

Draft decision IX/4c-V/4c on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol with respect to the construction of Buk Bijela hydropower plant on the Drina River

Point b and point c:

(b) The 2012–2013 environmental impact assessment by Bosnia and Herzegovina was still deemed valid for the issuance of a new permit in 2019;

(c) Following the above (para. 1 (b)), Bosnia and Herzegovina was not obliged to conduct a new environmental impact assessment before issuing a new permit in 2019, and, therefore it had not failed to comply with its obligations under articles 2 (2)–(3) and 4 (1) of the Convention;

to be changed in:

(b) The 2012–2013 environmental impact assessment by Bosnia and Herzegovina **was not still deemed** valid for the issuance of a new permit in 2019;

(c) Following the above (para. 1 (b)), Bosnia and Herzegovina **was obliged to conduct** a new environmental impact assessment before issuing a new permit in 2019, and, therefore **it had failed to comply** with its obligations under articles **2 (1)–(3) and 3-5** of the Convention;

Explanation:

In 2019 Bosnia and Herzegovina initiated a new environmental impact assessment procedure. It was not matter of renewal of environmental permit from 2013. It was a matter of a new EIA procedure in 2019.

The EIA from 2012 could be the basis for a new EIA procedure, either amended with new environmental data (seven years had passed), amended by transboundary impacts or amended with mitigation measures/missing data in EIA documentation (what represents a matter of ongoing bilateral consultations from 2021-open issues) or completely a new EIA, but for sure not to be considered as a valid in 2019 procedure as it was evaluated by Implementation Committee.

1. Two environmental impact assessment procedures have been carried by Bosnia and Herzegovina (2012/13 and 2019), and none of the two procedures were carried out in accordance with Espoo,

2. Espoo Convention/Environmental impact assessment procedure in 2012/13 had never been properly applied (absence of notification to Montenegro, not given timeframe for submission of transboundary comments, absence to ask Montenegro to submit its `transboundary` comments, based on Montenegro`s strong initiative to conduct transboundary consultation, as well as absence to inform on final decision in 2013).

3. Bosnia and Herzegovina had never informed Montenegro on final decision/environmental permit from 2013. For the first time, Montenegro found out from the official letter requesting the approval for a new environmental permit in 2019 that Bosnia and Herzegovina had issued environmental permit in 2013.

With no information on final decision from Bosnia and Herzegovina, Montenegro could not know that environmental permit had been issued.

In this respect, Bosnia and Herzegovina was in clear non-compliance of Art. 6 of the Espoo Convention. In addition, for both environmental procedures 2012/13 and 2019 Montenegro had not been informed about final decision and that is why Bosnia and Herzegovina was in non-compliance of Art. 6. Montenegro reminds that Art. 6 is self-standing and compliance should be analysed properly.

Having all said, Montenegro expresses the worries that the Implementation Committee did not address all noncompliance properly and invites Implementation Committee to reconsider findings, to take our comments into account and to change the stated in Draft Decision IX/4c-V/4c.

Bilateral consultation, initiated by Montenegro in 2021 does not mean the correction of the EIA procedure from 2019 or 2012/13, and it is **necessary to conduct a new environmental procedure in transboundary context in accordance with Espoo Convention and relevant EIA legislation.**

Montenegro kindly invites Implementation Committee to demonstrate proper application of the Espoo Convention for the case HPP Buk Bijela, to apply precautionary and preventive principles, and to invite Party of Origin, Bosnia and Herzegovina to stop all construction activities related to HPP Buk Bijela in Bosnia Herzegovina, till new Environmental impact assessment procedure with transboundary consultations is carried out and completed.

At the end, we emphasize the importance of proper application of the Espoo Convention. If the Committee does not change conclusions in points b and c in Draft Decision IX/4c-V/4c, this could severe affect the future application of the Espoo Convention particularly in the region.

We do hope that Implementation Committee will reconsider its conclusions in points b and c of the Draft Decision IX/4c-V/4c and change them, not allowing any potential damage is caused to the environment.