

CAUTIONARY TALES

**How the new EU Biodiversity Strategy 2030
can make good on the European Green Deal**



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This publication has been produced with the financial assistance of the European Union. The content of this publication is the sole responsibility of CEE Bankwatch Network and can under no circumstances be regarded as reflecting the position of the European Union.

Supported by:



Federal Ministry
for the Environment, Nature Conservation
and Nuclear Safety



European
Climate Initiative
EUKI

based on a decision of the German Bundestag

This project is part of the European Climate Initiative (EUKI) of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The opinions put forward in this paper are the sole responsibility of the authors and do not necessarily reflect the views of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

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INTRODUCTION

The EU Biodiversity Strategy for 2030 is an element of the European Green Deal, the flagship initiative of the European Commission to address climate change and environmental degradation in the EU and beyond. The new Biodiversity Strategy aims to 'protect nature and increase the coverage and effectiveness of protected areas', 'restore damaged ecosystems', 'promote the sustainable use of forest [and other] ecosystems', and to 'fully integrate biodiversity'.

A number of fundamental shortcomings already exist in the protection and promotion of biodiversity in Europe, both in terms of enforcement of the environmental legislation and EU support for harmful projects through public funding.

The Commission itself notes in the 2019 Environment Implementation Review (EIR) that 'Significant gaps in implementation, enforcement, financing and policy integration are affecting efforts to protect European ecosystems. Biodiversity loss continues in the EU, even if some progress has been achieved at local level¹.

Therefore, the EU's new Biodiversity Strategy should, as a matter of priority, ensure that:

- European environmental legislation is complied with, and
- No EU funding supports projects or practices that adversely affect biodiversity in Member or non-Member States.

As Bankwatch, we have first-hand knowledge of many cases of harmful projects that were approved at the national level, despite serious concerns about their compliance with EU rules. These cases were raised by civil society and affected communities in their respective countries, and their concerns were referred to the Commission. Unfortunately, this did not result in halting or mitigating the biodiversity loss, and EU funds were even used to support some of the projects.

These cases demonstrate the ways in which the current system of environmental enforcement in the EU funds' and EU banks' decision making have not ensured compliance with the EU legislative principles of precautionary approach and the selection of less harmful alternatives.

In most examples, infringement procedures are so protracted that by the time cases get resolved, significant (often irreversible) damage has already been done to species, habitats and ecosystems.

The problem is exacerbated by the Commission's approach: they do not intervene on individual projects, and instead only deal with systemic issues. This creates a perfect enforcement vacuum for harmful projects to be initiated, implemented and completed. If any action is taken, it comes at a stage where harm cannot be prevented or mitigated.

Specifically, current EU investments are not in line with EU law for the following reasons:

- The Commission is not involved in systematically checking EU funded projects' and programmes' consistency with EU environmental legislation. It is presumed that projects comply with national law, despite the fact that there are numerous examples of the lack of implementation of EU law at the national level and of national legislation that is not in line with EU law requirements.
- No measures are taken to withdraw EU funds in cases of proven conflict or violation. Without introducing such measures, it is likely that EU funded projects will continue to contribute to biodiversity loss.
- The cumulative impacts of EU projects on biodiversity are not considered systematically. The salami approach, where project promoters obtain funding for less controversial parts of large undertakings and thus gain more budgetary space to self-finance the most destructive parts or delay the actions relevant to sensitive parts, is allowed, in violation of the EU principles of strategic assessment, assessment of alternatives and precautionary approach.
- The existing infringement procedure is not sufficient to prevent the deterioration and damage of habitats and species. We need different instruments for addressing public concern and providing the public with information about EU funded projects' violations of EU law.

¹
https://ec.europa.eu/environment/eir/pdf/eir_2019.pdf

RECOMMENDATIONS

Inside the EU, the Commission has been reluctant to suspend Cohesion Policy payouts to whole categories of projects affected by systemic enforcement problems, instead preferring to take co-financing decisions on a case-by-case basis. This approach effectively encourages the practice of salami-slicing, which has adversely affected biodiversity, for example, in the case of large road projects.

The problem is likely to get worse if, in the EU's next Multiannual Financial Framework (MFF), the Commission is no longer in charge of approving major projects and more financing decisions are delegated to the national authorities.

Thus, we call on the Commission, as it prepares to propose the new Biodiversity Strategy, to devise ways to strengthen the enforcement and implementation of existing environmental legislation, specifically in relation to EU funds. The European Treaties and the EU funds regulations require the Commission to be a guardian of sustainable development and take preventive action to avoid damage to Natura 2000 sites.

The Commission should show political will when it comes to the implementation and enforcement of the laws that already exist, and consider in the new strategy new legal tools that will strengthen the rule of law in relation to the quality and the independence of decision making at the EU and national levels from political pressure at the national level.

We also call on the Commission to include measures in the new Biodiversity Strategy to ensure that no EU funds support harmful projects in the EU and globally. This should include measures to ensure that whole categories of projects are excluded from EU funding as long as they remain affected by systemic problems concerning the enforcement and implementation of EU environmental rules.

Outside the EU, the Western Balkans and Caucasus regions need to be brought into the EU's Biodiversity Strategy, not only as future EU members but as actors in the EU's energy and transport markets via the Energy Community Treaty² and the Transport Community Treaty³.

Participation in common markets must also mean common safeguards for people and the environment.

Both the Western Balkans and the Caucasus are biodiversity hotspots on a global scale; however, transport and energy infrastructure are both sectors that have the potential to cause very serious damage to biodiversity. Unfortunately, there has been quite some destruction already and much more is threatened. But there is also immense potential for the EU to assist with the protection of natural resources there, both by providing funding and know-how for proactive protection of specific sites and by insisting on the adoption and implementation of the EU's world-class nature and water protection legislation.

The European public banks, the EBRD and EIB, like to see their involvement in projects as helping to plug this compliance gap. However, our experience with their involvement in hydropower so far has shown that they have not been able to ensure that EU standards were properly applied. In some cases, they withdrew from projects (Ombla in Croatia⁴, Boskov Most in North Macedonia⁵), while in others they financed projects that appear to be non-compliant⁶.

With more and more projects financed by non-EU banks, we can expect such problems to continue in the coming years unless much more decisive action is taken.

To protect these non-Member States, we call on the Commission to include the Water Framework Directive and Nature and Habitats Directives in the Energy Community Treaty⁷ and strengthen the Treaty's enforcement mechanism. We also call on them to speed up alignment of renewable energy incentives schemes with the EU Energy and Environment Aid Guidelines 2014-2020, to exclude feed-in tariffs for hydropower plants over 500 kW and for those not in line with the Water Framework Directive and other EU environmental acquis.

Finally, they should provide additional funding for protection of future Natura 2000 sites, subject to strong conditionality that they will be properly protected by full implementation of the Nature and Habitats Directives and Water Framework Directive's safeguard provisions.

2
<http://www.energy-community.org>

3
https://ec.europa.eu/transport/themes/international/enlargement/western-balkans/transport-community_en

4
<https://bankwatch.org/project/ombla-hydropower-plant-croatia>

5
https://bankwatch.org/press_release/destructive-hydropower-project-in-macedonia-loses-its-only-source-of-funding

6
<https://bankwatch.org/publication/broken-rivers-impacts-european-financed-small-hydropower-plants-pristine-balkan-landscapes>

7
In so far as they relate to energy projects. Given that it is more institutionally advanced than the Transport Community Treaty, it makes more sense to include it here.

The case studies presented here, taken from Bankwatch's areas of operation in Central and Eastern Europe, the Western Balkans and the Caucasus, illustrate why it is necessary for the Commission to use the new Biodiversity Strategy to strengthen its commitment to implementing and enforcing new legislation and policies that protect biodiversity in EU Member States and the EU's neighbourhoods.



The Sana River, Bosnia and Herzegovina
@Luka Tomic

CASE STUDIES

THE SPECIAL ROAD BILL (SPECUSTAWA DROGOWA) POLAND

Adopted in 2003 and amended in 2011 to facilitate preparations for the 2012 UEFA Championship, the Special Road Bill allows environmental authorities to issue environmental decisions and road construction permits with an immediate enforceability clause. This clause enables work on a project to begin immediately, even if the environmental decision or construction permit is challenged in court on environmental grounds.

In recent years, with the increasing politicisation of permitting procedures, the immediate enforceability clause, originally designed for extraordinary situations, has routinely been used for environmental decisions on practically all road investments, rendering it impossible for environmental organisations to stop harmful road projects. Even if the legal challenge is successful, all the court can do is state that the decision or permit violated the law, but it cannot annul the decision or permit.

Consequently, it is not possible for NGOs to effectively apply for injunctive relief in Poland, and environmental authorities that issue faulty decisions and allow environmental damage can act with impunity.

The provisions of the Special Road Bill, along with similar provisions in other special bills concerning railway investments, transmission grids, gas pipelines, flood protection infrastructure, airports, nuclear facilities and the Vistula Spit canal, as well as the Construction Law, the Water Law and the Mining and Geological Law, are the subject of a reasoned opinion addressed to Poland by the Commission in March 2019 (case 2016/2046), in which the Commission points out that the national laws in question are incompatible with the EIA Directive's provisions on public participation in decisions concerning the environment and provisions on access to justice.

However, we have seen no effort on the part of the government to bring these existing laws into compliance with EU rules. Instead, new laws have been adopted and more are in the pipeline that will further erode the citizens' access to justice and their ability to protect nature.

One particularly egregious example of how the EU has failed to protect biodiversity threatened by the Special Road Bill is the S7 expressway. In 2010, Polish environmental organisation Pracownia na rzecz Wszystkich Istot went to

court claiming that the environmental decision for a section of this expressway near Skarżysko in central Poland failed to adequately reflect the environmental situation on the ground. It argued that the project threatened the integrity of the Lasy Skarżyskie Natura 2000 site because it would destroy a crucial habitat of the Marsh Fritillary – a butterfly for the protection of which the site had been established. It wanted the project promoter, the Polish Road Directorate (GDDKIA) to modify the project to bypass the habitat.

However, the GDDKIA, armed with the immediate enforceability clause, started work in the field in autumn of 2017. In July 2019, the Polish Supreme Administrative Court ruled that the road construction permit had been issued in blatant violation of the law, but because of the Special Road Bill, the permit could not be repealed. The Marsh Fritillary habitat had been bulldozed by then.

In 2014, the NGO had referred the case to the Commission, hoping the Commission would independently assess the case and persuade the project promoter to modify the project. However, the EU Pilot procedure dragged on, and the Commission uncritically accepted the project promoter's arguments without verifying them, closing the case just days before the Supreme Administrative Court ruling.

The GDDKIA is one of the top beneficiaries of Cohesion Policy funds in Poland: every second kilometre of road built in Poland is financed by the EU. The Skarżysko section of the S7 was originally slated for EU funding, until the Directorate decided not to pursue it for this particular section. However, the Skarżysko section ultimately did receive support from Cohesion Policy funds: because the section is only 8 kilometres long, it did not qualify as a major project, and EU co-financing could be awarded by the national authorities without consulting the Commission.

THE FOREST BILL POLAND

This is just one example of a systemic problem in Poland, where roads are built in violation of legal rules and environmental protection requirements. By 2025, Poland expects to build 1 900 kilometres of new expressways, indicating that this could be exacerbated in the future if action is not taken to stop it.

Amended on 16 December 2016, the Forests Bill exempts forest management activities from the obligations of strict species protection set forth in the Birds and Habitats Directives, including the prohibitions on deliberate killing, disturbance and destruction of habitats and feeding sites.

Under the same bill, the public has no access to justice with regards to the assessment of the effects of Forest Management Plans on forest ecosystems, including Natura 2000 sites. Forest Management Plans regulate logging and other forestry activities, and are therefore crucial from the point of view of nature protection in Poland's forests, which span a third of the country's entire territory.

In July 2019, the Commission issued a reasoned opinion urging Poland to bring national legislation into compliance with EU rules. However, there has been no progress thus far.

This has had disastrous consequences for the Białowieża Forest, a Natura 2000 site where increased logging threatened biodiverse habitats. Under Polish law, however, the Forest Management Plans for the three Forestry Districts that are part of the Białowieża Forest authorised an unprecedented increase in the volume of logging. These could not be legally challenged at the national level, and therefore the case was taken to the European Court of Justice (ECJ).

In April 2018, the ECJ ruled that Poland's decision to increase the volume of logging in the Białowieża Forest had been illegal. It also ordered Poland to stop the logging and comply with its obligations under the Birds and Habitats Directives. Poland has not fully complied with the ECJ verdict, though.

In 2018, the State Forests Holding decided to upgrade the Narewowska Road in the Białowieża Forest. Originally a quiet gravel road adjacent to the Białowieża National Park and several nature reserves, it was now to be transformed into a wide asphalt road. Once upgraded, the road would allow much higher traffic speed and create a deadly risk for crossing animals. Its drainage systems would cause nearby wetlands to dry up. Construction on the road would require cutting down more trees, even though the ECJ verdict only allowed logging for security reasons.

Due to these issues and their potential cumulative effect on the Białowieża Forest Natura 2000 site,

on 29 June 2018 the Commission called on Poland to stop all road works pending the assessment of the project's impact on the Natura 2000. The State Forests ignored the Commission's call, and its machinery re-entered the construction site on 3 July 2018. Construction is in progress and is expected to be completed by the end of this year. The Commission did not intervene further.

Logging has also increased considerably in other important woodlands in Poland, including the Beech Forest in north-western Poland and the Carpathian Forest (including the area of the proposed Turnicki National Park). Although people have been protesting, they have no legal means to stop it.

The State Forests Holding has been granted close to PLN 300 million from EU Funds for forest retention and fire protection projects. This funding has not been in any way affected by the Holding's blatant disregard for EU rules.

THE BRUA LAW ROMANIA

In 2016, the Romanian Government set forth a legislative procedure to adopt measures for the implementation of the Natural Gas Transport System, better known as the BRUA Corridor, which would connect Bulgaria, Romania, Hungary and Austria via a natural gas pipeline, part of the Southern Gas corridor.

The contents of these measures were problematic. They were based on derogations from national and international environmental protection laws, agricultural land and forests, protected natural areas or cultural heritage safeguards, and also on provisions contrary to regulations in the field of property rights protection. Furthermore, although the legislative proposal was specially designed for the implementation of the BRUA pipeline, at the end of the legislative procedure, these provisions were applied to all projects of national importance in the natural gas sector.

The resulting new law permits the occupation of forest lands belonging to the state or the administrative-territorial units for the purposes of carrying out the construction works of the pipeline, without cost to the construction companies. Specifically, the act provides that 'temporary occupation of forest land [...] shall be done free of charge for the entire duration

of the pipelines related to projects of national importance'.

Prior to the introduction of this law, the temporary occupation of forest lands was permitted for only a 10-year period with the possibility of extending the period for another 10 years, and it was accompanied by some monetary contribution obligations. Now, due to these changes, even if a pipeline exploitation is not given an end date, the occupation of forest lands for this purpose is still considered temporary and is instituted free of charge.

Besides changes in the forestry sector, the law also changes the regime of the protected natural areas. On its route, the BRUA pipeline will intersect seven Natura 2000 sites and cross 'Dinosaur Land' Geopark, a protected area of national interest. 4.73% of the pipeline's length will overlap with the perimeters of these areas⁸ and other parts of the pipeline will come near five other protected natural areas.

Prior to the introduction of the new law, the legislation stipulated that in areas of full protection and in the buffer zones around these areas, any form of exploitation or use of natural resources⁹ is prohibited. Now, the newly created changes will allow the location of pipeline projects right on the edges of these protection areas.¹⁰

The European financial contribution to the BRUA Pipeline includes a EUR 100 million loan from the EIB, a EUR 60 million loan from the EBRD and an approximately EUR 180 million investment from Connecting Europe Facility. The BRUA Pipeline has been included in the List of Projects of Common Interest since 2013.¹¹

STRUMA MOTORWAY THROUGH KRESNA GORGE BULGARIA

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

As a result, Kresna Gorge is part of the Natura 2000 network, designated as a protected haven

8
<http://www.anpm.ro/documents/12220/2231306/EA+BRUA.pdf/db57a03e-bb4c-4a28-9c09-7e8b112b9793>

9
According to art. 22, para. (4) of Government Decision 57/2007 regarding the regime of the protected natural areas, the conservation of natural habitats, of the flora and the wildlife, the full protection area represents that perimeter that includes 'the most valuable assets of the natural heritage within the protected natural areas'. According to art. 22 paragraph (7) of the same normative act, the buffer zones are those surfaces that make the transition between the areas with full protection and those of sustainable development.

10
According to art. 23 of Law 185/2016 on some measures necessary for the implementation of projects of national importance in the field of natural gas (<http://legislatie.just.ro/Public/DetaliiDocument/182923>)

11
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1391&from=EN>

for some of the EU's most threatened species and habitats. It is home to hundreds of rare and threatened animal, insect and plant species that have used the Gorge as a refuge and a bio-corridor for hundreds of years. Among others, it hosts 35 EU protected habitats and 92 EU protected species, including the European wolf and brown bear, designated by EU law as requiring strict protection.

The site is unique for its location on the border between Mediterranean and continental climatic zones and its functional use for the seasonal and multi-annual migration of species included in Annex II of the Habitats Directive (such as: *Testudo graeca*, *Eurotestudo hermanni*, *Rhinolophus ferrumequinum*, *Rhinolophus euryale*, *Rhinolophus hipposideros*, *Myotis emarginatus* and *Elaphe quatorlineata* and *Zamenis situla*).

This Natura 2000 site is therefore key to the coherence and integrity of the entire Natura 2000 network in Bulgaria and Europe. The Gorge has the highest concentration of biodiversity in Bulgaria, and one of the highest in Europe. It is also an area where local people have the potential to develop tourism and sustainable agriculture.

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

The Bulgarian government has been planning the construction of the Struma Motorway since the early 2000s. The initial route of the motorway was supposed to go directly through Kresna Gorge and the town of Kresna. In 2008, based on the findings of the project's final EIA and Appropriate Assessment (AA), it was agreed that the motorway's route would instead be built outside of the Gorge, routed via a tunnel.

The Struma Motorway construction started in 2011 from Lot 1 of the Motorway. The European Commission made it conditional that the funding for the rest of the Struma Motorway (Lot 2 and Lot 4) would be provided only once the design and construction of the tunnel through Kresna Gorge was implemented. However, the plan

for the tunnel was abandoned in 2014 under pressure from the construction companies.

Subsequently, the Bulgarian government reopened the discussion on alternative routes for the Kresna Gorge section, and on 19 October 2017 the government decided that it would construct the last remaining segment (Lot 3) of the highway along its preferred route: traffic will flow in one direction down the length of the Gorge with an opposite flow of traffic outside of the Gorge (known as the 'G10.5' plan). While these decisions were being made, the construction of other sections of the motorway increased traffic on the existing road in Kresna Gorge.

In 2017 and 2018, the Bulgarian government and parliament changed the laws and rules for road projects to allow special 'fast-track approval' for strategic projects like the Struma Motorway, in effect restricting democratic civil rights in the country. The proceedings concerning projects of 'strategic importance' are decided now in the first instance, and complainants are not entitled to appeal these decisions.

Thus, it is now impossible to challenge this type of activity. In the case of Kresna, NGOs made an appeal on the quality of the EIA report and the compliance of the 2017 government decision with EU law. However, their appeal was not considered by the first instance court decision in March 2018, and the Supreme Court rejected the opportunity to review the first instance court decision in October 2018.

Concerned about the possibility that national means could be used to resolve this, on 12 July 2017, a group of non-governmental organisations, including CEE Bankwatch Network, Friends of the Earth and Za Zemiata, submitted an EU law infringement complaint to the European Commission, informing it about the damaging effects of the project. In particular, the group noted, studies estimated that several protected species in Kresna Gorge would experience a 13-fold decrease in the relative abundance of their populations as a consequence of increased road traffic since the beginning of the Struma Motorway's construction.

In September and October 2019, the Commission issued two documents that point to the serious failures in the implementation of the EU acquis on nature conservation in case of Struma Motorway construction through Kresna Gorge. The Commission also confirmed the NGOs concerns about the deterioration of natural

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<http://www.api.bg/index.php/bg/presenter/novini/blgariya-otteglya-aplikacionnata-forma-za-am-struma-prez-kresnenskoto-defile-no-ne-se-otkazva-ot-proekta/>
13
<https://balkangreenenergynews.com/memorandum-of-cooperation-on-construction-of-hpp-buk-bijela-signed/>
14
<https://whc.unesco.org/en/tentativelists/1698/>
15
<https://whc.unesco.org/en/list/100>
16

The Foča and Paunci plants would be downstream of Buk Bijela in Bosnia and Herzegovina and the Sutjeska plant would be on the Sutjeska river, a tributary of the Drina. Together with Buk Bijela, these plants are often known as the Upper Drina hydropower plants.

17
<http://www.iucnredlist.org/details/10264/0>
18

https://balkanrivers.net/sites/default/files/Huchen_Study_2015.pdf

19
<http://www.iucnredlist.org/details/10264/0>

20
<https://rm.coe.int/1680304356>
21

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01992L0043-20130701&from=EN>
22

In June 2018 the Aarhus Center Sarajevo also submitted a court case challenging the renewal of the environmental permit for the Foča plant. Although the content was very similar to that of the Buk bijela case, the court dismissed the case. The Aarhus Center Sarajevo submitted an appeal to the Federal High Court in November 2019, which is currently pending.

23
https://bankwatch.org/press_release/bosnia-herzegovina-environmental-permit-for-buk-bijela-hydropower-plant-cancelled

habitats and the habitats of species, as well as the disturbance of the species in breach of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”).

On 15 January 2020, the Bulgarian Road Executive Agency informed the Commission¹² that it had withdrawn its application for funding of the Lot 3.2 from the EU Cohesion Fund, leaving the issues raised by the Commission unaddressed. The authorities also announced that the project, in its current shape, remains a priority for the government and that they will aim to finance it from the national budget.

BUK BIJELA/ UPPER DRINA HYDROPOWER PLANTS BOSNIA AND HERZEGOVINA

The river Drina is formed by the confluence of the Montenegrin rivers Tara and Piva at the border with Bosnia and Herzegovina (BiH). The 93 MW Buk Bijela hydropower plant is planned within Bosnia and Herzegovina, with its reservoir stretching upstream to the Montenegrin border.

Buk Bijela is being pushed by state-owned company Elektroprivreda Republike Srpske (ERS), and a memorandum on construction of the project was signed with China National Aero-Technology International Engineering Corporation (AVIC-ENG) in July 2017¹³.

A larger version of the Buk Bijela project has been disputed since the 1970s due to its impacts on the protected Tara canyon in Montenegro¹⁴, which is both a UNESCO World Heritage site and part of the Durmitor National Park¹⁵.

The newer version, while smaller, also suffers from a number of issues inherent to the location of the planned plant, as well as cumulative impacts with the planned Foča, Sutjeska and Paunci hydropower plants.¹⁶

The river Drina constitutes the most significant habitat for the endangered¹⁷ Danube Salmon (Hucho hucho) in terms of habitat length. Over the last 100 years Hucho hucho has undergone a

massive decline.¹⁸ It is now found only in a few of southeast Europe’s cleanest rivers.

This fish is highly sensitive to low oxygen and moderate levels of pollution and is a good indicator for river health. This means that it cannot flourish in areas with hydropower plants. In fact, the IUCN assesses that the main current threat to the species is the flow regulation from hydropower dams which impact the species, and their prey, habitat and pollution.¹⁹

Hucho hucho is protected²⁰ under Annex III of the Bern Convention and Annex II of the European Union Habitats Directive as a species of community interest whose conservation requires the designation of special areas of conservation.²¹

This means that, if the river was in the EU, the stretches of importance for the Danube Salmon, including the upper Drina, would almost certainly be in the Natura 2000 network of protected areas. The EU Water Framework Directive would also ensure protection against impairing the Drina’s water quality. At the moment, though, it is not even a nominated candidate Emerald Site.

In May 2019, a successful legal challenge by the Aarhus Center Sarajevo led to the project’s environmental permit being cancelled.^{22,23} In December 2019, however, a new permit was issued, relying on a poor quality environmental assessment from 2012. This too is now being challenged in court by the Aarhus Center Sarajevo. Meanwhile, the Drina’s future hangs in the balance.

ULOG AND UPPER NERETVA HYDROPOWER PLANTS BOSNIA AND HERZEGOVINA

The upper stretches of the crystal clear river Neretva were accepted as a nominated candidate Emerald Site in 2011, but this has not prevented a series of dams being planned.

In the Republika Srpska Entity, no fewer than eight dams are planned on the Neretva and its tributaries – the Ulog dam promoted by EFT

and built by China's Sinohydro and a series of seven plants planned by Marvel d.o.o.. In the Federation of Bosnia and Herzegovina another three are planned by the public electricity company Elektroprivreda BiH.

If built, the dams would completely fragment the upper Neretva river and its rich habitats, without even a full understanding of what species are present in this sparsely-inhabited region. So far, only the plants in Republika Srpska have obtained environmental permits, based on poor quality environmental assessments that did not clearly state which species are present at the sites. Not only has there been no assessment of the plants' cumulative impacts, but the environmental impact assessments even claimed there would be no impact on the Federation of BiH even though the Ulog plant would be built only just upstream from the Entity border line.

BAR-BOLJARE MOTORWAY CONSTRUCTION MONTENEGRO

The Bar-Boljare motorway, or more specifically the Mateševo-Smokovac section, built by the China Road and Bridge Corporation (CRBC) and financed by the China Eximbank, initially attracted attention for its high price tag and impact on Montenegro's debt rather than its biodiversity impacts.²⁴

This started to change, however, in October 2018 when non-governmental organisation MANS released drone footage²⁵ of the construction site at the Mateševo interchange, where the motorway will cross the river Tara, protected as a UNESCO Biosphere Reserve. The Tara is often known locally as the Teardrop of Europe due to its clear-running water, but the footage shows a straight, muddied channel with excavated material piled up around it.

A UNESCO mission visited the site shortly afterwards, and in June 2019 released a report confirming the damage.²⁶ Most frustratingly, it found that the damage was likely unnecessary:

The construction works are currently in progress for which the river course has been heavily altered from a braided river, stretching across

the floodplain, to an artificially straightened river.

The mission was informed that at least 20 different variations of the route for the motorway were presented and discussed in the process of granting the permission. From the reflections gained in the field, the mission is of the view that a less impactful variation of the route could have been identified. The main negative impact of the agreed solution lies in the fact that the location of the ramps and deviations to and from the motorway route, together with the pay-toll object, are located in the heart of the floodplain area of the Tara River. By urbanising the space in the wide river floodplain, support infrastructure for the motorway and typical major bed embankments in the form of intensive river regulation, were applied. This, as a consequence, destroys the floodplain character of the Tara River in this section. Floodplain character of the torrent-type river is essential to maintain the ecological values of the Tara River, together with its biodiversity, especially fish fauna. If the floodplain area would not be built up, no river regulation works would be needed (including up- and downstream of the section) and the impacts on the riverine ecology would be lower.

Besides the fact that the project foresees the replacement of the floodplain area under and besides the bridge, the mission observed that the construction works are being implemented without safeguards for the riverine environment. The project foresees that the former area of floodplains, where Tara River shifted its course every season in the wide floodplain terrain, will be transferred into an artificially planted forest. Floodplains will be reduced and remaining parts will become low-biodiversity value area[s], while the core biodiversity values and characteristic habitat features for floodplains (riffles, shallow pools, temporarily flooded areas etc.) will be lost. The floodplain river is transformed into [a] strictly regulated river with a determined channel, which will drastically alter the ecological character of this river section.

Several temporary deposition areas, gravel storage areas, ramps, and even gravel out-take areas were observed by the mission in the wider floodplain area and river bed. The area is dumped with trash and deposited materials also beyond the construction site. Although the majority of those negative impacts could

24 <https://www.reuters.com/article/us-china-silkroad-europe-montenegro-insi/chinese-highway-to-nowhere-haunts-montenegro-idUSKBN1K60QX>
25 <https://www.youtube.com/watch?v=MfAwRSCjaQI>
26 <https://whc.unesco.org/en/documents/174707>

be addressed after the final works on the highway construction, it is clear that some impacts will be visible also after the conclusion of the works. Extraction of gravel from the river bed was observed at some places along the river corridor.

The motorway currently under construction does not connect any major urban centres to one another, often causing it to be dubbed ‘the highway from nowhere to nowhere’. As a result, the Western Balkans Investment Framework has approved funds to assist Montenegro with developing phase two of the project, with potential co-financing for construction from the EBRD. However, if the EU is not able to ensure that Montenegro strengthens its capacity and political will to effectively oversee such projects, there is a very high risk of EU funding supporting more biodiversity destruction.

THE NENSKRA HYDROPOWER PLANT GEORGIA

The Nenskra hydropower plant is one of over 120 planned hydropower plant projects in biodiversity sensitive areas in Georgia. The impacts of these plants have been poorly assessed or overlooked completely.

The 280 MW Nenskra project includes the construction of a 130 metre high dam on the Nenskra river, flooding up to 300 hectares of forests and communal lands in the proposed Emerald site “Svaneti 1”. The project plans the construction of two tunnels (12.4 kilometres and 15.1 kilometres) to bring water from the Nakra river (on the other side of the mountain) to the Nenskra reservoir and then to the powerhouse, leaving approximately 35 kilometres of the Nenskra and Nakra rivers with almost no water.

The project is proposed to be funded by a number of international financial institutions, such as the EIB, the Asian Development Bank (ADB), Asian Infrastructure Investment Bank (AIIB) and the EBRD. Out of these, the EBRD and EIB have already approved loans for the project in February 2018.

In October 2015, the Project received an environmental permit from the Ministry of Environment, and after three months the

Government excluded all territories relevant for hydropower plant construction from the proposed Emerald site “Svaneti 1”. Later, the Government of Georgia proposed several smaller sites to compensate for this reduction.

In 2017, based on a survey conducted by Balkani Wildlife Society, the NGO Green Alternative submitted a complaint to the Bern Convention Secretariat alleging that the Georgian government had violated the Bern Convention by giving permission to build the Nenskra hydropower plant on a proposed Emerald site and threatening the destruction of significantly protected habitats and species, such as the brown bear, lynx, greater horseshoe bat and Alpine longhorn beetle.

Experts at the 2017 Biogeographical seminar in Tbilisi assessed the Emerald Network in Georgia and concluded that the reduction of ‘Svaneti 1’ and other sites has brought insufficient protection for species and habitats, even if the newly proposed small sites were added as protected territories.

On 19 March 2019, the Bureau of the Standing Committee of the Bern Convention required the government to provide a number of documents addressing the findings of the Biogeographical seminar to allow the Bureau to make a determination on the case. In its decision on the case, the Bureau noted the need to consider the relative quality of the proposed compensation site and the initial site and the need ‘to identify and designate an additional site with freshwater habitats to compensate the loss and to further work towards the completeness of the Emerald Network in Georgia’. It instructed the Secretariat ‘to request a new report [from] the national authorities for its first annual meeting in 2020 and to invite the NGO to comment on the authorities work and progress in the frame of the complaint’.

Despite such requests, the Georgian government disregarded the Bern Convention’s recommendations to their procedures for proposing and establishing Emerald Network sites in Georgia²⁸, and even pushed to exclude 12 proposed sites from the list of officially nominated candidate Emerald sites in Georgia.

The Nenskra and Nakra valleys include some of the best preserved forests, other natural habitats and habitats of species in the Great Caucasus. Allowing the destruction of such habitats is a clear example why Target 2 –

27
<https://www.wbif.eu/wbif-projects>

28
<https://rm.coe.int/updated-list-of-officially-nominated-candidate-emerald-sites-december-/168098ef50>

Maintain and restore ecosystems of the EU Biodiversity Strategy 2010-2020 was not met in this instance. Despite the fact that the Nenskra hydropower plant is funded partially with EU funds, the mechanisms of offsetting and no net loss (NNL) of biodiversity were used to allow its construction in areas that should be forbidden.

It is notable that during the 39th meeting of the Standing Committee of the Bern Convention (December 2019), the Committee examined and adopted the updated list of officially adopted Emerald Network sites from Georgia, but also noted the necessity to re-evaluate the sufficiency of the Georgian Emerald Network in light of the changes to the site proposals.

SHUAKHEVI HYDROPOWER PLANT GEORGIA

The 187 MW Shuakhevi hydropower plant project involves the 22 metre Skhalta dam (with a 19.4 hectare reservoir) and the 39 metre Didachara dam (with a 16.9 hectare reservoir) on the rivers Skhalta and Adjaristskali, as well as three diversion tunnels (at lengths of 5.8, 9.1 and 17.8 kilometres) to divert water from the upper parts of the Adjaristskali, Skhalta and Chirukhistskali rivers towards the reservoirs and to the powerhouse. The Shuakhevi HPP in the Adjara Autonomous Republic is part of a three step cascade on the River Adjaristskali, which consists also of the 150 MW Koromkheti and 65 MW Khertvisi hydropower plants.

The Shuakhevi hydropower plant is located in the Goderdzi Emerald site (GE0000026) and was constructed without an appropriate assessment on the impacts of the project on the Emerald Network. The project was funded by the EBRD, ADB and IFC, who claimed that supplementary studies indicated that all biodiversity impacts were effectively mitigated.

However, on-site analysis of the constructed Shuakhevi HPP show shocking results. The total area of destroyed habitat is around 170 hectares, without taking into account the impact downstream of the Shuakhevi powerhouse and on the Chorokhi delta (an Important Bird Area and Emerald Network site). The delta has already been severely impacted by other hydropower projects, and the Shuakhevi hydropower plant

will contribute to significant cumulative impacts.

Despite proposed offsetting or compensation for forest habitats (Planting 9.2 hectares of mixed species forest), the tree planting was not done before the habitats were destroyed as is required by EU directives. Furthermore, the forest offsetting/compensation will not be able to create habitats with similar ecological functions as the destroyed habitats provided.

The total area of habitats lost as a result of the project is also several times higher than what was assessed. The loss of key river and riparian habitats was not offset or compensated, as it is impossible to create a new river. Grassland habitats were not restored, and furthermore, some additional areas were destroyed during the forestation activities.

Even before the Shuakhevi hydropower plant began operation, fish populations and the Eurasian otter had almost completely disappeared from the area several kilometers below the two dams and the weir. The fish species could not survive the chemical poisoning and changes in water quantity and quality brought by the plant.

One spot assessment also revealed that traces of six different individual brown bears, a pack of four wolves, three golden jackals, one Eurasian nightjar, four Caucasian rose finches, one kingfisher and red-breasted flycatcher had been found along the river. This demonstrates that the river's banks are a biodiversity hotspot: no offsetting is possible, as there is no possibility to compensate the proposed damage to such a habitat. The reality in the case of Shuakhevi clearly contradicts the banks' claims that all impacts would be properly mitigated.

The case of Shuakhevi also shows that Target 6 – Help stop the loss of global biodiversity of the EU Biodiversity Strategy 2010-2020 was not met. Action 18 of this target provided for the systematic screening of EU action in development cooperation to reduce any negative impacts on biodiversity. Yet here, there was massive biodiversity loss because harmful projects were financed with EU public funds without proper screening.



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