



## **Master Thesis**

# **The progress of Bulgaria in the implementation of the Natura 2000 network and the main stumbling blocks upon its way**

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May 2012

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<sup>1</sup> A statement by Michael Baltzer, Director of the WWF’s Danube-Carpathian Programme, URL: <http://wwf.panda.org/index.cfm?uNewsID=88660> accessed 4.03.2012,

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# Chapter 1

## Thesis outline

In its Opinion on Bulgaria's Application for Membership of the European Union from 1997 the Commission wrote that "Bulgaria's environmental problems are very serious, and have not been effectively addressed". The Commission acknowledged that Bulgaria has "impressive biodiversity" and nature protection has been placed as an ever important objective of the country's EU accession aspirations. The environmental objectives have turned to be among the hardest ones to attain. In order to become a Member State of the EU, among the other conditions Bulgaria had to implement the Natura 2000 network. The Natura 2000 network has a central place in the European Union nature and biodiversity protection policy. It consists of a network of protected areas established under Directive 92/43/EEC for the habitats and Directive 2009/147/EC on the conservation of the wild birds. Its aim is to assure the protection of Europe's most valuable species and habitats and so far it spans on about "26.000 protected areas in all the Member States and an area of more than 750.000 km<sup>2</sup>, which is 18% of the EU's land area"<sup>2</sup>. The Commission has an important role in the entire network because it's a system connecting 27 Member States and some coordination and management is vital. The development of this network is an important and complex process with great impact on nature and society. "It is the largest network of protected areas in the world, and a testament to the importance that EU citizens attach to biodiversity."<sup>3</sup> The system works in the following way – the Member States are required to propose sites, a selection is made on the basis of the proposals and then management plans are prepared for the protection of the designated areas. It is important to note that part of the territories which are under Natura 2000 are privately owned and their future management needs to be sustainable both ecologically and economically.<sup>4</sup> In Bulgaria the process of the implementation of the Natura 2000 network is coordinated and managed by the Ministry of Environment and Water. In 2002 the country adopted the Biological Diversity Act which is the main national legal basis for the development.

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<sup>2</sup> European Commission, DG Environment, URL: [http://ec.europa.eu/environment/nature/index\\_en.htm](http://ec.europa.eu/environment/nature/index_en.htm)

<sup>3</sup> European Commission, DG Environment, URL: [http://ec.europa.eu/environment/nature/index\\_en.htm](http://ec.europa.eu/environment/nature/index_en.htm)

<sup>4</sup> European Commission, DG Environment, URL: [http://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/index_en.htm)

In this research I will study the progress of the implementation of the Natura 2000 network in Bulgaria so far as well as the main problems that the country faces upon its way. As some such problems I can list the process of selection of sites, the performance of Environmental Impact Assessments (EIA) according to Article 6(3) of the Habitats Directive, the funding of the management of the network, the protests of the landowners claiming infringement of their private property rights, etc. I will try to determine which the main problems are from a legal perspective and what is causing them. In the final chapter of this research I will make a brief comparison between the progress of Bulgaria and that of Romania in the implementation of the Natura 2000 network. I've selected Romania because it is a neighbouring country and furthermore because Bulgaria and Romania acceded to the EU together and my assumption would be that they have made the same progress. Based on the results of the comparison and on the experience of Romania, I will be able to answer the interesting question whether the two newcomers to the EU are sharing problems and I will try to pinpoint some probable solutions.

My main research question would be:

**What is the progress of Bulgaria in the implementation of the Natura 2000 network and which are the main stumbling blocks upon its way?**

In order to answer it, I have developed the following subquestions which will guide and structure my research :

1. What were the EU preaccession conditions in the negotiations with Bulgaria in regard to nature conservation and how well did Bulgaria manage to fulfill them?
2. What is the current status of the implementation process and why?
3. Which are the main problematic areas from a legal perspective connected with the implementation of the Natura 2000 network and why?
4. What are the causes of the problems that Bulgaria is facing and how are the main stakeholders trying to solve them?
5. What is the progress of Bulgaria with respect to the Natura 2000 implementation in comparison with the neighbouring country Romania?
6. Are there any common problems that the two countries are facing and how are the stakeholders in Romania approaching them?

I will organize this research in four chapters. This is the first chapter providing an overview of the whole thesis and its structure.

The second chapter will aim to give an answer to the first two subquestions – namely the preaccession conditions that Bulgaria had to meet in terms of nature conservation and the current status of the implementation of Natura 2000 in Bulgaria. I plan to answer them by examining the agreements for Accession Partnership with Bulgaria, the Commission’s regular reports on the progress of Bulgaria (1999 - 2007), the relevant legislation on EU and national level that concerns the implementation of Natura 2000 – more specifically the Habitats Directive, the Wild Birds Directive and the Bulgarian Biological Diversity Act of 2002. I will also examine the Commission’s website on Nature & Biodiversity which contains important information on the essence of the Natura 2000 network and its current development. The website of the Bulgarian Ministry of Environment and Water that is coordinating and managing the implementation process of the network in Bulgaria, also contains valuable resources for the current research mainly in terms of national legislation and progress of the programme.

Based on the findings in the second chapter, in the third one I will focus on the main stumbling blocks that Bulgaria is facing, (thus answering subquestions 3 and 4). I will present the main problems and I will select one or two of them – the major and the most interesting ones from a legal point of view – in order to elaborate on them and to delve into their possible causes and solutions. In order to determine the main problems I will find the regular reports of the Commission very helpful. I will check if there is any relevant case law of the ECJ concerning Bulgaria or some of the neighbouring Member States on this question, too. I will check if there are any infringement procedures started against Bulgaria on the same issues and if yes I will elaborate further on them. I will also to check the publications of the Bulgarian media on the subject. It would be useful to explore the websites and the publications of some prominent NGOs dealing with environmental issues (like WWF, IUCN, etc.) operating in Bulgaria, as well as those of some local NGOs. I will also contact a representative from the Bulgarian Ministry of Environment and Water and ask for his/her opinion. I will also contact representatives from DG Environment of the European Commission and I will try to obtain their opinion.

In the fourth chapter I’m going to do a brief comparison between the progress of Bulgaria in terms of implementation of the Natura 2000 network and that of the neighbouring Member State

Romania (and give an answer to my last two subquestions). As already mentioned above, I've selected this country because it is neighbouring to Bulgaria and my assumption is that they will share the main problems in terms of biodiversity conservation that they face. Bulgaria and Romania acceded to the European Union together and I assume that they would have made the same progress in terms of development of the Natura 2000 system. However, this can only be determined once examined. In order to do the comparison, I will check the information published on the website of the Commission, as well as its reports. I will see if there is any previous research on the topic of the progress of Romania. I believe that the EU preaccession conditions set in front of Romania were quite similar to the ones that Bulgaria had. I think that this analysis will help me determine the actual progress of Bulgaria in implementing the network of conservation areas in a broader and real-life context. Besides, I will also manage to answer the interesting question if the major problems that Bulgaria is facing are shared by other Member States or are country-specific.

And, finally, in conclusion I hope that I will manage to answer my main research question and defend my position with sound arguments. On the basis of the comparison analysis in the last chapter I will try to determine the state of the Bulgarian progress in terms of nature conservation in a regional context. Using the experience of Romania and in case it is confronted with the same major problems while implementing and managing the Natura 2000 network, I will try to suggest possible solutions or workarounds.

## Chapter 2

### The preaccession conditions in terms of nature conservation and the current status of the implementation of the Natura 2000 network in Bulgaria

#### 1. Introduction

In this chapter I am going to study the progress of Bulgaria in fulfilling the preaccession requirements of the EU in the environmental sphere and in nature conservation in particular. The chapter will provide answers to my first two subquestions – what those preaccession conditions were and how well Bulgaria managed to fulfill them, as well as to determine the current status of Natura 2000 implementation in the country. In order to do that, I will review the Commission's Regular Reports and the European and national legislation in the area of nature protection. The findings in this chapter will reveal a lot about the period of most dynamic progress in Bulgaria in terms of transposition of the environmental *acquis*, as well as point to the main issues that the country has been facing.

#### 2. Nature conservation in Europe

Nature is our home and the sad fact is that in the recent decades we have been neglecting it more and more. "Humanity's survival depends on the conservation of nature – of the natural resources of the planet in the form of soil, water, the atmosphere, and of the forests, plants, and life forms that these sustain."<sup>5</sup> What is the cause of even more concern is that according to scientists the biological diversity is currently at its maximum and it "must be regarded as a non-renewable resource"<sup>6</sup>. Since biological diversity cannot be compensated by human innovation, this makes it "irreplaceable" and a number of international documents speak of its "intrinsic value" and that it constitutes "common heritage" and "common concern"<sup>7</sup>. The 1992 Convention on Biological Diversity (CBD) of the UN – "one of the most widely ratified of all environmental conventions"<sup>8</sup> - gives the following definition of biological diversity: "the variability among living organisms

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<sup>5</sup> Birnie, P., A. Boyle, C. Redgwell, *International Law and the Environment*, 2009, 3<sup>rd</sup> edn, OUP, 583

<sup>6</sup> *Ibid.*, 584

<sup>7</sup> *Ibid.*, 584, 618, 600

<sup>8</sup> *Ibid.*, 612



from all sources, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part” including diversity “within species, between species and of ecosystems” (Article 2). The Convention on Biological Diversity is one of the landmark international agreements in the field, with its main objectives being “(a) the conservation of biodiversity, (b) the sustainable use of its components, and (c) the fair and equitable sharing of the benefits arising from the utilization of genetic resources”<sup>9</sup>. It is exactly the CBD and the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats of the Council of Europe (the Bern Convention) that lay the foundations of the nature protection legislation in the EU. Directive 2009/147/EC of the European Parliament and the Council of 30 November 2009 on the conservation of the wild birds (the Birds Directive) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) have their roots in the above mentioned international documents and form the basis of the EU nature conservation law. “Natura 2000 is the centrepiece of EU nature and biodiversity policy. It is an EU-wide network of nature protection areas established under the 1992 Habitats Directive. The aim of the network is to assure the long-term survival of Europe's most valuable and threatened species and habitats. It is comprised of Special Areas of Conservation (SAC) designated by Member States under the Habitats Directive, and also incorporates Special Protection Areas (SPAs) which they designate under the 1979 Birds Directive. Natura 2000 is not a system of strict nature reserves where all human activities are excluded. Whereas the network will certainly include nature reserves most of the land is likely to continue to be privately owned and the emphasis will be on ensuring that future management is sustainable, both ecologically and economically.”<sup>10</sup> According to Art.3 of the Habitats Directive the main aim of the Natura 2000 network is for the protected areas “to be maintained or, where appropriate, restored at a favourable conservation status”.

### **3. Natura 2000 in Bulgaria**

Since the fall of the communist regime in 1989, Bulgaria started its development as a democratic country with a market economy. In December 1995 Bulgaria filed its application for membership

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<sup>9</sup> Convention of the Biological Diversity of the UN, 1992, URL: <http://www.cbd.int/doc/legal/cbd-en.pdf>, Art.1, 3

<sup>10</sup> DG Environment, European Commission, URL: [http://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/index_en.htm) accessed 26 January 2012

of the EU. The Government Memorandum which accompanied the application stated that “Bulgaria’s membership of the European Union constitutes a strategic goal and is a matter of national interest. It will consolidate the results of the democratic reforms which have been carried out since the beginning of the 1990s and will represent a political acknowledgement of their success...Bulgaria’s aspiration for full membership of the EU reflects the will and readiness to take part in the realisation of the vision of a united Europe living in peace, prosperity and social justice”.<sup>11</sup> Bulgaria’s application was assessed in accordance with the Copenhagen criteria of 1993, verifying if the country satisfies the political and economic requirements, as well as if it can adequately assume the obligations of membership.

In terms of “Quality of Life and Environment” in its **Opinion of 1997** the Commission said that “the Union’s environmental policy, derived from the Treaty, aims towards sustainability based on the integration of environmental protection into EU sectoral policies, preventive action, the polluter pays principle, fighting environmental damage at the source, and shared responsibility. The *acquis* comprises approximately 200 legal acts covering a wide range of matters, including water and air pollution, management of waste and chemicals, biotechnology, radiation protection, and nature protection.”<sup>12</sup> It also stated that the Europe Agreement with Bulgaria takes those considerations into account. The European Commission underlined that “Bulgaria’s environmental problems are very serious, and have not been effectively addressed.”<sup>13</sup> It listed Bulgaria’s environmental issues among which the air pollution and the poor quality of the ambient air, the big problems with the waste, the soil pollution and erosion, etc. In terms of nature protection the Commission said that “Bulgaria enjoys an impressive biodiversity and the protection of the country’s natural heritage has traditionally been a priority.”<sup>14</sup> “After 1990, a Ministry of Environment was created, and an environmental framework law was passed (1990, amended subsequently), introducing *inter alia* the “polluter pays” principle and environmental impact assessment.”<sup>15</sup> The Commission underlined as major issues that the environmental spending in Bulgaria up to that moment had been low and that there had been lack of adequate legislation in the field. It was affirmed that “with respect to effective compliance

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<sup>11</sup> Commission Opinion on Bulgaria’s Application for Membership of the EU, DOC/97/11, Brussels 15 July 1997, 8

<sup>12</sup> *Ibid.*, 94

<sup>13</sup> *Ibid.*, 94

<sup>14</sup> *Ibid.*, 94

<sup>15</sup> *Ibid.*, 94

with EC environmental standards, Bulgaria still has to make even greater progress”<sup>16</sup> and the need for “development of a comprehensive, cost-effective and focused environmental strategy and of adequate implementation and enforcement structures.”<sup>17</sup>

The conclusion of the Commission stated that “for the environment, very important efforts will be needed including massive investment and strengthening of administrative capacity to enforce legislation. Full compliance with the *acquis* could be expected only in the very long term and would require increased levels of public expenditure.”<sup>18</sup> The Commission said that negotiations for accession with Bulgaria should be started as soon as the country demonstrates sufficient progress in all problematic areas specified, including the environment.

### **3.1. Progress towards accession**

As stated in Agenda 2000, the Commission had the responsibility of monitoring the progress towards membership of each applicant country from Central and Eastern Europe and to submit regular reports to the European Council, the first one being due at the end of 1998.<sup>19</sup> “On 30 March 1998 the accession process was formally launched by a meeting of the Ministers for Foreign Affairs of the fifteen EU Member States, the ten Central and East European applicant states and Cyprus. In advance of this meeting country specific Accession Partnerships were adopted to support the applicant countries in their preparations for membership. These documents set out the priorities for further work and the supporting financial assistance available from the EU. In May 1998 Bulgaria presented a first version of its National Programme for the Adoption of the *Acquis* (NPAA) which describes in more detail the actions needed to reach the objectives set out in the Accession Partnership.”<sup>20</sup>

In its **Regular Report of 1998**, the Commission declared that Bulgaria has made some progress since 1997, mainly in adopting legal acts in order to achieve alignment with the EU legislation and better understanding of the environmental problems was achieved. But further substantial efforts were needed in terms of investments, strengthening of the relevant institutions and for the transposition of the framework and horizontal legislation. In terms of the Bulgarian Ministry of

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<sup>16</sup>*Ibid.*, 95

<sup>17</sup>*Ibid.*, 96

<sup>18</sup>*Ibid.*, 121

<sup>19</sup> Regular Report from the Commission on Bulgaria’s Progress towards Accession, 1998, 4

<sup>20</sup>*Ibid.*, 6

Environment and Water (MoEW) the Commission identified the following issues: “lack of qualified administrative personnel, as well as lack of a thorough evaluation of the administrative costs for the adoption and implementation of the *acquis* are problems that need to be addressed. Bulgaria needs to strengthen administrative capacity in these institutions, including monitoring laboratories and implementation and enforcement structures. There is the need to encourage the improvement of the co-ordination between inspectorates.”<sup>21</sup>

The progress of the country with regard to the short-term goals set by the Accession Partnership in terms of environment can be summarized with the following: “Bulgaria has prepared strategic plans on implementation and enforcement of the environmental *acquis*, but they still need to become operational. Progress was made in the air and the waste sector, but further work is also needed in the other framework legislation sectors for example water, pollution control and risk management.”<sup>22</sup>

In its **Regular Report on Bulgaria from 1999**, the Commission acknowledged that further progress was made by the country in terms of harmonization of the legislation with the *acquis*. The Commission reiterated that the strategic plans for implementation and enforcement still need to be made operational and that the Ministry of Environment and Water still lacks enough staffing and is in need of restructuring. “As regards *nature protection*, a new Law on Protected Areas and a National strategy for biodiversity has been adopted. The new law reinforces Directorates which manage 3 national parks. 120 additional staff were appointed in 1999 and new rules for the operation of the Directorates and interaction with other ministries have been set.”<sup>23</sup> One of the main concerns in the Report in terms of environment is the lack of environmental strategy how the EU legislation requirements are to be implemented. “One of the vital issues when implementing the environmental *acquis* is to have a good estimate of the related costs. Bulgaria has not yet established a detailed financing plan estimating the costs over time.”<sup>24</sup>

The Report identified as a huge problem in the environmental sector in Bulgaria the lack of large-scale investments. The Ministry of Environment and Water constituted another point of criticism. “The ability of the Ministry of Environment and Water to develop and promote policy

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<sup>21</sup>*Ibid.*, 44

<sup>22</sup>*Ibid.*, 48

<sup>23</sup> 1999 Regular Report from the Commission on Bulgaria’s Progress Towards Accession, 13/10/99, 48

<sup>24</sup>*Ibid.*, 48

and strategies remains weak. Understanding of EU legislation and the measures for implementation and development policy in the environmental sector has improved. A clear mechanism for monitoring at the regional level and control in general on the approximation process should be developed... There are not enough developed capabilities to make financial/economic evaluations and plans. More training is required in the preparation and assessment of environmental impact assessments, especially at regional level.”<sup>25</sup>

The overall assessment given by the Commission in terms of environment was the following: “Bulgaria has made good progress in adopting legal acts with a view to harmonising its legislation to EU legislation, notably in transposition of horizontal and framework legislation on waste, air and water. However, further progress is required to prepare detailed approximation programmes of related legislation for air, water, waste, industrial pollution and risk management, chemicals, GMOs and noise emission as well as an overall multi-annual strategy for the environment and update the national action plan, including an estimate of investment costs required for the implementation of the *acquis*. Environmental monitoring and EIA should be strengthened at national and regional level. Therefore, this criteria has been partially met.”<sup>26</sup>

In the **2000 Regular Report**, the Commission made clear that ““progress” has been measured on the basis of decisions actually taken, legislation actually adopted, international conventions actually ratified (with due attention being given to implementation), and measures actually implemented.”<sup>27</sup> The Environment was present in the Report under *Chapter 22*. The Commission acknowledged that “Bulgaria has achieved further progress in terms of transposition of the EC environmental *acquis* and for the preparation of the implementation of EC directives.”<sup>28</sup> “In September 2000, a National Programme for the introduction and implementation of EC legislation was adopted by the Council of Ministers. This aims to give an overview of the full range of issues related to taking on the environmental *acquis*.”<sup>29</sup> The country has also developed five national sectoral programmes among which a national biodiversity conservation strategy. “For **nature protection**, some progress has been made both in legislation and implementation. In April 2000, the Protected Areas Act was amended, and a Medicinal Plants Act came into force. A Regulation on development plans for the management of protected areas was published.

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<sup>25</sup> *Ibid.*, 66

<sup>26</sup> *Ibid.*, 73

<sup>27</sup> 2000 Regular Report from the Commission on Bulgaria’s Progress Towards Accession, 8 November 2000, 6

<sup>28</sup> *Ibid.*, 70

<sup>29</sup> *Ibid.*, 71

Bulgaria has identified 140 sites, covering 12% of Bulgarian territory, as special protected areas. The requirements of the 'Birds' and 'Habitats' directives have not been fully integrated into Bulgarian legislation. The institutional strengthening of the Directorates of the 3 national parks is continuing, and 80 additional persons have been appointed.”<sup>30</sup>

In its overall assessment the Commission said that Bulgaria has achieved some progress in the transposition of the legislation of the *acquis*. However, it underlined that the Ministry of Environment and Water is still weak in its attempts to promote policies and strategies and that further work is required in the field of nature protection among the rest. Other areas in need of improvement we also specified. “Implementation of legislation adopted remains a problem. Investments remain limited. The structures needed for monitoring the enforcement of legislation are not yet adequate and further training is needed to ensure staff have the necessary knowledge to implement legislation. The mechanism for data collection, analysis and reporting is also very new and not well developed. The Ministry of Environment and Water and its Regional Inspectorates are generally understaffed. The newly appointed EU Integration Unit of the Ministry needs training.”<sup>31</sup> The Commission also reiterated the urgent need that the principle of sustainable development is incorporated in the other sectoral policies. The Commission made the final conclusion that the priority of *Chapter 22* has been partially met.

The Accession Partnership of 2001 specified a number of aims in front of Bulgaria in the environmental sphere. The country had to continue with the transposition of the *acquis* in the field of nature protection, environmental impact assessment, air quality, etc.; it should develop implementation plans; it should strengthen the capacity of the Ministry of the Environment and Water at central and regional level; and it should promote the principle of sustainable development in the other sectoral policies.<sup>32</sup>

In the **2001 Regular Report** on Bulgaria, the Commission wrote that “since the last Regular Report, Bulgaria has made some significant progress in terms of transposition of the EC environmental *acquis*.”<sup>33</sup> “Implementation and cost of alignment remain, however, challenges.”<sup>34</sup> The Commission welcomed the efforts of the authorities to integrate the environmental concerns

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<sup>30</sup> *Ibid.*, 72

<sup>31</sup> *Ibid.*, 73

<sup>32</sup> Proposal for a Council Decision on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria, 2001, 11

<sup>33</sup> 2001 Regular Report on Bulgaria's Progress Towards Accession, SEC(2001) 1744, 13.11.2001, 76

<sup>34</sup> *Ibid.*, 76

in the other policies. “In the field of **nature protection**, progress to align with the Directives on birds was made through adoption of a law on hunting and game protection. In terms of administrative capacity, directorates of the three national parks have been significantly reinforced. Whilst it is difficult to give a precise figure on investment and expenditure on environment, there has been an increase in funding from the national budget, national environmental protection fund and other sources (e.g. municipalities, donor funding and private investors). The total amount is over 2.0% of GDP for 1999.”<sup>35</sup> In its overall assessment the Commission stated that Bulgaria has reached a good level of alignment with the EU environmental legislation and that the situation with the environment has generally improved. However, “achieving full implementation continues to be a challenge. Particular emphasis needs to be put on the development of implementation plans, including financing strategies, and institutional strengthening to ensure proper implementation.”<sup>36</sup> “Bulgaria benefits from a well-preserved nature and wild life that is attracting more and more visitors in many areas of the country. Further transposition is still needed on the habitats directive and certain aspects of the birds’ directive, and concrete implementation measures are still needed. The attention that has been paid to nature protection should be maintained and enhanced.”<sup>37</sup> The Commission insisted again that the capacity of the Ministry of Environment and Water should be strengthened both at central and on regional level. It said that the Ministry had to improve its cooperation with the NGOs and the local populations. It was concluded that the priority has not been met and that “significant further efforts will be needed to *complete transposition and implementation of framework and sectoral legislation according to pre-defined timetable; and to integrate sustainable development principles into the definition and implementation of all other sectoral policies*”.<sup>38</sup>

### ***3.2. Transposition of the Birds and the Habitats Directives***

The Commission’s **Regular Report of 2002** stated that Bulgaria continued its progress in the transposition of the *acquis*. “However, implementation, together with the need for increased

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<sup>35</sup> *Ibid.*, 76, 77

<sup>36</sup> *Ibid.*, 77

<sup>37</sup> *Ibid.*, 77

<sup>38</sup> *Ibid.*, 105

administrative capacity and the cost of alignment, remains a major challenge.”<sup>39</sup> The Commission said that some progress was made in the integration of the environmental considerations into the other policies – like transport and agriculture, but increased efforts were needed on this point especially with respect to the energy sector. The Environmental Protection Act was adopted in 2002 which provided legislative framework for further development of the environmental impact assessments and access to information and industrial pollution protection and control (IPPC). “In the field of nature protection, the Law on Biological Diversity was adopted in August 2002 with a view to transposing the *acquis* on birds and habitats.”<sup>40</sup> The Commission underlined again the serious issue with the administrative capacity – that the staff was insufficient in number and not adequately trained. In its overall assessment the Commission recognized the good progress achieved in terms of alignment but insisted that the efforts should continue. “Achieving full implementation still poses a major challenge for Bulgaria and will take significant time and effort.”<sup>41</sup> The Commission stressed that “close attention needs to be paid to the implementation of the *acquis* in all sectors, particularly as regards... nature protection (management and protection of habitats and species, and strengthening the administrative capacity). This includes the need for enhanced co-ordination with other ministries, notably in the case of investments in infrastructure and nature protection where sound and complete environmental impact assessments must be prepared.”<sup>42</sup> “The majority of industry and of the general public is not well aware of environmental issues and this is a matter of concern, given the role industry could and should play on environmental issues.”<sup>43</sup> It was reminded that significant funding will be needed for the completion of the implementation of the environmental *acquis* and that Bulgaria needs to prepare financial plans, including management plans of the support funds (including ISPA). The bottomline was that negotiations on *Chapter 22* shall continue and “Bulgaria needs to focus on investments, and on reinforcing administrative capacity and implementation within all environment sectors, while continuing progress with transposition.”<sup>44</sup> “In the Strategy Paper ‘Towards the Enlarged Union’, of 9 October 2002, the Commission announced that it would propose, on the basis of the analysis in the 2002 Regular

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<sup>39</sup> 2002 Regular Report on Bulgaria’s Progress towards Accession, COM(2002) 700 final, 9.10.2002, 102

<sup>40</sup> *Ibid.*, 102

<sup>41</sup> *Ibid.*, 103

<sup>42</sup> *Ibid.*, 103

<sup>43</sup> *Ibid.*, 103, 104

<sup>44</sup> *Ibid.*, 105



Reports, detailed **roadmaps for Bulgaria and Romania** before the Copenhagen European Council.”<sup>45</sup> The roadmaps contained further guidance what remained to be done by the two countries in order to satisfy the accession criteria and these were supported by increased financial help. The document states that while Bulgaria continued to meet the political criteria and partially the economic ones, it still had some way to go in order to satisfy the *acquis* criteria. In terms of the chapter that we’re interested in, *Chapter 22 Environment*, “Bulgaria should now focus its efforts in particular on environmental impact assessment, waste management, nature protection, industrial pollution and risk management, chemicals and genetically modified organisms, and nuclear safety and radiation protection.”<sup>46</sup> As areas in need of improvement were mentioned again the need to increase the administrative capacity, the integration of the environmental considerations into the other policies and the need for investments. The Commission identified short term and medium term objectives. The short term objectives were the following: “update the overall assessment of the situation in the environment sector”; “develop implementation plans together with financing strategies”; “focus on planning, identification and availability of financial resources”; “improve administrative capacity”; “ensure that the environmental *acquis*, particularly the Environmental Impact Assessment Directive, is properly implemented in preparing large-scale infrastructure projects”; “continue transposition of legislation in all remaining areas”; “continue integrating environmental protection requirements into the definition and implementation of all other sectoral policies”. The medium term objectives included “progressive implementation of the *acquis* in all sectors, particularly as regards waste management, water quality, industrial pollution and risk management, chemicals and genetically modified organisms and nature protection” and the requirement to “enhance the administrative structures necessary for the full implementation of the *acquis* in all sectors”. By accession Bulgaria had to ensure full transposition and implementation of the environmental *acquis*.

In the Accession Partnership with Bulgaria of 2003 generally the same targets were reaffirmed. The country had to continue with the transposition and full implementation of the *acquis*, to make sure that the necessary plans are prepared and increase the investments in the sector, as

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<sup>45</sup>Communication from the Commission to the Council and the European Parliament. Roadmaps for Bulgaria and Romania, COM(2002) 624 final, 13.11.2002, 2

<sup>46</sup>*Ibid.*, 18

well as to continue its efforts to integrate the environmental considerations into the other policies.<sup>47</sup>

### ***3.3. Closure of Chapter 22 Environment***

The **Commission's Report of 2003** read that "in the field of nature protection, further alignment as regards birds and habitats was achieved through the adoption of a new law on biological diversity in September 2002. Some progress was also recorded on legislation relating to issuing permits for the introduction of non-native species into nature and the preparation of action plans for endangered plant and animal species. Administrative capacity has been increased at central level and in the three national parks."<sup>48</sup> The Report stated that some progress was achieved in awareness raising and the involvement of other groups in the area. As a major improvement was marked that "detailed implementation plans for key EC directives have been developed and adopted together with financing strategies. These now need to be matched by the planned resources and institutional strengthening. This will again require significant time and effort and the elaboration of mechanisms to monitor effective implementation of these plans."<sup>49</sup> The Commission said that the efforts in the sphere of nature protection, among the rest, should be enhanced, especially in the protection of conservation areas and protected habitats and species. As an important point of attention should be regarded the need for environmental awareness-raising, mainly among the public and the industry, "given their role in contributing to successful implementation of environmental legislation."<sup>50</sup>

The Commission concluded that given Bulgaria's progress in the area, the negotiations on this chapter were provisionally closed. It stated, however, that "implementation remains a major challenge, as is the need for increased administrative capacity and the cost of alignment."<sup>51</sup>

In its **2004 Report**, the Commission reminded that "ensuring compliance with the *acquis* requires significant investment, but also brings significant benefits for public health and reduces

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<sup>47</sup> Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Bulgaria (2003/396/EC), 12.06.2003, 6.10.2004, 15, 16

<sup>48</sup> 2003 Regular Report on Bulgaria's progress towards accession, (COM(2005) 534 final), 25 October 2005, 94

<sup>49</sup> *Ibid.*, 95

<sup>50</sup> *Ibid.*, 96

<sup>51</sup> *Ibid.*, 119

costly damage to forests, buildings, landscapes and fisheries.”<sup>52</sup> The Commission said that the country has continued with the “steady progress” and some improvement was also registered in terms of implementation. “A competent authority for strategic environmental impact assessment was appointed, and recruiting and training of additional staff at central and regional level took place. A considerable number of EIA-related decisions were issued. Regarding access to information, centres were established at the executive environmental agency and at nine regional inspectorates.”<sup>53</sup> The Commission also acknowledged the progress in terms of the implementation of the Natura 2000 network. “Additional staff was hired for central and regional level, for the executive environment agency and for the national parks directorates. Training and other public awareness measures on certain aspects of nature protection were organised for administrative staff and non-governmental organisations.”<sup>54</sup> The Natura 2000 was still in the status of establishment and preparatory work was carried on. “More efforts are required in relation to awareness raising and the involvement and participation of stakeholders in implementation. Administrative capacity needs to be enhanced with a view to preparing the protection measures that need to be applied by accession. Training is needed.”<sup>55</sup> The Commission confirmed that *Chapter 22* was closed and added that “on the whole, the continuation of the progress made to improve administrative capacity, an adequate allocation of resources and the full and timely completion of the planned remaining legislative alignment should allow addressing the bulk of issues covered by this chapter and ensure the enforcement of the rules.”<sup>56</sup>

The **2005 Regular Report** addressed again the issue with the administrative capacity, saying that the structures need more and better trained staff, particularly at regional and local level. “For both the Environmental Impact Assessment (EIA) and the Strategic Environmental Assessment (SEA), specific training is still essential. Application of the precautionary principle in EIA and SEA procedures, especially regarding potential Natura 2000 sites, should also be strengthened.”<sup>57</sup> In terms of nature protection the Report said that much of the legislation was successfully transposed. “Further efforts are needed to finalise the preparation of a list of proposed sites of

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<sup>52</sup> 2004 Regular Report on Bulgaria’s progress towards accession, COM(2004) 657 final), 6.10.2004, 109, 110

<sup>53</sup> *Ibid.*, 110

<sup>54</sup> *Ibid.*, 110

<sup>55</sup> *Ibid.*, 111, 112

<sup>56</sup> *Ibid.*, 113

<sup>57</sup> Bulgaria 2005 Comprehensive Monitoring Report, (COM(2005) 534 final), 25 October 2005, 59

Community interest and the designation of special protection areas and to apply the relevant protection measures by accession. Close attention needs to be paid to ensuring proper consultation while avoiding delays. So far, standard formats and maps for 581 potential NATURA 2000 sites have been prepared.”<sup>58</sup>

Based on the above mentioned Reports, the Brussels European Council recalled that all the outstanding negotiation chapters with Bulgaria were closed in 2004. “It welcomed the successful completion of these negotiations with Bulgaria on 14 December 2004 and accordingly looked forward to welcoming it as a member from January 2007.”<sup>59</sup>

### ***3.4.The Bulgarian Biological Diversity Act***

In terms of transposition of the Birds and the Habitats Directive which form the legal basis for the implementation of the Natura 2000 network, as mentioned above in 2002 the Bulgarian Biological Diversity Act was adopted. Bearing in mind that the current research is focused specifically on the protected habitats, we are interested in examining Art.4 of the Birds Directive and Art.4, Art.5 and Art.6 of the Habitats Directive and the way they were transposed in the Bulgarian law.

Art.4 of the Birds Directive concerns the designation of special protection areas (the so-called SPAs) for the conservation of the birds, it makes sure that the Commission is provided with all relevant information so that the areas designated form a coherent whole and also prohibits any pollution or deterioration of the habitats.

The objectives of this article were, in my opinion, successfully transposed in the Biological Diversity Act (BDA) of 2002. Art.6 (1)(3) and Art.6 (1)(4) of the BDA explicitly speak about designation of areas of conservation for the purposes of the Birds Directive. Art.29 BDA prohibits the deterioration of the habitats and the disturbance of the species and the second paragraph lists what the protection measures will include.

Art.4, Art.5 and Art.6 of the Habitats Directive were also adequately transposed in the BDA. These articles regulate the designation of the special areas of conservation (SACs), the sites of Community importance hosting priority natural habitats or priority species, impose on the

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<sup>58</sup> *Ibid.*, 60

<sup>59</sup> Council of the European Union, Presidency Conclusions, Brussels, 1 February 2005, 16238/1/04, 2

member States the responsibility to prepare management plans for the protected territories, prohibit deterioration, establish the requirement for Environmental Impact Assessments (EIAs) to be performed when needed and also define the possible derogations and the necessary compensatory measures. The EIA is regulated in further detail by the Bulgarian Environmental Protection Act of 2002.

Art.3 of the BDA speaks about the development of a National Ecological Network that will comprehend SACs part of the Natura 2000 network. Art.5 defines the special areas of conservation “intended for maintenance or restoration, at a favourable conservation status, of the natural habitats therein incorporated, as well as of the species within their natural range.”<sup>60</sup> Art.6 (1)(1) and Art.6 (1)(2) of the BDA determine the designation of such areas calling to the Habitats Directive that is being transposed. Art.8 BDA is also dedicated to the procedure of designation. Art.29 prohibits the deterioration of the sites.

Art.31-32 BDA are dedicated to the application of the EIAs, saying that “Any plans, programmes, projects and building-development proposals that are not directly related or necessary for the management of the special areas of conservation and that, either individually or in interaction with other plans, programmes, projects or building-development proposals, are likely to have a significant negative impact on the special areas of conservation, shall be assessed as to the compatibility thereof with the protection purposes of the relevant special area of conservation.”<sup>61</sup> Art.33 says that a derogation from the provisions of Art.32 (1) (prohibiting the adverse effects of plans and projects on the protected sites) is only possible by reasons of “overriding public interest” and in the “absence of alternative solution”. Art.34 envisages in the cases falling under Art.33 that the contractor of the programme or project needs to take compensatory measures to ensure the coherence of the National Ecological Network before the implementation of the project. Art.114 – 115 in their turn determine the responsibility of the Ministry of Environment and Water to prepare management plans for the protected areas in the Republic of Bulgaria. The Ministry is entrusted with the control and monitoring functions deriving from the provisions of this law.

In a research organized by the World Wide Fund for Nature (WWF) the authors also found that the Bulgarian Biological Diversity Act adequately transposes the European legislation in the

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<sup>60</sup> Biological Diversity Act, promulgated State Gazette No 77/9.08.2002

<sup>61</sup> *Ibid.*

field but detected some discrepancies in the Annexes. “The part of the Biological Diversity Act, referring to the types of natural habitats that will be protected by the National Ecological Network, does not entirely correspond to the requirements for implementation of Directive 92/43/EEC.”<sup>62</sup> The authors suggested that further 30 habitat types need to be included in Annex I of the Bulgarian law and that the correspondence of the BDA with the directive could be estimated at 60%.

The lawyer Svilen Ovcharov qualifies the Biological Diversity Act as “unclear” and he claims that in Bulgaria “there is hardly any properly translated legal act”.<sup>63</sup> He explains that the reason for that is the lack of quality control as well as the fact that at that time the Bulgarian environmental NGOs weren’t that competent and active as they are now.<sup>64</sup> Stefan Avramov from the Biodiversity Foundation admits that the NGOs were partly involved in the “fine calibrating” of the texts of the laws but when it came to the regulation of the EIAs and the SEAs their participation was unsuccessful.<sup>65</sup> Svilen Ovcharov recalls the rule that if the directives are not properly transposed then they themselves have direct effect and that the objective of the law should be to attain the objectives pursued by the directive.<sup>66</sup>

In July 2007 the Commission started two infringement procedures against Bulgaria for incorrect and incomplete transposition of both the Habitats Directive and the Wild Birds Directive.<sup>67</sup> The formal letters stated that the transposition should have been completed by 1 January 2007 and the Commission could not afford to put the protected habitats and species at risk. In 2009 the European Commission opened another infringement procedure against Bulgaria for incorrect transposition of Art.6(3) of the Habitats Directive because, as Bulgarian law stood at that time, some plans, projects and programmes falling outside of the protected areas that could still have significant negative impact on them, were not subject of a previous ecological assessment.<sup>68</sup> This

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<sup>62</sup> Implementation of Council Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora and Council Directive 79/409/EEC on the Conservation of Wild Birds in Bulgaria through the Biological Diversity Act. Comparative Analysis of the Scope with Reference to the European Ecological Network NATURA 2000, issued by WWF

<sup>63</sup> Mr Svilen Ovcharov from “The Green Lawyers” in an interview from May 2011 taken by Aneliya Parapanova, as part of her research for her Master thesis “Europäisierung der Umweltpolitik am Beispiel der Implementierung der europäischen Richtlinien für “Natura 2000” in Bulgarien”, Universität zu Köln, 2012, (thesis on file with the author)

<sup>64</sup> *Ibid.*

<sup>65</sup> Mr Stefan Avramov from “Biodiversity” Foundation in an interview from May 2011 taken by Aneliya Parapanova

<sup>66</sup> Mr Svilen Ovcharov from “The Green Lawyers” in an interview from May 2011 taken by Aneliya Parapanova

<sup>67</sup> Press Release from the Commission, IP/07/1123, Brussels, 18 July 2007

<sup>68</sup> Letter of formal notice, Infringement 2009/4423, C(2009) 7367, Brussels, 9.10.2009, 4, 5, 6

infringement procedure is currently closed. “From November 2005 until April 2011 the Biological Diversity Act was amended and improved 18 times and the last amended version is in force since 27.05.2011.”<sup>69</sup>

### ***3.5. The current status of the implementation***

Having paid attention to the past development of nature protection in Bulgaria, we shall now turn to its current status. “The preparation for the Structural Funds and the Cohesion Fund absorption from the beginning of 2007 for the sector “environment” is a main priority in the work of the Ministry of Environment and Water. Operational Programme “Environment” is one of the eight operational programmes, which are in a process of elaboration in our country with the aim of absorption of EU funds for the period 2007-2013. It will be financed from two EU funds – the Cohesion Fund and the European Regional Development Fund. Its elaboration started at the beginning of 2005 in conformity with the Proposal for Council Regulation COM(2004)492 laying down General Provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund.”<sup>70</sup> The Operational Programme is managed by the Directorate “Cohesion Policy for Environment” within the MoEW. According to the rules, the implementing powers are granted to a Working Group, composed of officials from the central, regional and local administration, representatives from the business and the NGOs and others. The main strategic goal of the programme is defined as: “*Improvement, preservation and recovery of the natural environment and development of the environmental infrastructure*”<sup>71</sup>, and one of the specific strategic goals is “*conservation of biodiversity and protection of nature*”.

The Operational Programme states that “Bulgaria is one of the richest countries in terms of biological diversity in Europe”, offering “almost all main types of natural habitats represented in Europe”.<sup>72</sup> It says that an Appendix to the Biological Diversity acts lists 106 types of habitats representative of Bulgaria and Europe and adds that a full assessment of the habitats has not been performed yet. The document confirms that “by 2010 the protected areas and protected zones

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<sup>69</sup> Aneliya Parapanova, Master thesis titled “Europäisierung der Umweltpolitik am Beispiel der Implementierung der europäischen Richtlinien für “Natura 2000” in Bulgarien”, Universität zu Köln, 2012, (thesis on file with the author)

<sup>70</sup> Information about Operational Programme “Environment” 2007 – 2013, 1

<sup>71</sup> *Ibid.*, 3

<sup>72</sup> Operational Programme “Environment 2007 – 2013”, CCI No: 2007BG161PO005, Sofia, 2007, 33

within the National Environmental Network should cover at least 15% of the territory of the country” and the rapid development of the process should start after 2007. Until 2004 the number of protected areas in Bulgaria was 858 with a total size of 544 394,9 ha. At the beginning of 2007 “the surface of protected areas in Bulgaria represents 4,9% of its total area. The share of the natural parks is the greatest - 45%, followed by the national parks- 27,6% and the reserves with 14,1%, while managed reserves have the smallest share - 0,8%.”<sup>73</sup> The virgin forests in Bulgaria span on an area of 257 000 ha which rank the country on the third place in Europe. The development of the national part of the Natura 2000 network began in 2003 with the preparation of a GIS strategy and the completion of an inventarization process according to the European requirements. As a result of the inventarization, 109 sites with respect to the Birds Directive were proposed to the Bulgarian Council of Ministers for approval (approximately 16% of Bulgaria’s territory). With regard to the Habitats Directive 196 potential sites were proposed (equaling about 15% of the country’s territory). “With Decision № 122/ 2<sup>nd</sup> of March 2007 the Council of Ministers reviewed the documentation of the sites proposed by the Ministry of Environment and Water for inclusion into the national list of Natura 2000 sites. From the 196 proposed Sites of Community Importance (pSCIs) and 109 Special protection Areas (SPAs) the Council of Ministers officially approved 180 pSCIs and 88 SPAs to be included into the national list of Natura 2000 sites.”<sup>74</sup> The rest of the proposals were postponed because insufficient information was gathered about them. According to the Bulgarian Biodiversity Act the approved SPAs should be designated within one year of the decision, and the approved pSCIs should be designated within 6 years after accession.

The Operational Programme will be funded by the European Regional Development Fund (maximum 85% of the total eligible expenditure) and from the National funds (minimum 15% of the total eligible expenditure according to priorities). Among the financed activities will be the preparation of management plans, raising of awareness campaigns, implementation activities, etc. The Programme will be coordinated with other programmes like the Rural Development Programme, OP “Regional development”, Phare, the two European Territorial Cooperation

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<sup>73</sup>*Ibid.*, 34

<sup>74</sup>*Ibid.*, 61



programmes, etc. The programmes will be complementing each other and the necessary measures will be taken to prevent overlaps.<sup>75</sup>

According to the Birds and the Habitats Directive, by the date of accession to the EU Bulgaria was required to submit to the Commission a list with the territories and species that will be designated under Natura 2000. “1st October 2002 the DANCEE supported Project "Conservation of Species and Habitats in Bulgaria: EU-Approximation" was initiated to support the National Nature Protection Services under MoEW in establishing the Bulgarian NATURA 2000 network of protected areas.”<sup>76</sup> This project has estimated that the Bulgarian Natura 2000 should cover about 34% of the country’s territory. Until December 2004 310 potential sites were identified and ecological information was collected for about 130 of them. The project took place between 1.02.2005 and 31.12.2005. According to the cited web-site, the project was successfully completed in 2008.

The Bulgarian part of the Natura 2000 network was initially proclaimed with delay with a Decision of the Bulgarian Council of Ministers №122 from 2.03.2007 and was consequently expanded four times – with Decision №661 from 16.10.2007, Decision №802 from 4.12.2007, Decision №811 from 16.11.2007 and the last one - Decision №335 from the 26.05.2011.<sup>77</sup> As the deputy minister of the environment and water Evdokia Maneva sums up, currently 34.34% of the territory of Bulgaria is part of the Natura 2000 network, with about 50% of Bulgarian territory enjoying some sort of protection.<sup>78</sup>

According to representatives of DG Environment of the European Commission the designation of the Natura 2000 network in Bulgaria is almost finalized. In terms of designation of SPAs under the Birds Directive Bulgaria has two incomplete zones left for which there is scientific evidence – Rila and Kaliakra. Negotiations about their future designation are currently underway. With regards to the Habitats Directive, Bulgaria has designated further 46 000 ha of

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<sup>75</sup> *Ibid.*, 67, 68

<sup>76</sup> Natura 2000 in Bulgaria, URL: <http://www.natura2000bg.org/natura/> accessed 30 January 2012

<sup>77</sup> Ministry of environment and water of Bulgaria, URL:

[http://www2.moew.government.bg/index\\_temp.html](http://www2.moew.government.bg/index_temp.html) accessed 17.03.2012

<sup>78</sup> Mrs Evdokia Maneva, deputy minister of environment and water of Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

its territory and there is a biogeographic seminar scheduled to review those areas and to pronounce on the completeness of the network.<sup>79</sup>

#### 4. Conclusion

In conclusion it is fair to say that in terms of nature protection Bulgaria has come a long way and has demonstrated a steady progress. It started as a country with rich biological diversity but with a poor record in terms of environmental protection and awareness. In my opinion Bulgaria's EU accession aspirations proved an essential motivator for the subsequent development in the environmental sphere. Slowly but steadily Bulgaria created and enhanced a Ministry for the Environment and Water, increased the investments in the sector and started to incorporate the ecological concerns into the other policies. In 2002 the Biological Diversity Act adequately transposed the Birds and the Habitats Directives which was decisive for the closure of *Chapter 22 Environment* a year later, in 2003, and hence for the successful completion of the accession negotiations.

According to the Natura 2000 Barometer of the European Commission of June 2011, Bulgaria has designated 33.9% of its territory, the total Natura 2000 sites being 332 and spanning on a territory of 38,606 km<sup>80</sup>. This information comes to prove that the initial plan – that the national part of Natura 2000 should cover about 34% of the national territory – was successfully completed. However, it would be unreasonable optimism to state that all the problems that the Commission addressed in its Reports were solved. As mentioned above, Bulgaria had to improve the administrative capacity, the funding in the sector and most importantly to integrate the environmental concerns into the other sectoral policies - and to a certain point it did. The public awareness, which is indispensable if a government wants to have the problems with nature protection adequately addressed, needs increased efforts and attention. The necessity for the performance of Appropriate Assessments and Environmental Impact Assessments (regulated in detail in the Bulgarian Environmental Protection Act) also poses certain issues and requires closer scrutiny. It is exactly these problems that I now turn to.

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<sup>79</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>80</sup> DG Environment, European Commission, URL:

<http://ec.europa.eu/environment/nature/natura2000/barometer/docs/n2000.pdf> accessed 31 January 2012

## Chapter 3

**“When it comes to nature protection, nothing in Bulgaria is sacred.”<sup>81</sup>**

### **The problems with the AAs/EIAs and public awareness in Bulgaria**

#### **1. Introduction**

In the present chapter, I will address the next two subquestions, namely the main problems connected with the implementation of the Natura 2000 network in Bulgaria, as well as what are the possible causes of these problems and what solutions are adopted by the various stakeholders. As already mentioned, the European Commission identified numerous issues with the practice of nature protection in Bulgaria. Among those issues I can list the insufficient funding, the administrative capacity of the Ministry of environment and water, the inadequate consideration of the environmental concerns into the other sectoral policies, the performance of the AAs/EIAs, the level of public awareness, etc. In this chapter, I have decided to elaborate further on the last two concerns – the performance of the AAs/EIAs, as well as on the issue with public awareness in Bulgaria, as being, in my opinion, the most important and interesting ones from a legal point of view. The Appropriate Assessment/Environmental Impact Assessment have their origin in the precautionary principle, i.e., it is deemed necessary to check first if a project will have a significant negative impact on the various habitats or not, and only then in case the assessment is positive to go ahead with it. Unfortunately, there are numerous examples that this is not happening in Bulgaria the way it is prescribed by law and thus is causing great damages in terms of nature conservation. The public, represented by civil society and the environmental NGOs (ENGOs), in my opinion is the chief stakeholder when it comes to nature protection. In order to have these issues adequately addressed we need to have a well-informed and active civil society that is granted access to justice when needed. I will present the issues with the AAs/EIAs and public awareness by addressing three cases – the case with the golf complex in Bojuretz, Kavarna (2006), the construction works in Strandzha Nature Park (2009) and the ongoing issue

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<sup>81</sup> A statement by Michael Baltzer, Director of the WWF’s Danube-Carpathian Programme, URL: <http://wwf.panda.org/index.cfm?uNewsID=88660> accessed 4.03.2012,

with the ski lifts in Bansko, Pirin National Park (2011). The cases are selected on purpose from different periods with regards to Bulgaria's membership in the EU – the first one is right before Bulgaria became a member and the other two – after that. In this way we will be able to see if there is any true progress on the side of the country regarding the actual implementation and enforcement of the Natura 2000 network.

## 2. The AA/EIA as regulated in Bulgarian law

The Habitats Directive requires the performance of an Appropriate Assessment which should determine the impact of plans or projects on the conservation objectives of the Natura 2000 habitats.<sup>82</sup> The assigned expert should assess the situation on the substance using specific measurable criteria. The Environmental Impact Assessment is meant to measure the global impact of plans and projects on all nature components (air, waters, etc.) and it requires a detailed procedure, including public discussion, etc.<sup>83</sup> In Bulgaria, these two kinds of assessments are associated and are performed together. "...A common or coordinated process with the appropriate assessment is not unusual, provided that the requirements of both Directives are fulfilled. But the Appropriate Assessment should remain a clearly distinguishable and separate section within the report so that it can be considered on its own and its findings can be differentiated from those of the general EIA or SEA."<sup>84</sup> As mentioned in the previous chapter, the necessity for the performance of AAs/EIAs is included in the Biological Diversity Act. Art. 31-34 transpose Art. 6 of the Habitats Directive, including "the heart" of this directive – Art.6(3).<sup>85</sup> In the opinion of Andrey Kovachev – an expert in biodiversity and Natura 2000 from Balkani Wildlife Society - if those articles do not function correctly then the protected areas are actually deprived of protection which is the current situation in Bulgaria.<sup>86</sup> "The need for a strict transposition of Article 6 has already been signalled in a case brought before the European Court of Justice (Opinion of Advocate General Fennelly in Case C-256/98, *Commission v France*,

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<sup>82</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>83</sup> *Ibid.*

<sup>84</sup> Guidance document. Non-energy mineral extraction and Natura 2000, European Commission, July 2010, 47

<sup>85</sup> Mr Andrey Kovachev from Balkani Wildlife Society in an interview from May 2011 taken by Aneliya Parapanova, as part of her research for her Master thesis "Europäisierung der Umweltpolitik am Beispiel der Implementierung der europäischen Richtlinien für "Natura 2000" in Bulgarien", Universität zu Köln, 2012, (thesis on file with the author)

<sup>86</sup> *Ibid.*

delivered on 16 September 1999).”<sup>87</sup> According to articles 31-34 BDA all plans or projects that are likely to have a “significant negative impact” on the special areas of conservation need previous assessment. The only derogation possible from this rule is when there are reasons of overriding public interest and in the absence of alternative solutions. In these cases, however, the investor is obliged to take compensatory measures and to ensure the coherence of the National Ecological Network. “As regards **geographical scope**, the provisions of Article 6(3) are not restricted to plans and projects which exclusively occur in or cover a protected site; they also target developments situated outside the site but likely to have a significant effect on it.”<sup>88</sup>

The performance of EIA is further regulated in Chapter Four of the Bulgarian Environmental Protection Act. Art. 19 thereof states that “All kinds of activities of the physical and juridical persons and of the state and municipal authorities may be subject to an environmental impact assessment.” Art. 20 determines the cases in which an EIA must be invariably made. Those cases are listed in the subsequent Annex and include all activities in protected areas subject to a mandatory EIA. Art. 21 prescribes that the EIA should be paid by the investor and performed by “independent experts” who satisfy specific conditions. The completed EIA shall then be made the object of a discussion in which “local administration bodies, representatives of public organisations, the public and the concerned natural and juridical persons” shall participate. Art. 23 is quite clear in its provisions that “The competent authority *shall prohibit or stop the activities* or implementation of projects for which the environmental impact assessment is negative or for which the mandatory assessment has not been made, or which have not been equipped with the necessary purification and protection equipment (emphasis added).” However, according to Stefan Avramov from “Biodiversity” Foundation this “legislation does not work” and the practice of EIA have proven to be a “complete failure”.<sup>89</sup> He identifies different reasons for this fact among which the widespread corruption, the immature civil society, etc. The expert sadly concludes that in Bulgaria “the short-term business profit seems to be more important than the long-term public interest”.<sup>90</sup>

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<sup>87</sup> Managing Natura 2000 Sites. The Provision of Article 6 of the 'Habitats' Directive 92/43/EEC, URL: [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision\\_of\\_art6\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf)

<sup>88</sup> *Ibid.*

<sup>89</sup> Mr Stefan Avramov from “Biodiversity” Foundation in an interview from May 2011 taken by Aneliya Parapanova

<sup>90</sup> *Ibid.*

The European Commission, fulfilling its role of the “Guardian of the Treaty”, is constantly monitoring not only if the relevant legislation is adequately transposed but if it is actually being implemented and enforced. Besides, everyone is entitled to file a signal to the Commission if one has strong suspicions or proofs that there are breaches of the environmental laws. “In performing that function, the Commission may open infringement procedures.”<sup>91</sup> “Infringement proceedings provide the Commission with an effective means to ‘push’ member states into compliance.”<sup>92</sup> They start with a formal letter of notice on behalf of the Commission to the relevant Member State, the Member State is given time to respond and to put an end to the alleged infringement. In the next step the Commission issues a Reasoned Opinion and the Member State is again given a period to respond. All decisions to start, to go to the next phase or to close infringement proceedings are taken by the college of Commissioners.<sup>93</sup> If this administrative phase proves unsuccessful in changing the course of action of the country in question, the Commission can bring the Member State before the European Court of Justice (ECJ) which can impose serious fines if it finds the Member State guilty. “Infringement proceedings also incur significant political costs on member states, particularly if they wish to portray themselves as environmental leaders or good Europeans.”<sup>94</sup> According to Andrey Kovachev most of the problems in Bulgaria can still be solved if there is political will but so far the politicians have not proven to be resolute enough.<sup>95</sup>

According to information published in the Bulgarian press, until the beginning of 2010 there were 15 infringement procedures opened against Bulgaria in the environmental sphere.<sup>96</sup> Thus environment appears to be the sector that is most criticized from Brussels. Seven or eight of these procedures are connected with poor nature protection or with infringements of the

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<sup>91</sup> European Commission, DG Environment,

URL: [http://ec.europa.eu/environment/legal/implementation\\_en.htm](http://ec.europa.eu/environment/legal/implementation_en.htm) accessed 7.03.2012

<sup>92</sup> Börzel, Tanja A. (2003): Environmental leaders and laggards in Europe. Why there is (not) a "southern problem". Ashgate Publishing Limited, 3

<sup>93</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

<sup>94</sup> Börzel, Tanja A. (2003): Environmental leaders and laggards in Europe. Why there is (not) a "southern problem". Ashgate Publishing Limited, 3

<sup>95</sup> Mr Andrey Kovachev from Balkani Wildlife Society in an interview from May 2011 taken by Aneliya Parapanova

<sup>96</sup> Dnevnik – Bulgarian daily newspaper, URL:

[http://www.dnevnik.bg/evropa/razshiriavane/2010/01/05/837874\\_evropa\\_i\\_prirodата/](http://www.dnevnik.bg/evropa/razshiriavane/2010/01/05/837874_evropa_i_prirodата/) accessed 7.03.2012

protected territories under Natura 2000.<sup>97</sup> Most of the infringement procedures started against Bulgaria are for incorrect application of the directives and all of them are at the stage of formal letter of notice.<sup>98</sup> The Commission is currently investigating and gathering information on the open cases as they bear the burden of proof.<sup>99</sup> Evdokia Maneva, a deputy minister of environment and water, says that all of these procedures have been “inherited” from the previous government and the current government needs to deal with them.<sup>100</sup> So far there have been no cases before the ECJ.

### **3. The public awareness about nature protection and Natura 2000 in Bulgaria – the role of the environmental NGOs as a driving force for change**

The environmentalists and the ENGOs in Bulgaria have proven to be the drivers of change and the ones that will raise the flag and go out and protest if they have to. Many of their protests over the past years turned out to be successful – it was exactly because of these protests that the protected areas under Natura 2000 in Bulgaria now exceed 30% of the country’s territory (the initial plans envisaged only about 15%), they managed to defend Strandzha and with partial success also Rila and Pirin mountains.<sup>101</sup> They often use extravagant ways of protesting and their campaigns usually turn into big happenings where young and old alike are having fun. However, not all of their battles proved to be a success – they couldn’t prevent the excessive construction works on the Black sea coast and partly those in the mountain resorts.<sup>102</sup>

However, it turns out that in Bulgaria not all environmental organizations appear to be deserving of their name. According to Andrey Kovachev from Balkani Wildlife Society there are NGOs created simply to absorb money, such with strong connections with particular political parties

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<sup>97</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>98</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

<sup>99</sup> *Ibid.*

<sup>100</sup> Mrs Evdokia Maneva, deputy minister of environment and water of Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

<sup>101</sup> Capital – weekly Bulgarian newspaper, URL:

[http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2012/01/31/1753449\\_multimedia\\_zelenite\\_chovecheta/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2012/01/31/1753449_multimedia_zelenite_chovecheta/) accessed 7.03.2012

<sup>102</sup> *Ibid.*

and such created only to serve economic business interests.<sup>103</sup> In his opinion the legitimate ones fulfill two essential criteria: one of them is that they have a long history and the other – that they try to protect the public interest. Among the organizations that fulfill those conditions he mentions Balkani Wildlife Society, “Biodiversity” Foundation, the World Wide Fund for Nature (WWF), the Bulgarian Society for the Protection of Birds (BSPB), etc.<sup>104</sup>

Most of the legitimate ENGOs have decided to unite their efforts and have created a coalition called “For the Nature”. Among its members are the Association of parks in Bulgaria, Balkani Wildlife Society, Bulgarian Society for the Protection of Birds, Bulgarian “Biodiversity” Foundation, WWF Danube-Carpathian Programme in Bulgaria, “Green Balkans” Federation, Zazemiata Association, etc. As Aleksandar Dunchev from the Association of parks in Bulgaria says the NGOs are working together on specific cases and also filing signals for infringements to the Commission when necessary.<sup>105</sup>

The popularity and the influence of the ENGOs increased after they managed to successfully protect some important sites like the Irakli beach. A recent research carried out by WWF and Alfa Research (performed in May 2011) reveals that there is a gradual increase, compared to 2006 and 2008, of the public awareness about the environmental problems and especially with regards to public approval of construction works in the protected territories (in 2006 51.5% of the people interviewed stated that they do not approve of such construction works, whereas in 2011 the percentage rose to 80).<sup>106</sup>

Some of the environmentalists point out the lack of a comprehensive information campaign about Natura 2000 at the start of its implementation in Bulgaria as a major miss on the part of the Ministry of environment and water.<sup>107</sup> Although there was funding for such a campaign the matter was not given the importance that it should have received. The people did not have adequate information and rumors started circulating that the designation of land under Natura

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<sup>103</sup>Capital – weekly Bulgarian newspaper, URL: [http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2012/02/17/1768954\\_po\\_zelenoto\\_shte\\_gi\\_poznaete/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2012/02/17/1768954_po_zelenoto_shte_gi_poznaete/) accessed 7.04.2012

<sup>104</sup>*Ibid.*

<sup>105</sup>Mr Aleksandar Dunchev from the Association of parks in Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

<sup>106</sup>Research carried out by WWF and Alfa Research on the public attitudes towards nature conservation in Bulgaria, May 2011, URL: [http://awsassets.panda.org/downloads/\\_\\_\\_\\_\\_.pdf](http://awsassets.panda.org/downloads/_____.pdf) accessed 7.03.2012

<sup>107</sup>Mr Aleksandar Dunchev and Mr Andrey Kovachev in interviews from May 2011 taken by Aneliya Parapanova



2000 will actually deprive the owners of their property. The residents of some small Bulgarian villages were so convinced of that that they started selling their livestock and their property half-price.<sup>108</sup> There was a clear need for information and especially for information that is “clear, accurate, reliable, comprehensive and accessible to all interested parties”<sup>109</sup>. As some researchers further argue, the lack of such information marked the “birth of the conflict “for” and “against” Natura 2000”<sup>110</sup> which could have been easily avoided. The NGOs on their part tried to fill in this vacuum but they did not possess the required potential. The real information campaign started only in late 2006 when things finally started moving in the right direction.<sup>111</sup> But the damage had been already caused. Even the deputy minister of environment and water Evdokia Maneva admits that the local population cannot be relied on to assist with the enforcement of the protection of the protected territories.<sup>112</sup> However, according to Andrey Kovachev the Bulgarians are starting more and more to rely on Natura 2000 in order to save their way of life and the environment. In his opinion currently more people are in favour of Natura 2000 than against it.<sup>113</sup>

Mrs Sylvia Barova from the European Commission also shares the opinion that the Bulgarian authorities have underestimated the situation with Natura 2000. She points out that this is a serious obligation which requires substantial resources and in the beginning there has been an “insufficient input” on the side of the Bulgarian government which contributed to the negative image of the whole network in Bulgaria.<sup>114</sup>

As we shall see in the case studies discussed below, the ENGOs have access to court and they use it when necessary. Besides, it appears that the environmental NGOs are the chief stakeholders that file signals for infringements of the environmental legislation to the European Commission. In the recent years they have literally flooded the Commission and the European Parliament.<sup>115</sup> They have produced so many signals that on a meeting with them held in

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<sup>108</sup> Mr Stefan Avramov from “Biodiversity” Foundation in an interview from May 2011 taken by Aneliya Parapanova

<sup>109</sup> Mariana Valcheva, Master thesis, “Nature and Communications. The start of the National Ecological Network Natura 2000”, Sofia University “Sveti Kliment Ohridski”, Sofia, 2007, (thesis on file with the author), 6

<sup>110</sup> *Ibid.*

<sup>111</sup> Mr Stefan Avramov from “Biodiversity” Foundation in an interview from May 2011 taken by Aneliya Parapanova

<sup>112</sup> Mrs Evdokia Maneva, deputy minister of environment and water of Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

<sup>113</sup> Mr Andrey Kovachev from Balkani Wildlife Society in an interview from May 2011 taken by Aneliya Parapanova

<sup>114</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>115</sup> Dnevnik – Bulgarian daily newspaper, URL:

[http://www.dnevnik.bg/evropa/razshiriavane/2010/01/05/837874\\_evropa\\_i\\_prirodata/](http://www.dnevnik.bg/evropa/razshiriavane/2010/01/05/837874_evropa_i_prirodata/) accessed 7.03.2012

November 2009 the representatives from DG Environment confessed that they don't have the potential to work on all of them.<sup>116</sup>

Stefan Avramov from "Biodiversity" Foundation admits that initially the Bulgarian environmentalists had too high expectations from the European Commission and that now they are aware that "Brussels won't set us free".<sup>117</sup> The environmentalists also realize that even if the possible financial sanctions from the European Union might produce some positive effect on the discipline of the Bulgarian institutions, they will still be at the expense of all Bulgarian citizens and, most of all, they won't bring back nature that has already been destroyed.<sup>118</sup>

#### **4. Three case studies – the golf complex in Bojuretz, Kavarna (2006), the construction works in Strandzha (2009) and the ski resort in Bansko, Pirin (2011)**

##### ***4.1. The golf complex in Bojuretz, Kavarna (2006)***

###### *4.1.1. Facts of the case*

The small village of Bojuretz is situated on the Black sea coast in the Northeast part of Bulgaria between the towns of Balchik and Kavarna. It is relatively depopulated but it is characteristic with its unique nature. It is a home of steppe plants that cannot be found anywhere else in Bulgaria or even in the world. "It is not by chance that it has been already included both as an ornithologically important place ("The White Rocks", 2 618.5 hectares) and as a habitat location ("Kaliakra", 2 537.2 ha) in the proposals filed with the Ministry of Environment and Water regarding Natura 2000 protected areas in Bulgaria."<sup>119</sup> In 2004, a scientific team of the World Wide Fund for Nature (WWF) explored this part of the Black Sea coast and determined a new endemic association: "Alyso Caliacrae – Artemisietum Lerchianae, Tzonev, Roussakova et Dimitrov, 2006, which represents a specific subtype of habitat 62C0 West Pontic Wormwood Steppes as per the Law on Biodiversity, which in the final version of Council Directive 92/43/EEC for 27 countries is "62C0 Ponto-Sarmatic Steppes" and is of protection

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<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> "For the Nature" – coalition of Bulgarian ENGOS, URL: <http://en.forthenature.org/cases/34> accessed 3.03.2012

priority.”<sup>120</sup> According to the BDA and the Habitats Directive this piece of land must stay wild and intact for the future generations. Unfortunately, this was not meant to be. In 2003 – 2005 the mayor of Kavarna Tsonko Tsonev sold 200 hectares of the municipal land on which the company “Tracian Rocks” AD built the biggest golf field in the country.<sup>121</sup> “The prepared report on the environmental impact assessment for the “golf complex” actually mentions nothing about protected species, and even less about habitats and plants communities.”<sup>122</sup> The investor was responsible for the mapping out of the habitats and species. “The mapping was done by Lubomir Profirov and prof. Dimitar Dimitrov. It is carried out absolutely tendentiously and the conclusions (on 1.5 pages) are untruthful, and contradictory to the Law on Biodiversity.

In 2005 four ENGOs (BALKANI Wildlife Society, Bulgarian Society for the Protection of Birds – BSPB, Bulgarian Society for the Protection of Birds - Varna, and Public Environment Centre for Sustainable Development - Varna) started litigation before the Supreme Administrative Court because of the tendentious report on the environmental impact assessment.<sup>123</sup> The investors established contacts with the NGOs through their representative Rado Todorov and expressed a will for change. They promised that they will redesign the golf field and in February 2006 they even came to an agreement with the ENGOs and so the latter withdrew the litigation. It proved to be a huge mistake on the part of the NGOs as immediately after that Rado Todorov left the company and the agreement was cancelled. The investors stated that they could only trust their ecologists and their reports.<sup>124</sup>

Experts of the Bulgarian Academy of Sciences (BAS) and Sofia University “Sveti Kliment Ohridski” performed an independent assessment of the territory of the golf complex and rejected the conclusions of L. Profirov and D. Dimitrov. A meeting was held between the representatives of the ENGOs and the Bulgarian minister of environment and water on which the latter was acquainted with the new scientific data. The environmentalists insisted that the minister should declare the previous report void and order the performance of a new EIA. The minister

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<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

considered this step to be too risky and replied that a permit for the golf course had already been granted and he could not revoke it.<sup>125</sup>

Habitat 62C0 (the West Pontic Wormwood Steppes) was completely removed from the territory of the country. The construction works destroyed more than 60% of an endemic and unique for Bulgaria natural habitat subtype (*Alyso Caliacrae - Artemisietum Lerchianae*). In November 2006 the machines started working and thus unique vegetation formed gradually over the course of 12 000 years was destroyed overnight and replaced by grass mixtures.<sup>126</sup>

“The vicious procedure of permit issuing as per environmental impact assessments in the region of Kavarna Municipality is turning into a direct and drastic infringement of the Law on Biodiversity – direct destruction of entire populations of tens of protected types included in Annex 3 to the Law on Biodiversity, the Annexes to the Bern Convention, and of course, these to the Birds Directive (79/409) and the Habitats Directive (92/43).”<sup>127</sup> The construction of the golf complex caused the destruction of a number of protected plants included in Annex 3 of the Law on Biodiversity: *Artemisia Lerchiana*, *Nepeta Parviflora*, *Ephedra Distycha*, *Goniolimon Besseranum*, *Limonium Latifolium*, *Mathiola Odoratissima*. The responsibility for this lies with the representatives of the state – Kavarna Municipality and the mayor, the Ministry of Environment and Water and the local inspectorate Varna.<sup>128</sup>

The BSPB filed a complaint to the European Commission which was supported by a number of other Bulgarian NGOs. They claimed breach of Art.4(1), 4(2) and 4(4) of the Birds Directive, breach of Art.6(2) and 6(3) of the Habitats Directive, as well as breach of the EIA Directive. “By approving projects in Kaliakra IBA without proper consideration of potential impacts on biodiversity during Bulgaria’s final preparations for EU Accession, ie in the period between February 2005, when the BSPB widely publicized a map of IBAs (potential SPAs) in Bulgaria/April 2005 when the Accession Treaty of Bulgaria and Romania was signed and 31 December 2006, the Bulgarian Government has allowed deterioration and damage to the IBA/potential SPA and the species for which its designation is proposed. This frustrates the

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<sup>125</sup>*ibid.*

<sup>126</sup>*ibid.*

<sup>127</sup>*ibid.*

<sup>128</sup>*ibid.*

achievement of the objectives of the EC Birds and Habitats Directives following accession thereby frustrating the objectives of the EC Treaty itself”<sup>129</sup>

In 2008 the Commission started infringement proceedings against Bulgaria on this case. The Commission has received complaints that ongoing construction projects in the important bird area (IBA) of Kaliakra are leading to the deterioration of a number of bird species habitats and disturbance of bird species protected by EU law. According to the Press Release, the Commission was informed that the projects were authorized without prior EIA and without taking account of the cumulative impact of all projects.<sup>130</sup>

#### 4.1.2. *Analysis from the perspective of AA/EIA*

The leading NGO working on the Bojuretz case was the Bulgarian Society for the Protection of Birds (BSPB). In 2007, they filed a complaint to the Commission for infringements of the Birds Directive. In 2008, BSPB filed another complaint on the specific case of Kaliakra potential SPA, supported by 12 other Bulgarian ENGOS. In late May they sent to the Commission further detailed information about the damage already caused to Kaliakra and the further damage likely to be caused by the progressing developments in the region.<sup>131</sup> In the specific case of Kaliakra and Bojuretz the BSPB rightly claimed “breach of Article 4 (4) of the Birds Directive and Article 6 (2) and the general obligations of the Habitats Directive for not providing adequate protection of proposed Natura 2000 sites (Kaliakra, Rila, Pirin, Central Balkan SPAs and many pSCIs)”<sup>132</sup>, as well as “breach of Articles 6(3)-6 (4) of the Habitats Directive, Article 4 of the EIA Directive and Article 3 (2) of the SEA Directive because:”<sup>133</sup> “Ministry and regional inspectorates of environment are making decisions based on unsound AA/EIA/SEAs – of extremely poor scientific quality, without sufficient public participation and without taking into account cumulative effects of the thousands of projects in one and the same locality. Consequently almost all sites in the Black sea region are severely fragmented and even destroyed

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<sup>129</sup> Complaint to the Commission of the European Communities concerning failure to comply with Community law, BSPB, 14, 15

<sup>130</sup> Press Release of the Commission, IP/08/1826 of 27 November 2008

<sup>131</sup> Bulgarian Society for the Protection of Birds (BSPB), URL:

[http://www.birdlife.org/eu/pdfs/Nature\\_Directives\\_material/Portfolio\\_texts%20final.pdf](http://www.birdlife.org/eu/pdfs/Nature_Directives_material/Portfolio_texts%20final.pdf) accessed 9.03.2012

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

significantly;”<sup>134</sup> “Statements of NGOs and scientists are not taken into account. There is a lack of any communication by authorities with the respondents of the Natura 2000 sites.”<sup>135</sup>

And this is exactly what happened in this case. According to Art.21 of the Bulgarian Environmental Protection act the EIA should be paid by the investor and performed by “independent experts” who satisfy specific conditions. This practice appears to be quite problematic in Bulgaria. According to the environmentalists there is only one genuine EIA performed in Bulgaria so far – that of the future highway Struma which is going to be built with European financing and the Commission is strictly monitoring all procedures.<sup>136</sup> However, when it comes to internal projects the picture is quite different.

“According to the environmentalists as long as the investors are paying for the EIA it will be hard to find a negative or at least an objective one.”<sup>137</sup> They give an example with the master spatial plan of Tzarevo municipality where only one expert pointed to the actual dangers for nature but whose conclusions were never included in the final report.<sup>138</sup> That is why the ENGOs have suggested a way out – that these assessments should be paid for by a special agency outside the executive power whose budget will be financed with taxes imposed on the investors. In this way the direct link between the expert and the investor will be cut and we can expect more objective EIAs. The state has failed to respond to this suggestion so far.<sup>139</sup>

#### *4.1.3. Analysis from the perspective of public awareness*

The environmental NGOs and especially the BSPB were quite active in this case, filing two complaints to the European Commission, in 2007 and in 2008 respectively. Even before that, in 2005 they started litigation before the Supreme Administrative Court against the tendentious EIA of the golf complex. As explained above, they were tricked by the investors who started negotiations with them and even promised to change the plans and to start considering nature. The litigation was subsequently withdrawn but later on it turned out that the investors had no true

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<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> Capital – Bulgarian weekly newspaper, URL:

[http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2008/09/19/552415\\_natura\\_vleze\\_vdun\\_gori\\_tilileiski/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2008/09/19/552415_natura_vleze_vdun_gori_tilileiski/)  
accessed 9.03.2012

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*

intentions of amending their project and claimed that ““their ecologists” are L. Profirov and D. Dimitrov and they can have confidence solely in these latter’s conclusions.”<sup>140</sup>

Although experienced experts of the Bulgarian Academy of Sciences (BAS) and the Sofia University “Sveti Kliment Ohridski” also carried out assessments that rejected the conclusions of the experts of the investors, this argument wasn’t strong enough for the Bulgarian minister of the environment and water to revoke the EIA and to order a new one.

This was what caused the NGOs to file complaints to the European Commission which subsequently started an infringement procedure against Bulgaria on those grounds.

#### **4.2. The construction works in Strandzha Nature Park (2009)**

##### *4.2.1. Facts of the case*

Strandzha Nature Park is the largest protection area in the country spanning on 116 068.5 ha. It is located in the southeastern part of Bulgaria and is truly unique. It is in an area between Europe and Asia with ecologies that are exceptional to Europe. “In particular, the deciduous broad-leaved forests with laurel undergrowth. Protected territories in Strandzha’s boundaries include a biosphere reserve, as well as 29 other sites of natural and cultural significance. 404 vertebrate species were identified, making it one of the most biologically diverse areas in the country.”<sup>141</sup> What is further special about the Nature Park is that people coexist with nature and their settlements compliment the ecosystems. The local traditions and dialects are well preserved. “In 1992, the park was one of five areas of priority for the Environmental Action Plan for Central and Eastern Europe, making it a site for numerous initiatives for conservation and sustainable development.”<sup>142</sup>

In 1995 Tzarevo municipality was consulted for the development of the Strandzha Nature Park’s management plan and initially supported the sustainable development and nature protection in the area. However, since 2003 the municipality has drastically changed its formerly supportive attitude. “Now the local government sees Strandzha as a barrier to development in the region.”<sup>143</sup> Tzarevo Municipality even launched a case against the designation of Strandzha

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<sup>140</sup> “For the Nature” – coalition of Bulgarian ENGOS, URL: <http://en.forthenature.org/cases/34> accessed 3.03.2012

<sup>141</sup> “For the Nature” – coalition of Bulgarian ENGOS, URL: <http://en.forthenature.org/cases/10>

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

Nature Park together with “Crash 2000”, a construction company with business interests in the region. “Crash 2000” had built a hotel complex called “Golden Pearl” on the territory of the Nature Park without the required EIA. The project was divided into ten parts – a common tactic in order to avoid an EIA of the whole project<sup>144</sup> – but all separate parts did not have one as well.<sup>145</sup> “Crash 2000” wanted to legalize its complex by removing the land from the protection of the Natura 2000 network. After the Supreme Court declared the designation invalid, thousands of people gathered to protest against the decision and put an extreme pressure on the authorities. “Protesters gathered on the streets, crossroads were jammed, thousands of signatures were collected (including those of famous Bulgarians). In addition numerous events were held, including concerts, discussions and films, highlighting the enormous cultural and ecological value of the area.”<sup>146</sup> The public demanded that the government should adopt a legal act, stating that past designation orders for protected areas cannot be appealed in court.<sup>147</sup> The lawyer Svilen Ovcharov who was involved in the process recalls that a question for preliminary ruling was even sent to the ECJ.<sup>148</sup> Politicians, mayors and ministers finally met with environmentalists and fortunately the pressure paid off. The demanded order was passed which overturned the judgment of the court still under appeal.<sup>149</sup>

“The success of the campaign provides optimism that an active civil society can promote public interest and maintain areas of environmental and cultural importance in Bulgaria. Unfortunately, there is still much to be done for the protection of Strandja.”<sup>150</sup> The illegal complex was not demolished after the order was passed, although the ENGOs insisted on that and claimed that this is going to be a good demonstration of the commitment of the Bulgarian government to nature protection.<sup>151</sup>

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<sup>144</sup> Bulgarian Society for the Protection of Birds (BSPB), URL:

[http://www.birdlife.org/eu/pdfs/Nature\\_Directives\\_material/Portfolio\\_texts%20final.pdf](http://www.birdlife.org/eu/pdfs/Nature_Directives_material/Portfolio_texts%20final.pdf) accessed 13.03.2012

<sup>145</sup> Capital – Bulgarian weekly newspaper, URL:

[http://www.capital.bg/vestnikut/kapital\\_prim/2009/10/08/797196\\_novi\\_nakazatelni\\_proceduri\\_sreshtu\\_bulgariia\\_v\\_sferata/](http://www.capital.bg/vestnikut/kapital_prim/2009/10/08/797196_novi_nakazatelni_proceduri_sreshtu_bulgariia_v_sferata/) accessed 13.03.2012

<sup>146</sup> “For the Nature” – coalition of Bulgarian ENGOs, URL: <http://en.forthenature.org/cases/10> accessed 3.03.2012

<sup>147</sup> *Ibid.*

<sup>148</sup> Mr Svilen Ovcharov from “The Green Lawyers” in an interview from May 2011 taken by Aneliya Parapanova

<sup>149</sup> “For the Nature” – coalition of Bulgarian ENGOs, URL: <http://en.forthenature.org/cases/10> accessed 3.03.2012

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*



“In 2008, the Government authorized a spatial master plan designating for urbanization 85% of the Strandja SPA/pSCI’s coastal habitats and despite the negative statements of the scientific experts working on the plan: “According to the impact assessment of the plan 25% of the populations of priority species will be damaged.” This violation of Art. 6 (3) of the Habitats Directive is accompanied by violation of the Aarhus Convention because there is no possibility for the general public to appeal the authorization procedure.”<sup>152</sup> According to the NGOs the following sites will be affected: Strandzha SPA (BG 0002040) and Strandzha SCI (BG 0001007).<sup>153</sup> In their opinion the only alternative solution was to exclude from urbanization the territories which are priority for target animal species, which meant that 70% of the territories in the new spatial plan of Tzarevo had to be excluded.<sup>154</sup>

According to this new spatial plan the hotel complex “Golden Pearl” is now within the boundaries of an urban area and could be legalized. The plan was approved by the minister of regional development and public works. The Ministry of environment and water also authorized the plan stating that it does not breach the special regime of Strandzha Nature Park.<sup>155</sup>

“The environmental authorities approved the plan despite of the position papers submitted by a number of biodiversity experts from 4 academic institutions and over 30 NGOs protesting against the inadequacies of the reports like: incomplete list of Habitats and Bird directives species assessed, incomplete assessments and disregard for the Criteria of Favourable Conservation Status (already developed for Bulgaria), lack of alternatives, contradictory conclusions between authors of different biological groups and a number of procedural violations. The decision for the approval of the plan was a political one taken in blunt disregard of the EU nature conservation legislation, more specifically art.6.2 of Directive 92/43 EEC, art.4.4 of Directive 79/409/EEC and art.5.1 of 2001/42/EC.”<sup>156</sup>

Neither of the two Bulgarian ministries has published its decision on the SEA of the master plan which according to Bulgarian law (Spatial Planning Act and Environmental Protection Act) is

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<sup>152</sup> Sixteen cases of Natura 2000 vandalism in Bulgaria, a report prepared by the Bulgarian Society for the Protection of the Birds (BSPB), 14

<sup>153</sup> Request for supplementary information by the Commission, WWF Danube-Carpathian Programme, 5

<sup>154</sup> *Ibid.*, 15

<sup>155</sup> “The Green Lawyers”, URL:

<http://ecopravo.blogspot.com/search/label/%D0%A1%D1%82%D1%80%D0%B0%D0%BD%D0%B4%D0%B6%D0%B0> accessed 9.03.2012

<sup>156</sup> Request for supplementary information by the Commission, WWF Danube-Carpathian Programme, 2

the only decision in the spatial planning process that could be appealed in court. This has deprived the Bulgarian public of the opportunity to apply legal control on the matter.<sup>157</sup>

Although the authorization of the “manipulated SEA”<sup>158</sup> of the spatial master plan granted by the Ministry could not formally be appealed in court, it was the reason for a law suit started by “The Green Lawyers” – a group of lawyers working on nature protection cases that initially formed ad hoc for this particular case but turned to be a permanent one, cooperating with and assisting the environmental NGOs in Bulgaria.<sup>159</sup>

Initially the case was dismissed as inadmissible by the Supreme Administrative Court exactly because it was impossible for the general public to appeal the authorization procedure. However, on the higher instance the Court decided that the case is admissible and it held that such authorizations can be appealed as acts with independent legal significance which marked a precedent in Bulgarian law.<sup>160</sup> Subsequently, the current Bulgarian minister of the environment and water Nona Karajova decided to withdraw the approval of the spatial master plan of Tzarevo municipality because she did not agree with the decision of the previous minister and moreover because of the position of the European Commission that had opened an infringement procedure against Bulgaria on the same case.<sup>161</sup> According to the principle that the EU judge is the national judge and that EU law takes precedence over national law, the Commission halts the infringement proceedings every time there is a case opened on the same issue before the national court.<sup>162</sup> Although the authorization was withdrawn, the Ministry of regional development and public works which was also involved in the case insisted that the litigation should continue. In May 2010 “The Green Lawyers” won the case and the court ruled that the illegal complex “Golden Pearl” should be demolished.<sup>163</sup> The minister of regional development and public works

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<sup>157</sup> *Ibid.*, 3

<sup>158</sup> Dounchev, A., Association of parks in Bulgaria, 2010, EU infringements to Bulgaria, can we call it a success story?, URL: [http://cmsdata.iucn.org/downloads/eu\\_infringements\\_to\\_bulgaria.pdf](http://cmsdata.iucn.org/downloads/eu_infringements_to_bulgaria.pdf)

<sup>159</sup> “The Green Lawyers”, URL: <http://ecopravo.blogspot.com/> accessed 9.03.2012

<sup>160</sup> “The Green Lawyers”, URL:

<http://ecopravo.blogspot.com/search/label/%D0%A1%D1%82%D1%80%D0%B0%D0%BD%D0%B4%D0%B6%D0%B0> accessed 8.03.2012

<sup>161</sup> *Ibid.*

<sup>162</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

<sup>163</sup> *Ibid.*

at that time Rossen Plevneliev confirmed that, stating that stricter measures should be taken from now on for nature protection in Bulgaria.<sup>164</sup>

In my personal communication with representatives from DG Environment from the European Commission I have requested the letter of formal notice sent to Bulgaria as a result of the open infringement procedure on this case. The Commission officials have advised that since this infringement procedure is currently closed, they will provide me with the requested information. I was kindly sent the formal letter in question which I will now briefly discuss. After presenting the relevant legislation and the facts of the case, in the legal analysis the Commission claimed breach of two directives: the Habitats Directive and Directive 2001/42/EC. In its legal analysis the Commission said that Bulgaria has infringed Art.6(3) in connection with Art.7 of the Habitats Directive by not having assessed all effects of the change of the spatial master plan of Tzarevo Municipality on all bird species and their habitats, for not having adequately assessed the cumulative effects of the change of the plan together with the already existing plans and projects in the SPA “Strandzha” (BG0002040) and for having approved the new spatial plan without making sure that it won’t have a negative impact on the coherence of the SPA “Strandzha”.<sup>165</sup>

The Commission also took the position that Bulgaria has failed to fulfill its responsibilities stemming from Art.6(4) in connection with Art.7 of the Habitats Directive for approving the spatial master plan of Tzarevo Municipality in spite of its negative impact on the SPA “Strandzha” (BG0002040) and without the necessary overriding reasons of public interest and alternative solutions.<sup>166</sup> Regarding the SCI “Strandzha” (BG0001007) the Commission held that by approving an intervention that seriously damages the ecological characteristics of the mentioned area, the Republic of Bulgaria has failed to fulfill its obligations under the Habitats Directive according to the interpretation given by the ECJ in cases C-117/03 and 244/05.<sup>167</sup> The Commission said that since the SCI “Strandzha” (designated on 12.12.2008) was designated a few months after the approval of the spatial master plan of Tzarevo municipality (13.08.2008), it could not claim breach of Art.6(3) of the Habitats Directive because this article was not applicable to the SCI at the time of the authorization of the master plan. Furthermore, Bulgaria

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<sup>164</sup> bTV – Bulgarian national television, URL:

[http://btvnews.bg/2048696675-Sabaryat\\_kompleks\\_Zlatna\\_perla\\_kray\\_Varvara.html](http://btvnews.bg/2048696675-Sabaryat_kompleks_Zlatna_perla_kray_Varvara.html) accessed 8.03.2012

<sup>165</sup> Letter of formal notice, Infringement 2009/4424, C(2009) 7368, Brussels, 9.10.2009, 19

<sup>166</sup> *ibid.*, 20

<sup>167</sup> *ibid.*, 20

was found to be in breach of Directive 2001/42/EC and in particular of Art.5(1), Annex 1j, Art.8 and Art.9(1)b thereof.<sup>168</sup>

#### 4.2.2. Analysis from the perspective of AA/EIA

In this specific case there is no data that an AA/EIA was carried out at all. It is moreover claimed that the company “Crash 2000” received an authorization to start the construction works after faking the signature of a deputy minister of the environment and water. It is further stated that even after the company was fined and formally asked to stop all construction activities, it continued building the complex until the main work was finished.<sup>169</sup> What followed next were strong and repeated attempts to legalize the complex, unfortunately supported by Tzarevo municipality two Bulgarian ministers.

One of the main issues here and in principle is, as Mrs Barova from DG Environment of the European Commission says, the lack of understanding that the Natura 2000 is actually a “very flexible instrument”. The best solution in most cases would be if the business considers nature as early as possible at the stage of planning and thus all problems and extra costs would be reduced to a minimum.<sup>170</sup> According to some of the environmentalists, this is exactly what the responsible investors are doing.<sup>171</sup> Unfortunately, not all of them are choosing the legal and responsible way.

In the discussed case Tzarevo municipality “smartly” decided to draft a new spatial master plan according to which the “Golden Pearl” complex, originally built on the territory of the Strandzha Nature Park, now conveniently appeared to be within the boundaries of an urban area. The plan was surprisingly approved by the minister of environment and water, who claimed that it was not in contrast with the regime of the Nature Park. It was exactly this authorization that was successfully challenged in court by “The Green Lawyers”, which marked a precedent in Bulgarian law. Even though the current Bulgarian minister of environment and water withdrew the approval, the litigation continued and the court ruled against the authorization. Since there

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<sup>168</sup> *Ibid.*, 20

<sup>169</sup> “The Green Lawyers”, URL:

<http://ecopravo.blogspot.com/search/label/%D0%A1%D1%82%D1%80%D0%B0%D0%BD%D0%B4%D0%B6%D0%B0> accessed 9.03.2012

<sup>170</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>171</sup> Mr Andrey Kovachev from Balkani Wildlife Society in an interview from May 2011 taken by Aneliya Parapanova

was a ruling by the national court and following the principle that the national judge is bound to apply EU law, the Commission decided to close the infringement procedure.<sup>172</sup>

#### 4.2.3. *Analysis from the perspective of public awareness*

In my opinion this case concentrated the public attention and marks a shift in the involvement of civil society in Bulgaria with the environmental problems. After the Supreme Court declared the designation of Strandzha Nature Park invalid, thousands of people gathered and protested. As mentioned above, “protesters gathered on the streets, crossroads were jammed, thousands of signatures were collected (including those of famous Bulgarians).”<sup>173</sup> According to Aleksandar Dunchev this was a critical moment and a boiling point was reached.<sup>174</sup> Fortunately, the pressure paid off and the Bulgarian government passed an order stating that past proclamation for protected areas cannot be appealed in court which overturned the judgment.<sup>175</sup> This is a great victory for both the ENGOs and for the Bulgarian citizens in their attempts to save unique Bulgarian nature for the future generations. The unpleasant surprise in this particular case stems from the fact that the battle was not only against the private investor but also against a Bulgarian municipality and a Bulgarian Court.

Later on Tzarevo municipality decided to pass a new master plan, approved by two Bulgarian ministers. Again, this did not go unnoticed and “The Green Lawyers” were formed ad hoc to respond to this threat. On a higher instance the Supreme Administrative Court held the case admissible and later on ruled against the authorization of the plan, marking a precedent in Bulgarian law. For the subsequent developments we should not underestimate the impact of the infringement procedure against Bulgaria started by the Commission (2009/4424). In this case the pressure both from above and from below produced positive effects. “If member states become ‘sandwiched’ between pressure from below, where domestic actors pull the EU policy down to the domestic level, and from above, where the Commission and the European Court of Justice

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<sup>172</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

<sup>173</sup> “For the Nature” – coalition of Bulgarian ENGOs, URL: <http://en.forthenature.org/cases/10> accessed 9.03.2012

<sup>174</sup> Mr Aleksandar Dunchev from the Association of parks in Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

<sup>175</sup> “For the Nature” – coalition of Bulgarian ENGOs, URL: <http://en.forthenature.org/cases/10> accessed 9.03.2012

push towards compliance, European policies are more likely to be effectively implemented and complied with, despite the high costs involved.”<sup>176</sup>

### **4.3. The ski resort in Bansko, Pirin National Park (2011)**

#### *4.3.1. Facts of the case*

“Pirin National Park is a part of the EU’s environmental network NATURA 2000 and a UNESCO World Natural Heritage Site.”<sup>177</sup> It has unique biological diversity and beautiful pine trees, as well as the oldest tree on the Balkans – Baikusheva Mura.<sup>178</sup> The European Commission is currently investigating the construction of illegal ski facilities in the main ski resort in the area of Bansko after 2007, when Bulgaria joined the EU. UNESCO have declared that if those violations don’t come to an end, it will declare Pirin National Park a World Natural Heritage site in danger.<sup>179</sup>

“The concession contract for Bansko Ski Zone was signed in 2001 with the concession rights given to Yulen JSCo., whose present major shareholders are two offshore companies as well as Bansko municipality.”<sup>180</sup> It has appeared that over the past 10 years the Ski Zone has been expanded on a territory larger than the one legally defined by the concession contract and therefore around 40% of it should be considered illegal.<sup>181</sup> “According to WWF, the developer has also breached nearly every requirement of the environmental impact assessment but has gotten off the hook by simply paying all fines incurred by the authorities.”<sup>182</sup> For this serious breach of law the company Yulen JSCo. had received a ridiculous fine of 2000 BGN (which equals about 1000 euro) which was qualified as a “joke” by the chief of the legal department of DG Environment Jean-Francois Brakeland when he was on official investigation visit in Bulgaria last year.<sup>183</sup> He underlined that Bulgaria still has to transpose the European directive for

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<sup>176</sup> Börzel, Tanja A. (2003): Environmental leaders and laggards in Europe. Why there is (not) a "southern problem". Ashgate Publishing Limited, 3

<sup>177</sup> WWF, URL: <http://wwf.panda.org/?uNewsID=201084> accessed 4.03.2012

<sup>178</sup> “For the Nature” – coalition of Bulgarian ENGOS, URL: <http://forthenature.org/cases/35> accessed 13.03.2012

<sup>179</sup> WWF, URL: <http://wwf.panda.org/?uNewsID=201084> accessed 4.03.2012

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> WWF, URL: <http://wwf.panda.org/index.cfm?uNewsID=88660> accessed 4.03.2012

<sup>183</sup> Dnevnik – Bulgarian daily newspaper, URL:

[http://www.dnevnik.bg/zelen/2011/04/06/1071215\\_ek\\_otreche\\_tvurdeniata\\_zh\\_spirane\\_na\\_nakazateln/](http://www.dnevnik.bg/zelen/2011/04/06/1071215_ek_otreche_tvurdeniata_zh_spirane_na_nakazateln/) accessed 13.03.2012

environmental crimes which requires much higher sanctions on the offenders that are proportionate to the committed offences.<sup>184</sup>

During all years since the start of the concession contract in 2001 the environmentalists have been trying to attract the attention of four Bulgarian governments to the numerous breaches of law that it involved and to the tragic impact on the National Park.<sup>185</sup> “It is not well known that according to the concession contract some of the old ski tracks need to be recultivated and closed, which has not been done.”<sup>186</sup> Furthermore, the ski resort has impacted nature “causing mass erosion and deforestation in the region”<sup>187</sup>.

In 2004 the government accepted a management plan for the National Park Pirin as one is due to be drafted for each protected territory. It is valid for 10 years. The plan proclaims that the Bansko ski resort cannot be further expanded than what is stated in the concession contract of 2001. However, in 2005 Bansko municipality changed the territorial plan of Bansko ski resort, completely disregarding the management plan of the National Park Pirin, which makes those amendments illegal. Those illegal changes give the right to the investors to further expand the resort.<sup>188</sup> According to the NGOs “the actualization of the GSP (General Spatial Plan) is not subjected to any EIA assessment by the Municipality of Bansko since the Municipality regards the actualization of the GSP as a “correction of factual fault” in the GSP”.<sup>189</sup>

“The ski facilities construction was adjoined by the expansion of the accommodation base in the town of Bansko with 200% within the period 2002-2007 to a total of 13500 beds in 2007. Another 1000 beds were still in construction in 2007. The accommodation capacity growth in Bansko was substantially larger than adopted in the ski resort official Master Plan. The building expansion took place with little oversight by local authorities, especially in the first four years of the construction boom and lead to overdevelopment and building congestion.”<sup>190</sup>

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<sup>184</sup> *Ibid.*

<sup>185</sup> “For the Nature” – coalition of Bulgarian ENGOS, URL: <http://forthenature.org/cases/35> accessed 13.03.2012

<sup>186</sup> *Ibid.*

<sup>187</sup> Filka Sekulova, Master thesis “The Discourse of Skiing. Kabul-Ezerata-Panichishte. A Social Cost Benefit Analysis”, Vrije Universiteit Amsterdam, (thesis on file with the author), 8

<sup>188</sup> “For the Nature” – coalition of Bulgarian ENGOS, URL: <http://forthenature.org/cases/35> accessed 13.03.2012

<sup>189</sup> Letter of complaint to the European Commission, GREEN BALKANS

<sup>190</sup> Filka Sekulova, Master thesis “The Discourse of Skiing. Kabul-Ezerata-Panichishte. A Social Cost Benefit Analysis”, Vrije Universiteit Amsterdam, (thesis on file with the author), 6

The NGOs decided to take action and to complain to the Commission. The NGO GREEN BALKANS contacted the Commission claiming infringement of Art.6(3) of the Habitats Directive because of activities taking place in SPA “Pirin” BG0000209 and pSCI “Pirin” BG0000209. They have specifically addressed the following activities: the acceptance of the Detailed Zoning Plan (DZP) of ‘Ski and Golf complex – Kulinoto”, the project “Construction of a four-seats lift in the area of Chalin Valog” of ski area Bansko, the project for the construction of infrastructural facility for the passage of a ski run through heights 1185-1190 m in ski zone Bansko and the modification of the General Zoning Plan (GZP) of ski zone Bansko – construction of three drag-lifts with lengths of 300 m, 300 m and 150 m<sup>191</sup>.

These developments have become the reason for the start of a yet another infringement procedure against Bulgaria. “The Commission has received a number of complaints regarding on-going tourist and skiing developments in the Bansko Ski Centre in protected areas of the Pirin Mountain, which are noted for their spectacular flora and fauna. Some of the developments in question were authorized by the national authorities before any proper assessment of their impact and cumulative effects on protected species and habitats had been carried out.”<sup>192</sup>

The current Bulgarian government has come up with a peculiar solution. It stated that the investor Yulen JSCo. has all the necessary documents allowing the construction of the ski lifts and the ski facilities and so the law is to be changed.<sup>193</sup> “Environment minister Nona Karadzhova has said that the government plans to solve the problem by amending the Concession Law. This would mean that unlawfully built ski facilities on close to 647 000 m<sup>2</sup> would become legal.”<sup>194</sup>

According to Vesselina Kavrakova, Programme Manager at the WWF, such a step would be in complete violation of the EU nature protection principles. “If the law is amended, this would mean that the government is letting a private company usurp state land instead of punishing the offender”, she said.<sup>195</sup> This particular case, as well as the ones described above, have made Michael Baltzer, Director of WWF’s Danube-Carpathian Programme dramatically to conclude, that “When it comes to nature protection, nothing in Bulgaria is sacred.”<sup>196</sup>

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<sup>191</sup> Letter of complaint to the European Commission, GREEN BALKANS

<sup>192</sup> Press Release of the Commission IP/09/1484 from 8 October 2009

<sup>193</sup> WWF, URL: <http://wwf.panda.org/?uNewsID=201084> accessed 4.03.2012

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> WWF, URL: <http://wwf.panda.org/index.cfm?uNewsID=88660> accessed 4.03.2012



#### *4.3.2. Analysis from the perspective of AA/EIA*

Unfortunately, we cannot see any improvement in the practice of performing an AA/EIA, I would rather argue that the situation gets even worse. The investor – being aware that the ski resort is in a National Park of high importance and going the legal way and trying to obtain a positive AA/EIA of the expansion would be impossible – decides to apply shrewd tactics. They have attracted the local municipality on their side making it a shareholder in the company Yulen JSCo. and thus compromising its assessment and the actual interests it is bound to pursue. Thus in 2005 Bansko municipality introduced changes to its territorial plan – in breach of the management plan of the National Park Pirin, which takes precedence – and the investor was free to expand the ski resort on land that is public property and also protected by the Natura 2000 network.

The suggestions of the Bulgarian authorities to change the law and to legalize the resort do not present valid options for the environmental NGOs. That is why they have signaled the European Commission which has started yet another infringement procedure and is currently investigating the case.

#### *4.3.3. Analysis from the perspective of public awareness*

The environmental NGOs have once again mobilized their efforts to attract the attention of all relevant stakeholders to the problem discussed. They have tried to seize the attention of four Bulgarian governments, of the European Commission, of the Bulgarian media and of all Bulgarian citizens that care for nature protection. They are also suggesting solutions of the problem – namely, that the current government should declare the concession contract invalid, nationalize all the facilities built illegally on public property, order the infringing company to repair the damage caused and impose serious fines on it.<sup>197</sup>

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<sup>197</sup> "For the Nature" – coalition of Bulgarian ENGOS, URL: <http://forthenature.org/cases/35> accessed 13.03.2012

Time will show what the result and the actual approach followed would be, but Bulgaria is still to prove that it takes nature protection seriously and that the environmental laws are more than “paper laws” as the majority of the ENGOs in Bulgaria claim.<sup>198</sup>

## 5. Conclusion

As we saw from the findings in this chapter, there is still a lot to be done in Bulgaria with regard to nature conservation. Even though the bulk of the European environmental legislation was adequately transposed it is still not sufficiently implemented and enforced in practice which gives the representatives of the environmental NGOs solid grounds to claim that it is not actually working.<sup>199</sup> They list numerous causes for that among which the lack of sufficient information, the widespread corruption in Bulgaria, the immature and insufficiently active civil society, the vicious practices on the part of some of the investors, the weakness of the Bulgarian judicial system and the inadequate resources and the lack of political will on the side of the Ministry of the environment and water and the Bulgarian government as a whole.<sup>200</sup> As a chief problem with the enforcement of the legislation the majority of the environmentalists identify the practice of the performance of AAs/EIAs which should make operational “the heart” of the Habitats Directive – Art. 6(3).<sup>201</sup> Unfortunately, their unanimous conclusion is that as a rule the AAs/EIAs are not properly done in Bulgaria which in practice deprives the protected areas of the protection they should enjoy by law. The Bulgarian public is one of the main stakeholders in the process but so far it has failed to act to the high standards that the cause of nature conservation requires. The main reasons for that are the low level of public awareness what the Natura 2000 network is all about as well as the immaturity of civil society as a whole in Bulgaria. As some environmentalists point out, there is a widespread and partly justified fear that if people go out and protest or simply signal or oppose infringements they will be having serious problems like losing their jobs or even being physically threatened or harmed.<sup>202</sup> Furthermore, as Mrs Sylvia

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<sup>198</sup> Capital – Bulgarian weekly newspaper, URL:

[http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2008/09/19/552415\\_natura\\_vleze\\_vdun\\_gori\\_tilileiski/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2008/09/19/552415_natura_vleze_vdun_gori_tilileiski/)  
accessed 13.03.2012

<sup>199</sup> Mr Andrey Kovachev and Mr Stefan Avramov in interviews from May 2011 taken by Aneliya Parapanova

<sup>200</sup> Mr Aleksandar Dunchev, Mr Andrey Kovachev and Mr Stefan Avramov in interviews from May 2011 taken by Aneliya Parapanova

<sup>201</sup> Mr Andrey Kovachev from Balkani Wildlife Society in an interview from May 2011 taken by Aneliya Parapanova

<sup>202</sup> Mr Aleksandar Dunchev from the Association of parks in Bulgaria in an interview from May 2011 taken by Aneliya Parapanova

Barova from the Commission rightly points out, the Natura 2000 network is offering great advantages but due to this lack of understanding and awareness they cannot be properly used in Bulgaria.<sup>203</sup> The ENGOs are the other main stakeholder concerned with public awareness and the chief drivers of positive change. According to lawyer Svilen Ovcharov the NGOs have developed significantly during the years from initially providing only expert knowledge and assistance to the institutions to more active members in the process of nature protection, using more and more the services of lawyers and PR professionals and dealing with lobbying.<sup>204</sup> The legitimate NGOs have decided to unite forming the powerful coalition “For the Nature”. In the face of the European Commission they have found a good partner in the struggle for a better nature protection policy and they are the main source of signals for infringements.<sup>205</sup> There are about 8 infringement procedures opened by the Commission against Bulgaria in the area of nature conservation so far and all of them are still in the administrative stage of formal letter of notice.<sup>206</sup> Some of the environmentalists even consider that a case before the ECJ may have a positive impact and a strong preventative effect against new cases and infringement procedures, which is yet to be seen in reality.<sup>207</sup>

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<sup>203</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>204</sup> Mr Svilen Ovcharov from “The Green Lawyers” in an interview from May 2011 taken by Aneliya Parapanova

<sup>205</sup> Dnevnik – Bulgarian daily newspaper, URL:

[http://www.dnevnik.bg/evropa/razshiravane/2010/01/05/837874\\_evropa\\_i\\_priroda/](http://www.dnevnik.bg/evropa/razshiravane/2010/01/05/837874_evropa_i_priroda/) accessed 7.03.2012

<sup>206</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

<sup>207</sup> Mr Stefan Avramov from “Biodiversity” Foundation in an interview from May 2011 taken by Aneliya Parapanova

## Chapter 4

### Comparison between the progress in the implementation of the Natura 2000 network of Romania and Bulgaria

#### 1. Introduction

Bulgaria and Romania started their journey towards EU accession together along with the rest of the other ex-communist Central and Eastern European states. However, they could not complete all the required reforms on time to join the EU in 2004 as the other applicant countries did. The two countries acceded to the EU only on 1 January 2007 and are sometimes referred to in the literature as the “successful laggards”<sup>208</sup>. In the present chapter I will make a brief parallel between the development of the two countries in terms of transposition and implementation of the EU nature conservation legislation. In order to do that, I will critically review the Regular Reports of the Commission on the progress of Romania towards accession, drawing constant parallels to the findings of the Commission on the respective progress of Bulgaria. Also, it will be interesting and beneficial for the purposes of the current study to check if both Bulgaria and Romania share the problems discussed in the previous chapter – the performance of AAs/EIAs for plans and projects in the protected areas and the level of public awareness about the Natura 2000 network. Given that the two countries share a lot of commonalities – they are both ex-communist, they are situated in Eastern Europe and neighbor each other and they acceded to the EU together, later than the other applicant countries and with a number of conditions – my assumption would be that they would have made a similar progress in terms of transposition, implementation and enforcement of the Natura 2000 network and would be likely to share the same major problems.

#### 2. Pre-accession developments

In its **1997 Opinion** on Romania’s application for membership, the Commission stated that Romania satisfies the political criteria and that it will need further substantial efforts to fulfill the

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<sup>208</sup>Noutcheva, Gergana and Dimitar Bechev, 2008, The Successful laggards. Bulgaria and Romania on the road to EU membership, East European Politics and Societies Vol. 22, Nr. 1

economic ones.<sup>209</sup> Regarding the environment, the Commission repeated the same formula used for Bulgaria, saying that “Romania faces very severe environmental problems, with particular challenges in all the key areas: water quality, waste management, and air and soil pollution.”<sup>210</sup> As with Bulgaria, the Commission acknowledged that Romania has “valuable areas of unspoiled nature”, referring specifically to the Carpathian Mountains and the Danube delta. Romania was found not to have addressed any of the environmental issues effectively, mainly because of the lack of sufficient funding in the sector.<sup>211</sup>

The progress of Romania with regards to the transposition of the environmental legislation was assessed by the Commission as unsatisfactory and the country was further criticized for the lack of planning for the transposition and implementation. The level of environmental public awareness was found to be “very low” and the conclusion was that “(t)here is, therefore, a long way to go in formal compliance with EU requirements in Romania.”<sup>212</sup>

The Commission’s ultimate conclusion was that Romania needs to place greater priority on the environmental issues, substantially to improve the investments and to strengthen and develop the administrative capacity in order to meet the requirements set in the area. The Commission expected that this could be achieved only in the “very long term”<sup>213</sup>.

In its **Regular Report from 1998**, the Commission wrote that Romania has achieved little progress in the transposition of the legislation. The country was reproached for not having adopted “any framework laws in the various environmental sectors despite the priorities included in the Accession Partnership.”<sup>214</sup> The Commission repeated its previous observations that Romania needs to increase the investments in the sector, as well as to improve the administrative capacity. The country was also to adopt a detailed strategy in order to ensure the successful transposition of the environmental legislation.

In the Report from the same year on Bulgaria, the Commission basically raised the same concerns, the difference being that in the case of Bulgaria strategic plans for the transposition of the *acquis* were found to exist, the country only had to make them operational.

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<sup>209</sup> Agenda 2000: Commission Opinion on Romania’s Application for Membership of the EU, DOC/97/18, Brussels, 15<sup>th</sup> July 1997

<sup>210</sup> *Ibid.*, 89

<sup>211</sup> *Ibid.*, 89

<sup>212</sup> *Ibid.*, 90

<sup>213</sup> *Ibid.*, 90

<sup>214</sup> 1998 Regular Report from the Commission on Romania’s Progress Towards Accession, 39

The **1999 Regular Report** on Romania stressed the same major concerns that the country has failed to address. The Commission underlined that it is “problematic” that Romania still lacks a comprehensive strategy for the transposition and it is now “urgent” that the country speeds up the transposition of the horizontal legislation.<sup>215</sup> The opinion of the Commission on the progress of Romania to that point is best described by the conclusion that “(i)t seems that environment is not a priority for the Government”<sup>216</sup>

In contrast, in the Report from the same year on Bulgaria the country was found to have made a “good progress” in the harmonization of the horizontal and framework legislation. However, Bulgaria and Romania shared the same problems regarding the poor investments in the area and the low capacity of the relevant ministries to meet the future challenges.

The **2000 Regular Report** stated that Romania has finally started adopting the necessary reforms in the environmental sphere. Romania tried reinforcing the administrative capacity by introducing reforms at the local level, but the Commission was mainly concerned by the ability of the central administration to successfully manage the EU structural funds. *Chapter 22 Environment* says that Romania has also prepared some strategies for the transposition and although its pace was slow some legal acts were nevertheless adopted. “New laws harmonise Romanian legislation with the Community *acquis* on the conservation of natural habitats and of wild fauna and flora, and on the conservation of wild birds.”<sup>217</sup> The Commission did not miss the opportunity to point out that the environmental accidents that had occurred in the beginning of 2000 directly pointed to the existing deficiencies in the environmental sphere and called for increased attention and resources. The conclusion of the Commission was that Romania has demonstrated a “limited progress” on this Chapter.

In the case of Bulgaria, the Commission acknowledged that “further progress” has been made, the final lines being that the priority is partially met. The country was admitted to have achieved further alignment by adopting strategies and transposing and implementing the legislation. As main problematic fields were pinpointed the actual implementation of the legislation, as well as the incorporation of the principle of sustainable development into the other sectoral policies.

The **2001 Report** on Romania identified progress in ratifying some international conventions, adopting plans for the transposition, as well as some legal acts from the *acquis*. In terms of the

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<sup>215</sup> 1999 Regular Report from the Commission on Romania’s Progress Towards Accession, 13/10/99, 52, 53

<sup>216</sup> *Ibid.*, 53

<sup>217</sup> 2000 Regular Report from the Commission on Romania’s Progress Towards Accession, 8 November 2000, 71

integration of the environment into the other policies, however, “no significant progress has been achieved”<sup>218</sup>. “On nature protection, in order to transpose the directives on the conservation of natural habitats, of wild fauna and flora, and on the conservation of wild birds, an emergency ordinance has been adopted and published.”<sup>219</sup> The Commission said that further efforts will be required in order to prepare for the establishment of the Natura 2000 network. The Commission concluded that Romania had still a long way to go before a full alignment with the environmental *acquis* was in place and that it should make the environment a priority in the accession.

In 2001, Bulgaria went further ahead compared to Romania. The Commission found that the country has made significant progress in almost all directions – transposition of the legislation, incorporation of the environmental concerns into the other policies, improvement of the administrative capacity, increased funding, etc. It was concluded that Bulgaria has reached a good level of alignment with the *acquis* and that the state of the environment has generally improved.<sup>220</sup>

The following Commission **Report from 2002** addressed the same issues with the poor investments and low administrative potential and it was stressed that even though an impressive amount of the legislation appears to have been transposed, all the relevant stakeholders were not consulted and Romania lacked the actual resources to implement it in practice.<sup>221</sup> Besides, Romania has neither implemented the environmental impact assessment legislation, nor has done any significant efforts to integrate the environment into the other policies. “In the case of nature protection, most of the *acquis* has been transposed.”<sup>222</sup> The Commission concluded that the priorities included in the Accession Partnership have not been met and negotiations on this Chapter continue.

In the Regular Report on Bulgaria, the Commission spoke again of the good progress reached, insisting that the efforts should continue. The Commission noted that full implementation still remained a challenge and pointed Bulgaria’s attention to the need for preparation of sound environmental impact assessments and raising the public awareness about the environmental issues.

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<sup>218</sup> 2001 Regular Report on Romania’s Progress Towards Accession, SEC(2001) 1753, Brussels, 13/11/2001, 81

<sup>219</sup> *Ibid.*, 81

<sup>220</sup> 2001 Regular Report on Bulgaria’s Progress Towards Accession, SEC(2001) 1744, Brussels, 13.11.2001, 76

<sup>221</sup> 2002 Regular Report on Romania’s Progress Towards Accession, SEC(2002) 1409, Brussels, 9.10.2002, 105

<sup>222</sup> *Ibid.*, 105

The **2002 Roadmaps** prepared for the “laggards” Bulgaria and Romania contained basically the same recommendations – need to increase the administrative capacities, to foster the investments, to integrate the environmental considerations into the other sectoral policies and to continue with the transposition.

In the **2003 Regular Report** on Romania, the Commission noted significant progress in terms of alignment with the horizontal legislation, including new legislation regulating the environmental impact assessment. However, the Commission criticized Romania for no or little progress with the integration of the environment into the other policies. With regards to nature protection, developments were registered on data collection for the protected sites and for establishing the necessary administration. It was noted that in 2003 the Ministry of the Environment and Waters Protection was merged with the Ministry of Agriculture which has only led to increased uncertainty and unclear responsibilities. “There is a heavy emphasis on the legal transposition and formal meeting of the requirements of the *acquis*. This can be to the detriment of real progress as transposition continues to outpace both strategic thinking and actual implementation, even if in some sectors such as waste management attempts can be registered as regards strengthening of strategic planning.”<sup>223</sup>

In 2003, Bulgaria officially closed Chapter Environment. The Commission welcomed the progress achieved, especially in strengthening the administrative capacity, in the environmental awareness-raising and in the adoption of detailed implementation plans. The new Biological Diversity Act adopted in 2002, which transposed the Wild Birds and the Habitats Directives, played a significant role in successfully closing the negotiations.

In its **Report from 2004**, the Commission monitored further progress on the side of Romania in terms of nature protection with respect to the preparation of the Natura 2000 network and transposition of the legislation. After the merger with the Ministry of Agriculture, in March 2004 Romania decided to re-establish a separate Ministry of Environment and Water Management. A recruitment strategy was drafted according to which in the period 2004-2006 736 new employees were going to be hired. The concluding notes of the Commission read that “(*e*)*nvironment* is an area where Romania has achieved a good level of alignment with the *acquis* in most of the sectors, whereas implementation is, in general, still lagging behind.”<sup>224</sup>

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<sup>223</sup> 2003 Regular Report on Romania’s Progress Towards Accession, 97

<sup>224</sup> 2004 Regular Report on Romania’s Progress Towards Accession, COM(2004) 657 final, 6.10.2004, 145



On Bulgaria the Commission confirmed that the chapter was closed and acknowledged the “steady progress” of the country. The Natura 2000 network was still at the stage of establishment and implementation but the country was showing a good pace of the process.

In the **Report from 2005**, the Commission said that regarding nature conservation “legislation is in place, but transposition of certain requirements of the birds directive has to be completed by the date of accession”.<sup>225</sup> The implementation of the Natura 2000 was going well and the NGOs were involved in the process of the site selection. Romania had to ensure that the protection of the sites is actually enforced before accession. The conclusion reached was that Romania was generally meeting the requirements for membership and if it kept the current pace of reforms it should be able to successfully implement the environmental *acquis*, including in the field of nature protection.

The 2005 Report on Bulgaria focused on specific issues like the special training needed for both the EIA and the SEA. It was acknowledged that the bulk of the legislation was transposed. Bulgaria had to finalise the lists of proposed sites of Community interest and the designation of SPAs.

The **Regular Report of the Commission on Romania from 2006** determined that in terms of developments connected with the Natura 2000 things have slowed down. “The area of nature protection deteriorated and the full implementation of the *acquis* as from accession needs to be ensured. In particular, strengthening of the administrative capacities, of the cooperation and coordination mechanisms as well as the completion of the preparations for special nature protection areas are needed. All these areas required increased efforts and swift action.”<sup>226</sup>

The corresponding Report on Bulgaria stated that the country is meeting the commitments arising from the accession negotiations. “Increased efforts and swift action are now needed by Bulgaria to finalise the transposition process and to implement and enforce the legislation. Administrative capacity still needs to be further increased in these areas, with particular attention to the regional and local environmental authorities and the inspectorates.”<sup>227</sup>

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<sup>225</sup> Romania. 2005 Comprehensive Monitoring report, COM(2005) 534 final, Brussels 25 October 2005, 64

<sup>226</sup> Commission Staff Working Document. Romania. May 2006 Monitoring Report, COM(2006) 214 final, Brussels, 16.05.2006, 33

<sup>227</sup> Commission Staff Working Document. Bulgaria. May 2006 Monitoring Report, COM(2006) 214 final, Brussels, 16.05.2006, 33

Both Bulgaria and Romania closed all outstanding negotiation chapters in 2004 and the Brussels European Council of December 2004 confirmed the accession date of 2007.<sup>228</sup> “According to a Commission official employed at the DG Enlargement in 2006, the European Commission recognized that the shortcomings of Bulgarian and Romanian law enforcement structures and governance standards jeopardized the countries’ ability to correctly apply EU law in the post-accession phase. However, they also noticed a lack of political alternatives.”<sup>229</sup>

### 3. Post-accession situation

Based on the information found in the Press Releases of the Commission, there are four cases on which infringement procedures were opened against Romania in the environmental sphere. Three of these cases are for breaches of the nature protection legislation and all of them are at the stage of a Reasoned Opinion. One of the cases – for failure to designate SPAs under the Wild Birds Directive – which started in 2007 quickly appeared in the docket of the ECJ. The case is characteristic for the problems that Romania is currently facing and I will briefly describe it.

In 2007 the Commission warned Romania over its failure to designate SPAs for migratory and vulnerable birds.<sup>230</sup> As a result Romania subsequently designated 108 SPAs but it turned out that 21 areas identified as Important Bird Areas (IBAs) were not designated and the actual designated SPAs were smaller in size than the respective IBAs, leaving over one million of hectares outside the Natura 2000 protection.<sup>231</sup> Romania was sent a Reasoned Opinion but as it failed to respond to it in a satisfactory manner the Commission started legal proceedings before the ECJ. However, in case C-522/09 Romania claimed that the Commission has changed the subject-matter in the Reasoned Opinion – the breach mentioned in the letter of formal notice was failure to designate SPAs and in the Reasoned Opinion the Commission was unhappy with the number and size of the designated SPAs which in the view of Romania created legal uncertainty. In paragraph 20 of its brief judgment delivered in 2011, the ECJ agreed with Romania, ruling that “the letter of formal notice did not identify sufficiently the failure to fulfil obligations of which Romania was

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<sup>228</sup>Noutcheva, Gergana and Bechev, Dimitar, (2008) The Successful laggards. Bulgaria and Romania on the road to EU membership. East European Politics and Societies Vol. 22, Nr. 1, 124

<sup>229</sup>Trauner, Florian, Post-accession compliance with EU law in Bulgaria and Romania: a comparative perspective, European Integration online Papers, Special Issue 2, Volume 13 (2009), Art.21, 5

<sup>230</sup> Press Release of the Commission, IP/07/1508, Brussels, 17 October 2007

<sup>231</sup> Press Release of the Commission, IP/08/1347, 18 September 2008

subsequently accused in the reasoned opinion and that the pre-litigation procedure did not attain its objective of guaranteeing the right of the Member State concerned to submit its observations against the complaints formulated by the Commission, so that the action must be held inadmissible.”

According to representatives from DG Environment of the Commission, Romania is still facing big problems with the designation of SPAs that correspond to the IBAs identified.<sup>232</sup> In contrast, Bulgaria is not having the same issues in terms of SPA designation. According to the same sources there are currently only two areas in Bulgaria for which there is scientific information but that are not fully designated yet – Rila and Kaliakra.

One of the other infringement procedures against Romania is also based on breaches of the Wild Birds Directive. It was started because it was determined that hunting seasons partially coincide with breeding periods of the wild birds.<sup>233</sup>

The third case is concerned with improper performance of EIA for a project in the Natura 2000 network and will be discussed in further detail in the next section below.<sup>234</sup>

On the whole, we can see a similar pattern in both Bulgaria and Romania. The legislation appears to have been transposed adequately by Romania, as there are no infringement procedures for non-transposition or for incorrect transposition. However, the application of the legislation in both countries seems to be problematic. We should also note that there are less cases opened against Romania but they are “progressing” rather quickly – there is already one case before the ECJ (no cases against Bulgaria) and all of the other infringement procedures are at the stage of a Reasoned Opinion (letter of formal notice is the highest stage ever reached in Bulgaria). It is a good time to note that according to representatives of the Commission it has been recently decided to start publishing press releases for infringement proceedings only when they reach the stage of a Reasoned Opinion and therefore we cannot be certain how many such procedures there are currently against Romania.<sup>235</sup>

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<sup>232</sup> Mrs Sylvia Barova from DG Environment, European Commission in an interview taken on 22.03.2012

<sup>233</sup> Press Release of the Commission, IP/10/1231, 30 September 2010

<sup>234</sup> Press Release of the Commission, IP/11/92, 27 January 2011

<sup>235</sup> Mrs Rositsa Pencheva, Legal Expert at DG Environment, European Commission, in an interview taken on 22.03.2012

## **4. The performance of AAs/EIAs and environmental public awareness in Romania**

### ***4.1. The performance of AAs/EIAs in Romania***

In order to check if Romania is having the same problems with performing sound and complete AAs/EIAs as Bulgaria does, I am going to examine the infringement procedure opened against the country in 2010 because of the construction works in the Sulina beach.<sup>236</sup> Sulina is a city in eastern Romania, situated on the southern part of the Danube delta and on the Black sea coast, in one of Europe's most important wetland areas. The area of Sulina is protected under the Natura 2000 network. Romania started building tourist facilities, including recreation areas, a health office and roads. However, the Commission found out that there were deficiencies in the EIA that was carried out for the project, as its conclusions were vague and unconvincing and it has sent a letter of formal notice to Romania. The Commission was not satisfied with Romania's reply and it issued a Reasoned Opinion on the case, stating that "(i)f the environmental impact study is deficient, the required certainty cannot exist and the project cannot be given the green light"<sup>237</sup>. "Data available to the Commission shows that the project has already had a negative effect on one endemic species (*Centaurea Pontica*) protected under the Habitats Directive, and on a protected habitat (Mediterranean salt meadows)."<sup>238</sup>

The case described welcomes a quick parallel to the situation with the Bojuretz case (2006) in the area of Kaliakra in Bulgaria described in the previous chapter. There the experts of the golf complex prepared an unsound and tendentious report on 1.5 pages, on the basis of which the huge project that subsequently affected the environment and a number of endemic species was carried out. In this respect both Bulgaria and Romania seem to demonstrate a kind of misunderstanding of the idea behind the nature protection legislation, which is not to prevent all economic activities in the protected areas as a whole, but to shift them to a more sustainable level – both economically and ecologically.

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<sup>236</sup> Press Release of the Commission, IP/10/526, 5 May 2010

<sup>237</sup> Press Release of the Commission, IP/11/92, 27 January 2011

<sup>238</sup> *ibid.*

#### ***4.2. Public awareness in Romania***

In a report prepared by WWF and published in June 2004, titled “Natura 2000 in the New EU Member States”, we can read that from the NGOs active in Romania only BirdLife Romania was mainly involved in the process of site selection. Furthermore, the report pointed out that a major obstacle for the other ENGOs to participate in the preparation for the network was the lack of funding provided by the responsible Romanian Ministry. That is why the WWF decided to step in and organized a seminar on Natura 2000 in 2003 which marked the beginning of a platform of NGOs. “The NGO Coalition on Natura 2000 in Romania currently includes 32 members, which are now undertaking a gap analysis of data available among NGOs as well as organizing a range of capacity building and awareness raising activities, all focused on preparing for Natura 2000 in Romania.”<sup>239</sup> The report also stated, *inter alia*, that awareness about Natura 2000 among the stakeholders and the public authorities alike was minimal and there were no action plans or strategies for the improvement of the situation.

According to other sources the WWF Danube-Carpathian Programme (WWF DCP) emerged as the leading NGO in Romania, organizing the coalition of ENGOs.<sup>240</sup> The number of NGOs in the coalition subsequently grew to 51 and they were involved in the designation process, in awareness-raising campaigns and in lobbying both in Romania and in Brussels. “The influence of the Coalition increased because it could effectively bring together environmental groups that were acting locally and secure financing through EU programmes such as PHAREACCESS or bi- or multilateral assistance schemes.”<sup>241</sup>

These developments in Romania strongly resemble the situation in Bulgaria where a similar ENGO coalition “For the Nature” was formed. WWF DCP is also active in Bulgaria but unlike in Romania it cannot be identified as the leading NGO. However, given the importance and the novelty of the task – the designation and protection of the Natura 2000 network – the NGOs in both countries have rightly decided that they will be stronger if they unite their efforts and potential.

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<sup>239</sup>“Natura 2000 in the New EU Member States. Status report and list of sites for selected habitats and species”, WWF, June 2004, 82

<sup>240</sup>Börzel, Tanja A. and Buzogány, Aron (2010): Environmental organisations and the Europeanization of public policy in Central and Eastern Europe: the case of biodiversity governance. In: Environmental Politics, Vol. 19, Nr. 5,

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<sup>241</sup>*ibid.*, 14

The Romanian NGOs started acting as “watch-dogs” for the Commission, signaling breaches of the nature protection legislation. “The biggest impact of ENGOs working on Natura 2000 achieved Polish and Romanian NGOs by the completion of the so-called ‘Shadow Lists’ of proposed sites (Cent et al. 2007).”<sup>242</sup> If they thought that the lists proposed by their governments were incomplete or politically motivated, they would publish their own lists of sites based entirely on scientific criteria and would send them directly to the Commission. This proved beneficial in the case of Poland that subsequently started cooperating with the ENGOs but Romania failed to react in this way. This made the Romanian NGOs even more critical and led to the start of infringement proceedings. However, some representatives of the Romanian Ministry of Environment and Forestry are critical towards the overall activities of the ENGOs, claiming that their main focus of attention is on the process of designation and on signaling the Commission, without being fully involved in the whole process of AA.<sup>243</sup>

## 5. Conclusion

As I said, Bulgaria and Romania started their journey to the EU together but as the above brief analysis has revealed, although they shared their basic features, there are also some differences in their developments with regards to nature conservation. In the pre-accession period Bulgaria was progressing a step ahead, demonstrating most of the time a “steady progress” as acknowledged by the Commission. Romania started genuine reforms only in the year 2000, proving the Commission right that environment wasn’t actually seen as a top priority. However, as we have seen, the last two newcomers to the EU share more similarities than differences. They were both heavily criticized for the extremely low administrative capacities, for the insufficient investments, the lacking integration of the environmental concerns into the other policies and for the lack of plans and strategies that could ensure successful implementation. Unfortunately, as some authors suggest, both “Bulgaria and Romania accelerated reform when they felt the “stick” of EU conditionality.”<sup>244</sup> Because of Romania’s worse performance during the pre-accession period on the whole the authorities in Bulgaria were worried that Bulgarian accession could be

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<sup>242</sup> *Ibid.*, 14

<sup>243</sup> Personal opinion of a Senior Counsellor working in the Biodiversity Directorate of the Romanian Ministry of Environment and Forestry expressed in private communication

<sup>244</sup> Noutcheva, Gergana and Bechev, Dimitar, (2008) The Successful laggards. Bulgaria and Romania on the road to EU membership. East European Politics and Societies Vol. 22, Nr. 1, 12

delayed and they insisted that each country was treated and assessed individually<sup>245</sup>. As the analysis above has demonstrated, the transposition of the legislation in both countries was not problematic as a whole. But, as the Commission has remarked, it has definitely outpaced and compromised the actual implementation and enforcement. Romania still faces huge difficulties and delays in designating thorough and complete SPAs that actually correspond to the IBAs. In contrast, Bulgaria's designation is almost complete. However, the practical application still poses major problems in both countries as the infringement procedures come to prove. There is a blatant lack of understanding or a desire to show a lack of understanding about the point and the aims of the Natura 2000 network. The network seems to be wrongly perceived in both countries as an obstacle to economic growth and development and the preferred course of action appears to be to ignore it by abusing or circumventing the procedures. This situation shows that there is a special focus needed on behalf of the EU and the Commission regarding the specific problems that Bulgaria and Romania are having.

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<sup>245</sup>*ibid.*, 11

## Conclusion

This research is about the implementation of the Natura 2000 network in Bulgaria, the progress of the country so far and the main problems that it is coming upon. My main research question is: What is the progress of Bulgaria in the implementation of the Natura 2000 network and which are the main stumbling blocks upon its way? I have decided to approach the topic mainly by reading and discussing the relevant legislation (both European and national), as well as by reviewing the Regular Reports of the European Commission on the pre-accession progress of Bulgaria. I have examined the relevant literature on the subject matter, too. I have also conducted personal interviews with representatives of DG Environment of the Commission which proved invaluable for my work. Furthermore, I have approached representatives from the Bulgarian ENGOs and I have received and studied very interesting materials from them. I was also very fortunate to communicate with a fellow master student working on a similar topic who has kindly provided me with recordings of interviews that she took with representatives from the Bulgarian Ministry of the Environment and Water and from the ENGOs, which was of great help for the purposes of the current study. That being said, I will briefly summarize the result of my findings.

The Natura 2000 is the cornerstone of the EU nature protection legislation, demonstrating the desire of Europe to be a world environmental leader. That is why it is sometimes described as one of the most ambitious but also among the most controversial EU policies.<sup>246</sup> When the ex-communist countries of Central and Eastern Europe applied for membership of the EU in the early 90s they had to transpose, *inter alia*, the far-reaching environmental legislation and subsequently to implement and enforce it. This appeared to be a slow and hard process given the many problems that Bulgaria and all the rest of the applicant countries were facing during their respective transition periods. The situation was further aggravated by the fact that the environmental late-comers were policy takers rather than policy makers, and were obliged to implement policies that “often do not address their most pressing environmental problems”<sup>247</sup>.

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<sup>246</sup>Börzel, Tanja A. and Buzogány, Aron (2010): Environmental organisations and the Europeanization of public policy in Central and Eastern Europe: the case of biodiversity governance. In: Environmental Politics, Vol. 19, Nr. 5, 9

<sup>247</sup>Börzel, Tanja A. (2003): Environmental leaders and laggards in Europe. Why there is (not) a "southern problem". Ashgate Publishing Limite, 144



For the purposes of the fifth and the sixth enlargement with the new democracies from Central and Eastern Europe the EU had created and developed the principle of conditionality, guiding the applicant countries into compliance by means of "sticks" and "carrots"<sup>248</sup>. According to some authors, both Bulgaria and Romania did not start reforming in earnest until they felt the "stick" of the EU conditionality.<sup>249</sup> For the two countries the pre-accession chapters on environment appeared to be among the hardest ones to close. The main point of criticism of the Commission concentrated on their poor administrative capacity to implement the legislation, the insufficient funding, the missing incorporation of the environment into the other sectoral policies that seemed to take priority. Bulgaria managed to close *Chapter 22 Environment* only in 2003 after transposing the bulk of the environmental *acquis*, among which the Wild Birds and the Habitats Directives reflected in the Bulgarian Biological Diversity Act.

However, the problems with the application followed immediately after, signaled by the increasingly active Bulgarian ENGOs and frequently accompanied by infringement procedures started by the Commission. In this research I have decided to focus my attention on the performance of the AAs/EIAs for plans and projects in the protected areas, as well as on the issue with the environmental public awareness as being, in my opinion, the major and the most interesting ones from a legal perspective. The current study has revealed that in Bulgaria there is a widespread misconception about the Natura 2000 which seems to be perceived as problematic in itself and as an obstacle to the economic progress. As Mrs Sylvia Barova from DG Environment of the Commission has pointed out, the Natura 2000 is rather quite a flexible programme offering great advantages but since there is a complete lack of understanding about it they could never be actually used. As a proof of that can be mentioned the fact that the financing on the network in Bulgaria started only last year and it cannot be qualified as a success. The reasons for this situation are numerous, among which that the "governing elites in both countries were not willing to pay the short-term cost of transformation and thus loosen their grip on power"<sup>250</sup>, the corruption, the weakness of the judicial systems and notably the immature civil

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<sup>248</sup>D. Kochenov, *EU Enlargement and the Failure of Conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law*, Groningen, Kluwer Law International (2008), 309

<sup>249</sup>Noutcheva, Gergana and Bechev, Dimitar (2008). *The Successful laggards. Bulgaria and Romania on the road to EU membership*. East European Politics and Societies Vol. 22, Nr. 1, 7-8

<sup>250</sup>Noutcheva, Gergana and Bechev, Dimitar (2008). *The Successful laggards. Bulgaria and Romania on the road to EU membership*. East European Politics and Societies Vol. 22, Nr. 1, 27

society. Surprisingly, the Ministry of Environment and Water of Bulgaria failed to organize a comprehensive information campaign prior to the implementation of the Natura 2000 network which the ENGOs unanimously identify as a major miss. This caused the circulation of numerous rumours and the unpleasant feeling of worry and uncertainty among Bulgarian society. The task to inform the public was passed on to the NGOs which did not possess the required means and potential. The Bulgarian ENGOs have ultimately decided to unite in the powerful coalition called "For the Nature" and subsequently started organizing protests, filing signals for infringements to the European Commission and dealing with lobbying.

The brief parallel made in the last chapter with the situation in Romania comes to prove that in spite of some differences both countries are facing similar issues and are the cause of similar concerns. They both could use some more "political guidance, material resources and expert know-how"<sup>251</sup> as well as more flexibility<sup>252</sup> that the Union could offer. "EU conditionality has helped tilt the political balance in favour of a consensus on pro-EU reforms, but before these reforms can take root, they need to generate further demand 'from below'."<sup>253</sup> Unfortunately, both Bulgaria and Romania appear to be lacking in resolute political will to give the needed strength and weight to the nature protection legislation.

The current political developments in the environmental sphere in Bulgaria are a cause of further concern. According to some sources after the shock caused by the number of infringement procedures opened against Bulgaria in the field of environment, the designation orders for the protected areas under Natura 2000 published after 2009 lack internal zoning, meaning that all economic activities in those areas are prohibited.<sup>254</sup> This kind of opposite extreme is also not in line with the rationale of the network and maybe in the coming years we shall see litigation on the side of the affected business. Besides, according to some recent publications in the Bulgarian media the environmental minister Nona Karajova has started delegating some of her important prerogatives to other ministries and to the regional structures of the ministry.<sup>255</sup> As argued in the

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<sup>251</sup> Andreev, Svetlozar A. (2009): The unbearable lightness of membership: Bulgaria and Romania after the 2007 EU accession. In: Communist and Post-Communist Studies, Vol. 42 Nr. 3, 14

<sup>252</sup> Börzel, Tanja A. (2003): Environmental leaders and laggards in Europe. Why there is (not) a "southern problem". Ashgate Publishing Limite, 152

<sup>253</sup> Noutcheva, Gergana and Bechev, Dimitar (2008). The Successful laggards. Bulgaria and Romania on the road to EU membership. East European Politics and Societies Vol. 22, Nr. 1, 5

<sup>254</sup> Mr Svilen Ovcharov from "The Green Lawyers" in an interview from May 2011 taken by Aneliya Parapanova

<sup>255</sup> Capital – weekly Bulgarian newspaper, URL:

[http://www.capital.bg/politika\\_i\\_ikonomika/bulgaria/2012/02/24/1774020\\_razdavachut\\_na\\_ekologija/](http://www.capital.bg/politika_i_ikonomika/bulgaria/2012/02/24/1774020_razdavachut_na_ekologija/)

article, while this can be beneficial to some extent from the point of efficiency, it might prove to be disastrous when it comes to the substantive protection of Bulgarian nature that the ecological ministry is bound to ensure.

Initially Bulgaria viewed the membership of the EU as a strategic decision and aim. Now, that this aim is accomplished, it is clear that the membership is no panacea for all the ills of the communist past. For both Bulgaria and Romania the EU membership is not the end of the story but rather the end of a chapter, hopefully marking the beginning of true transformation and change.<sup>256</sup>

The main research question of this study was: What is the progress of Bulgaria in the implementation of the Natura 2000 network and which are the main stumbling blocks upon its way? My answer is that although Bulgaria has come a long way with regards to transposition of the EU nature conservation legislation, its actual application is very problematic and can be best described as ineffective. In my opinion, from a legal perspective two of the main stumbling blocks that Bulgaria is facing are, on the one hand, the compromised performance of EIAs for plans and projects in the protected areas and, on the other, – the inadequate environmental public awareness. As main reasons for those problems we can identify the communist legacy, the widespread corruption, the immature civil society and – above all – the lack of resolute political will for change. I personally do not think that the situation will improve significantly in the future unless the two main actors – the Bulgarian government and the European Commission do not change their course of action. In the past Bulgaria has reacted positively to the dissuasive leverage used by the Commission and there is no indication that the same kind of pressure will not produce the same positive results in the future, especially given the highly image-sensitive government that Bulgaria currently has. In my opinion making the nature conservation legislation work is a common responsibility both of the Member States and of the European institutions and the noble aims that it pursues are definitely worth the effort.

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<sup>256</sup>Noutcheva, Gergana and Dimitar Bechev, 2008, The Successful laggards. Bulgaria and Romania on the road to EU membership. East European Politics and Societies Vol. 22, Nr. 1, 28

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1. Mrs Sylvia Barova – DG Environment - Unit B.3 "Nature" BU-5 6/158, European Commission B-1049 Brussels
2. Mrs Rositsa Pencheva – DG Environment, Legal Expert, European Commission B-1049 Brussels
3. Senior Counsellor, Biodiversity Directorate, Romanian Ministry of Environment and Forestry

Interviews taken by A. Parapanova in May 2011

1. Mr Svilen Ovcharov, Lawyer, “The Green Lawyers”
2. Mr Andrey Kovachev, Biodiversity expert, Balkani Wildlife Society
3. Mr Stefan Avramov, Biologist, Bulgarian “Biodiversity” Foundation
4. Mr Aleksandar Dunchev, Association of the parks in Bulgaria
5. Mrs Evdokia Maneva, deputy minister of environment and water of Bulgaria