



EUROPEAN COMMISSION

## Complaint – Infringement of EU law

Before filling in this form, please read 'How to submit a complaint to the European Commission':

[https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)

All fields with \* are mandatory. Please be concise and if necessary continue on a separate page.

### 1. Identity & contact details

	Complainant 1*	Your representative (if applicable)
Title* Mr/Ms/Mrs		
First name*		
Surname*		
Organisation:	BALKANI Wildlife Society	
Address*	93 Evlogi i Hristo Georgievi Blvd., fl. 1, apt. 1142 Sofia, Bulgaria, p.box of organisation	
Town/City *	Sofia	
Postcode*	1142	
Country*	Bulgaria	
Telephone		
E-mail		
Language*	English and Bulgarian	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>

### Other complainers

	Complainant 2*	Your representative (if applicable)
Title* Mr/Ms/Mrs		
First name*		
Surname*		
Organisation:	Green Policy Institute	
Address*		
Town/City *	Sofia	
Postcode*		
Country*	Bulgaria	
Telephone		
E-mail		
Language*	English and Bulgarian	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>
	Complainant 3*	Your representative (if applicable)
Title* Mr/Ms/Mrs		
First name*		

Surname*		
Organisation:	School for Nature Vlahi	
Address*	Village of Vlahi, Municipality of Kresna, Blagoevgrad district,	
Town/City *	Blagoevgrad	
Postcode*	2841	
Country*	Bulgaria	
Telephone		
E-mail		
Language*	English and Bulgarian	
Should we send correspondence to you or your representative*:	X	<input type="checkbox"/>

## 2. How has EU law been infringed?\*

	<b>Authority or body you are complaining about:</b>
Name*	Road Executive Agency (RIA) and Ministry of Transport, Information Technology and Communications (MTITC)
Address	MTITC - 9 DyakonIgnatiy Str., Sofia 1000  RIA - 3 Makedonia Sq., Sofia 1606
Town/City	Sofia
Postcode	MTITC - 1000 RIA - 1606
EU Country*	Bulgaria
Telephone	MTITC + 359-2-940-9-421 RIA - + 359-2-917-32-48
Mobile	
E-mail	MTITC gvassileva@mtitc.government.bg RIA - g.terziyski@api.bg

### 2.1 Which national measure(s) do you think are in breach of EU law and why?\*

Bulgaria violated articles 3 and 4 of the Directive 2008/96/EC in planning and adoption of the Lot 3.2 of Struma Motorway – part of TNT. Our conclusion is based on the following facts:

- The Bulgarian road authorities\* initiated in April 2015\*\* a new project called “Improving the route of Lot 3.2 of Struma Motorway”. The project included all initial planning activities – technical planning of alternatives on Conceptual designing level, their assessment and final approval. A full EIA and AA of all planned alternatives were commissioned.
- Final alternative was adopted on 19 October 2017 with issuing the EIA decision 3-3/2017 of the Minister of Environment and Waters (see Appendix 6).
- On 9 August 2019 Bulgarian Authorities submitted to the European Commission the Application form for project “Lot 3.2 of Struma Motorway”.
- In appendix 12 to the Application form a road safety audit at the Extended Conceptual design of chosen alternative is presented and dated 05 June 2019 (see Appendix 3). The audit was actually made for 2 elements of the Lot 3.2. – a new eastern by-pass (motorway lane from south to north) and a new by-pass of the Kresna town (lane from north to south). The audit didn't assess 2 important issues: road safety issues of using the existing E79 road through the Kresna Gorge; and the use of the motorway also as a local road (combining pedestrians, local low speed

traffic and motorway traffic). In the audit the assessed project elements were accepted as motorway without the function of local road.

Based on these facts we found that:

- Bulgarian authorities have failed to make a road safety impact assessment of Lot 3.2 of the Struma Motorway at the initial planning stage before the infrastructure project is approved. The road safety considerations were not taken into account in the choice of the proposed solution.
- Bulgarian authorities have failed to make full audit of the draft design of Lot 3.2 of the Struma Motorway, as section of E79 existing road is not assessed at all and as the function of the planned option as both a motorway and a local road was disregarded.

*\* Before 7 April 2016 the National Company Strategic Infrastructure projects (NCSIP) is responsible for planning of Struma Motorway, and after that date the current Road Infrastructure Projects has been responsible.*

*\*\* Letter No 1795/28.04.2015 from NCSIP to the Minister of Environment and Waters*

## 2.2 Which is the EU law in question?

Bulgaria violated the following provisions of the articles 3 and 4 of the Directive 2008/96/EC:

Article 3:

1. Member States shall ensure that a road safety impact assessment is carried out for all infrastructure projects.
2. The road safety impact assessment shall be carried out at the initial planning stage before the infrastructure project is approved. In that connection, Member States shall endeavour to meet the criteria set out in Annex I.
3. The road safety impact assessment shall indicate the road safety considerations which contribute to the choice of the proposed solution. It shall further provide all relevant information necessary for a cost-benefit analysis of the different options assessed

Article 4:

1. Member States shall ensure that road safety audits are carried out for all infrastructure projects.
2. When carrying out road safety audits the Member States shall endeavour to meet the criteria set out in Annex II.
3. Road safety audits shall form an integral part of the design process of the infrastructure project at the stage of draft design, detailed design, pre-opening and early operation.
4. Member States shall ensure that the auditor sets out safety critical design elements in an audit report for each stage of the infrastructure project. Where unsafe features are identified in the course of the audit but the design is not rectified before the end of the appropriate stage as referred to in Annex II, the reasons shall be stated by the competent entity in an Annex to that report

## 2.3 Describe the problem, providing facts and reasons for your complaint\* (max.7000 characters):

The Government's decision will lead to severe catastrophic deaths on the Trans-European highway in the Kresna Gorge section due to the lack of a local/bypass road. The decision combines a freeway and a local road on 2 narrow lanes with sharp turns, no banquet and highway fences (such fences are not assessed in the EIA report and cannot be built because of its function as a local road). Pedestrians, tourists, rafters with their bulky inventory, cyclists, slow local vehicles, wild and domestic animals – they will all have to walk through or along at the 2 narrow lanes with all the highway traffic on them. There are at least 3 alternatives which provide a local road – leave the existing E79 through the Kresna Gorge as only a local road. All of them were in different way dismissed by the Government without taking into account those road safety issues. Those alternatives are:

- “G20 Eastern” – “Full eastern by-pass of the Kresna Gorge and town. Rejected in EIA report.
- Full tunnel (from western side). Rejected in EIA report.
- System of short tunnels on the eastern slope above the railway – proposed by Engineering companies. Not designed by road authorities to the level of conceptual design and not included in the EIA report.

The G10.5 alternative chosen by the government includes the current E79 route through the Kresna Gorge. For the period 2009-2016, there were 396 road accidents, 159 injured people and 30 dead people in this section of road alone\*. Most road accidents are caused by incorrect road ahead. This is a manageable risk that can be prevented or greatly reduced by a midline between the two directions of movement and the cameras. The RIA is the responsible governmental road safety agency on both planned and active roads\*\*. We have no information that the RIA conducted a safety audit after 2008. Such an audit was also not conducted prior to the submission of the application form to the European Commission for financing the Major project Motorway Struma Lot 3.2\*\*\*. We are also unaware that any practical measures have been taken to prevent road accidents.

\* Information from Bulgarian Ministry of Internal Affairs (see Appendix ?, in Bulgarian)

\*\* Article 21 (3) of the Bulgarian Road Law

\*\*\* Appendix 12 to Application form for Major project “Lot 3.2 of the Struma Motorway” containing road safety audit at the Extended Conceptual design of chosen alternative is presented and dated 05 June 2019. (see Appendix 3, in English)

**2.4 Does the Country concerned receive (or could it receive in future) EU funding relating to the subject of your complaint?**

Yes, please specify below

The project is part of the large TEN-T project for the Struma Motorway financed under the Operational Program Transport for 2007-2013 and 2014-2020 (the project is phased). Specifically, Lot 3.2 is funded by the 2014-2020 program. Currently, an application form has been submitted by the Bulgarian Government, which is being evaluated by the European Commission. Project is applying for 227 444 659 Euro co-financing by the Operation program transport 2014-2020.

**2.5 Does your complaint relate to a breach of the EU Charter of Fundamental Rights?**

The Commission can only investigate such cases if the breach is due to national implementation of EU law.

Yes, please specify below

With its decision Bulgarian government creates high level of risk of heavy road accidents and human mortality, dismisses potentially safer alternatives (those providing for a local road), and the Government is aware of that risk. The EU Charter of Fundamental Rights Article 1 (1) postulates that everyone has the right to life and this requirement is not met by the chosen alternative.

### 3. Previous action taken to solve the problem\*

Have you already taken any action in the Country in question to solve the problem?\*

**IF YES**, was it:  Administrative

**3.1** Please describe: (a) the body/authority/court that was involved and the type of decision that resulted; (b) any other action you are aware of.

After an NGO signal in 2002 the Standing Committee of the Bern Convention adopted the Recommendation 98/2002. Item 6 of the Recommendation says: "provide for the downscaling and rehabilitation of the existing road, restoring its initial status of a local road used by the farming community and tourists and thus ease current pressure on the site, with suitable planning to revitalise damaged areas and provide user information services". The application of this recommendation is subject of intensive NGO campaign and communication on it involved Bulgarian Government, EC etc. The latest and most important issues related to this campaign are reflected in the complaint reg N CHAP(2017)02186 - BULGARIA

**3.2** Was your complaint settled by the body/authority/court or is it still pending? If pending, when can a decision be expected?\*

No court cases

**IF NOT** please specify below as appropriate

- Another case on the same issue is pending before a national or EU Court
- No remedy is available for the problem
- A remedy exists, but is too costly
- Time limit for action has expired
- No legal standing (not legally entitled to bring an action before the Court) please indicate why:

The Bulgarian legislation (article 21 (3) of the Bulgarian Road Law and regulation ПД-02-20-14 from 29 Sept 2011) do not provide a clear procedures for transposition and implementation of the Articles 3 and 4 of Directive 2008/96/EC finishing with clear administrative decisions, which could be appealed in the national court.

- No legal aid/no lawyer
- I do not know which remedies are available for the problem
- Other – specify

4. If you have already contacted any of the EU institutions dealing with problems of this type, please give the reference for your file/correspondence:

Petition to the European Parliament – Ref0527/2018

European Commission – Ref:.....

European Ombudsman – Ref:.....

Other – name the institution or body you contacted and the reference for your complaint (e.g. SOLVIT, FIN-Net, European Consumer Centres)

5. List any supporting documents/evidence which you could – if requested – send to the Commission.

 Don't enclose any documents at this stage.

All appendices attached in electronic form

Appendix 1. Letter OVOS-85/13.05.2015 of the Ministry of Environment to the NKSIP (in Bulgarian). With this letter new project “Improvement the route of Lot 3.2 of the Struma Motorway” was finally initiated.

Appendix 2. Non – technical summary of the official EIA report from July 2017 and EIA decision 3-3/2017 of the Minister of Environment and Waters from 19 October 2017 (in Bulgarian). Both documents show that at the final stage of alternatives adoption, road safety assessment is missing and the issue is not reflected in the relevant chapters of the report.

Appendix 3. Appendix 12 to Application form for Major project “Lot 3.2 of the Struma Motorway” containing road safety audit at the Extended Conceptual design of chosen alternative is presented and dated 05 June 2019. This document also demonstrates a lack of preliminary assessment of road safety at the early stage. It also shows the weaknesses of the audit itself – significant omissions in the audit scope.

Appendix 4. Recommendation 98/200 of the Standing Committee of the Bern Convention

Appendix 5. Information from Bulgarian Ministry of Internal Affairs, Reg. No 812104-159 from 10.08.2017

Appendix 6 The EIA decision 3-3/2017 of the Minister of Environment and Waters from 19 October 2017

## 6. Personal data\*

Do you authorise the Commission to disclose your identity in its contacts with the authorities you are lodging a complaint against?

Yes       No

 In some cases, disclosing your identity may make it easier for us to deal with your complaint.