

Decision IX/4c–V/4c on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol in respect of the construction of Buk Bijela hydropower plant on the Drina River

The Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol, meeting in joint session,

Recalling articles 11 (2) and 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context and article 14 (4) of the Protocol on Strategic Environmental Assessment,

Recalling also decisions IX/4¹ on general issues of compliance with the Convention, adopted at the ninth session of the Meeting of the Parties to the Convention, and V/4² on general issues of compliance with the Protocol, adopted at the fifth session of the Meeting of the Parties to the Protocol (Geneva, 12–15 December 2023),

Having considered the findings and recommendations of the Implementation Committee on compliance by Bosnia and Herzegovina with its obligations under the Convention and the Protocol in respect of the construction of Buk Bijela hydropower plant on the Drina River,³

Having considered also the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its ninth session, in particular, the section concerning Bosnia and Herzegovina,⁴

1. *Endorse* the findings of the Implementation Committee that:

(a) The concerned Parties should, at the earliest stage possible, provide the Committee with all allegations and information on facts to which they wish to refer, and which are relevant for the outcome of the case. The allegation of Montenegro regarding the absence of any time limit set by Bosnia and Herzegovina during the 2012/2013 procedure was delivered only after it had received the Committee's revised draft findings and recommendations. Such late delivery of new claims by Montenegro considerably obstructed the work of the Committee;

(b) By not notifying Montenegro regarding the activity early in the 2012/2013 procedure, Bosnia and Herzegovina failed to fulfil its obligations under articles 2 (4) and 3 (1) of the Convention;

(c) The above non-compliance was not rectified by subsequently setting a time limit in accordance with article 3 of the Convention; Bosnia and Herzegovina did not provide evidence of, nor did it follow up on, what it considered to be an agreement to that effect with Montenegro;

(d) By not providing Montenegro with the final decision, Bosnia and Herzegovina failed to fulfil its obligations under article 6 (2) of the Convention;

(e) The environmental impact assessment procedure conducted by Bosnia and Herzegovina in 2012/2013 was in breach of the Convention and, therefore, would not be valid for subsequent permit decisions;

(f) By not conducting a new environmental impact assessment before issuing a new permit in 2019 for the planned activities at the Buk Bijela hydropower plant, Bosnia and Herzegovina failed to comply with its obligations under articles 2 (2)–(3) and 4 (1) of the Convention;

¹ ECE/MP.EIA/2023/6.

² ECE/MP.EIA/SEA/2023/8.

³ ECE/MP.EIA/IC/2023/8, annex II.

⁴ ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

(g) Bosnia and Herzegovina was not in non-compliance with its obligations under the Protocol, as the Protocol entered into force for it only after the start of the procedure for the adoption of plans or programmes for the energy sector that include Buk Bijela hydropower plant;

2. *Welcome* the fact that the Parties entered into bilateral cooperation to address some of the disputed issues and recommend that, in the future, the Parties broaden the scope of that cooperation to cover issues of a more general focus;

3. *Also welcome* the establishment of a joint working group as a result of the bilateral cooperation, not only for this project but also for future proposed activities, to enhance trust and understanding between the Parties;

4. *Request* Bosnia and Herzegovina to conduct a transboundary environmental impact assessment procedure involving Montenegro and, as needed, other affected Parties, including, by:

(a) Concluding consultations with authorities and the public of the affected Parties based on the environmental impact assessment documentation, as set out in articles 3 (8), 4 (2) and 5 of the Convention;

(b) Revising the final decision on the construction of the Buk Bijela hydropower plant, taking due account of the outcomes of the environmental impact assessment procedure, including the environmental impact assessment documentation and comments received from the affected Parties, further to article 6 of the Convention;

(c) Providing the affected Parties with the revised final decision;

5. *Also request* Bosnia and Herzegovina to provide the Implementation Committee, as soon as possible and no later than 15 January 2024, with a detailed plan with a timetable for implementing the steps foreseen in the above recommendations;

6. *Further request* Bosnia and Herzegovina to report, by the end of each year, to the Implementation Committee on the steps taken to complete the transboundary environmental impact assessment procedure;

7. *Request* the Implementation Committee to report to the Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol at their tenth and sixth sessions, respectively, on compliance by Bosnia and Herzegovina in respect of the permit for the Buk Bijela hydropower plant.
