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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

41st meeting
Strasbourg, 29 November – 3 December 2021

Complaint on stand-by: 2020/9

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

- REPORT OF THE COMPLAINANTS -

*Document prepared by
Center for Environment (FoE Bosnia & Herzegovina), Aarhus Centre in Bosnia and Herzegovina,
RiverWatch, EuroNature, CEE Bankwatch Network, ClientEarth*

To the Bern Convention Secretariat

23 July 2021

Complaint no. 2020/9: Bosnia and Herzegovina – The Upper Neretva hydro-power plants and their impact on the *Gornji tok Neretve* candidate Emerald site

Report by the Complainants

Document prepared by

Center for Environment (FoE Bosnia & Herzegovina), Aarhus Centre in Bosnia and Herzegovina, RiverWatch, EuroNature, CEE Bankwatch Network, ClientEarth

Dear Ms. Sticker,

Hereby we would like to present our update on complaint no. 2020/9 hydro-power development on the Upper Neretva river in Bosnia and Herzegovina. The report will focus primarily on the ongoing construction of Ulog hydropower plant and the claims provided in the Reply of the Ministry of Spatial Planning, Construction and Ecology of the Republic of Srpska, (hereinafter “Ministry”) from February 2021 to the Standing Committee of the Bern Convention.

The extended version of the Report is provided in Annex I attached to this report, whilst the present document will summarise some of the key replies to the Report by the Ministry.

The complainants would hereby like to notify the Bureau that the construction of the Ulog hydropower plant has started. We urge the Bureau to consider upgrading the complaint to possible file in order to prevent irreversible damage from ongoing construction.

1. Construction in the Emerald site has started

The complainants would like to notify the Bern Convention Bureau that the construction of the Ulog hydropower plant has already started, which can be seen in the photos attached in Annex II to this document. To the best of our knowledge, the current works are being done on the derivation tunnel, 2767m long, through which the water would go to a machine building¹. It is clearly visible that the water quality is severely impacted by the construction, which has significant negative impact on the habitats and species at the construction site and downstream:

- C3.55 Sparsely vegetated river gravel banks (Habitats Directive codes: 3220 and 3240) and F9.1 Riverine scrub (3240 in Habitats Directive) - these habitats are especially sensitive to hydropower construction as they occupy gravel deposits of rivers or river banks and any changes in the riverbed impact them.
- Mammals: Eurasian otter (*Lutra lutra*) - present in the river only when there are healthy fish and crab populations – if construction continues changes in the food base and direct destruction of breeding and feeding habitats will lead to disappearing of the species;
- Fish: softmouth trout (*Salmo obtusirostris*, globally Endangered species) and marble trout (*Salmo marmoratus*) - additional fine sediment caused by construction work on Ulog hydropower plant is likely to have deteriorated the spawning success of these endangered species that live downstream. In the stretch directly impacted by the plant construction, this would likely have a detrimental effect on the populations of other species - Adriatic brown

¹ The EIA study mentions two tunnels, the deviation tunnel, that will be permanently used for power generation, and the bypass tunnel, that will be used to dry up the riverbed during construction.

trout (*Salmo farioides*)², European bitterling (*Rhodeus sericeus amarus*), freshwater sculpin (*Cottus gobio*) and possibly others not investigated still. Upper Neretva is one of the last river stretches with genetically pure *Salmo farioides*;

- Birds: common kingfisher (*Alcedo atthis*), white-throated dipper (*Cinclus cinclus*), white wagtail (*Motacilla alba*), grey wagtail (*Motacilla cinerea*) - bird species of natural rivers, depend on an available foodbase, so any decline in fish will impact seriously their populations;
- Invertebrates: white-clawed crayfish (*Austropotamobius pallipes*, globally Endangered) could become extinct from the Upper Neretva.

2. Lack of overall environmental impact assessment of the Upper Neretva plants

Although the HES “Gornja Neretva” was originally seen as one project, the seven plants were split and their environmental impact was assessed separately in two different studies. The reasons for splitting were the fact that the investor faced difficulties in obtaining urban conditions for all projects. This is also explicitly confirmed by the Ministry in the Report of the Government T-PVS/Files(2021)40 to the Standing Committee.

However, whether project splitting may lead to circumventing the need to carry out an EIA or underestimating the environmental impact and thus affecting the decision-making process, it is in conflict with the EIA Directive if the overall impact of all plants together was not assessed. Differences in the approval jurisdiction do not justify the splitting, since the meaning of the term ‘project’ refers to the whole installation that has an impact and is wider than the concept of it in technical terms. The fact that an overall project could be developed through two or more technical projects does not imply that they should be assessed separately. What is ultimately important **are their overall environmental effects.**

The environmental assessment also failed to include the impact that planned power lines in connection to the project would have on species. The Ministry Report T-PVS/Files(2021)40 to the Standing Committee claims that the allegations in the complaint regarding the impact of the transmission line on birds and mammals is unjustified, because the impact was determined in the procedure of environmental impact assessment and measures were prescribed to protect all environmental elements and factors that must be implemented during construction and during exploitation of the plants in question. However, in the access to information reply from 17/11/2020, the Ministry confirmed³ that in the case of the HES “Gornja Neretva” plants, the Ministry did not conduct any procedures regarding the approval of the environmental impact assessment studies, or the environmental permits. **The authorities should thus explain in which EIA procedure the power lines for HES “Gornja Neretva” phase I and phase II plants were assessed.**

The construction of the power lines for the Ulog hydropower plant were subject to separate environmental assessments from the actual hydropower plant. Based on the Report of the Commission for Concessions of Republika Srpska for the year 2010, construction of two new power lines for the connection to the grid of hydropower plants in the Municipalities of Foča, Rudo, Kalinovik and Gacko, of 35kV and 110 kV respectively was envisaged. Therefore, on 21.07.2011, an environmental permit for construction of the 35kV power line, 15.8km long, was issued to the investor EFT – HE Ulog. This permit was renewed on 08.07.2016. Similarly, on 07.08.2018, the approval of an environmental impact assessment study for the construction of connection power line of 2x110 kV, 20.7km long for the Ulog hydropower plant, was renewed for Elektroprijenos-Elektroprenos BiH, which was submitted by an EFT proxy.⁴ Therefore, the environmental impact of power lines was

² Not protected by the Bern Convention, but endemic species of the Adriatic basin, highly threatened by habitat loss and restocking of other trout.

³ Reply to the request for information from 17/11/2020, Ministry of Spatial Planning, Construction and Ecology of Republika Srpska <https://drive.google.com/file/d/1U9LYgSSODEudzP0VTtKqZJPBD2MZUFh5/view>

⁴ Ibid.

subject to two separate assessments, and not part of an overall environmental impact assessment with the Ulog hydropower plant.

The process of splitting does not only create an obvious result in circumventing the need to carry out an EIA, this practice can also lead to underestimation of the environmental impact of the project as a whole, thus affecting the decision-making process. Splitting also affects other parts of the assessment, such as the assessment of the alternatives, impact on species, protected areas, as well as the mitigation or compensation measures. Similarly, by not assessing the hydropower plants together with the power lines, the authorities failed to show the overall impact of this development on other species in the area apart from fish, that are dependent on the river, forest and the entire area of the upper Neretva, such as birds and mammals.

3. Cumulative effects of all hydropower plants on the Neretva river

Despite the existence of a section including the word “cumulative” in its title,⁵ the EIAs do not describe the cumulative impacts of the HES “Gornja Neretva” project, either regarding the three hydropower plants forming Phase 1, or together with Phase 2, nor together with Ulog. From reading the study, one cannot differentiate between the impacts of one of the plants and several of them.

A very concrete example of this is in the section on mitigation measures, as one of the measures proposed for Ulog was fish stocking where the part of the Neretva further up would need to remain free of construction, but now cannot be implemented. The HES “Gornja Neretva” project would dam the site chosen as a designated natural spawning ground for fish as a mitigation measure at the time when the Ulog plant was planned. This is a serious consequence of the lack of cumulative impact assessment, which has not been satisfactorily resolved.

Particularly important in this case is the lack of assessment of cumulative impacts of all the planned hydropower plants on the upper Neretva. The plants practically “lean” onto one another and the largest difference between them is 240 m. Based on our calculations, **there will be plants stretching continuously from around 8 km from the source⁶ to 38 km from the source (30 km) with only one gap of 2 km between Ulog and Uloški Buk**. Bearing in mind that the Ulog plant practically reaches the entity boundary with FBiH, this means that **hydropower plants would directly impact three quarters of the river down to the entity border**. If these plans go ahead, the upper Neretva will be completely changed from a river into a series of reservoirs and pipelines.

4. Significant effects of the proposed project on the *Gornji tok Neretve* candidate Emerald site

The failure of the EIA reports to properly identify the species present and assess the impacts on them, as well as to propose proper mitigation measures is fully outlined in Annex I. However, the complainants would also like to refer to the binding obligations of the countries to protect candidate Emerald sites in accordance with the provisions of the Bern Convention.

The Government Report attempted to justify not carrying out a proper assessment of the impact on the *Gornji tok Neretve* candidate Emerald site, by stating that the protection of this area was not declared at the time of issuing the decision, and that the area intended for implementation of the projects had been identified as a potential candidate for a potential site of the future “Emerald Network” in BiH.

⁵ EIA Phase 2, p 137, section 2.4.12. Description of the direct impacts and any indirect, secondary, cumulative, short-term, medium-term and long-term, permanent and temporary, positive and negative impacts. EIA report for HES “Gornja Neretva” Phase 2, November 2016, available at https://drive.google.com/file/d/16PVnupdTQ2XKm3fXQa_MwstYGHsWlGez/view

⁶ Igašćica would dam a tributary but its powerhouse would be on the Neretva at the same point where the Mjednik intake would be.

The complainants would like to emphasise again that the obligations to protect the habitats of species and endangered natural habitats are not ‘soft law’ but rather strict obligations clearly marked in the Bern Convention and forming part of international law.⁷

Therefore, having regard to the objectives of the Convention to conserve wild flora and fauna and their natural habitats, the requirements from Article 3 of the Convention to take steps to promote national policies for the conservation of the habitats of wild flora, wild fauna and natural habitats, with particular attention to endangered and vulnerable species, especially endemic ones, and endangered habitats, as well as Article 4(1) of the Convention that provides that each Contracting party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild fauna species, especially those listed in Appendices I and II to the Convention, it is clear from the recent developments explained above that these requirements have not been met.

Moreover, the *Gornji tok Neretve* was officially nominated as a candidate Emerald site in 2011, and - as such - it is subject to Recommendation No. 157 (2011) on the status of candidate Emerald sites and guidelines on the criteria for their nomination, requiring national authorities to “take the necessary protection and conservation measures in order to maintain the ecological characteristics of the candidate Emerald sites” until their full inclusion in the Emerald Network, since the ecological quality of proposed Emerald Network sites should be preserved as soon as they are officially nominated as ‘candidate Emerald Network sites’ by the Standing Committee to the Bern Convention.⁸

The complainants would like to urge the Bern Convention Bureau to put the case onto the agenda of the next Standing Committee. The complainants (Center for Environment and Aarhus Centre in BiH) have tried all means on national level, participated in the procedures before the competent authorities and courts regarding the approval of the Ulog and HES “Gornja Neretva” plants, but this has not stopped the ongoing construction. One more year of construction of the Ulog hydropower plant could have irreversible impacts on the Emerald site.

Annexes to the Report:

- [Annex I](#) – Extended Reply to the Report of the Government of Republika Srpska to the Standing Committee of the Bern Convention regarding the complaint no. 2020/9;
- [Annex II](#) – Photos of the construction site of the Ulog HPP.

⁷ CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, Group of Experts on Protected Areas and Ecological Networks The Emerald Network: A Network of Areas of Special Conservation Interest for Europe, Explanatory document and compilation of relevant texts, T-PVS/PA (2016) 4, Strasbourg, 10 June 2016, p 5.

⁸ Recommendation No. 157 (2011) of the Standing Committee, adopted on 2 December 2011 and revised on 6 December 2019, on the status of candidate Emerald sites and guidelines on the criteria for their nomination, available at <https://rm.coe.int/2011-rec-157e-revised-in-2019-on-emerald-network-criteria/1680993e41>, p 2.