

REPORT REFERRING TO THE CONCERN OF MONTENEGRO REGARDING THE COMPLIANCE OF THE REPUBLIC OF ALBANIA WITH ITS OBLIGATIONS UNDER THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT – ESPOO AND THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) IN RESPECT OF THE ACTIVITY OF THE CONSTRUCTION OF SMALL HYDROPOWER PLANTS ON THE CEM (CIJEVNA) RIVER

Referring to the concern raised by Montenegro in the Implementation Committee of the Convention on Transboundary Environmental Impact Assessment and the Strategic Environmental Assessment Protocol on the compatibility of Albania's activities with the obligations under the ESPOO Convention regarding the designation of some hydropower plants in the CEM River, we explain as follows:

By letter no. 5125 prot., Dated 5.11.2018, of the Deputy Prime Minister, "Letter forwarding to the Deputy Prime Minister of Montenegro", we were informed about the letter dated 19.10.2018, of the Deputy Prime Minister and Minister of Agriculture and Rural Development of Montenegro, through which it presents the concern raised by the Montenegrin side regarding the construction of small HPPs in the Cem river claiming that their construction affects groundwater on the Montenegrin side and that this activity is not in compliance with the implementation of the ESPOO convention.

In response to the Deputy Prime Minister's letter, following the information received from the Drin-Buna Water Basin Agency, the Water Resources Management Agency (WRMA) with Letter No.230 / 1 prot. submitted a summary report on the situation of approving water resource use permits.

On February 5, 2019, in Shkodra, a preparatory meeting was held at the technical level between representatives of institutions in the water resources management sector of the Republic of Albania and the Republic of Montenegro. At this meeting the representatives of the Montenegrin side claimed that the information officially submitted to them by the Albanian side was not sufficient for their experts to reach a final conclusion, whether this activity causes environmental damage or not in their territory.

Following the meetings with representatives of several institutions on this issue, the Ministry of Tourism and Environment of Albania made available in electronic format (CD) the following documentation:

1. Preliminary EIA Report on the HPP "Vriela" Implementation Project in the Vriela River, Shkodra Region;
2. Preliminary EIA Decision no. 1025 prot., Dated 26.04.2017, decision 17, no. identification 272, of the National Environment Agency;
3. Preliminary EIA Report on the HPP Dobrinje Implementation Project on the Cemi River of Selca, Shkodra Region;
4. Preliminary EIA Decision no. 1026 prot., Dated 26.04.2017, decision 17, no. identification 273, of the National Environmental Agency;
5. Preliminary EIA Report on the HPP "Muras";

6. Decision on Preliminary EIA No. 2829 prot., Dated 2.12.2016, decision 59, no. identification 712, of the National Environment Agency;

By letter no. 347/2 prot., Dated 10.06.2019, the Ministry of Europe and Foreign Affairs was requested to diplomatically transmit to the Montenegrin party copies of the Ministry of Tourism and Environment documentation on the HPP projects in the Cem River.

On 19.09.2019, in Podgorica, a joint meeting of the Albanian-Montenegrin Commission for Water Management of Common Interest took place. At this meeting, the Montenegrin side once again raised the concern of the construction of small HPPs on the Cem river, claiming that their construction has a direct impact on the quality and quantity of groundwater in the territory of the Republic of Montenegro and that the Montenegrin side's prior information is in violation of the ESPOO convention. The Albanian side explained to the Montenegrin party that there are three HPPs built before 1990, which were privatized and only two of them are working. For these HPPs there has been no claim from the Montenegrin side during these years. It was also emphasized that the construction of small HPPs on the Cem river does not contravene the ESPOO Convention, as this Convention refers to the case of consulting neighboring countries when constructing reservoirs or dams, while the planned small HPPs do not provide the construction of reservoirs or dams, but they take the water by diversion. Meanwhile, Environmental Impact Assessments for the three small HPPs have been forwarded to the Montenegrin side. For its part, the Montenegrin party itself claimed that the environmental documentation made available was not sufficient for their experts to conclude whether or not this activity caused environmental damage in their territory.

In the context of the good neighborly relations and in the implementation of the "Framework Agreement between the Council of Ministers of the Republic of Albania and the Government of Montenegro on bilateral relations in the management of transboundary water resources" the Albanian side took the commitment that within 15 days from the joint meeting to make available to the Montenegrin side a map that will reflect all the HPPs built before the 1990s and those under construction in the Cem River.

Following the information received, WRMA with letter no. 1116/2 prot., Dated 5.11.2019, requested the Ministry of Europe and Foreign Affairs to transmit diplomatically to the Montenegrin party a copy of the documentation of the Ministry of Infrastructure and Energy for the HPP projects in the Cem river. Part of this documentation is also letter no. 8339/1 prot., Dated 08.10.2019, through which MIE informed on the contracts concluded between the Ministry of Infrastructure and Energy and the Holders of Final Approvals, pursuant to DCM 822, dated 07.10.2015 "On the approval of construction rules and procedures of new non-concession generating capacities", as amended. Part of this documentation was also information on anticipated hydropower plants to be built on the Cem River, A3 format map, scale 1: 25000 reflecting geographical coordinates, installed power and quotas of takeover deeds for those HPP that have been finalized with a contract in compliance with DCM 822, dated 07.10.2015, as amended, and subsequently provided with building permits, as well as geographical coordinates, installed powers, and quotes of deeds for those old HPP, privatized (whether or not in working condition), as well as copies of the decisions of the National Territorial Council for approval of building permits.

Referring to point 11, appendix 1 of the ESPOO Convention, transboundary consultations are subject to the "Large Dam and Reservoir" projects. Referring to works for the production of electricity from the use of the waters of the Cem River in the Albanian territory, which have been

the subject of discussion with the Montenegrin party after being officially approved and granted construction permits, it has been assessed that they are not subject to the ESPOO Convention, since none of these projects is large Dam or Reservoir, as required by this Convention.

So with reference to Point 2, Article 2, each Party shall take the necessary administrative, legal, etc. measures to implement the terms of this Convention, including with regard to the activities proposed in Schedule I, which are likely to have an impact significant transboundary negative, setting up an environmental impact assessment procedure that permits public participation and preparation of documentation for environmental impact assessment described in Annex II.

However, with reference to Point 5, Article 2, stating that the Stakeholders will be debated whether one or more of the proposed activities not listed in Annex I is or are likely to cause a significant adverse impact beyond the boundaries and should to be treated as if she or they were listed in Annex I. When the Parties agree, the activity or activities shall be treated as such. The general guidance for identifying criteria in determining significant adverse impact is given in Appendix 3.

ANNEX III: General criteria to help determine the environmental importance of the activities listed in Annex I

1. By addressing the proposed activities to which Article 2/5 applies, interested parties may consider whether the activity is likely to have a significant transboundary negative impact, in particular through one or more of the following criteria:

a. Size: Proposed activities that are large;

- Regarding the type of activity we cite that the projects for hydropower production, equipped with construction permits in the river Cem are small (with installed power up to 2 MW) and derivative, without dam or storage tank. They can never be considered "big" projects.

b. Settlement: Proposed activities that are located in or near an area of special environmental importance or sensitivity (such as underwater land as defined in the Ramsar Convention, national parks, nature reserves, places of special scientific interest or sites of historical, cultural or cultural importance) archaeological); also proposed activities in countries where the characteristics of the proposed development are likely to have significant consequences on the population.

- This remains to be assessed if it is the case of the HPPs on the Cem river, as to date there is no document or study submitted by the Montenegrin side to such an impact.

c. Consequences: Proposed activities with particularly complex and potentially adverse consequences, including those that have serious effects on humans or on valuable organisms and species, those that threaten the existing or potential use of an affected area, and those that cause additional burdens that cannot be maintained by the capacity of the environment.

-Even this point remains to be evaluated or consulted if there are impacts of this kind, as to date there are no scientific data or indicators measured and validated by the Montenegrin side regarding the impact.

In this context, the provisions of point 2 of Article 2 should be accompanied by a detailed argument by the Montenegrin side as to what are the significant impacts of these hydro projects on the territory of Montenegro.

It should be clarified that there are currently two HPPs built prior to the 1990s operating in this cascade. Two contracts have been concluded between the Ministry of Infrastructure and Energy and the Holders of Final Approvals, pursuant to DCM 822, dated 07.10.2015 “On the approval of rules and procedures construction of new electricity generation capacities, which are not subject to concession”, as amended, for the construction of Muras HPP and Dobrinje HPP. These two HPP have been issued the construction permits and actually are in construction phase but have not yet been put into operation.

It results that in terms of water diversion there is currently no change of flow from where to also derive effects at the bottom of the CEM River while none of the new HPPs are operational, and there are practically in operation phase for electric power generation only two pre-1990 HPPs.

According to the provisions of article 10.1 to the SEA protocol (where a Party of origin is aware that implementation of a plan or program is likely to have significant transboundary environmental impacts, including health, effects or where a Party is likely to be significantly affected by such requests, the Party of origin shall notify the affected Party as early as possible before the adoption of the plan or program. The Republic of Albania has not adopted any plan or program for the construction of small hydropower plants in the CEM River.

Furthermore, as noted in the letter of compliance of the Republic of Montenegro, the activity of construction of small hydropower plants on the CEM (Cijevna) River is neither listed in Annex 1 of the ESPOO Convention nor listed as such in Annex 1 to the SEA Protocol.

Albania's activity has never risked to be contrary to the obligations set out in both the ESPOO Convention and the SEA Protocol because the construction of small HPPs is not listed in Annex 1 of the ESPOO Convention nor in Annex 1 of the SEA Protocol. Moreover in the absence of scientific facts and arguments proving that the construction of small HPPs in the Cem River would have a significant impact on the Cijevn Canyon, Albania has always complied with the ESPOO Convention and the SEA Protocol.

Based on the above, we remain convinced that the Implementation Committee will confirm that Albania's activity has always been in line with the commitments deriving from the Convention and the Protocol.

Drafted by the inter-institutional group, with the contribution of the:

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