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1. Identity & contact details

	Complainant*	Your representative (if applicable)
Title* Mr/Ms/Mrs		Mr
First name*		Siim
Surname*		Vahtrus
Organisation:	Association Justice&Environment	Association Justice&Environment
Address*	Údolní 33,	Vana-Kalamaja 43-17
Town/City *	Brno	Tallinn
Postcode*	602 00	10415
Country*	Czech Republic	Estonia
Telephone		+372 55 683 880
E-mail	secretariat@justiceandenvironment.org	chairman@justiceandenvironment.org
Language*	English	English
Should we send correspondence to you or your representative*:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

2. How has EU law been infringed?*

This complaint to the European Commission concerns the infringement of Art 6(3) of the EU Habitats Directive¹ by a number of EU Member States. In more detail, the infringement relates to non-performance of the so-called “appropriate assessment” of projects and plans that may have a significant impact on Natura 2000 sites. This non-performance is in turn caused by improper implementation of the so-called ‘screening’ phase of the assessment, in which the authorities are to decide if a full assessment of impacts of a plan or project should be carried out or not.

According to the well-established CJEU case-law, such assessment should be made in light of the precautionary principle. Detailed appropriate assessment is required, if it cannot be excluded, on the basis of objective information, that it will undermine the site’s conservation objectives either individually or in combination with other plans or projects.² Unfortunately, as detailed below, this requirement is not being followed by authorities in several Member States in practice.

As a consequence of these infringements, many plans and projects which may have negative impacts on the Natura 2000 sites and their conservation objectives are approved without proper assessment and consideration of their impacts. In addition to being a clear breach of the Union law, this also has dire consequences on the Natura 2000 sites and the coherence of the whole network. Although some of the cases where such an infringement takes place

¹ Council Directive no. 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)

² *Waddenzee*, para 45 and 49.

may seem like having only a minor impact on the sites, their cumulative effect is considerable, amounting to the proverbial ‘death by a thousand cuts’.

Although this complaint is directly concerned with only three countries and authorities in these countries, there are several other countries, where similar problems exist.³ We therefore urge the European Commission to approach this issue in a broader manner and ensure compliance with the EU legislation and CJEU case law on appropriate assessments across the whole Union.

The complaint has been compiled by the NGO network Justice&Environment, with the input of its member organisations:

- Bankwatch Association Romania
- Bluelink (Bulgaria)
- VIA IURIS (Slovakia)

Bulgaria

	Authority or body you are complaining about:
Name*	Ministry of Environment and Waters, Regional Inspectorates for Environment and Water
Address	
Town/City	
Postcode	
EU Member State*	Bulgaria
Telephone	
Mobile	
E-mail	

Romania

	Authority or body you are complaining about:
Name*	Environmental Protection Agency Covasna, Gorj Environmental Protection Agency, Hunedoara County Council, Gorj County Council
Address	
Town/City	
Postcode	
EU Member State*	Romania
Telephone	
Mobile	
E-mail	

Slovakia

	Authority or body you are complaining about:

³ For example, in Estonia, similar situation to Slovakia’s exists as regards both the laws and practice. However, there the member organization of Justice & Environment is currently still working with the national authorities on making necessary changes. In case of failure by the Member State and its authorities to change the laws and/or practice, a separate complaint will be formally made to the EC on that in the future.

Name*	District Environmental Authorities of: Bratislava, Banska Bystrica, Košice, Nitra, Prešov, Trenčín, Trnava and Žilina.
Address	
Town/City	
Postcode	
EU Member State*	Slovakia
Telephone	
Mobile	
E-mail	

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

1) Slovakia

a) Legal framework

Act No. 543/2002 Z.z. On Nature and Landscape Protection (Act on nature protection), Section 28 (2) to (5)

"(2) Any plan or project not directly related to the management of a territory belonging to the European Protected Areas System, the proposed protected bird area or site of community significance (hereinafter referred to as the "Natura 2000"), or which is not needed for its management, but which is likely to have a significant impact on its own or in combination with another plan or project, is subject to an appropriate assessment of its effects on that territory in the light of the objectives of its protection.

(3) Any person intending to carry out a plan or project under paragraph 2 (hereinafter "the petitioner") shall be obliged to submit a draft plan or project for the assessment of the nature conservation authority. This obligation does not apply to plans or projects subject to environmental impact assessment under a special regulation.

(4) The district office shall issue an expert opinion on the possibility of its significant impact on the territory of Natura 2000 to the draft plan or project pursuant to paragraph 3. If the plan or project is to be carried out in the territory of several regions, the expert opinion shall be issued by the district office on whose territory most of the plan or project is to be carried out. An expert opinion may also be issued by the ministry or district office on its own initiative if the request for extradition has been ascertained during the procedure for exemption, consent or expression under this Act. If, according to expert opinion, plan or project may have alone or in combination with other plans or projects significant impact on that area, it is a subject to environmental impact assessment under a special regulation.

(5) A plan or project may be approved or authorized only if, on the basis of the outcome of the environmental impact assessment according to a special regulation, it proves that it will not adversely affect the integrity of the protected area's territory in terms of its conservation objectives ("adverse effect on the integrity of the site"). "

In short then, appropriate assessment of proposed project/activity (hereinafter referred to as "the project") for Natura 2000 sites in the Slovak Republic must be carried out in the case of a project which (1) is not required to carry out for the management of the protected area, and (2) may have a significant impact by itself or in combination with another activity on the site.

In the case of a project which is subject to an environmental impact assessment (if it is an activity included in Annex 8 of Act No. 24/2006 Coll. On Environmental Impact Assessment), an appropriate assessment shall be carried out in environmental impact assessment process (EIA process). This is also in line with the EIA Act, which requires that the assessment report include a comprehensive assessment of impacts on Natura 2000 sites (Annex 11 to the EIA Act), which must then be reflected in the final opinion from the EIA process In Annex 12 of the EIA Act).

Different rules apply when the project that may have negative impacts on a Natura 2000 site is not subject to the EIA process due to other impacts than those on the Natura 2000 sites. In such cases, the project promoter is obliged to submit the project proposal to the competent authority of the State

Administration of Nature and Landscape Protection. The latter is required to issue an expert opinion on the proposed project, indicating whether the project may have a significant impact on the Natura 2000 site separately or in combination with another plan or project or not (i.e. the 'screening' decision).

In case of a positive screening decision (i.e. the expert opinion finds that the proposed project is likely to have a significant impact on the Natura 2000 site concerned), an environmental impact assessment within the meaning of the EIA Act must be carried out. In case of a negative decision, no further impact assessment needs to be carried out.

b) National application practice

The national application practice is rather unproblematic in those cases where the EIA is required by national laws for reasons other than a project's impacts on Natura 2000 sites. However, in those cases where the performance of the appropriate assessment is based on the 'screening' decision, the full assessment is almost never carried out. In 96% of cases, the expert opinions concluded, that it is an activity that cannot affect the Natura 2000 site and therefore it is not necessary to carry out a process of an appropriate assessment of its impact on Natura 2000 sites.

It is unlikely that in almost all of these cases, it could already at this stage be excluded, based on objective information and the precautionary principle that the project will undermine a site's conservation objectives. This conviction is supported by a number of examples, where the reasoning given in the 'screening' decisions does not correspond to the criteria established by the CJEU when interpreting the Article 6(3) of the Habitats Directive (see part 2.3).

In practical terms, in Slovakia the appropriate assessment is therefore only carried out for those projects that are subject to EIA for some other reason than project's impacts on Natura 2000 sites. Such an application practice is manifestly violating Article 6(3) of the Habitats Directive, because from the perspective of the EU Directive, the obligation to carry out an appropriate assessment should in no way be dependent on the obligation to conduct the EIA. As it is evident from the CJEU case law, the 'threshold' of impacts is much lower for the appropriate assessments than the EIA and therefore a number of projects not subject to EIA should still be subject to appropriate assessments.

Complainant is convinced that under the conditions of the Slovak Republic, one of the reasons for this poor application practice is linking the appropriate assessment process with the EIA process, even in those cases, where the EIA process is otherwise not required. The EIA process has a much wider content than the appropriate assessment, it generates much higher costs and takes a long time. In many cases, its implementation is not relevant; on the contrary, it is unnecessarily expensive and inefficient. It seems that this association also leads to described negative application practice of the competent authorities. The solution would be to establish a separate process of appropriate assessment under Art. 6 (3) of the Habitats Directive in those cases where it is a project, that would normally not be subject to the EIA process (if not covered by the obligation under Article 6 (3) of the Habitats Directive).

2) Bulgaria

a) Legal framework

Biodiversity Act (promulgated in State Gazette No. 77/ 09.08. 2002, last amendment prom. in State Gazette No.76/19.09.2017), Article 31

(1) Plans, programmes, projects and investment proposals, not directly connected with or necessary for the management of the protected areas and which either individually or in combination with other plans, programmes or projects are likely to have a significant effect on the protected areas shall be subject to assessment of their compatibility with the object and conservation objectives of the respective protected area.

(2) The assessment under para. 1 is carried out for protected areas which are:

1. discussed and approved in principle by the National Council on Biological Diversity notwithstanding whether they are postponed for additional study and research or are included in the list to Art. 10, para.3 to be submitted to the Council of Ministers for approval, or are

2. included in the list to the Art. 10, para.4, promulgated in the State Gazette, or

3. designated with an order pursuant to Art. 12, para. 6;

(3) repealed;

(4) For plans, programmes and investment proposals, within the scope of the Environmental Protection Act (EPA), the assessment under para. 1 is carried out following the procedures for [strategic] environmental assessment (EA), respectively environmental impact assessment, pursuant to EPA and pursuant to the special provisions of this Act and of the Ordinance to Art. 31a.;

(5) Besides the instances under Art. 4 of AA Ordinance appropriate assessment of plans, programmes, and investment proposals shall be carried out following the procedure regulated in the Ordinance to Art. 31a.;

(6) In the instances under para. 4 by carrying out of obligatory EA or EIA pursuant to EPA, when it has decided that the plan, programme or the investment proposal is not likely to have a significant impact on the protected area, the competent authority takes this assessment into consideration by issuing the respective decision pursuant to Chapter VI of the EPA.

(7) Under the instances under para. 5, when it decides that the plan, programme, project or investment proposal are not likely to have a significant impact on the protected area, the competent authority approves it with a decision whereas it can require particular conditions, requirements or measures for conservation of the protected area by the implementation of the plan, programme, project or investment proposal.

(8) Under the instances of para. 4 while assessing the need for carrying out of EA or EIA pursuant to EPA, when it decides that plan, programme or investment proposal is likely to have a significant negative impact on the protected area, the competent authority issues a decision for carrying out of EA or EIA.

(9) Under the instances of para. 8 when for the plan, programme or investment proposal EA or EIA shall be carried out and the competent authority decides that they are likely to have significant negative impact on the protected area, in the EA or the EIA is integrated an assessment of the degree of the impact on the natural habitats and habitats of species, object to conservation in the protected area.

(10) Under the instances of para. 5 when it decides that the plan, programme or investment proposal are likely to have a significant negative impact on the protected area, the competent authority issues a decision to carry out an assessment of the degree of the impact on the natural habitats and habitats of species, object to conservation in the protected area.

(11) The assessment under para. 10 concludes with a decision of the Minister of Environment and Waters or of the Director of the respective Regional Inspection for Environment and Waters. If within 5 years of the date of issuing of the decision, the proponent does not commence activities for implementation of the investment proposal or project, or for approval of plan or programme, the effect of the decision under para. 12, p. 1, is automatically revoked.

(12) With its decision under para. 11 the respective competent authority:

1. approves the plan, programme, project or investment proposal under para. 5, and determines specific conditions, requirements, and measures for conservation of the protected area by implementation of the plan, programme, project or investment proposal;

2. does not approve plan, programme, project or investment proposal under para. 5, by laying out the reasons for that.

(13) When it is objectively impossible to collect enough information for carrying out of the assessment under para. 10 or when it could not be determined the degree of impact on the protected area, the competent authority ceases the procedure by notifying the proponent.

Based on the delegation of the Biodiversity Act, Art. 31A, The Council of Ministers has adopted an Ordinance on the conditions and procedure for carrying out of assessment of compatibility of plans, programmes, projects and investment proposals with the object and conservation objectives of the

protected areas (prom. in SG No. 73/11.09.2007, last amendment in SG no.94/30.11.2012) (the AA Ordinance).

The Ordinance states in Art. 4 that the appropriate assessment of plans, programmes and investment proposals, within the scope of the Environmental Protection Act (EPA), should be carried out following the procedures for [strategic] environmental assessment or environmental impact assessment, pursuant to EPA and by pursuant to the special provisions of Biodiversity Act and of Chapter Three of the AA Ordinance. Besides the instances under Art. 4 of AA Ordinance appropriate assessment of plans, programmes, and investment proposals shall be carried out following the procedure laid out in Chapter II of the AA Ordinance.

b) National application practice

There are plans, programmes, and projects, mainly in the field of building and spatial planning, adopted after 2007 in breach or not proper application of the national laws and without assessment of the need for appropriate assessment (screening) and their compatibility with the conservation objectives of Natura 2000 areas, which have taken a legally binding nature because there is no legal opportunity to challenge these or because the competent authorities on Natura 2000 (MoEW and RIEW) and the Prosecutor's office have missed the period for appeal. Cases to this point are, for example the urban development masterplan (UDM) of Tsarevo Municipality, detailed development plan of Byala Sever (North), and in the case of Kaliakra described in Part 2.3.

Some activities of the administration which have the character of a plan or programme are not subject to screening procedure (respectively to SEA, EIA or AA) according to the national legislation but individually or in combination with other plans, projects and investment proposals might lead to negative impacts on the habitats subject to conservation in Natura 2000 areas. Examples of such activities and decisions are the procedures for permanent change of land use and water management with examples given in Part 2.3.

In the screening procedures for AA or during the AA itself the competent authority often bases its decisions only on the percentage of area that will be damaged without analyzing the cumulative effects together with the impacts of other plans, projects, and investment proposals. There is a lack of methodology for assessment of the cumulative effects and its assessment depends on the will of the investor or the competence of the various authorities.

The competent authorities for Natura 2000 themselves do not always decide on the need for AA at the earliest stage as is required by the legislation for those plans and projects for which the developer's role is taken by the same competent authority. Examples of this are the management plans for the protected areas. In this way no alternatives are elaborated for such plans and the public concerned is often missed the opportunity to discuss the impacts of these plans on Natura 2000 areas.

In some cases, a competent authority after having carried out the screening procedure for plans and projects, could on own initiative or through the Council of Ministers amend the plan or project and they are approved without the impact of the amendments being assessed. Such examples are the management plans of the Nature Park Persina, Nature Park Bulgarka. The same applies also to amendments to plans adopted after carrying out the AA – e.g. the UDM of Tsarevo and UDP of Byala and others.

3) Romania

a) Legal framework

The Government Emergency Ordinance no 57/2007 on the regime of protected natural areas, conservation of natural habitats, wild flora, and fauna, Article 28

(1) Activities within the perimeters of protected natural areas of Community interest which are likely to result in pollution or deterioration of habitats and disturbances of the species for which the areas have been designated are prohibited where such activities have a significant effect, having regard to the objectives of protection and conservation of species and habitats. Protecting and conserving wild birds, including migratory birds, is prohibited for activities outside protected natural areas that would cause pollution or damage to habitats.

2. Any plan or project not directly connected with or necessary to the management of the natural protected area of Community interest but likely to have a significant effect on the site alone or in combination with other plans or projects shall be subject to an assessment adequate to potential impacts on the protected natural area of Community interest, taking into account its conservation objectives.

(3) The methodological guide on adequate assessment of potential impacts of plans or projects on protected natural areas of Community interest, as well as the powers to issue Natura 2000 approval, shall be approved by order of the head of the central public authority for environmental protection and forests.

(4) In the case of plans or projects subject to environmental impact assessment or environmental impact assessment, an appropriate assessment of the potential effects on the protected natural area of Community interest shall form an integral part thereof.

(5) Following the appropriate assessment, the competent authority for environmental protection issues the Natura 2000 permit or the decision to reject the project or plan. In the situations provided in paragraph (4), the competent environmental protection authority issues the environmental agreement or the decision to reject the environmental agreement, or, as the case may be, the environmental permit or the decision to reject the environmental permit, including the conclusions of the appropriate assessment.

(6) The environmental agreement, the environmental permit or the Natura 2000 permit, as the case may be, for the projects and / or plans referred to in paragraph (2) shall be issued only if the project or plan does not adversely affect the integrity of the protected natural area concerned and after consulting the public in accordance with the relevant legislation.

(7) By way of exception to the provisions of paragraph (6) where the appropriate assessment reveals significant adverse effects on the protected natural area and, in the absence of alternative solutions, the plan or project must nonetheless be carried out on imperative grounds of overriding public interest, including social or economic, the competent authority for the environmental protection issues the environmental agreement, the environmental permit or the Natura 2000 permit, as the case may be, only after the necessary compensatory measures have been taken to protect the overall coherence of the Natura 2000 network.

(8) In the situations provided in paragraph (7), the central public authority for environmental protection and forests informs the European Commission of the compensatory measures adopted.

(9) Where sites included in the Natura 2000 network identified under the legislation in force host a priority natural habitat type and/or a priority species, the only considerations that may be invoked for the issuance of the environmental agreement, the environmental permit or Natura 2000 advice, as appropriate, are those concerning:

- a) public health or safety;
- b) certain beneficial consequences of major importance for the environment;
- c) other overriding reasons of major public interest over which the European Commission has obtained its opinion.

(10) In the procedure for the issuance of regulatory acts for plans, projects and/or activities that may significantly affect the natural protected areas of Community interest, the competent authorities for environmental protection shall request and take into account the opinion of the administrators, respectively of the custodians of the protected natural areas.

(11) Administrators and custodians of protected areas of national and/or community interest, in order to take into account all aspects of the field, shall be consulted by the environmental authorities competent in the environmental project/ plans/activities environment stage which can significantly affect protected natural areas.

b) National application practice

The evaluation of the significant effects of the projects, especially if they are near the Natura 2000 sites are not realized objectively by experts. Most of the times there are no scientific arguments in the

screening decisions that would support the conclusion that the appropriate assessment is not needed. The arguments are most of the times that the protected area is too far (e.g., 200m, 500m, 1 km away) without a proper analysis of the protected species, their habitat and possible interaction with the project activities or results.

The Romanian legislation establishes that the Appropriate Assessment could be done either for new projects also subject to EIA/SEA and for projects that are not subject to the EIA/SEA but could have possible significant impacts of the project/plan on the Natura 2000 Site. However, there are certain projects that started before the Natura 2000 areas were established and are still under construction (Defileul Jiului (EN: Jiu Gorge) case, see part 2.3). For such cases, the documentation related to the project and its impacts are not updated and no screening decisions made, although the projects are about to destroy entire habitats.

There are also projects started and put into operation before the Natura 2000 Site network was established. After the establishment, the industrial facilities have undergone refurbishments and EIA permits or operating permits were granted (e.g IED permits for coal power plants, see part 2.3 for examples). For this category of activities, the Romanian legislation does not clearly stipulate that the AA is necessary. As common practice, Natura 2000 site and the protected species are not mentioned in the documentation approving the further functioning of the projects and no mitigation or monitoring measures are envisaged. In a few cases, where the Natura 2000 sites are given some attention (e.g. in the case of Reci wood processing plant, see case description in part 2.3), the screening does not correspond to the requirements of the Union law. Specifically, scientific argumentation that would remove doubt of the impacts of the project is not given, where potential for impacts is evident due to location (e.g. situated adjacent to the Natura 2000 site) and volume of impacts (e.g. emission levels comparable to coal-fired plant) of the project.

2.2 Which is the **EU law** in question?

1) **EU law**

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

Article 6

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

2) **CJEU case law**

Case C-127/02 Waddenzee, paragraphs 45 & 49

“In the light of the foregoing, the answer to Question 3(a) must be that the first sentence of Article 6(3) of the Habitats Directive must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”

“The answer to Question 3(b) must therefore be that, pursuant to the first sentence of Article 6(3) of the Habitats Directive, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project.”

Case C-538/09 Commission v Belgium, paragraphs 50-64

„It should be borne in mind that even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration (see, to that effect, with regard to Directive 85/337, Case C-392/96 Commission v Ireland, paragraph 66). It follows that a Member State cannot assume that categories of plans or projects defined by reference to spheres of activity and special installations will, by definition, have a low impact on humans and on the environment”.

„The Kingdom of Belgium mentions the obligation to comply with the Environment Code, although it does not state specifically how the provisions of that code, read in conjunction with the general conditions, are capable of protecting the environment. It is clear from the foregoing that the Kingdom of Belgium has not provided evidence enabling the Court to determine whether the provisions which that Member State has adopted allow it to be excluded, on the basis of objective information, that any plan or project subject to that declaratory scheme will have a significant effect on a Natura 2000 site, whether individually or in combination with other plans or projects”.

„In the light of the foregoing considerations, it must be held that, by not requiring an appropriate environmental impact assessment to be undertaken for certain activities, subject to a declaratory scheme, when those activities are likely to have an effect on a Natura 2000 site, the Kingdom of Belgium has failed to fulfil its obligations under Article 6(3) of the Habitats Directive”.

Case C-182/10, Solvay and others, paragraph 65-70

„Those (Article 6(3)) obligations are incumbent on the Member States by virtue of the Habitats Directive regardless of the nature of the national authority with competence to authorise the plan or project concerned. Article 6(3) of the Habitats Directive, which refers to the ‘competent national authorities’, does not lay down any special rule for plans or projects approved by a legislative authority. That status consequently has no effect on the extent or scope of the obligations imposed on the Member States by Article 6(3) of the Habitats Directive”.

„The answer to Question 5 is therefore that Article 6(3) of the Habitats Directive must be interpreted as not allowing a national authority, even if it is a legislative authority, to authorise a plan or project without having ascertained that it will not adversely affect the integrity of the site concerned”.

Case C-418/04 Commission v Ireland, paragraphs 229 – 231

„Those two (EIA and SEA) Directives contain provisions relating to the deliberation procedure, without binding the Member States as to the decision, and relate to only certain projects and plans. By contrast, under the second sentence of Article 6(3) of the Habitats Directive, a plan or project can be authorised only after the national authorities have ascertained that it will not adversely affect the integrity of the site. Accordingly, assessments carried out pursuant to the EIA Directive or SEA Directive cannot replace the procedure provided for in Article 6(3) and (4) of the Habitats Directive”.

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

Below you can find a description of a few selected cases which illustrate the systemic problems with the Member States' laws and practice described in part 2.1 of the complaint.

1) Slovakia

a) Reconstruction of the forest road under the pretext of reconstruction of the cycle path.

(Screening Decision of District Environmental Office in Prešov No. OU-PO-OSZP1-2017/042042-8/KM-R issued on November 10th 2017.)

Objective of the decision was to assess whether the proposed activity "Cycle route reconstruction" will be subject to an appropriate assessment of the impact on Natura 2000 sites, according art. 6 (3) of the Habitats Directive.

Activity is proposed to be realized in the territory, which is located in the site of Community importance Bukovske Hills (SKUEV 0229) and in a protected bird area Bukovske Hills (SKCHVU002), which are part of the National Park Poloniny.

The decision states that the proposed activity will probably not have a significant impact on the integrity of the NATURA 2000 sites in terms of the conservation objectives and protected habitats and species. Therefore, it is not necessary to carry on an appropriate assessment (as part of Environmental Impact Assessment).

Deficiencies of decision: The decision did not take into account the impacts resulting from the fact that the planned reconstruction of the cycle route is a de facto reconstruction of the forest road (with a width of 3 meters). Reconstruction of the forest path will undoubtedly increase the traffic of motor vehicles in the area. The increased traffic of motor vehicles in remote and inaccessible areas will undoubtedly be a disturbing factor for the species occupying the area. Motor vehicles in a area are mainly used in relation to wood harvesting and hunting. Enabling their increased traffic will undoubtedly have a direct impact on the increased intensity of wood harvesting and hunting. However, these considerations have not been taken into account in the screening decision. In addition, the planned reconstruction will lead to the border with Poland, where it will be directly linked to the existing forest road and will serve as a tourist link between Poland and Slovakia, which will further increase the intensity of the use of the road by motor vehicles.

b) Increasing of planned timber harvesting

(Screening Decision of the District Environmental Office in Prešov No. OU-PO-OSZP1-2016/0012381-15/KM-R issued on August 23, 2016.)

Objective of the decision was to assess whether the proposed action, "Increased planned wood harvesting", should be subject to an appropriate assessment of the impact on Natura 2000 sites, according art. 6 (3) of the Habitats Directive.

The activity is proposed to be carry out in the sites of Community importance Hubková (SKUEV 0205), Makovica (SKUEV 0230), Beskyd (SKUEV 0387) and in the Protected bird area Laborec Highlands (SKCHVU011).

The decision states that the increasing of planned timber harvesting in the Natura 2000 sites as compared to what was approved in the Forest Management Plan for a period of 10 years, will probably not have a significant impact on the integrity of NATURA 2000 sites in terms of the conservation objectives and protected habitats and species. Therefore, it is not necessary to carry on an appropriate assessment (as part of Environmental Impact Assessment).

Deficiencies of the decision: In the Natura 2000 areas where forest biotopes are being protected, it was proposed to change the intensity of timber harvesting, to increase the extent of areas of wood harvesting in forest areas from small-scale (up to 3 hectares) to large-scale (up to 5 hectares), and to increase the total area, where the wood harvesting is planned. This clearly has a negative impact on the protected habitats. Nevertheless, the competent authority has determined that such an intervention in the forest areas which are the subject of Natura 2000 protection are not significant enough to warrant an appropriate assessment.

2) Bulgaria

a) The Minister of Environment and Waters Decision No. EO-7/2017

(Decision No. EO-7/2017 of Minister of Environment and Waters (on the assessment of the need to carry out environmental assessment – screening), dated 07.11.2017)

Objective of the decision was to decide the need to carry out environmental assessment for the work project for search and exploration of crude oil and natural gas in the field “Block I-11 Vranino”.

The activity is located in the North East of Bulgaria, in Dobridzha region, and the following Natura 2000 sites could be affected: the Site of Community Importance (SCI) Complex Kaliakra (BG0000573), SPA Bilo (BG0002115), SCI Krajmorska (Coastal) Dobrudzha (BG0000130) and SCI Lake Durankulak (BG0000154).

The decision concludes that an environmental assessment should be carried out under the provided conditions but at the same time it states that there is no need for appropriate assessment because the project is not likely to have significant negative impacts on the natural habitats, populations, habitats of species subject to protection in the protected areas.

Deficiencies of the decision: The minister does not provide any sound evidence for his decision not to carry out an appropriate assessment within the environmental assessment but states in general and vague terms in the reasoning of the Decision that the whole work project is not likely to have significant negative impacts on Natura 2000 sites because the activity is not likely to damage permanently, destroy or fragment the natural habitats or habitats of species. No noise, emissions, and waste are expected to be generated in type and quantity to have a significant negative impact on conservation objectives of the protected areas and protected habitats and species. It is claimed that the geological exploration activities in an area of 397.42 sq.km would not have any long-term impacts on conservation objectives of the protected areas nor species or habitats protected there. No scientific criteria for such assessment and conclusions are provided.

b) Procedures of land use permanent change (case of Kaliakra)

Decision No.38 BH-OC/2015 of the Regional Inspectorate for Environment and Waters – Varna

The activity is located in the region of Dobrudzha, within the boundaries of the Site of Community Importance (SCI) Complex Kaliakra (BG0000573) and SPA for protection of wild birds Kaliakra (BG0002051).

The decision is a good example of practice that the competent authorities (the Regional Inspectorate for Environment and Waters in this case) do not take in their decisions into proper consideration the compatibility of the projects with the Natura 2000 site’s conservation objectives either individually or in combination with other plans or projects. With its decision the RIEW decided that an investment proposal – a garden for growing of cucumbers - on area of 24 decares within the boundaries of two Natura 2000 sites does not need an appropriate assessment because the proposed activity is not in gross contradiction (emphasis ours) and it does not affect the conservation objectives of the Natura 2000 sites. In addition, it states that although the investment proposal is destroying 0.123 % of the priority habitat Ponto-Sarmatic steppes, it is not in gross contradiction and it does not affect the conservation objectives of the habitats. The RIEW does not provide any scientific and detailed arguments for its negative screening decision. According to the Bulgarian Society for Protection of Birds, expressed in a complaint related to the case to the Minister of Environment and Water already in 2008 within an EIA procedure there was an unlawful change of permanent land use of the territory – from pasture to a field.

3) Romania

a) Reci wood processing factory and biomass power plant (over 60 MW)

Environmental Permit No 1/2014 of Environmental protection Agency Covasna.

Objective of the decision was to approve two industrial facilities (wood processing factory and biomass power plant). The two industrial facilities were built in the same location by two different legal persons. The two legal persons, however, have the same shareholder, Gerald Schweighofer. The projects were promoted within a period of three months from one another. The biomass power plant

is also necessary to produce the electricity needed by the wood factory. The factory was built on 68 ha and its capacity is of 800.000 sq. m per year, making it the largest wood processing factory in Romania.

The activity was located near several Natura 2000 sites (Mestecănișul de la Reci (ROSCI0111), Valea Râului Negru (ROSPA0147), Munții Bodoc - Baraolt (ROSPA0082) at distances between 800 m to 2 km).

Deficiencies of the decision: The EIA process was carried out only for the biomass plant. Based on the report, the authority decided that no AA was needed. The decision was not based on scientific data, but only on suppositions issued by non-experts – no biodiversity specialists were included. For the wood processing factory, although it is of an outstanding capacity and dimensions, no EIA and no AA were deemed to be necessary according to the screening decision issued by Covasna Environmental Protection Agency.

b) Defileul Jiului (Jiu Gorge)

Environmental Agreement 5/2003 of Gorj Environmental Protection Agency, building permit No 7/2016 of Hunedoara County Council and building permit No 16/2012 of Gorj County Council.

Two hydropower plant projects were approved by an environmental permit in 2003. At the time the location of the project was not a Natura 2000 Site.

In 2005 The National Park Defileul Jiului became protected at the national level, and in 2007 it became also a Natura 2000 site “RO SCI 0063 “Defileul Jiului”. The River Jiu is one of the most important rivers in Romania, also regarding the biodiversity. The hydropower plants are being built upstream, close to the springs, and are going to direct the water flow through huge tubes, destroying the entire biodiversity in the Natura 2000 Site.

Deficiencies of the decision: in 2017 the construction works were still not finished. Several construction permits were issued, but the documentation was not upgraded according to the new legislation and no AA was conducted.

NB! Several court cases were filed by The National Environmental Guard and by Bankwatch Romania regarding this issue. Both building permits were cancelled by The Court of Appel according to the decision no 5378/14.12.2017. Hidroelectrica, supported by the Romanian Government according to the recent press releases, filed an extraordinary appeal against this decision (contestation for annulment).

c) Turceni and Rovinari Coal power plants

IED Permit 1/2014 of Gorj Environmental Protection Agency for Turceni Power Plant. Rovinari Power Plant is currently functioning without an IED permit because the previous one expired in 31st of December 2017.

The coal power plants Rovinari and Turceni were commissioned before 1989, during communism. Several major refurbishments were done, and operating permits have been issued after 2007, but no AA was ever conducted.

In 2007 The River Jiu was declared a Natura 2000 Site on that sector, ROSCI0045 “Coridorul Jiului”, upstream from the power plants. The power plants are using the river water for the cooling system and are located: Turceni a few hundred meters from the site’s limits and Rovinari upstream of Turceni Power Plant and about 6 km away from nearest site location.

Deficiencies of the decision: The authorities claim that no AA is needed because there is no possible impact on the biodiversity protected in the Natura 2000 Site. However, no scientific studies that would support such conclusions have been conducted.

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

Yes, please specify below No I don't know

Many of the projects that are not properly screened as regards the “appropriate assessments” in the affected Member States could be eligible for EU funding. As the issue is systematic, it is, however, not possible to give a definitive list of such projects and funding.

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 No I don't know

3. Previous action taken to solve the problem*

Have you already taken any action in the Member State in question to solve the problem?*

IF YES, was it: Administrative Legal ?

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.

Slovakia

In 2013, an amendment of Act no. 543/2002 Z. on Nature and Landscape Protection was prepared and approved. In the legislative process, it was suggested from a group of environmental NGOs that the Nature Conservation Act should also contain rules on the process of appropriate assessment according to Art 6(3) of the Habitats Directive. It was proposed that, in the case of plans and projects which are not covered by the EIA process, it will be only required to carry out an appropriate assessment process (without the need to carry out a full EIA process just due to the effects on Natura 2000 sites). This possibility was discussed directly with the Minister of the Environment. Negotiations were unsuccessful and the proposed adaptation of the appropriate assessment process was not incorporated in the amendment to the Nature Conservation Act.

Bulgaria

Since the accession of Bulgaria to the European Union there are on-going attempts to solve the problem with the non-performance of appropriate assessment of projects and plans that may have a significant impact on Natura 2000 sites. Most of them are driven by active environmental NGOs and their coalitions, e.g. For the Nature (<http://en.forthenature.org>). The situation is partly caused by the fact that Bulgaria has the third largest network of Natura 2000 sites covering about 34 % of its territory coupled with the extensive economic transition and related infrastructure development (e.g. along the Black Sea coast) which imposes strong pressure on the protected areas and the biodiversity.

A case to the point is the ECJ case – C-141/14 in which the Court found that Bulgaria failed to include all the territories of the important bird areas (IBAs) in the special protection area (SPA) covering the Kaliakra region ('the Kaliakra SPA'), the Republic of Bulgaria has failed to classify as a special protection area the most suitable territories in number and size for the conservation. The Bulgarian Society for Protection of Birds filed a complaint to the European Commission as early as in 2008 claiming the problem with the insufficient scope of the geographical area covered by the Kaliakra SPA and the adverse effects of several business projects on natural habitats and habitats of bird species.

Through the years active citizens and NGOs have raised these issues with the competent authorities, e.g. drawn the attention of Ministry of Environment and Waters to destruction of the priority habitats not sanctioned by the relevant Regional inspectorate. Many complaints against administrative decisions authorizing developments without proper AA have been filed in the administrative courts. In some cases the civil society resorted even to street protests like the on-going protest against developments in the National Park Pirin which could be authorized by the Decision of the Council of Ministers.

In some cases, decisions that were violating the rules related to appropriate assessments were repealed. There are good sources of information about court cases and administrative proceedings related to environmental assessments, incl. AA: (e.g. for the impact of dams and hydro power plants on the rivers <http://www.reki.bg/2017/12/>). Although there have also been many court cases which support the proper implementation of Bulgarian and EU legislation concerning Natura 2000 sites, the administrative practice continues to be non-compliant, as exemplified by the cases attached to this complaint.

Romania

Legal action on the national level has been taken by several organisations (Greenpeace, Bankwatch, Newer Weg) both against the Reci wood processing factory and biomass power plant as well as hydro power plants in the Jiu Gorge. In the case of development plans in Reci, the cases were rejected by the national court. In the Jiu Gorge case, the decision of the Court of Appeal has been challenged by the developer and the Government of Romania.

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

Slovakia – issue no longer pending
Bulgaria – some cases pending, some settled
Romania – some cases pending, some settled

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:

- 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 – Ref:.....
- 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.

As supporting documents, documents related to specific cases of infringements described above could be sent.

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.*