testudo graeca* and *Elaphe* sp.)

	Not possible mitigation of road mortality. L – 12 229; PL - 78,6				Possible mitigation of road mortality. L – 3 391; PL - 21,8	
	SRS L – 10 495; PL - 67,4			**NSRS-NH**	**NSRS-AH**	**EC**
	SF	**AW**	**NSF**			
NR	18	16	27	15	18	23
L	2 833	2 559	5 103	1 734	2 158	1 233
PL	18,2	16,4	32,8	11,2	13,9	7,9

2. Assessment of adverse impacts on Kresna Gorge Natura 2000 site from motorway traffic through the existing Gorge road

An assessment of alternatives and impacts of increased motorway traffic through the Gorge was made in 2007 for the Appropriate Assessment report[18] (cited below as "NRI 2007 AA report", see the whole report attached in official electronic form provided to public during consultation held in 2007 - in Bulgarian)

It predicted likely cumulative adverse impacts on populations of *Elaphe situla*, *Elaphe quatuorlineata*, *Testudo hermanni* , *Barbastella barbastellus, Myotis bechsteini, Myotis emarginatus, Rhinolophus euryale, Rhinolophus hipposideros* arising from the construction and operation of the motorway and consequent rising traffic through the existing Gorge road. Pages 91 -97 of the NRI 2007 AA report assess expected or possible impacts on the integrity of Kresna Gorge SCI arising from each of the alternatives. The conclusions are summarised below.

"Existing road" ("zero alternative") (pages 91-94, see some translations of this section in appendix 1) –

-Based on 3 seasons of field observations of road mortality in Kresna Gorge conducted by the NGOs

-Existing road traffic routed through Kresna Gorge has significant adverse effects on the

18October 26, 2007. Appropriate Assessment report of project for construction of the Struma motorway, Sofia – Kulata in the section Dragichevo – Kulata, with the objectives and purpose of protection of the protected zones of the National Ecological Network. National Road Infrastructure Fund. 149 Pp. + 2 Annexes with color shemes (in Bulgarian)

population of species such as *Elaphe situla*, *Elaphe quatorlineata*, *Testudo graeca*, *Testudo hermanni*, bats and birds. For *Elaphe situla* and *Elaphe quatuorlineata (*mainly juveniles observed on the road*)* this impact led to possible partial extinction and fragmentation of populations along the road, and restriction of both species mainly to marginal valleys. For *Testudo hermanni* and *Testudo graeca* the impact has deteriorated populations adjacent to the road (within a distance of 2-4 hectares (150-200 m, *Testudo hermanni*) and 700 m (*Testudo graeca*) from the road), but still not causing complete extinction (big number of road casualties, both mature and juveniles);

-A possible future increase in traffic (as of 2007 levels) (cumulative impact of motorway development) on the existing road and associated increase in road mortalities may exceed the thresholds of the adaptation of populations and lead to their full extinction (along the road and very narrow migration bio-corridor);

-The increase of traffic will damage the functioning of the very narrow migration bio-corridor for these species;

- **It is not possible to take any effective mitigation measures to reduce the impacts of road mortality along the existing road other than to route the transit motorway traffic outside of the Kresna Gorge** and to reduce traffic significantly below the existing levels at that time (2007).

On this basis, the EIA/AA decision 1-1/2008 therefore identified mitigation measure I.3.2: requiring priority construction of the motorway in the Kresna Gorge section (Lot 3) before other sections be constructed, and for the motorway traffic to be diverted fully outside the Kresna Gorge. This was the only possible mitigation measure identified by AA 2008, to avoid degradation and adverse impacts on the integrity of the site from the zero alternative (continued or increased road traffic at 2007 levels).

The EIA/AA 2008 identified and assessed other alternatives for routing of Lot 3 (the Kresna Gorge section) - "Green", "Red" and "Brown" – for which it identified the following possible significant impacts (pages 94-95) – direct destruction of habitats, increased road mortality, physical barriers for animals migrations, fragmentation, damaging the bio-corridor, wildlife avoidance (noise and light pollution), air pollution. Impacts were assessed also for both alternatives by-passing the Gorge (pages 95-96) – "**NGO Eastern by pass"** and **"Full tunnel".**

The significance of possible impacts for the integrity of the Kresna Gorge SCI of each alternative and for each habitat and species, together with the possibilities for mitigation is made in 3 chapters of the NRI 2007 AA report – on pages 97-114, 129-133 and 138-140; summarized here below.

Table – summary of pages 97-114, 129-133 and 138-140 of the NRI 2007 AA report – assessment of impacts of each alternative on every Annex 1 and Annex 2 habitat and species together with possible mitigation measures.

Used abbreviations:

*- Level of Impact: **AI** – Adverse Impact; **II** - Insignificant Impact; **NI** - No Impact;*

*-Type of impact: **DD** – direct destruction; **DE** – deterioration of habitat quality and/or populations in the habitat; **FR** – fragmentation of bio-corridors; **WA** – wildlife avoidance; **RK** – road kills; **LP** – light pollution; **IS** – invasive species; **AP** –air pollution; **AC** – pollution from traffic accidents;*

*- Features or functions of Kresna Gorge SCI affected: **BB** - bio-corridor along the valley of the Kresna Gorge; **BK** - bio-corridor through the valley of Kresna Gorge connecting high mountains*

*from both sides; **BH** – the border and access between key habitats for the daily life cycle of species, such as valley/slope etc.; **SA** – small area affected*

Habitats/ species	**Existing road/zero alternative**	**Green**	**Red**	**Brown**	**NGO Eastern by pass**	**Full tunnel**
91E0* (and 92A0)	**Possible AI** – DD; DE (IS)	**NI**	**AI** – DD; DE (IS)	**AI** – DD; DE (IS)	**II** – DE (SA - below viaducts)	**NI**
92C0	**Possible AI** – DD; DE (IS)	**NI**	**AI** – DD; DE (IS); FR (BB)	**AI** – DD; DE (IS); FR (BB)	**NI**	**II** – DE (SA)
92D0	**II** – DE (IS, AP)	**NI**	**AI** – DD; DE (IS); FR (BB)	**AI** – DD; DE (IS); FR (BB)	**NI**	**NI**
91AA*	**NI**	**II** – DD (SA<1%)	**II** – DD (SA<1%)	**AI** – DD (>1%)	**II** – DD (SA<1%)	**NI**
91Z0	**NI**	**AI** – DD (>1%)	**II** – DD (SA<1%)	**AI** – DD (>1%)	**NI**	**NI**
9560*	**Possible AI** – DE (AP)	**AI** – DD (>1%)	**AI** – DD (>1%)	**AI** – DD (>1%)	**NI**	**II** – DD (SA<0.6%)
6220*	**Possible AI** – DE (IS, AP)	**II** – DD (SA<1%)	**II** – DD (SA<1%)	**AI** – DD (>1%)	**II** – DD (SA<1%)	**NI**
8220 (and 8230)	**NI**	**II** – DD (SA)	**II** – DD (SA)	**AI** – DD	**NI**	**NI**
Lutra lutra	**AI – DE (WF, 75%** of the population and habitats in the Gorge)	**NI**	**AI – DD (up to 100%); FR (BB)**	**AI – DD (up to 100%)**	**II**	**NI**
*Ursus arctos**	**II** –FR (WA, BK)	**II**	**AI** –FR (WA, BK)	**AI** –FR (WA, BK)	**AI (on the border of significance) -** DD (400 ha , 2-3% of breeding habitat)	**NI**
*Canis lupus**	**II**	**II**	**AI** –FR (WA, BK)	**AI** –FR (WA, BK)	**AI (on the border of significance) -** DD (700 ha , 2% of breeding habitat)	**NI**
Myotis bechsteini	**AI** – FR (BB); RK; LP	**II** – FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**NI**	**II** – RK
Myotis emarginatus	**AI** – FR (BB); RK; LP	**II** – FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**NI**	**II** – RK
Myotis blythii	**AI** – FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**NI**	**II** – RK

Miniopterus schreibersi	**II** – FR (BB); RK; LP	**II** – FR (BB); RK; LP	**AI** – FR (BB); RK; LP	**AI** – FR (BB); RK; LP	**NI**	**II** – RK
Rhinolophus ferrumequinum	**AI** – FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**NI**	**II** – RK
Rhinolophus euryale	**AI** – FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**AI** – DD; FR (BB); RK; LP	**NI**	**II** – RK
Elaphe situla	**AI** – DE (RK,10-15 indiv. per year, 75% of habitats in the Gorge); FR (BB,BH)	**AI** – DD (60 ha, >1%); DE (RK); FR (4km affected, BB –25% of habitats in the Gorge, BH – 10% of the habitats in the Kresna SCI)	**AI** – DD (240 ha, >1%); DE (RK); FR (16 km affected, BB –85% of habitats in the Gorge, BH – 40% of the habitats in the Kresna SCI)	**AI** – DD (270 ha, >1%); DE (RK); FR (16 km affected, BB –100% of habitats in the Gorge, BH – 50% of the habitats in the Kresna SCI)	**II** – DD (SA, 1 ha, <1%)	**II** – DD (SA, 3 ha, <1%); FR (0.2 km affected, <1%)
Elaphe quatuorlineata	**AI** – DE (RK,1-2 indiv. per year, 75% of habitats in the Gorge); FR (BB,BH)	**AI** – DD (60 ha, >1%); DE (RK); FR (4km affected, BB –25% of habitats in the Gorge, BH – 5% of the habitats in the Kresna SCI	**AI** – DD (240 ha, >1%); DE (RK); FR (16 km affected, BB –85% of habitats in the Gorge, BH – 30% of the habitats in the Kresna SCI)	**AI** – DD (270 ha, >1%); DE (RK); FR (16 km affected, BB –100% of habitats in the Gorge, BH – 40% of the habitats in the Kresna SCI)	**II** – DD (SA, 1 ha, <1%)	**II** – DD (SA, 3 ha, <1%); FR (0.2 km affected, <1%)
Testudo graeca and *Testudo hermanni*	**AI** – DE (RK,120-150 indiv. per year, 75% of habitats in the Gorge); FR (BB,BH)	**AI** – DD (60 ha, 0.2%); DE (RK); FR (4km affected, BB –25% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**AI** – DD (240 ha, 0.7%); DE (RK); FR (16km affected, BB –85% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**AI** – DD (270 ha, 0.8%); DE (RK); FR (18km affected, BB –100% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**II** – DD (SA, 40ha, <1%)	**II**
	AI – DE (RK,120-150 indiv. per year, 75% of habitats in the Gorge); FR (BB,BH)	**AI** – DD (60 ha, 0.2%); DE (RK); FR (4km affected, BB –25% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**AI** – DD (240 ha, 0.7%); DE (RK); FR (16km affected, BB –85% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**AI** – DD (270 ha, 0.8%); DE (RK); FR (18km affected, BB –100% of habitats in the Gorge, BH – <1% of the habitats in the Kresna SCI	**II** – DD (SA, 40ha, <1%)	**II**
Bombina variegata	**II**	**II**	**II**	**II**	**II**	**II**

Rhodeus sericeus amarus, Barbus plebejus, Cobitis taenia, Aspius aspius	**Possible AI** – DE (AC)	**NI**	**AI** – DD (50% of the habitats); DE (AC)	**Possible AI** – DE (AC)	**NI**	**NI**
Austropotamobius torrentium	**NI**	**NI**	**NI**	**NI**	**II**	**NI**

In summary, for each of the alternatives, the NRI 2007 AA report found the following **adverse impacts on Kresna Gorge SCI integrity after all possible mitigation** measures:

-"Existing road/zero" alternative – adverse impacts on 4 Annex 1 habitats: 91E0*, 92C0, 6220*, 9560*; adverse impacts on 11 Annex 2 species: *Lutra lutra, Rhinolophus ferrumequinum, Rhinolophus euryale, Myotis blythii, Myotis emarginatus, Myotis bechsteini, Miniopterus schreibersi, Elaphe situla, Elaphe quatuorlineata, Testudo graeca, Testudo hermanni*

-"Green" alternative - adverse impacts on 2 Annex 1 habitats: 91Z0, 9560*; adverse impacts on 7 Annex 2 species: *Rhinolophus ferrumequinum, Rhinolophus euryale, Myotis blythii, Elaphe situla, Elaphe quatuorlineata, Testudo graeca, Testudo hermanni*

-"Red" alternative - adverse impacts on 8 Annex 1 habitats: 91E0*, 92A0, 92C0, 92D0, 6220*, 8220, 8230, 9560*; adverse impacts on Annex 2 species: *17 Lutra lutra, Canis lupus*,Ursus arctos*, Rhinolophus ferrumequinum, Rhinolophus euryale, Myotis blythii, Myotis emarginatus, Myotis bechsteini, Miniopterus schreibersi, Elaphe situla, Elaphe quatuorlineata, Testudo graeca, Testudo hermanni, Rhodeus sericeus amarus, Barbus plebejus, Cobitis taenia, Aspius aspius*

-"Brown" alternative - adverse impacts on 10 Annex 1 habitats: 91E0*, 92A0, 92C0, 92D0, 6220*, 8220, 8230, 91Z0, 91AA, 9560*; adverse impacts on 17 Annex 2 species: *Lutra lutra, Canis lupus*, Ursus arctos*, Rhinolophus ferrumequinum, Rhinolophus euryale, Myotis blythii, Myotis emarginatus, Myotis bechsteini, Miniopterus schreibersi, Elaphe situla, Elaphe quatuorlineata, Testudo graeca, Testudo hermanni, Rhodeus sericeus amarus, Barbus plebejus, Cobitis taenia, Aspius aspius*

-"NGO Eastern by pass" alternative - adverse impacts on 2 Annex 2 species: *Canis lupus*, Ursus arctos* (*marginal adverse effect - on the border of significance**)**

-"Full tunnel" option –no adverse affect on habitats and species

On pages 138-140 the NRI 2007 AA report also assesses that the adverse impacts of the "Existing road/zero", "Green", "Red" and "Brown" alternatives on the very narrow migration bio-corridor of the Kresna Gorge – an important functional feature of this SCI - could not be compensated.

9. BIRDS SPECIES DIRECTLY AFFECTED

10)

10.1 The plan project has already been approved by the competent authorities :
Yes X

10.2 If yes, by which act ?

The construction of the motorway was approved by the decision 1-1/2008 from 15 January 2008 (see attached official copy). In Bulgaria both procedures, EIA and AA are separate, but parallel and finish with a common decision. The Bulgarian formal name of this decision could be directly translated as "decision on EIA 1-1/2008". Here in this complaint it will be further referred as "EIA/AA decision 1-1/2008".

10.3 and which authority ?

The EIA/AA decision 1-1/2008 was issued by the Bulgarian Minister of Environment and Waters on January 15 2008

10.4 If the plan or project has not yet been approved, please indicate the administrative procedure being followed and the stage reached:

The construction of Struma motorway has followed several EIA reports and EIA process during pre-accession period – but non of them resulted in a legal EIA/AA decision prior to country accession in the EU in 2007. Here we will describe only the final stage after 2007, which finished with legal EIA/AA decision 1-1/2008, which is the only binding legal base for further implementation of the project.

1. Adoption of EIA/AA decision 1-1/2008

The relevant EIA for the development of the Struma motorway was started in 2006 (for more details see Appendix 1). The EIA/AA was developed and submitted by the "National Road Infrastructure" Fund Agency (an administrative agency under authority of the Minister of Regional Development and Public Works – here referred as NRI), at the 14 September 2007 request of the Minister of Environment and Waters (MEW).

After 1 month - on 26 October 2007 - the AA report [19] (further referred as "NRI 2007 AA report") was submitted to the MEW, including assessment of the expected impacts on the Kresna Gorge Natura 2000 site. In the report all new alternatives coming from public consultations were also assessed, including the "full tunnel option". On 15 January 2008 a final decision was issued by the MEW.

The EIA/AA decision 1-1/2008 contains mandatory mitigation measures to avoid adverse effects on Kresna Gorge SCIs (BG0000366 and BG0002003), which are based on the NRI 2007 AA report. The most important measure is those on page 6, chapter I.3.2, quoted here:

"*For sub-section Krupnik – Kresna (the section of Kresna Gorge):*

- Parallel to the development of the purple (tunnel) option to seek opportunities to improve it and reach the best possible – environmental friendly, technically feasible and cost-effective option;
- To design as a priority the route in the sub-section [Lot 3] in order to avoid it remaining as a "zero variant" when other sections of motorway became operational. ....

19 October 26, 2007. Appropriate Assessment report of project for construction of the Struma motorway, Sofia – Kulata in the section Dragichevo – Kulata, with the objectives and purpose of protection of the protected zones of the National Ecological Network. National Road Infrastructure Fund. 149 Pp. (electronic version, in Bulgarian)

...- If possible, to be continued to the village of Dolna Gradeshnitsa at the expense of shortening of the section M5 (3.3), thus not excluding from future research and design options similar to the "alternatives" east of the Kresna Gorge and "Tisata".”

The EIA/AA decision 1-1/2008 also included other mandatory mitigation measures related to reducing the impact of the tunnel option, which was chosen as the main alternative of the decision, such as construction of emergency exits at the level of the current road, construction of ventilation shafts without the technological paths.

2. The governmental decision to not implement mitigation measure I.3.2 of the EIA/AA decision 1-1/2008

Decision **No. 712/26.09.2011 of the Bulgarian Council of Ministers** provided national approval and financing for starting construction of Struma Motorway in sections 1, 2 and 4 – with the aim of subsequently attaining reimbursement of expenditure to the Operational Programme Transport. This decision initiated construction of the Struma motorway in other sections connecting to the Kresna Gorge prior to the Kresna Gorge section (Lot 3) itself.

This decision is a clear violation of mandatory mitigation measure I.3.2 of the EIA/AA decision 1-1/2008 – to “*design as a priority the route in the sub-section [Lot 3] in order to avoid it remaining as a "zero variant" when other sections of motorway became operational”* (see previous point). This action by the Bulgarian Government has resulted in a large increase (44%) in trans-national motorway traffic routed through the Gorge, by creating a bottleneck of motorway traffic feeding through the existing Gorge road in both directions. The Bulgarian Government has thus failed to “avoid [Lot 3/Kresna Gorge] remaining as a ‘zero variant’” and has caused the serious adverse impacts of the “Zero Alternative” – namely serious damage to the conservation status of Annex 2 species (as detailed above), which was predicted in NRI 2007 AA report (see point 8).

The Bulgarian Government has thus breached two key conditions of Habitats Directive Article 6(3), namely in failing to meet a compulsory mitigation measure, it has failed to take “light of the conclusions of the [appropriate] assessment of the implications for the site”; and in taking action to construct Lots 1, 2 and 4, it has failed to “ascertain that [this action] will not adversely affect the integrity of the site concerned”.

3. A “New EIA/AA” (for more details see Appendix 1).

On 13 May 2015, documentation to initiate a new EIA/AA procedure was submitted to the MEW by the responsible road authorities for other Lot 3/Kresna Gorge options[20].

Initially this first project proposal had 2 alternatives – the “full tunnel“ option and a new “G 20 blue” option (through the Gorge) (see their brief description in chapter 15). On the same day (13 May 2015), the MEW published an official answer on the request for new EIA and AA[21]. The MEW gave no clear and attributable legal justification for starting a new EIA and AA procedure for a project which already has a functioning EIA/AA decision (1-1/2008) and which is already at the final stage of implementation.

20 At that time the responsible authority was the “National Company Strategic Infrastructure Projects" NCSIP, replacing the “Road Infrastructure Agency” - RIA as investor, both subordinates of the Ministry of Regional Development and Public Works – MRDPW. On April 2016 again responsibilities for project implementation were moved to RIA

21 http://www5.moew.government.bg/wp-content/uploads/filebase/Industry/Early_notifications/Early_notifications_2015/notice_AM_Struma_Lot_3.pdf

On 16 September 2016 the first draft ToR for the scope of the new EIA/AA was submitted to the MEW and public consultation was started. At that time besides the "full tunnel option" the only alternatives examined were fully or partially inside the Kresna Gorge, including the newly added "G10.5 Semi -Eastern" (see their brief description in chapter 15) - despite the above EIA/AA 1-1/2008 decision and compulsory mitigation action for motorway traffic to be routed fully outside of the Gorge.

On 26 January 2017 an amended ToR for the "new EIA/AA" was submitted to the MEW, reflecting the results of the public consultation. This included an additional "G20 Eastern" alternative - a new route fully bypassing the Gorge to the east (see short description in chapter 15) and thus satisfying a demand of The Coalition to include alternatives outside the Gorge (besides politically rejected "tunnel alternative"). To date the MEW has adopted the amended ToR and the "new EIA/AA" report is expected to appear in July 2017.

According to the national law (article 99 of the Administrative procedure code - APC) an administrative act/decision issued by a Ministry and which is in force (and not expired) can be amended by the same Ministry which issued it if:

- there are new facts, which were not known by the authority at the time of the issuing of the decision and affect its effect; or
-one of the requirements for its legality has been substantially violated.
(here we refer to 2 most relevant legal grounds)[22]

According to Article 6(3) of the Habitats Directive – mandatory mitigation measures (such as EIA/AA 1-1/2008) cannot be withdrawn, as this would risk adverse impacts on the integrity of the Natura 2000 network. New Appropriate Assessments can withdraw or amend mandatory article 6(3) mitigation measures only if:

- there are new facts or scientific evidence presented, which indicate omissions or wrong conclusions in the original AA report judgments relevant to the to integrity of Natura 2000;
- new alternatives are proposed which bring new features not regarded in the original AA report and which likely bring significant advantages relevant to the integrity of Natura 2000;
- there are substantial changes to the project relevant to the integrity of Natura 2000;

In the case of this "new EIA/AA" initiated in 2015, none of these conditions is met that would justify a new EIA/AA and reconsideration of alternatives that were already considered and disallowed in the EIA/AA 1-1/2008 decision (such as those through the Gorge). In particular:
- no new facts or scientific evidence have to date been presented that would indicate that the original EIA/AA 1-1/2008 decision is no longer correct;
- the only new alternative considered by the "new EIA/AA" which brings new features not assessed in the original AA report is the "G20 Eastern" alternative (see description in chapter 15);
- there are no substantial changes to the project relevant to the integrity of Natura 2000.

Furthermore, no procedure for amending of the EIA/AA 1-1/2008 decision has so far been initiated by the authorities according the legal rules of the Bulgarian Administrative procedure code. The EIA/AA decision 1-1/2008 and related EIA and AA reports, public consultations and procedures, are therefore the only legal grounds for developing the Struma motorway. According to the Bulgarian and European legislation, the EIA/AA decision 1-1/2008 is a final decision, which provides grounds for receiving the building permits.

From a legal point, if the "new EIA/AA" initiated in 2015 will:
- amend the EIA/AA 1-1/2008 decision and its mitigation measures, it would violate both the procedural rules and legal grounds of the Bulgarian Administrative procedure code and Article 6(3) of the EU Habitats

22Article 99 (1) and (2) of the APC http://www.lex.bg/laws/ldoc/2135521015

Directive *unless* the initiator provides relevant legal grounds for initiating such a procedure and follows the procedural rules of the Administrative procedure code[23].
- develop the EIA/AA 1-1/2008 decision, without amending it or providing an EIA and AA at a more developed stage of design and planning of the project, it must not amend the existing EIA/AA 1-1/2008 decision nor create legal uncertainty in respect of implementation of EIA/AA 1-1/2008 decision and its mitigation measures.

So far these conditions are not being met - there are no clear indications regarding the scope of the "New EIA/AA" vis-a-vis the procedural rules and the mitigation measures prescribed by EIA/AA 1-1/2008 decision. Therefore the "New EIA/AA" cannot withdraw these 2008 mandatory mitigation measures during the implementation of the projects whilst there is no new evidence nor changes in the project itself that would reduce the impacts of the project. So **there is a risk of legal uncertainty in forthcoming decisions that might follow from the "new EIA/AA procedure" if there is any contradiction with the EIA/AA 1-1/2008 decision**.

4. The Bulgarian Road Infrastructure Agency decision to choose a new alternative for Struma motorway in Kresna Gorge based on economic and technical criteria without a preliminary Appropriate Assessment violates Art. 6(3) of the Habitats Directive.

On 20 April 2017 the Road Infrastructure Agency (RIA) – a state authority and primary investor and project manager – informed the media[24,25] that a detailed preliminary design for the Struma motorway project in section 3.2, Kresna Gorge, was adopted[26]. This decision is step before final design and construction of Lot 3.2, however this decision has been taken prior to the report and decision of the "New EIA/AA", currently under completion.

This decision clearly violates the "New EIA/AA" procedure from 13 May 2015. Whilst it is not the final decision on the motorway routing (e.g. that will be communicated to the European Commission once finalised), it is a decision that advance development of one particular alternative, and shows strong steps to pre-empting the final decision of the chosen alternative. It therefore pre-empts the outcome of the "New EIA/AA" report/decision before its completion, and by advancing detailed design of one particular alternative over others, it does not give equal weight to assessing all alternative solutions in the "New EIA/AA" (as other alternatives are not in the same stage of development and cannot be assessed to equal depth or with equal information). The decision by the RIA to choose the one alternative for development has been taken on purely economic and technical grounds, without having completed an Appropriate Assessment - which should *equally assess all* alternatives for their impacts and should guarantee no adverse effects on the integrity of the site concerned. **This decision therefore violates a requirement of Article 6(3) of the Habitat Directive.**

Furthermore, the detailed preliminary design chosen by the RIA for section 3.2 of the Struma motorway is for the **"G10,5 Semi-Eastern" alternative.** This route incorporates routing one direction of motorway traffic (south-bound) through the two lanes of the existing Gorge road; whilst the north-bound road would be outside to the east of the Gorge. The "G10,5 Semi-Eastern" alternative, if built, would be a **violation of the mandatory mitigation measures prescribed in point I.3.2 of the EIA/AA decision 1-1/2008 decision, and would likely have very negative effects on the integrity of the Natura 2000 site and on species of EU importance**. As detailed earlier, the EIA/AA decision 1-1/2008 assessed that all alternatives for the construction of the Struma motorway routed *inside* of the Kresna Gorge, including the "zero alternative"

23 The procedural code rules how interested parties can initiate such a procedure at the responsible administrative body are laid down in article 99-106 of APC http://www.lex.bg/laws/ldoc/2135521015

24 http://www.api.bg/index.php/bg/prescentar/novini/predlozhenieto-na-ptproekt-2000-ood-e-klasirano-na-prvo-myasto-v-konkursa-za-izrabotvaneto-na-razshiren-ideen-proekt-na-am-strum

25 http://www.mrrb.government.bg/ministur-nankov-bezopasnostta-po-putistata-tryabva-da-e-nashata-osnovna-cel/

26 The official decision is still not published for public access on the page of the Agency.

(maintaining the current (2007) levels of traffic on the existing 2-lane road), would have adverse impacts on the integrity of the Natura 2000 site and the functioning of the very narrow migration bio-corridor for protected species; and it therefore identified the sole mitigation measure – to divert all motorway traffic outside of the Gorge (by means of a full tunnel option or eastern by-pass option). The "G10,5 Semi-Eastern" alternative chosen by the RIA on 20 April 2017 incorporates into its design the same rejected "zero alternative", the existing road which was excluded by EIA/AA decision 1-1/2008.

In sum, the RIA's chosen alternative shows strong steps to pre-empting the final decision and the outcome of the "new EIA/AA", without full or equal consideration of all alternatives, and moreover would contravene the EIA/AA decision 1-1/2008. The RIA's decision is therefore a prospective violation of Article 6(3) whose impacts on the integrity of the Kresna Natura 2000 area would, according to EIA/AA 2007 report, be grave. Namely: further to the 2007 significant adverse effects on protected reptile and bat species; further to the 2013-2015 measured significant disturbance and partial extinction of priority species for which the Natura 2000 area has been designated as a result of increased motorway road traffic through the Gorge; this alternative "may exceed the thresholds of the adaptation of populations and lead to their full extinctions along the bio-corridor" – effects which could not be mitigated.

11)

11.1 Has any Environmental Impact Assessment (EIA) or environmental impact study been done or is one in progress? Yes X No

11.2. If yes, give a brief description of its results (max. 1/2 page)

The EIA/AA Decision No 1-1/ 2008 stipulates:

Page 1*: "Approve (...) sub-section after the junction Krupnik from km 381 + 108 to km 398 + 644.56 (in the section of Kresna Gorge) by Purple (Tunnel) variant (...)"*;

Page 6: *"Article I. "Design phase", Sub-article 3.2. "For sub-section Krupnik – Kresna (the section of Kresna Gorge):*

*- **Parallel to the development of purple (tunnel) option to seek opportunities to improve it** and reach the best possible – environmentally friendly, technically feasible and cost-effective option;*

*- **To design as a priority the route in the sub-section in order to avoid it remaining as a "zero alternative" when other sections of motorway become operational**;*

(...)

*- If possible, to be continued to village of Dolna Gradeshnitsa at the expense of shortening of the section M5 (3.3), **thus not excluding from future research and design options similar to presented "alternatives" east of the Kresna Gorge and "Tisata"**."*

All these conclusions are based on NRI 2007 AA report[27], which:

- Assessed 6 alternatives

- 1 of these alternatives is the "zero alternative" - maintaining motorway/transit traffic on the current road (this "zero alternative" is incorporated into several subsequent options, including "Semi-Eastern", "G20 Red", "G20 Blue" in the "New EIA/AA", see chapter 12 for more information on alternatives). It was rejected by NRI 2007 AA report as having **adverse impact on the integrity of the Natura 2000 sites (Kresna – Ilindentzi)**.

- all together 4 alternatives inside the Kresna Gorge ("Zero/exizting road", "Green", "Red", "Brown") were assessed, and all have adverse impacts on the integrity of the Natura 2000 sites (Kresna – Ilindentzi and Kresna) and are evaluated as unacceptable.

27 In Bulgaria EIA and AA are separate, but parallel procedures, which finish with one common decision, which incorporates the mitigation measures coming from both procedures in one final decision.

- 2 alternatives outside the Kresna Gorge are assessed not to have adverse impacts on the Natura 2000 site – the "full tunnel option" (the options with the smallest impacts on the integrity of the Natura 2000 site) and "Eastern by-pass (NGO alternative)" (which had small, marginal negative effects on breeding habitats of wolf and brown bear after mitigation and therefore required the application of article 6(4); but was still a much better solution than the alternatives inside the Gorge, where the impacts could not be mitigated and compensated).

12) a) Describe any alternative solution(s) to the plan or project which have been considered by the authorities (indicate on the maps if relevant)

1. Alternatives assessed in NRI 2007 AA report (see more in chapter 8 and appendix 1):

The **NRI 2007 AA report** assessed all possible principle options for crossing the area of Kresna Gorge:
- **"Zero alternative"-** the existing international road through the Kresna Gorge – about 15 km. Assessed as having adverse negative impact on the integrity of Kresna Gorge SCI (BG0000366) without possibility to mitigate the impacts.
- **Other 3 alternatives passing through Kresna Gorge - "**Green alternative", **"**Red alternative" and "Brown alternative" all assessed in the **NRI 2007 AA report** as having adverse negative impact on the integrity of Natura 2000 sites (BG0000366 and BG0002003) - without possibility to mitigate that impacts.

The **NRI 2007 AA report** assessed 2 alternatives that avoided the Kresna Gorge:
- **"Full tunnel" option-** assessed as having no effect on the Kresna Gorge very narrow migration bio-corridor, assessed as having no strong impacts on the integrity of the Natura 2000 sites (Kresna – Ilindentzi and Kresna) and mostly compatible with the Natura 2000 site from all assessed alternatives.

- **"Eastern by-pass (NGO alternative)"** – assessed as having no effect on the Kresna Gorge very narrow migration bio-corridor and its role for the coherence of the Natura 2000 network. It was assessed as having marginal local negative impact on un-fragmented mountain habitats of *Ursus arctos* and *Canis lupus,* 2-3% of their breeding habitat and thus requires compensation and application of Article 6(4) of the Habitats Directive.

2. **Information on alternatives included in the scope of the "New EIA/AA" (see maps, chapter 8 and appendix 1, attached as well as kml):**

A. Three alternatives are currently being considered in the "New EIA/AA" initiated in 2015, which contradict EIA/AA Decision No 1-1/ 2008. These options create legal uncertainty, and, according to NRI 2007 AA report, would adversely damage the integrity of Natura 2000:
(1) **"G20 Blue"** and (2) **"G20 Red"** (20 meters wide, 4 lines, 80 km, 1st class road) – In one direction uses the "existing road" – the alternative assessed by NRI 2007 AA report as having adverse impact on the integrity of Kresna Gorge SCI. In the other direction is similar to "Green/Brown alternative" – also assessed by NRI 2007 AA as having adverse impact.
(3) **"G10,5 Semi-Eastern"** (20 meters wide, divided in 2 separate lines, together 4 lines, 80 km, 1st class road). It also in one direction uses the "existing road"; In the second direction the rout of "G20 Eastern" will be used. Regarding the use of the existing road, this alternative was already assessed by NRI 2007 AA report as having adverse impact on the integrity of Kresna Gorge SCI. Despite the fact that only half of the transit traffic will pass through the Kresna Gorge (two south-bound lanes on the existing road), this is not a sufficient measure to reduce pressure on existing severely deteriorated populations. According to the National Strategic Infrastructure Projects Company (NSIPC)[28], in just 10-15 years' time (by 2030-40), the traffic in one direction will exceed 7 000 vehicles per day, which is equal to the present day traffic (6 7 969

28Update traffic forecast and "cost - benefit" analysis for Lot 3 of "Struma". Report to update the forecast traffic. Version 01 29.12.2014g. OP Transport 2007-2013. National Company "Strategic Infrastructure Projects". 111 pp.

vehicles in 2014) which has already been found to cause adverse impacts on site integrity and population. Such intensity will not allow for the recovery of populations that are already damaged. In the second direction the rout of "G20 Eastern" will be used.

B. Two alternatives are currently being considered in the "New EIA/AA" initiated in 2015, that were already considered by NRI 2007 AA as not adversely affecting the integrity of Natura 2000 and which would comply with the <u>EIA/AA Decision No 1-1/ 2008:</u> These two alternatives both share several advantages, namely:
- these are the only alternatives **compatible** with the EIA/AA Decision No 1-1/ 2008 and which do not lead to legal uncertainty
- these are the only alternatives which provide **mitigation** of the cumulative environmental impacts from the increasing traffic along the existing road resulting from the implementation of the motorway project in other sections
- these are the only alternatives providing opportunity to restore and even improve the initial conditions in the Natura 2000 site and thus to uphold Habitats Directive articles 6(2) and 6(3) to restore damaged species and their habitats (the Kresna Gorge bio-corridor).
- these are the only alternatives providing a "bypass" for the local (non-transit) low speed, tourist and agricultural traffic to and from inhabited small villages, landscapes and agricultural lands in the Kresna Gorge area

(4) **"Full tunnel"** option (29 meters wide, 6 lines, 120 km, international motorway) –further developed alternative to the "full tunnel" from 2008 (without 5 exists in the Kresna Gorge).
(5) **"G20 Eastern"** (20 meters wide, 4 lines, 80 km, 1st class road) – a by-pass fully east of the Kresna Gorge. It differs slightly from the "Eastern by-pass (NGO alternative)" from 2007, because it passes several hundred meters lower with certain mitigation measures (noise and light screening) and does not significantly affect breeding and feeding habitats of *Ursus arctos*. This would still be likely to have a marginal impact on breeding habitats (about 1%) of *Canis lupus* (see chapter 13b for necessary mitigation/compensation measures).

b) Describe any other alternative solution(s) to the plan or project which you believe are feasible and which have not been considered by the national authorities (indicate on the maps if relevant) (max.1/2 page)

NONE

13) a) Describe any mitigation measures which have been proposed or considered by the national authorities (indicate in the maps if relevant)

It must be underlined that mitigation and compensation measures for the "Zero alternative" ,"Green", "Red" and "Brown" alternatives were regarded as impossible by the NRI 2007 AA report.

The only possible mitigation measures prescribed by the NRI 2007 AA report[29] are:
-drastic reduction of vehicle traffic (intensity) in the Kresna Gorge in early stage
-reduction of vehicle speed
-removing the heavy and fast traffic from the Kresna Gorge (when planning the project)
-to reduce road slopes as far as possible and at least partially restore the accessibility of the slopes from the road.
The EIA/AA Decision No 1-1/ 2008 reflected these measures in point I.3.2

29p. 92 – 93 of the NRI 2007 AA report

In this way, the mitigation measure for the damage caused by the "zero alternative" (current/2007 international transit traffic routed through the Kresna Gorge road) was to route the motorway traffic fully outside of the Gorge.

b) Describe any mitigation measures which you consider feasible and which have not been considered or proposed by the national authorities

The Coalition proposes the following necessary mitigation measures for the "G20 Eastern" alternative

This alternative by-passes outside the Kresna Gorge and its very narrow migration bio-corridor, but it would still cross another section of the Kresna SCI and have certain impacts, which require mitigation measures to avoid adverse impacts (some of them described in consensus position of Bulgarian scientists from 20 September[30] 2016).

1. Risk: Direct destruction of Annex I habitats – affected area is about 1,0-1,5% of the area of habitats 6220*, 91AA*, 91E0* in SCI Kresna – Ilindentsi. The intensity is marginal. The impact is local as all the affected habitats are more or less widely spread and the SCI Kresna–Ilindentsi plays a role of stepping stone for all of them, they are well presented in all adjacent SCIs (see chapters 6.1 and 6.2). At least for some of these habitats – such as 91AA* (woods of copies origin with low age) affected localities are not very highly represented – the whole 3 habitats are assessed to be in unfavourable status in SCI BG0000366. Possible mitigation measures, which can avoid adverse impacts and **reduce the impact to insignificant** include:

Mitigation:

1.1. reduce direct destruction during the construction of areas near rivers below high viaducts and thus to preserve from direct destruction stands of 91E0*, but also of other 2 habitats.

1.2. incorporate in defragmentation programme a management of the adjacent areas to over- and under-passes. And to include restoration of anthropogenic habitats - artificial forests, arable lands, etc. to natural ones from Annex I.

We regard here the last measure (1.2.) as mitigation rather than compensation also, because failure to implement this measure could cause non-implementation of this "G20 Eastern" alternative – which is itself is a mitigation measure to avoid the very strong adverse impacts on Kresna Gorge from continued international transit through the Gorge (impacts which cannot even be compensated).

2. Risk: Deterioration of breeding habitat of Canis lupus* (wildlife avoidance) - expected affected area is about 1,0-1,5% of the area of species habitat in SCI Kresna – Ilindentsi. In order to reduce this impact it is necessary to develop special mitigation measures in areas where the motorway crosses breeding habitats of wolf (west and east of the village of Stara Kresna):

Mitigation:

-To construct noise barriers - here the motorway crosses a hilly area and noise barriers will reflect the noise mostly outside the habitat;

-To construct in certain points additional "wolf" underpasses;

-To close and restore to shrubby habitats all roads created during the construction, and also all unused forest roads in 1 km area around the motorway in the same section;

-To build special net fences fortified against crossing of bears and wolves (to use experience of Via Egnatia in Pindos mountain);

-To develop project for releasing game species and enhance the feeding base for wolf in the 5 km zone along the motorway, after the finalization of construction works – mostly *Capreolus capreolus*.

The application of these measures should prevent:

-antrpogenisation of landscape after motorway construction;

-fragmentation;

30 20th September 2016. Position statement by scientists and experts in the field of biodiversity conservation on the construction of Struma motorway through Kresna Gorge, Pp.8 + signed by 99 scientists.

-pollution with noise of the habitat and avoidance;
-abundance of prey should attract fast return of otherwise very flexible wolves to their habitat.

Thus such measures should be effective to reduce significantly the effect of wildlife avoidance and habitat deterioration from the "G20 Eastern" alternative outside the Gorge.

14) a) Describe any compensatory measures for nature conservation damage caused by the plan or project which have been proposed or considered by the national authorities (indicate in the maps if relevant)
b) Describe any compensatory measures which you believe are feasible and which have not been considered or proposed by the national authorities (indicate on the maps if relevant)

NONE

15) Other information (max. 1/2 page). Copies of relevant studies and publications may be annexed.

During the meeting of 36th Bern Convention Standing Committee held on 15-18 November 2016, the Bulgarian government reported that certain relevant[31] "mitigation" actions to reduce road mortality on the existing road, were applied in Kresna Gorge in September – October 2016. Particularly they reported the construction of small (50 cm high) walls next to the road along 1,4 km of the road in Kresna Gorge – as it was stated "to reduce the mortality rates".

The Coalition disputes the legality and the effectiveness of such actions:

1) They contradicts the conclusions of NRI 2007 AA report, which clearly assessed that mitigation measures for the "zero alternative" (along the existing road) could not be effective;
2) the placement of fragmenting walls along the road, without functional culverts/underpasses, only leads to an *increase* in the fragmentation of the habitats for small animals (land tortoises, Leopard and Four-lined snakes). Before those habitats were only partially fragmented, due the road mortality; afterwards, they are now completely fragmented and actually have adverse impact on populations of species from Annex 2.
3) this measure was not assessed according to the article 6(3) – taking into account that it can have negative impacts it cannot automatically accepted as "necessary for the management of the site" –and thus it should have been subject to article 6(3) assessment.

Annexes:

1. Appendix 1 – additional information, references and maps to main content of the complaint.
2. EIA/AA decision 1-1 / 2008 (official electronic copy presented to public, in Bulgarian)
3. Update traffic forecast and "cost - benefit" analysis for Lot 3 of "Struma". Report to update the forecast traffic. Version 01 29.12.2014g. OP Transport 2007-2013. National Company "Strategic Infrastructure Projects". 111 pp. (official electronic copy presented to public, in Bulgarian)
4. March 2014, "Monitoring, analysis and assessment of the mortality of the species in the section of road E-79 (I-1), passing through the protected zones" Kresna"and" Kresna - Ilindentsi – Final Report, Period March

31T-PVS/Files (2016) 11. Follow-up of Recommendation No. 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria) - REPORT BY THE GOVERNMENT. Bern Convention, Standing Committee, p. 12 of the governmental report, 36th meeting, Strasbourg, 23 November 2015. Pp. 41

2013 – February 2014", National Company strategic infrastructure projects, 86 Pp. + 7 Ap. (official electronic copy presented to public, in Bulgarian)
5. November 2003. Monitoring mortality of vertebrates along the existing international road E-79 passing through the Kresna Gorge, Emerald and future Natura 2000 site, Bulgaria. Information of Non-governmental organizations regarding the Recommendation N ° 98 (2002) on the project to build a motorway through the Kresna Gorge (Bulgaria) to the 23th Standing Committee of the Bern Convention. 3 Pp (electronic version, in Bulgarian)
6. March 2015, "Monitoring, analysis and assessment of the mortality of the species in the section of road E-79 (I-1), passing through the protected zones" Kresna"and" Kresna - Ilindentsi – Final Report, Period March 2014 – January 2015", National Company strategic infrastructure projects, 118 Pp. + 3 Ap. (official electronic copy presented to public, in Bulgarian)
7. 20th September 2016. Position statement by scientists and experts in the field of biodiversity conservation
8. Supplemented Updated Scope of Environmental Impact Assessment of the Investment Proposal for "Improvement of the route of Lot 3.2 of Motorway " Struma ", Sofia, January 2016, Agency "Road Infrastructure", 126 pp. + 10 app. (official electronic copy presented to public, in Bulgarian)
9. A. Letter from 3 July 2014 from the Ministry of Regional Development and Public Works to the state "National Company Strategic Infrastructure Projects" and B. Letter from 30 June 2014 from the Minister of Environment and Water to the Ministry of Regional Development and Public Works (copies in pdf – in Bulgarian)
10. October 26, 2007. Appropriate Assessment report of project for construction of the Struma motorway, Sofia – Kulata in the section Dragichevo – Kulata, with the objectives and purpose of protection of the protected zones of the National Ecological Network. National Road Infrastructure Fund. 149 Pp. (official electronic copy presented for public consultation, in Bulgarian)
11. Decision of the Council of Ministers No. 712/26.09.2011 providing national financing for starting construction of Struma Motorway in sections 1,2 and 4 (electronic copy, in Bulgarian)
12. 13 May 2015 Ministry of Environment and Waters official notification on starting new EIA and AA procedure (electronic copy, in Bulgarian)
13. Free GIS (Google Earth) – motorway alternatives assessed in NRI 2007 AA report and included in the scope of the "New EIA/AA, borders of Natura 2000 sites, monitoring of defragmentation (2003)
14. Letter from 2 November 2009 from the Environmental Association "Za Zemiata" (For the Earth) to the Minister of Transport, Information Technologies and Communications; National Agency Road Infrastructure; Minister of Envireonment and Waters; Minister of Regional Development and and Public Works.
15. Letter from 4 November 2009 from the National Agency Road Infrastructure to the Environmental Association "Za Zemiata" (For the Earth).
16. Letter from 18 February 2010 from the Environmental Association "Za Zemiata" (For the Earth) to the Minister of Regional Development and and Public Works.
17. Letter from 20 January 2015 of Andrey Kovachev, Petko Kovachev, Daniel Popov, Irina Kostadinova as representatives of the "Save Kresna Gorge Coalition" in Struma Motorway Steering Committee (SC) to the Programme of the 10th SC meeting
18. Monitoring of the vehicle traffic in Kresna Gorge -2014. Second redaction. Version 15 06. 2015g. National Company "Strategic Infrastructure Projects". 25 pp.
19. Press release and public statement of the "Save Kresna Gorge Coalition" from 26 April 2011

Place **Signature**

Date