



# Economic and Social Council

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## Economic Commission for Europe

### Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context

#### Ninth session

### Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

#### Fifth session

Geneva, 12–15 December 2023

Items 3 (a) and 8 (a) of the provisional agenda

#### Outstanding issues: draft joint decisions

Adoption of decisions: decisions to be taken jointly

## Draft decisions on compliance with the Convention and the Protocol

### Proposals by the Implementation Committee

#### *Summary*

The present document contains a compilation of draft decisions on compliance with the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment, finalized by the Implementation Committee under the Convention and its Protocol at its fifty-seventh session (Geneva, 29 August–1 September 2023), following their submission for comments to the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment at its twelfth meeting (Geneva, 13–15 June 2023).

The Meeting of the Parties to Convention and the Meeting of the Parties to the Protocol are expected to review the draft decisions and agree on their adoption.



## 1. Decision IX/4a-V/4a on compliance by Albania with its obligations under the Convention and the Protocol in respect of the planned construction of several small hydropower plants on the Cijevna River

*The Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol,*

*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/4<sup>1</sup> on general issues of compliance with the Convention, adopted at the ninth session of the Meeting of the Parties to the Convention, and V/4<sup>2</sup> 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 Albania with its obligations under the Convention and the Protocol in respect of the planned construction of several small hydropower plants on the Cijevna River,<sup>3</sup>

*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 Albania,<sup>4</sup>

1. *Welcome* the steps taken by Albania and Montenegro to enter, further to article 2 (5) of the Convention, into discussions on whether the proposed activities by Albania referred to in the submission by Montenegro of 25 September 2019 were likely to cause a significant adverse transboundary impact;

2. *Establish* that, in discussions under article 2 (5) of the Convention, Parties should exchange information in a way that allows them to identify whether significant adverse transboundary impacts on the environment could occur, and that both the Party of origin and the affected Party are responsible for the timeliness and quality of their information exchange;

3. *Endorse* the findings of the Implementation Committee that, in accordance with the information provided to the Committee:

(a) Albania and Montenegro properly fulfilled their obligations under article 2 (5) of the Convention by entering into discussion with each other on the matter;

(b) In the absence of an agreement by the concerned Parties under article 2 (5) of the Convention, Albania was not in non-compliance with article 2 (2) and (6) of the Convention, as those provisions were not applicable;

(c) Albania was not in non-compliance with article 10 of the Protocol, as, in the absence of a plan or a programme by Albania in the meaning of article 4 (1) of the Protocol, the Protocol was not applicable;

4. *Encourage* both Parties to continue their dialogue under article 2 (5) of the Convention, ensuring that the cumulative impact of the proposed activities is properly assessed, and the criteria listed in appendix III to the Convention are properly applied during the assessment, including with regard to the environmental sensitivity of the Cijevna River basin;

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<sup>1</sup> ECE/MP.EIA/2023/6.

<sup>2</sup> ECE/MP.EIA/SEA/2023/8.

<sup>3</sup> ECE/MP.EIA/IC/2023/9.

<sup>4</sup> ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

5. *Invite* Albania to continue to provide Montenegro with information on all planned activities at the Cijevna River referred to in the above-mentioned submission for the purposes of the assessment of their transboundary impacts;
6. *Invite* Montenegro to provide Albania with any further reasonably obtainable information relating to the potentially affected environment from the proposed activities, if requested;
7. *Acknowledge* that Albania expressed its willingness to apply the Convention should it, as a result of the discussions under article 2 (5) thereof, agree that the activities in question cause significant adverse transboundary impacts;
8. *Encourage* Albania to take into account, in the context of any future assessment of transboundary environmental impacts of any further small hydropower plants on the Cijevna River, the cumulative impacts of all existing and planned hydropower plants, and to provide the related information to Montenegro;
9. *Encourage* Montenegro to provide Albania with any reasonably obtainable information relating to the potentially affected environment from any future relevant planned activities on the Cijevna River, if requested;
10. *Request* Albania and Montenegro to apply the Protocol as an environmental protection instrument at an early stage of development of plans and programmes, such as energy strategies or plans and joint river basin management plans that cover any future developments in the Cijevna River basin or other areas of outstanding nature and environmental value, as well as to ensure that cumulative impacts of the planned activities, including those in a transboundary context, are properly addressed.

## 2. Decision IX/4b-V/4b on compliance by Armenia with its obligations under the Convention and the Protocol in respect of its national legislation

*The Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol,*

*Recalling* articles 11 (2) and 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context and article 14 (6) of the Protocol on Strategic Environmental Assessment,

*Recalling also* decisions IV/2, paragraphs 15–19,<sup>1</sup> V/4, paragraphs 27 and 28,<sup>2</sup> VI/2, paragraphs 29–35,<sup>3</sup> IS/1a<sup>4</sup> and VIII/4a<sup>5</sup> on compliance by Armenia in respect of its national legislation for the implementation of the Convention,

*Recalling further* decisions IX/4<sup>6</sup> on general issues of compliance with the Convention, adopted at the ninth session of the Meeting of the Parties to the Convention, and V/4<sup>7</sup> 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 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 the steps taken by Armenia further to decisions IS/1a and VIII/4a,<sup>8</sup>

*Acknowledging* the technical assistance provided by the secretariat to the Government of Armenia to assist the country in bringing its legislation into line with the provisions of the Convention and the Protocol, further to paragraph 35 of decision VI/2,

1. *Appreciate* the regular, albeit occasionally delayed, progress reports and the steps taken by the Government of Armenia further to decision VIII/4a since the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol (Vilnius (online), 8–11 December 2020);

2. *Welcome* the adoption of a new law on environmental impact assessment and expert examination on 3 May 2023,<sup>9</sup> but note the delays in the legislative process for adopting the relevant secondary legislation;

3. *Note with concern* that, while providing some improvements, the new law does not address most of the fundamental deficiencies of the previous law, therefore not ensuring full compliance by Armenia with its obligations under the Convention and the Protocol;

4. *Note* that the new law contains in particular the following deficiencies:

(a) The definition of “report”, which covers both environmental impact assessment and strategic environmental assessment reports, reflects a conceptual discrepancy in the approach towards assessment and the role of the respective reports in the Convention and Protocol (environmental impact assessment documentation under article 4 of the Convention and the environmental report under article 7 of the Protocol);

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<sup>1</sup> ECE/MP.EIA/10.

<sup>2</sup> ECE/MP.EIA/15.

<sup>3</sup> ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

<sup>4</sup> ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

<sup>5</sup> ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

<sup>6</sup> ECE/MP.EIA/2023/6.

<sup>7</sup> ECE/MP.EIA/SEA/2023/8.

<sup>8</sup> ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

<sup>9</sup> Law of the Republic of Armenia on Making an Amendment to the Law of the Republic of Armenia on Environmental Impact Assessment and Expert Examination, adopted on 3 May 2023 and entered into force on 9 June 2023.

(b) The definition of “the public” and public associations, organizations or groups in accordance with article 1 (x) of the Convention and article 2 (8) of the Protocol is not included;

(c) It is unclear whether “major changes” to activities are covered according to the Convention;

(d) It is unclear which plans or programmes are subject to article 4 (3) and (4) to the screening in accordance with article 5 of the Protocol, in particular whether an appropriate procedure is in place, and whether screening criteria according to annex III to the Protocol are provided for;

(e) Monitoring in accordance with article 12 of the Protocol is not provided for;

5. *Regret* that, despite over a decade of technical assistance provided by the secretariat<sup>10</sup> and the Implementation Committee to Armenia to bring its legislation into line with the Convention and the Protocol, and multiple decisions by the Meetings of the Parties requesting it to do so, Armenia has not yet adopted fully compliant legislation or secondary legislation, especially concerning procedures according to the Protocol;

6. *Endorse* the finding of the Implementation Committee that, despite steps taken, pending the alignment of its law with the Convention and the Protocol and the adoption of relevant secondary legislation, the Government of Armenia has not yet fulfilled the requests addressed to it in decisions IS/1a and VIII/4a;<sup>11</sup>

7. *Reaffirm* decisions IS/1a and VIII/4a, and request the Government of Armenia to rectify, as soon as possible, the deficiencies of the new law, and to adopt the relevant secondary legislation in accordance with the recommendations of the international consultants to the secretariat<sup>12</sup>, with a view to ensuring full compliance of its legislative framework with the Convention and the Protocol;

8. *Request* the Government of Armenia to provide the Implementation Committee with the text of the amendments to the law of 3 May 2023 and the relevant secondary legislation, once adopted, together with the English translations thereof;

9. *Request* the Implementation Committee to evaluate the amendments to the law of 3 May 2023 and the relevant secondary legislation, once adopted, and to report thereon 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.

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<sup>10</sup> In the period 2013–2018, with European Union funding under the Greening Economies in the European Union’s Eastern Neighbourhood programme and, in the period 2019–2023, under the European Union for Environment programme.

<sup>11</sup> ECE/MP.EIA/IC/2023/8, para. 8 (advance version).

<sup>12</sup> See [Assessment of the draft Law of the Republic of Armenia "On the environmental impact assessment and expertise"](#) (2014).

### **[3. 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<sup>1</sup>**

*The Meeting of the Parties to the Convention and the Meeting of the Parties to the Protocol,*

*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/4<sup>2</sup> on general issues of compliance with the Convention, adopted at the ninth session of the Meeting of the Parties to the Convention, and V/4<sup>3</sup> 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,<sup>4</sup>

*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,<sup>5</sup>

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

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<sup>1</sup> The text of the decision is in square brackets pending the finalization of the corresponding draft findings and recommendations by the Implementation Committee (ECE/MP.EIA/IC/2023/8, annex II) in November 2023.

<sup>2</sup> ECE/MP.EIA/2023/6.

<sup>3</sup> ECE/MP.EIA/SEA/2023/8.

<sup>4</sup> ECE/MP.EIA/IC/2023/8, annex II (advance version).

<sup>5</sup> ECE/MP.EIA/2023/13–ECE/MP.EIA/SEA/2023/13.

Herzegovina failed to comply with its obligations under articles 2 (2)–(3) and 4 (1) of the Convention;

(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 lifetime extension 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.]

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