



Montenegro
Ministry of Sustainable Development and Tourism

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IMPLEMENTATION COMMITTEE

THE CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT

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Subject: SUBMISSION BY MONTENEGRO HAVING CONCERNS ABOUT 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 THE SMALL HYDROPOWER PLANTS ON THE CIJEVNA RIVER

Dear Mr. Svedas, Ms. Santer,

As a Party to the Convention on Environmental Impact Assessment in a Transboundary Context regulating the matters of notifying neighbouring countries and the opportunities to take part in exchange of information in a transboundary context, in environmental protection matters, Montenegro was informed by the Montenegrin media and non-governmental organisations at end of September 2018 that the Republic of Albania had started construction of small hydro power plants on the Cijevna River. The Cijevna River is a transboundary river passing through Montenegro and Albania.

According to this ratified international treaty, if a project implementation is likely to cause impact on the environment of another country, exchange of information and consultations with the country whose environment may be jeopardized shall be implemented in accordance with the aforementioned international treaty. Montenegro or the Ministry of Sustainable Development and Tourism have not received a notification from the relevant authority of the Republic of Albania concerning the intention to build small hydro power plants on the Cijevna River.

Article of the Convention: Article 2 (2). *Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the*



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establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

Montenegro is concerned with respect to compliance of the Republic of Albania with the commitments under the Convention on Environmental Impact Assessment in a Transboundary Context since Montenegro has not been informed about the intention of the Republic of Albania to build small hydro power plants on the Cijevna River and has not been given an opportunity to take part in the transboundary procedure. Montenegro expresses its concern regarding compliance with the transboundary procedure, in line with the Espoo Convention.

In December 2018, the Ministry of Sustainable Development and Tourism informed the Secretariat to the Espoo Convention that they had found out that the neighbouring Republic of Albania intended to build small hydro power plants on the Cijevna River.

The communication with the Republic of Albania concerning the intention to build small hydro power plants on the Cijevna River on the Albanian side takes place via the Ministry of Foreign Affairs, in compliance with the ratified international treaty, the Convention on Environmental Impact Assessment in a Transboundary Context – Espoo Convention. In July this year, the Albanian side submitted documents concerning the hydro energy facilities on the Cijevna River, which have been requested since October 2018, to the Ministry of Sustainable Development via the Ministry of Foreign Affairs. They were submitted in July 2019 in the Albanian language, and the Ministry translated them into the Montenegrin language.

In addition, there is also a concern as to whether the provisions of the SEA Protocol, Article 10 (1) have been breached (Article 10, paragraph 1 - Transboundary consultations: Where a Party of origin considers that the implementation of a plan or programme is likely to have significant transboundary environmental, including health, effects or where a Party likely to be significantly affected so requests, the Party of origin shall as early as possible before the adoption of the plan or programme notify the affected Party), whereby the Party of origin shall notify the neighbouring country about possible transboundary environmental impact of the plan/programme for construction of small hydro power plants, since they have a considerable cumulative impact, particularly on the water ecosystem and biodiversity of the area where activities are planned.

Appendix I, List of Activities of the Espoo Convention, item 11 defines large dams and reservoirs. Also, the SEA Protocol, Appendix I (SEA Protocol: ANNEX I - List of projects as referred to in article 4, paragraph 2) item 11 identifies large dams and reservoirs (point 11 Large dams and reservoirs), and item 80, Dams and other installations designed for the holding back or for the long-term or permanent storage of water, as far as not included in Annex I.

Montenegro wishes to point out that the construction of small hydro power plants is neither listed in Appendix I of the Espoo Convention nor listed as such in Appendix I to the SEA Protocol. Montenegro expresses further concerns due to a potential cumulative impact of small hydro power plants on the environment of Montenegro, since works have started towards the construction of small hydro power plants on the Cijevna River in the Republic of Albania, as per media reports (media reports are attached to this Letter).

Montenegro has not been informed by relevant authorities of the Republic of Albania about the potential strategic environmental impact assessment, if carried out, or about the project or environmental impact assessment for planned activities. Although small hydro power plants are not recognized as such in Appendix I to the Espoo Convention and the SEA Protocol, the construction of small hydro power plants is likely to have a considerable cumulative impact on the environment of Montenegro, particularly since the Cijevna Canyon is recognized as the area of exceptional natural



values according to the criteria of the Council of Europe and the Bern Convention, and represents a potential Emerald site.

Accordingly, Montenegro considers potential impacts of planned activities from the Albanian side to be substantial and in the focus of interest of local public, media and NGOs, which is more than a sufficient reason for Montenegro to request officially the information in a transboundary context about the construction of small hydro power plants on the Cijevna River pursuant to

Article 2 (5): Concerned Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed. Where those Parties so agree, the activity or activities shall be thus treated. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III.

On 8 October 2018, pursuant to provisions of international treaties and having in mind that Montenegro was not given an opportunity to take part in the procedure of exchanging information about potential transboundary impacts of the intention to build small hydro power plants on the Cijevna River on the Albanian side, all relevant information in the context of environmental impact assessment for planned small hydro power plants on the Cijevna River were requested by diplomatic channels, via the Ministry of Foreign Affairs, Letter No. 112-2841/1 of 8 October 2018, pursuant to Article 4 of the Convention on Environmental Impact Assessment in a Transboundary Context so as to obtain information about potential transboundary impacts of planned activities of the neighbouring country and implement further procedure for exchange of transboundary information.

In addition to the Letter sent by diplomatic channels, the Montenegrin focal/contact point also sent the request by e-mail to the relevant e-mail address of the Albanian Ministry of Tourist and Environment (attached to this Letter).

In the period 8 October – 18 December 2018, on the initiative of the Montenegrin side, the following discussions and written correspondence took place:

- On 15 October 2018, the Montenegrin Ambassador to the Republic of Albania met with Assistant Minister of Infrastructure and Energy in Tirana. The meeting was initiated by the Montenegrin side, where the Albanian side expressed readiness to submit all necessary information to Montenegro with respect to implementation of the project for the construction of sHPP on the Cijevna River.
- On 22 October 2018, the Montenegrin Ambassador to the Republic of Albania met with the Minister of Environment and Tourism of the Republic of Albania.
- On 6 November 2018, the Ministry of Sustainable Development and Tourism received a Memo from the Embassy of Montenegro to Albania, via the Ministry of Foreign Affairs (marked as "INTERNAL" No. 05/4-721/3) containing a letter from the Ministry of Infrastructure and Energy of the Republic of Albania. This letter provides a list of small hydro power plants which were granted preliminary approvals (3 in total). In this letter, Montenegro has not received documents requested on 8 October 2018.

It is stated in the Memo that, although projects had been prepared by private construction companies, they were subject of the National Technical Evaluation carried out by the National Agency of Natural Resources, and they need to be granted certificates of compliance of these facilities, including also environmental impact assessment from 20 national structures and institutions prior to obtaining construction permits. They state in the submitted Memo, recalling items VII and VIII of Article 1 of the ESPOO Convention concerning environmental impact assessment reports, that sites (locations) where projects are implemented, their technical characteristics, manner of exploitation of water sources and protection of technical and legal norms for ecological flow and



implementation of the environment rehabilitation plans after the construction led to a conclusion that these projects have no transboundary impact. They particularly underline that the construction of

these hydro power plants will be implemented entirely in the territory of Albania and that their construction will have no impact on the quantity of water flowing to the territory of Montenegro. Also, they state that analyses showed that if there had been such a possibility, the Albanian side would have certainly informed the competent authorities in Montenegro and take further position with respect to this matter subject to the level of compliance. For this reason, their assessment was that they did not need to inform the Montenegrin side under the ESPOO Convention.

The Albanian side concludes that, although these projects have no potential ecological or social impact on the territory of Montenegro and on reduced quantities of water running through the territory of Montenegro, in the spirit of good mutual understanding and friendship and in compliance with international treaties, they assure that if there will be impacts, the procedure for issuing construction permits will not continue and they would be ready to review these projects together with the Montenegrin side, at expert level within the Bilateral Commission. In the same letter, the Albanian side pointed out a possibility to request information concerning potential plans and projects for the construction of hydro power plants in the territory of Montenegro having a potential transboundary impact.

On 20 November 2018, a Letter was sent to the Republic of Albania via the Ministry of Foreign Affairs stating that Montenegro had not been provided with the environmental impact assessment documents pursuant to the Convention about Environmental Impact Assessment in a Transboundary Context–Espoo, requested on 8 October 2018. Respecting good neighbourly relations and in communication with competent authorities of the Republic of Albania, if works on the construction of sHPP have started based on issued permits, their suspension was requested by the same Letter and the request of Montenegro was repeated concerning submission of the environmental impact assessment documents, pursuant to the Convention on Environmental Impact Assessment in a Transboundary Context–Espoo for the purpose of implementation of further procedure.

Also, Montenegro expressed readiness to notify the Republic of Albania if a decision is made to implement any similar project, all in line with the Espoo Convention.

On 12 February 2019, by Letter No. 112-171/5, a letter was sent via the Ministry of Foreign Affairs of Montenegro requesting information as to whether the list of hydro power plants whose construction will be suspended included small hydro power plants planned on the Cijevna River, according to statements of electronic media that the Albanian Minister of Infrastructure and Energy, Belinda Balluku, stated that she would suspend the construction of new hydro power plants and start an investigation about 182 permits issued for the construction of 440 plants in the Republic of Albania (source: <https://balkangreenenergynews.com/rs/albanija-zaustavlja-gradnju-hidroelektrana-zbog-brige-o-zastiti-zivotne-sredine/>).

On 27 February 2019, the Ministry of Sustainable Development and Tourism received a note from the Ministry of Foreign Affairs concerning a discussion between the Montenegrin Ambassador and the Minister of Infrastructure and Energy of the Republic of Albania (Letter No. 101-171/7 of 27 February 2019 is attached). The meeting was held on the initiative of the Montenegrin side, as per instructions of the Ministry of Foreign Affairs concerning media statements that the Republic of Albania will suspend the construction of new hydro power plants and start an investigation concerning 182 permits issued for 440 plants so as to obtain information whether the list includes hydro power plants on the Cijevna River.

The Minister of Infrastructure and Energy of the Republic of Albania said that it is a “temporary suspension of issuance of new permits, i.e. a temporary suspension of all ongoing procedures and



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requests" so as to ensure full compliance with laws and standards, while when it comes to permits that have already been issued and the plants already under construction or operational, it is a "voluntary suspension of work(s) in order to analyse and assess whether contracts have been complied with". Regarding interest in "investigations concerning 182 issued permits and 440 plants",

she pointed out that those are not investigations but "monitoring of contracts", and whether there are 182 or 420 of them, that should not be subject of interest of Montenegro (?!), and she, nevertheless, specified that there are 420 contracts. She stated that if Montenegro wishes, the Ministry of Infrastructure and Energy is willing to carry out as a priority "monitoring and evaluation" of sHPP on Cijevna. She said that she understood concerns of the public in Montenegro, but that her interest and competences are related to developing infrastructure and energy in the territory of Albania, i.e. the interests of Albanian citizens. She proposed that "communication is raised to the diplomatic level, that is to involve the Ministry of Foreign Affairs of Albania which is competent for relations with neighbours so that this matter is given a higher, transboundary, i.e. inter-state approach and attention".

The Montenegrin side reminded that information had been requested about environmental impact assessment for planned sHPP on Cijevna, pursuant to Article 4 of ESPOO, and about transboundary impact of these projects, pursuant to the Framework Agreement on mutual relations in the field of transboundary waters management, which have not been provided, i.e. only descriptive information of the Ministry of Infrastructure and Energy have been submitted about three contracted hydro power plants and another three with preliminary approvals, with a statement that the projects were subject to the National Technical Evaluation carried out by the National Agency of Natural Resources, and before construction permits were issued, companies needed to obtain certificates of compliance of these structures from about 20 state structures and institutions, including Environmental Impact Assessment, with a conclusion that these projects had no transboundary impact (Letter of the Amb. No. 394/209-2 of 2 November 2018), but that these documents were not provided to the Montenegrin side as part of the reply. It was highlighted that the intention from the very beginning was to exchange all relevant information, in line with good neighbourly and friendly bilateral relations for the purpose of expert clarification of the situation, without taking this matter to the highest political-diplomatic level.

In that respect, the emphasis was placed on the importance of the beginning of work of the Joint Commission for Water Management under the Framework Agreement as soon as possible, with a note that the Montenegrin side had already designated members of the Montenegrin part of the Commission, and that the designation of the Albanian side of the Commission is expected. It was also reminded of the preliminary technical meeting of 5 February of this year in Shkodra between representatives of the Ministry of Agriculture and Rural Development of Montenegro and representatives of the Agency for Water Resource Management of the Republic of Albania, with a view to establishing the Joint Commission. Also, acting Minister for European and Foreign Affairs of the Republic of Albania will visit Montenegro on 8 March and that this topic will anyway be a part of the discussion, and the second joint session of the two Governments is expected to take place during this year in Montenegro.

The Minister of Infrastructure and Energy of the Republic of Albania pointed out that the Ministry of Infrastructure and Energy will provide the Embassy with a list of the Albanian part of the Commission, with two members from the Ministry of Infrastructure and Energy and one or two members from the Ministry of Tourism and Environment of Albania, until Monday (25 February), and once the Commission starts working, they will make all relevant documents available to the Montenegrin side allowing experts to verify environmental impact on both sides of the border.

Within communication since October 2018, in the context of transboundary consultations concerning the construction of small hydro power plants on the Cijevna River, the Ministry of Sustainable Development received documents relating to hydro energy projects on the Cijevna River on 4 July



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2019, via the Ministry of Foreign Affairs and it was designated with a secrecy level "INTERNAL". The documents were received in the Albanian language, and this Ministry translated them into the Montenegrin language. The level of secrecy "INTERNAL" was officially suspended on 9 September 2019.

The Ministry of Sustainable Development and Tourism forwarded the translated documents to the Montenegrin Commission for cooperation with the Republic of Albania in the field of water management, established by the Government of Montenegro in July 2018, for consideration. **After consideration, it was established that the documents received did not include and did not consider potential impacts on the environment of Montenegro.**

Article 2, paragraph 6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of Origin.

In addition to responsible state institutions, there is a high public interest (particularly NGOs) in this matter, and they expect that all relevant documents from the Republic of Albania are made available. As a responsible Party to the Espoo Convention, once the requested documents are received from the Republic of Albania, containing possible transboundary environmental impacts, Montenegro will make them available to the entire Montenegrin public in order to include them in reviewing the received documents.

APPENDIX III (General criteria to assist in the determination of the environmental significance of activities not listed in Appendix I).

Based on the above, the Montenegrin side considers the following:

1. When considering the proposed activities that Article 2 (2) relates to, the respective Parties may consider whether the activity is likely to have a considerable negative transboundary effect, particularly by any of the following criteria:

(a) Scope: proposed activities that are large for the given type of activities;

Since it is about a several small hydro power plants, their cumulative impact on the environment of Montenegro must be reviewed, particularly from the aspect of the likely impact on biodiversity, volume and quality of water and the quality of air, quality of soil, during the construction and functioning of sHPP, on population and human health, likely impacts on micro climate etc...

(b) Place: the proposed activities that are placed in or near the area with particularly sensitive environment or are of particular importance (such as marshlands listed in the Ramsar Convention, national parks, nature reserves, sites of particular scientific interest or sites of archaeological, cultural or historical importance); also, the proposed activities in places where the proposed development is likely to have considerable effects on the population;

As stated in the beginning, the Cijevna Canyon is recognized as the area of exceptional natural values according to criteria of the Council of Europe and the Bern Convention, and it represents a potential Emerald site. The Cijevna Canyon is a protected natural resource of local importance named the Natural Monument "Cijevna Canyon" (Decision on declaration of the Natural Monument "Cijevna Canyon" (Official Gazette of Montenegro – Municipal Regulations 053/17 of 25 December 2017 given in Annex IV).



The region of the Cijevna Canyon is characterized by a high level of biodiversity – species and ecosystem – that is reflected in the presence of a large number of endemic and relict plant species and phytocenosis. The presence of particularly valuable plant species has been registered in the Canyon, such as *Edraianthus tenuifolius*, rock bells, *Edraianthus ginzbergeri*, grassy bells, *Ramonda serbica*, Serbian ramonda and a number of orchid species. Flora of the Cijevna Canyon is rich with a large number of endemic species. Relict plant species have been registered in the Cijevna Canyon. Also, the Cijevna

Canyon is a habitat of rare plant community *Adianto-Pinguiculetumhirti* florae. The forest community of the territory of the Cijevna Canyon includes valuable dendroflora species. 28 species of fungus belonging to *Basidiomycota* have been identified in the territory of the Cijevna Canyon and by larger part represent species that are characteristic for thermophile habitats. Surveys identified for the first time the following species in Montenegro: *Crinipellis tomentosa* and *Lactarius romagnesii*. A number of bird species has been identified in the territory of the Cijevna Canyon. A characteristic of the respective area is ichthyofauna (representatives of the family *Salmonidae*, *Czprinidae*, *Anguillidae* and *Poecilidae*) and fauna of the bottom - Bentos (*Chironomidae*, *Ephemeroptera*, *Plecoptera*, *Trichoptera* and *Simulidae*). 15 species of herpetofauna have been identified in the Cijevna Canyon (4 amphibian species and 11 reptile species), and all of them are on national or international lists of protected species. Biodiversity of the Cijevna Canyon includes a rich and diverse fauna of gastropods (snails). 20 snail species have been identified, three of which are slug species protected by national legislation. A large number of insects has been identified in the territory of the Cijevna Canyon, including taxa protected by national legislation. The Bern Convention provides protection for 4 species of insects: *Lucanus cervus*, *Lzcaena dispar*, *Euplagia quadripunctaria* and *Eriogaster catax*. Out of mammal species having international status (Resolution 6 of the Bern Convention), the Cijevna Canyon is the site for wolf (*Canis lupus*) and Eurasian otter (*Lutra lutra*). The Cijevna Canyon is an Emerald site identified on the entire area.

- (c) Effects: the proposed activities with particularly complex and potentially negative effects, including those that cause serious effects on people or on valuable species and organisms, those that pose a threat to the existing or potential use of the damaged area and those causing further pressure that the environmental capacity cannot sustain.

Activities related to the construction and functioning of small hydro power plants will certainly reflect on the rich wildlife (described under item b), habitats and on water regime in the Cijevna Canyon. Also, cumulative effects are also expected with respect to the overall quality of other environmental segments.

Summarizing all of the above, and emphasizing that although the construction of small hydro power plants is not listed in Appendix I to the Convention, and recalling Article 2 (5), Parties shall, at the initiative of any such Party, enter into discussions on whether one or more proposed activities not listed in Appendix I is or are likely to cause a significant adverse transboundary impact and thus should be treated as if it or they were so listed, Montenegro requests from the Implementation Committee and the Secretariat to the Espoo Convention to:

- Pay the required attention to this matter and take any necessary actions towards solving this matter;
- Pay the required attention to this matter and take actions by referring the Albanian side to the matter of compliance with the Espoo Convention and/or SEA Protocol so as to receive documents containing assessed potential environmental impacts with proposed protection measures;



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- Invite the Albanian side to deliver all required documents concerning the number of planned hydro power plants and those whose construction has potentially started;
- Invite the Albanian side to suspend all works towards construction of small hydro power plants on the Cijevna River until the procedure of transboundary impact assessment is implemented completely;
- Invite the Albanian side to deliver all required documents to the Montenegrin side to allow a complete review of potential environmental impacts and informing local public to participate in the transboundary EIA procedure and express their opinion;
- If the strategic assessment procedure has not been implemented at the plan or the programme level, or the environmental impact assessment due to a substantial transboundary environmental impact, the procedure should be brought back to the beginning and adequate assessments should be carried out and the required transboundary consultations with Montenegro should take place.

We use this opportunity to thank the Implementation Committee and the Secretariat to the Espoo Convention and we are looking forward to future cooperation!

Should further information be needed, we are willing to provide them.

This letter is accompanied by the supporting documents concerning:

- Official communication; and
- Media excerpts.

According to the above, we ask that information is forwarded, in communication with competent authorities of the Republic of Albania, that the received documents do not provide answers to transboundary impact, i.e. do not assess potential impacts on the environment of Montenegro. In this respect, documents reviewing and assessing potential impacts on the environment of Montenegro should be delivered.

Since the session of the Joint Interstate Commission of Montenegro and Albania for Cooperation in Water Management is scheduled to take place on 19 September, and since the matter of construction of hydro energy plants on the Cijevna River is important from the aspect of inter-sectoral cooperation and inclusion of all relevant actors, we expect a prompt reaction from the Albanian side.

Contact person for any further information is: Brankica Cmiljanović, telephone: 020446283, email: brankica.cmiljanovic@mrt.gov.me

Sincerely,

AGREED BY
Saša Radulović, State Secretary

APPROVED BY
Ivaša Vojinović, Director General, Directorate for Environment

Focal and Contact point of the ESPOO Convention and SEA Protocol
Brankica Cmiljanović, Head of the Directorate for Horizontal Legislation



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