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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

42nd meeting
Strasbourg, 28 November - 2 December 2022

Possible File: 2020/9

**Possible negative impact of hydro-power plant development on
the Neretva river
(Bosnia and Herzegovina)**

**TERMS OF REFERENCE FOR A BERN CONVENTION
ON-THE-SPOT APPRAISAL**

*Document prepared by
the Secretariat of the Bern Convention*

1. BACKGROUND OF THE COMPLAINT

The complaint concerns an alleged breach of the Bern Convention through the development of the 35MW Ulog hydropower plant (HPP) and the hydroelectric system (HES) “Gornja Neretva” that consists of seven small HPPs with a total installed capacity of 15.01 MW, on the upper Neretva River (Gornja Neretva) and its tributaries stretching around 30 km along the river. The Ulog HPP project is situated near the centre of the candidate Emerald Network Site “Gornji tok Neretve” (BA0000002) and the HES “Gornja Neretva” is located inside the site. This site constitutes a major biodiversity hotspot for the country and includes a variety of species protected under Appendices I, II, and III and Resolutions No. 4 (1996) and No. 6 (1998) of the Bern Convention, as well as under Appendix II of the Convention on Migratory Species (CMS).

A first Environmental Impact Assessment (EIA) was conducted in 2012. According to the complainant, the ecological information provided by the developers was outdated, did not show the real ecological risks and adverse impacts from the proposed projects and failed to assess the overall cumulative impacts of the small HPPs, which would considerably impact the continuity of hydrological and hydro-biological conditions in the watercourse. The complainant further noted that the supporting infrastructure such as the power lines may impact other species in the area apart from fish that are dependent on the river, forest, and surrounding area, such as birds and mammals.

There is also an ongoing procedure of the complaint regarding the preliminary EIA for Phase I, as well as on changes at the HPP “Ulog” from 2017. Following the judgment of the Court, a new screening decision for the Gornja Neretva Phase I plants was issued by the Ministry of Physical Planning, Civil Engineering and Ecology in February 2021, obliging the developer to initiate a new EIA.

The authorities' first response to a Bern Convention request for information at the beginning of 2021 contradicted the complainant by stating that cumulative impacts had been considered and that the information used for the EIA included actual environmental risks. The authorities further disagreed with the complainant on the impact of the water discharge, which would, according to the authorities, not disturb the aquatic species. Additionally, the impact of transmission lines on birds and mammals had been determined during the EIA and measures prescribed to mitigate damages during construction and use. The authorities further stated that at the time of the decision on the construction of the HPPs, ecological networks including the Emerald Network or protected areas in the Republika Srpska had not yet been declared.

The Bureau at its meeting in April 2021 noted that the HPPs would affect the Emerald Network site “Gornji tok Neretve”, as well as potentially impact negatively on numerous habitats and species protected under the appendices and resolutions of the Bern Convention. It also took note of the information of the authorities that at the time of the initial EIA, the area had not any protected area status. It thus decided to place the file in the category on stand-by.

Following new reports received over the Summer, the Bureau in September 2021 expressed its concern at the conflicting information received from both Parties, and in particular that construction appeared to have begun in the Emerald Network site, despite the authorities in their reports having stated that all works must be halted until a new EIA has been carried out. The Bureau further expressed concern on the alleged illegal procedure of splitting the EIA of the small HPPs into several different studies, as well as the alleged lack of a competent cumulative impact assessment.

The Bureau welcomed that a study towards the proclamation of certain sites as protected areas has begun but asked for clarification as to whether these sites cover the area of development, and whether they are already Emerald Network sites. Due to the urgency and risk to this Emerald site as described by the complainant, and the apparent lack of commitment to the Emerald Network provisions from the authorities, the Bureau decided to upgrade this case to a Possible File, thus bringing it to the agenda of the 41st Standing Committee.

In October 2021, the authorities informed that no site activities or works have taken place for the project HES “Gorna Neretva” phase nor were any works identified at the upper course of Neretva river.

The authorities further re-emphasised that the EIA and its subdivisions had been done in accordance with the law and considered cumulative effects.

The 41st Standing Committee shared the concerns of the Bureau over the contradictory information of both parties and allegations of the complainant about the threat to the Emerald Network site and irregularities over the EIA carried out, and noted the proposal of the complainant to open a file.

The Standing Committee decided to mandate an on-the-spot appraisal (OSA). The aim of the mission would be for the independent expert to corroborate the information from both parties on the ground, inspect the area, and come up with recommendations. The OSA would be subject to the agreement of the authorities of Bosnia and Herzegovina who were absent from the meeting.

The Committee also took note of the information that the Energy Community Treaty was also closely involved with this case, and that the European Commission was also concerned and would be in contact with the EU delegation in the country.

2. OBJECTIVES OF THE MISSION

On the basis of the instructions by the Standing Committee, and the information provided by the authorities, complainant NGO, and other stakeholders, the objectives of the mission are, through research, on-site assessment, and discussions with relevant stakeholders, to:

1. Collect information on the conservation status of the species and habitats protected by the Bern Convention in the candidate Emerald Network site and its surroundings;
2. Assess the possible impact of the hydropower plants, hydroelectric system and related infrastructure on the protected species and habitats as well as possible downstream impacts;
3. Assess the current state of play of construction at the sites;
4. Collect information on the environmental impact assessments undertaken, including cumulative impact assessment, as well as on the current status of all hydropower projects planned in the Emerald Network site;
5. Collect information on the Study towards the proclamation of certain sites as protected areas at State and entity level, and on synergies between these processes and development of the Emerald Network.

3. MISSION DELIVERABLES

Based on the findings of the mission, the expert shall submit a written report of max. 20 pages, including proposed recommendations to the State authorities on adhering to the Bern Convention and its Emerald Network, taking into account [Recommendation No. 157 \(2011, revised in 2019\)](#) on the status of candidate Emerald sites and guidelines on the criteria for their nomination, [Recommendation No. 208 \(2019\)](#) on detecting, reporting, assessing and responding to changes in the ecological character of Emerald Network sites, and the [Post-2020 Strategic Workplan for the Emerald Network](#).

The recommendations shall be accompanied with a monitoring plan for their implementation and shall be examined and possibly adopted by the Standing Committee to the Bern Convention.

4. MISSION TEAM PARTICIPANTS, STATE, ENTITY AND LOCAL AUTHORITIES, AND OTHER STAKEHOLDERS TO BE INVOLVED

4.1. Mission team

- International independent expert
- Bern Convention Secretariat

4.2. State, entity and local authorities

- Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina;
- Ministry for Tourism and Environment of Bosnia and Herzegovina;
- Ministry of Spatial Planning, Construction and Ecology of the Republika Srpska;
- Other relevant ministries/agencies/institutions/local authorities;

4.3. Other stakeholders

- Center for Environment (complainant)
- Other relevant NGOs, e.g. Aarhus Centre in Bosnia and Herzegovina, RiverWatch, EuroNature, CEE Bankwatch Network, ClientEarth;
- Scientific and academic community;
- Local community representatives;
- Relevant international organisations, e.g., Energy Community Treaty, Espoo convention, Aarhus Convention Compliance Committee, Delegation of the EU in Bosnia and Herzegovina.

5. FUNDING AND ORGANISATION OF THE MISSION

Funding for covering costs of the on-the-spot appraisal will be borne by the Bern Convention and international logistical arrangements will be done and coordinated by the Bern Convention Secretariat. The Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (or other relevant Ministry) is kindly requested to organise and provide local logistics, such as arranging meetings scheduled with all stakeholders, field visits, providing local transportation for the mission team free of charge, providing interpretation and translation of documents if required.

Should the Covid-19 pandemic mean that an on-site visit is impossible during 2022, this mission may be transferred into an online advisory mission.

6. TENTATIVE DATES

The mission could take place during the Summer in 2022 (to be determined).