

# CROSS BORDER DIALOG WORKING GROUP

## 1<sup>st</sup> meeting

**Date:** 02.06. 2023

**Location:** Energy Community Secretariat, Vienna

### I. REPORT

#### 1. *Welcome and introductions*

The Deputy Director and Legal Counsel of the Energy Community Secretariat, Mr. Buschle warmly welcomed the members of the working group and expressed his appreciation for their participation in this cross-border dialogue. Mr. Buschle emphasized the critical role of effective communication channels in promoting transboundary cooperation on energy and environmental matters highlighting the Secretariat's commitment and readiness to assist and support in facilitating this cross-border dialogue. The Secretariat reminded that there is a registered complaint (Case ECS-25/21) concerning the Environmental Impact Assessment (EIA) of the hydropower project ("HPP") *Buk Bijela*, submitted by representatives of the civil society from both Contracting Parties, Bosnia and Herzegovina (BiH) and Montenegro. The Secretariat noted that the cross-border dialogue can also contribute to avoiding legal actions related to this complaint. The dialogue continued in the local languages, facilitated by Ms. Bujaroska ("Facilitator"). The meeting was also attended by the Energy Community Secretariat's Country Officers for BiH and Montenegro.

#### 2. *Information sharing and data exchange*

Following the presentation of the members of the core group, the following focal points were agreed for both delegations:

BiH: Ms. Ljiljana Stanisljevic, Ministry of Spatial Planning, Construction and Ecology of Republika Srpska, and

Montenegro: Ms. Brankica Cmiljanović, Ministry of Ecology, Spatial Planning and Urbanism of Montenegro.

Their primary responsibility is to facilitate the flow of relevant information and gather feedback within their specific Contracting Party (CP). In addition, the focal points shall promptly notify the delegation groups in cases where a member of the core group is replaced or unable to participate. The focal points should proactively engage in maintaining open lines of communication, creating a conducive environment for sharing information, and facilitating productive discussions among the members. The focal points will actively seek input from stakeholders and disseminate important updates or decisions to all concerned parties. The Secretariat will fully assist the focal points in this task.

### 3. *State of relevant processes/procedures concerning the focus project*

During the meeting, both delegations provided an overview of the cross-border implications and challenges related to the HPP *Buk Bijela* project. In addition to the background information, the following international processes were highlighted:

- An ongoing case under the scope of the ESPOO Convention on Environmental Impact Assessment in a Transboundary Context – Findings and recommendations concerning the case, draft Decision IX/4c–V/4c expected to be adopted in December 2023 at the Meeting of the Parties of the Espoo Convention (*to be discussed in Geneva, 12–15 December 2023*);
- UNESCO question related to requests the State Party of Bosnia and Herzegovina to assess jointly with the State Party of Montenegro any potential impacts on the OUV of the property and to submit an updated Environmental Impact Assessment (EIA), in line with IUCN's Advice Note on Environmental Assessment to the World Heritage Centre, for review by IUCN - *Decision 44 COM 7B.104 - Durmitor National Park (Montenegro) (N 100bis)* <https://whc.unesco.org/en/decisions/7820>;

Montenegro informed the group about a cyber-attack that disrupted the previous communication channel. They expressed their gratitude for the facilitation provided by the Secretariat in overcoming this challenge. Both parties reiterated their commitment to continue working on this topic.

Regarding the EU legislation, as well as national EIA legislation, Montenegro stated that when a new development consent (environmental permit) is issued for a project, such as the HPP *Buk Bijela*, a new EIA process must be implemented. Montenegro also mentioned that the project in question was subject to a court case in BiH, which resulted in the national court annulling the extension of the environmental permit. Consequently, the project was obligated to obtain a new environmental permit, which was confirmed by BiH. Montenegro emphasized that in view of the EIA procedure the project should undergo a new EIA process with transboundary consultations, bearing in the mind that previous EIA permit had expired.

BiH stated that the project remained unchanged, and based on this fact, it was decided that there is no need for a new assessment of impacts (no new EIA was implemented) before the issuing of the new environmental permit for the project. BiH further noted that the project's environmental permit was annulled based on a procedural shortcoming (i.e. delay in submitting request for renewal and revision of environmental permit). The procedure for obtaining a new environmental permit was implemented based on the national rules in BiH, where in case the project remained the same there is no need for a new EIA.

BiH expressed readiness to review the environmental permit with a view of revising/supplementing the conditions and measures provided within based on a new EIA if based on the expert reports, prepared and verified by both BiH and Montenegro, can be concluded that the project approved 2012 EIA study could have adverse negative impact on the environment of MNE and measures to avoid, prevent or reduce and, if possible offset the likely significant adverse impacts on Montenegro are not stipulated.

BiH further informed that the project currently holds a construction permit for preparatory works, with 80% of these preparations already completed (where works refer to construction of housing for workers and accompanying infrastructure). The Ministry confirmed that no construction permit has been issued for the whole project. They assured the group that in the event an application for a construction permit is submitted by the developer, the Ministry will promptly inform the working group.

The facilitator highlighted the importance of implementing any EIA in accordance with the fundamental provisions of the EIA Directive. The primary objective of the EIA Directive is to ensure that projects with the potential for significant environmental effects, based on their nature, size, or location, undergo an assessment of their environmental impacts before consent is granted. Therefore, any future consideration of new EIA related to HPP *Buk Bijela* should be approached from this perspective. It was emphasized that the focus should not solely be on following national procedures for the sake of procedure, but rather on ensuring substantive assessment of the project's environmental effects, and in this case, particularly the transboundary impacts. During the meeting, the facilitator highlighted the potential challenges associated with the possibly outdated EIA study for the project, which is over a decade old. This raised concerns regarding the relevance and adequacy of the study in addressing current environmental considerations. Furthermore, it was emphasized that the EIA Directive has undergone amendments and improvements since the initial EIA study was conducted. Specifically, Article 3 of the EIA Directive, which provides the framework for EIA procedures, has been supplemented to include considerations for the vulnerability of projects to the risks of major accidents or disasters that are relevant to the specific project at hand. This serves as a reminder that the EIA process should be comprehensive and up-to-date, aligning with current legal provisions and addressing all relevant aspects of the project's impact on the environment.

#### *4. Discussion on potential areas of cooperation - work plan and timeline*

Both delegations **agreed to adhere to the roadmap for the project within the specified timeframe, pending internal consideration and discussions as indicated in the next steps.** In the event that a deadline cannot be met, any delegation has the option to seek additional guidance and assistance from the Secretariat.

#### *5. Identification of key stakeholders and engagement strategies*

Both delegations acknowledged that the involvement of relevant stakeholders is crucial for ensuring comprehensive and inclusive decision-making. The following stakeholders were identified as essential:

- Competent authorities, responsible management bodies and expert institutes (relevant Ministries, Hydrometeorological Institutes, National Park Management);
- Units of local self-governance, local communities and residents in the project area;
- Civil society organizations with expertise and interest in environmental impact assessment (including the organisation that filed the complaint to the Secretariat);
- Environmental experts and researchers;
- Developer (project holder).

During the meeting, the delegations emphasized the importance of actively engaging and representing stakeholders throughout the execution of the roadmap to ensure transparency,

inclusivity, and accountability. It was recognized that the involvement of stakeholders is essential for making informed decisions and addressing concerns related to the project.

To facilitate effective stakeholder engagement, the delegations agreed to develop tailored communication channels. These channels will utilize various methods, including consultations, community meetings, online platforms, and dedicated information campaigns. The goal is to reach different stakeholders effectively and provide them with relevant project information and opportunities for participation.

It was noted that the obligations under the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters will serve as minimum rules and should be adhered to throughout the stakeholder engagement process. By implementing these measures, the delegations aim to foster meaningful dialogue and enhance stakeholder participation.

During the meeting, it was agreed that in all communications with key stakeholders, a disclaimer or clear indication should be included to clarify that the activities being conducted are not part of an EIA process and to emphasise that these activities do not intend to replace or undermine the importance of the EIA process.

The purpose of the activities under this process is to foster a cross-border expert dialogue. The objective is to provide clarity and explore options for the next steps to be taken by the two countries involved.

#### *6. Next steps and closing remarks*

During the meeting, it was agreed that both **delegations would provide their comments on the draft report and draft roadmap by 16 June**. The Secretariat will make efforts to incorporate these comments to the extent possible and, if necessary, engage in bilateral exchanges to address any outstanding issues and prepare a **final report and roadmap by 23 June**. This deadline can be extended based on mutual agreement by both delegation's focal points and the Secretariat.

Following the completion of the final report and roadmap, the Secretariat will proceed with preparing a **draft news article, which will be distributed to the relevant stakeholders**. This article will serve as a communication tool to share information regarding the outcomes of the first meeting of the cross-border dialogue group.

Both delegations reiterated their commitment to **providing timely feedback on the implementation of the roadmap within the specified timeframe**. Recognizing the importance of effective communication, it was agreed that the Secretariat would play a central role in facilitating communication channels related to the execution of tasks outlined in the roadmap.

The **Secretariat will serve as a hub for information exchange and coordination**, ensuring that all relevant parties are kept informed and engaged. In addition, if requested by either delegation, the Secretariat will provide guidance and assistance on specific tasks outlined in the roadmap. This support aims to enhance the implementation process and address any challenges that may arise.

**The next meeting of the core group was scheduled to take place in September.**

Additionally, it was confirmed that **BiH would disclose the construction permit for preparatory works within one week** from the meeting, as agreed upon.

Both delegations will **actively disclose information with the Secretariat on the procedures under other international organisations** (e.g. ESPOO, UNESO, etc.) or national procedures concerning the project.

Overall, the meeting concluded with clear timelines and commitments from both delegations. The ongoing communication and exchange of feedback will play a crucial role in the successful implementation of the roadmap for the project.

## II. ROADMAP

### Step 1. Verification of additional expert reports (analysis)

Based on a jointly agreed Term of Reference, hydrological measurements and topographical surveys were performed in July 2022 (*please consult background information*). Two reports were prepared:

- the Report on the Results of Geodetic Surveys, and
- the Report on the Results of Hydrological Measurements.

**Task 1.1:** Ministry of Spatial Planning, Construction and Ecology of Republika Srpska will submit the draft reports [Report on the Results of Geodetic Surveys, and Report on the Results of Hydrological Measurements] to the Ministry of Ecology, Spatial Planning and Urbanism of Montenegro.

Focal point:

BiH: Ms. Ljiljana Stanisljevic Ministry of Spatial Planning, Construction and Ecology of Republika Srpska

Deadline: 30 June

**Task 1.2:** The Ministry of Ecology, Spatial Planning and Urbanism of Montenegro will receive verified reports which are only related to the geodetic and hydrological surveys and do not represent other impacts on segments of the environment, and in addition obtain an expert opinion on the project's impacts on the territory of Montenegro from competent authorities to get an opinion of the reports or indicate gaps with regards to the protected areas (particularly consider the river flow, river sediment and the climate of the micro-location also the possibility of encroaching of the reservoir onto the territory of Montenegro during both its normal and maximum elevation levels);

Focal point:

Montenegro: Brankica Cmiljanović, Ministry of Ecology, Spatial Planning and Urbanism of Montenegro

Deadline: 4 September (feedback), 16 October 2023 (deliverables)

**Task 1.3:** The Ministry of Ecology, Spatial Planning and Urbanism of Montenegro will submit the verified reports and the opinion to the Ministry of Spatial Planning, Construction and Ecology of Republika Srpska, including the Energy Community Secretariat.

Focal point:

Montenegro: Brankica Cmiljanović, Ministry of Ecology, Spatial Planning and Urbanism of Montenegro

Deadline: 16 October 2023

**Task 1.4:** The Energy Community Secretariat will initiate and facilitate the cross-border dialogues via meetings for aligning any remarks and concerns raised by the delegations and prepare the final reports. The meeting location will be agreed upon by both delegations.

Focal point:

Energy Community Secretariat: Ms. Aleksandra Bujaroska

Deadline: 20 October 2023

**Step 2. Public consultations concerning the expert reports (analysis)**

**Task 1:** Stakeholders feedback and input on draft documents, organise consultation and consider/reflect on the input and feedback

Ministry of Spatial Planning, Construction and Ecology of Republika Srpska and the Ministry of Ecology, Spatial Planning and Urbanism with assistance from the Secretariat will jointly organise the consultation process (expert presentation), to present reports and obtain opinion, suggestions or remarks with relevant stakeholders (public, concerned public and NGOs) in both BiH and Montenegro.

The working group will jointly discuss the comments and opinions received during the consultation process and dully reflect them in the final documents.

Focal points:

BiH: Ms. Ljiljana Stanisljevic Ministry of Spatial Planning, Construction and Ecology of Republika Srpska

Montenegro: Brankica Cmiljanović, Ministry of Ecology, Spatial Planning and Urbanism of Montenegro

ECS: Aleksandra Bujaroska, Energy Community Secretariat

Deadline: 30 November

**Step 3: Conclusion on next steps**

**Task 1:** Decision on extraordinary review of the environmental permit and new EIA

Based on the final reports and having in mind the EIA directive requirements considering the significant impact on the on Montenegro in particular the protected UNECO area, the Ministry of Spatial Planning, Construction and Ecology of Republika Srpska will conclude on extraordinary revision of the environmental permit for the project and the necessity to review the EIA study in order to supplement the measures to avoid, prevent or reduce and if possible offset likely significant effects on the environment.

The draft conclusion of Ministry of Spatial Planning, Construction and Ecology of Republic of Srpska will be submitted to the Ministry of Ecology, Spatial Planning and Urbanism of Montenegro for opinion.

Based on the conclusion next steps will be defined.

Focal points:

BiH: Ms. Ljiljana Stanisljevic Ministry of Spatial Planning, Construction and Ecology of Republika Srpska

Montenegro: Brankica Cmiljanović, Ministry of Ecology, Spatial Planning and Urbanism of Montenegro

ECS: Aleksandra Bujaroska, Energy Community Secretariat



### III. BACKGROUND INFORMATION

#### *Project concern*

The 93 MW hydropower plant (“HPP”), with the reservoir volume of 15.7 million m<sup>3</sup>, on the Drina river within Bosnia and Herzegovina, with its reservoir stretching upstream to the Montenegrin border (Fig.1). The river Drina is formed by the confluence of the Montenegrin rivers Tara and Piva at the border with Bosnia and Herzegovina.



Слика бр. 45 Изглед и положај акумулације ХЕ Бук Бијела у простору и односу на границу са Р. Црном Гором

Fig 1. Location (EIA report HPP Buk Bijela, November 2012)

HPP *Buk Bijela* is a project subject to a mandatory environmental impact assessment (EIA) – Article 4(1) of, and point 15 of Annex I to the Directive 2011/92/EU (“EIA Directive”) “*Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres*”.

Табела бр. 46 Основни подаци о величини пројекта

Редни број	Позиција	Брана и акумулација Бук Бијела 433,6 mnm
I	<b>Технички параметри</b>	
I 1.	Стационажа (km)	334+550
I 2.	Кота нормалног успора (mnm)	434
I 3.	Кота максималног нивоа (mnm)	434
I 4.	Кота за експропријацију (mnm)	437,0
I 5.	Дужина акумулације (km)	11,50
I 6.	Укупна запремина акумулације ( $10^6 \text{ m}^3$ )	15,70
I 7.	Корисна запремина ( $10^6 \text{ m}^3$ )	11,0
I 8.	Запремина мртвог простора ( $10^6 \text{ m}^3$ )	4,70
I 9.	Површина плављења (ha)	163,30
I 10.	Површина под ријечним коритом (ha)	52,85

Кота нормалног успора од 434 mnm налази се на ушћу ријека Плаве и Таре, односно на граници Републике Црне Горе и Републике Српске. Ово је једини елемент цијелог комплекса хидроелектрана Горња Дрина који има неки додир са Црном Гором.

*Fig 2. Capacity (EIA report HPP Buk Bijela, November 2012)*

Article 2(1) and Article 4(1) of the EIA Directive, read together, indicate that projects covered by Annex I present an inherent risk of significant effects on the environment and therefore an environmental impact assessment is indispensable in those cases.

Article 7 of the EIA Directive is a fundamental provision that focuses on transboundary impact assessment. It establishes the obligations when a Contracting Party becomes aware that a project is likely to have significant environmental effects on another Contracting Party, or when a Contracting Party likely to be significantly affected requests such information. In such cases, the Contracting Party responsible for carrying out the project within its territory is required to inform the affected Contracting Party. The concerned Contracting Parties are then obligated to engage in consultations, addressing various aspects including the potential transboundary effects of the project and the proposed measures to mitigate or eliminate such effects. These consultations can be conducted through a suitable joint body established for this purpose.

#### *Information on the cross-border working group Montenegro and Bosnia and Herzegovina*

A joint expert working group consisting of representatives from Bosnia and Herzegovina, Republika Srpska, and Montenegro was established to address unresolved issues related to the implementation of the Buk Bijela hydropower plant. Their first meeting was held on 28th September 2021 in Trebinje, Bosnia and Herzegovina. During the meeting, the working group determined that conducting new geodetic surveys and hydrological measurements in the impact zone of the Buk Bijela reservoir on the border area of Montenegro was essential.

The purpose of these measurements was to calibrate and verify the hydraulic mathematical model, enabling the assessment of different hydrological scenarios affecting the Piva and Tara rivers. Additionally, it aimed to evaluate the impact of maintaining the normal water level in the "Buk Bijela" reservoir on Montenegro's territory. The initial agreement reached by the working

groups was to establish the Terms of Reference for conducting topographic surveys in the border zone and hydrological measurements on defined profiles. It was further decided that the Republic of Srpska's working group would oversee the planning and organization of the topographic surveys and hydrological measurements. However, the execution of these activities would be supervised by an expert team from Montenegro.

After the harmonization of the Terms of Reference for topographic surveys and hydrological measurements between working groups from the Republic of Srpska and Montenegro, the locations in the area of Šćepan polje, where the planned measurements were envisaged to be carried out, were visited on 27 April 2022. In addition to the representatives of the working groups, the site visit was also attended by measurement operators, as well as design supervision representatives. Procedures to be implemented and a dynamic plan for the realization of measurements were defined.

Hydrological measurements were performed on 6 and 7 July 2022, while topographical surveys were performed during these two days, as well as during several other days in the month of July. After the completion of the measurement, performed in the presence of the supervision staff appointed by the working group from Montenegro Institute of Hydrometeorology and Seismology" Podgorica, the measurement operators performed appropriate processing and analysis of the measurement results and presented them in two reports:

- the Report on the Results of Geodetic Surveys, and
- the Report on the Results of Hydrological Measurements.

Following our exchange during the Energy Community Secretariat's mission to Montenegro and to Bosnia and Herzegovina concerning the cross-border impacts and challenges of hydropower development, in particular the Buk Bijela project, and considering the different aspects of the impacts, to facilitate the discussion further the Energy Community Secretariat offered its assistance and support to streamline the cross-border dialogue.

The Energy Community Secretariat proposed to shape and expand the cross-border dialogue with representatives from the respective ministries of environment, energy and capital investments, and to establish an inter-ministerial core group.