

IMPLEMENTATION COMMITTEE
CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY
CONTEXT
PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

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Ref. ECE/IC/INFO/23 Banovici thermal power plant
ECE/IC/INFO/24 construction of unit 7 at Tuzla thermal power plant

17 February 2021

Dear Ms. Golic,

I am writing to you on behalf of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) and its Protocol on Strategic Environmental Assessment (Kyiv, 2003).

At its forty-ninth session, held online from 2 to 5 February 2021, the Committee continued its consideration of the matters regarding the planned construction by Bosnia and Herzegovina of a new thermal power plant in Banovici and unit 7 of the thermal power plant in Tuzla (planned activities).

The Committee first examined outcomes of its informal consultations with Bosnia and Herzegovina, Croatia and Serbia regarding the activities that it had exceptionally held at a separate on-line session on 29 October 2020. Please see enclosed for your information the Committee's report on the informal consultations.

It then examined the correspondence provided by the Parties concerned in advance of the informal consultations and thereafter, in particular from Bosnia and Herzegovina, dated 17 February 2020, 10 December 2020 and 25 January 2021, from Croatia, dated 20 January 2021, and from Serbia, dated 27 February 2020.

.../...

Ms. Srebrenka Golic
Focal Point for Administrative Matters
regarding the Espoo Convention
Ministry of Spatial Planning, Civil Engineering and Ecology
of the Republic of Srpska
Banja Luka

Noting the views of Bosnia and Herzegovina on the applicability of the Convention to the planned activities, the Committee held that, in the absence of any transitional provision governing the Convention's application prior to its entry into force, a transboundary environmental impact assessment procedure should be undertaken by a Party of origin prior to taking a decision to authorize or undertake a proposed activity falling under the scope of the Convention as set out in n's article 2(3) thereof, unless the Party had deposited a specific reservation in that regard together with its instrument of ratification.

The Committee noted the absence of any reservations from Bosnia and Herzegovina declared in relation to its ratification of the Convention. It also noted that, according to the information made available to it by Bosnia and Herzegovina, the first environmental permit for unit 7 of Tuzla thermal power plant (No UP-I105-23-142/09) had been issued on 22 November 2010 and a decision to undertake the proposed activity in Banovici had been taken in June 2014. It concluded that both decisions had been issued after the Convention's entry into force in Bosnia and Herzegovina on 14 March 2010. Consequently, the notification on both activities was necessary in case they fall under the scope of the Convention.

Subsequently, the Committee examined the information on the planned activities, finding that both activities had to be considered as thermal power stations with a heat output of 300 MW or more listed in paragraph 2 (a) of appendix I to the Convention. In addition, further to the information exchange and discussions regarding the planned activities under article 3 (7) with Bosnia and Herzegovina, both Croatia and Serbia had concluded that a significant adverse impact on their environment was likely and had expressed their wish to be notified under article 3(1) of the Convention. In the light of the above and recalling its previous opinions that "even a low likelihood of a significant adverse transboundary impact should trigger the obligations of the Convention" (ECE/MP.EIA/IC/2020/4, para 10) and that "notification is necessary unless a significant adverse transboundary impact can be excluded" (decision IV/2, annex I, para. 54), the Committee considered that the activities fell under the scope of application of the Convention.

The Committee further discussed the probable need to apply the Convention to the amended permits issued further to the settlement agreements between Bosnia and Herzegovina and the energy community. In the Committee's preliminary view, modifications to the planned activities required under those agreements to ensure compliance with more stringent emission limit values set out by the EU Industrial Emissions Directive 2010/75/EU, including the increase of the height of the flue gases stacks, might be qualified as a "major change to an activity" within the meaning of the Convention.

In the light of the above, the Committee agreed that the information available to it was sufficient to conclude on a profound suspicion of non-compliance by Bosnia and Herzegovina with its obligations under the Convention concerning the activities and that, further to paragraph 6 of the Committee's structure and functions, the

Committee needed to begin a Committee initiative. However, recalling that during the informal consultations Bosnia and Herzegovina had indicated that it was willing to notify the affected Parties in case in the Committee's view the application of the Convention was required, the Committee agreed to postpone its decision on the matter to its next session.

Considering the above, I am now writing to you, at the request of the Committee, to inform the Government of Bosnia and Herzegovina about the Committee's conclusion on the need to apply of the Convention to the planned activities and to request it to notify Croatia and Serbia about the activities under article 3(1) of the Convention without delay. Meanwhile, Bosnia and Herzegovina should refrain from taking any steps towards commencing the activity.

With a view to enabling the Committee to draw its conclusions at its next session, the Government of Bosnia and Herzegovina is kindly invited to inform the Committee on the steps taken by it further to the Committee's recommendations above, as soon as possible and no later than **15 April 2021**.

Yours sincerely,



Joe Ducombe
Chair of the Implementation Committee

Enclosure: Report of the Committee on the informal consultations with Bosnia and Herzegovina, Croatia and Serbia concerning the planned construction by Bosnia and Herzegovina of a new thermal power plant in Banovici, unit 7 of the thermal power plant in Tuzla and a third block for the thermal power plant in Ugljevik

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(UNEDITED VERSION)

1. The Committee continued its consideration of the matters regarding the planned construction by Bosnia and Herzegovina of a new thermal power plant in Banovici (ECE/IC/INFO/23), unit 7 of the thermal power plant in Tuzla (ECE/IC/INFO/24) and a third block for the thermal power plant in Ugljevik (EIA/IC/INFO/16) (proposed activities).

2. It recalled that further to its decision at its forty-eighth session, the Committee had exceptionally organized a separate on-line session, on 29 October 2020, for the purposes of carrying out informal consultations with Bosnia and Herzegovina, Croatia and Serbia regarding the planned activities. The session was held using videoconferencing and without interpretation.

3. Noting the informal character of the discussions, the Committee welcomed the delegation of Bosnia and Herzegovina, the delegation of Croatia and a representative of Serbia who participated as an observer. It recalled that the purpose of the informal consultations was to obtain required clarifications on the Parties' positions with respect to the proposed activities, and to assist the Parties in complying with the Convention.

4. First, the Committee clarified that further to its operating rule 15 the sources of information by which the Committee might become aware of a possible non-compliance could be either Parties' work under the Convention or any other source, including non-governmental organisations provided the source of the information was known and it was related to an activity listed in Appendix I to the Convention and the implementation of the Convention provisions.

5. With a view to setting the framework for the discussions, the Committee provided detailed clarifications on steps, to be taken by Parties concerned under article 3(7) of the Convention, to exchange information and to carry out discussions on whether a significant adverse transboundary impact of the proposed activities was likely, emphasizing a need for the Parties involved to be proactive (see ECE/MP.EIA/IC/2019/6, paras. 86 – 88). It further underlined that a notification under article 3(1) of the Convention was necessary unless a significant adverse transboundary impact could be excluded.

6. The Committee then pointed out that any effect caused by a proposed activity on the environment constituted an impact in accordance with article 1 (viii) of the Convention. It drew attention of the Parties concerned to the growing relevance and importance of assessing cumulative effects of existing and planned activities listed in Appendix I, in particular with a view to taking appropriate and effective measures to prevent, reduce and control their significant adverse transboundary impact. A strategic environmental assessment of plans and programmes, including in energy sector, falling in the scope the

Protocol, was an efficient tool to assess, at an early stage, cumulative adverse effects of the proposed activities.

7. To facilitate the discussions, the Committee had provided questions to the issues that it had deemed necessary to be addressed during a discussion in advance of the session. In addition, upon agreement of all three Parties concerned, the related correspondence from each Party to the Committee had also copied to the other two Parties for their views and possible comments.

8. On 11 February 2020 Bosnia and Herzegovina provided written responses to the Committee questions of 14 January 2020 with regard to unit 3 of the Uglevik thermal power plant and on 12 February 2020 concerning the proposed activities at the Banovici and Tuzla thermal power plants. Its responses of 22 October 2020 and 26 October 2020 covered only the activities at the Ugljevik thermal power plant and the Tuzla thermal power plant, respectively, and did not fully address the additional requests of the Committee after the Committee's forty-eighth session. Serbia had clarified in writing its position concerning the Ugljevik thermal power plant and the activities in Banovici and Tuzla thermal power plants on 14 February and 27 February 2020, respectively. However, Croatia had not responded to the Committee's requests of 14 January 2020.

8. Members asked some additional questions to seek clarification on the countries' positions, further to their written replies and oral presentations. The Committee noted that Bosnia and Herzegovina proposed to respond in writing on whether, taking into account that Serbia considered itself potentially affected and wished to be notified regarding the activities in Banovici and Tuzla, it was willing to initiate a procedure under article 3(1) of the Convention without carrying out prior discussions under article 3(7) of the Convention. It invited the Party to provide its response in advance of the Committee's next session (Geneva, 2–5 February 2020), by no later than 12 January 2021.

9. The Committee also noted the information from the Chair of the Task Force on Integrated Assessment Modelling under the UNECE Convention on Long-range Transboundary Air Pollution (Air Convention). In particular, it noted that according to the recent research carried out with tools and data from the European Monitoring and Evaluation Programme under the Air Convention, operation of any coal thermal power plant caused a transboundary impact. The main determinants in calculating magnitude of such impact included capacity and technology of a thermal power plant, stack height, and distance to the receiving country. Significance of the transboundary impact was to be determined taking into account a total air pollution and air quality targets in the receiving countries. Noting that tools developed under the Air Convention could be used for environmental impact assessments in a transboundary context, the Committee invited the Parties concerned to consider application of such tools, including for discussions under article 3(7).

10. Following the discussion with the Parties concerned, the Committee pointed out that the Parties should ensure that exchange of information and discussions under article 3(7) of the Convention be conducted efficiently and within a reasonable time. It further clarified that the exchange of information and

other communication under article 3(7) should be carried out either through points of contact for notification or through focal points for administrative matters. In addition, the Committee subsequently considered that it was the responsibility of each Party to clearly indicate from the beginning to other Parties concerned which of those two communication channels should be used for the purpose.

11. In general, the Committee found the informal consultations with the Parties concerned on the proposed activities in Banovici and Tuzla useful. It considered that further informal discussions could be organised, as needed, on case-by-case basis, including, for example, with regard to unit 3 of the Ugljevik thermal power plant on which it was unable to receive sufficient clarifications at the meeting due to time limitations.

12. The Committee encouraged the Parties concerned to continue the ongoing procedures under the Convention concerning the proposed activities in Banovici, Tuzla and Ugljevik and to request them to update it on any progress made in advance of its next session (Geneva, 2–5 February 2020).