

Public consultation on Guidance on the environmental assessments of small hydropower projects

22 submitted online contributions, excluding 5 contributions with no disclosure clause

QUESTIONNAIRE

PARTICIPANT

First name: Jasmin

Last name: Moro

Email: jasmin.sarajevo@gmail.com

Name of organisation: None

Country of organisation: Bosnia and Herzegovina

QUESTIONS

Question 1: Yes

Comment: Yes, due to the number of facts such as: high level of corruption from the municipal level to a higher levels, due to poor environmental awareness of local population in general, due to the minor awareness of population that they support this injustice projects trough their electricity bills and many other reasons

Question 2: Yes

Comment: The system is made in such way that investors are receiving a tremendously high support trough feed in tariffs so their ROI is from 2 to 5 years, the only solutions is to discontinue the support or else most of rivers and water ecosystems in Bosnia and the balkan region will be permanently destroyed

Question 3: No

Comment: Screening results are false and are just copy paste with minor corrections and as such are fraud screening of any environmental influence.

Question 4: No

Comment: Public is in general unaware of any agreements until construction is visible on the field.

Question 5: No

Comment: Due to high level of corruption the justice comes only when local population physically preventing construction works

Question 6: No

Comment: No, there should be more tv programs, billboards, open public discussions etc where environmental impacts are explained.

Question 7: To investors and politicians It all comes to money.. , we have to exclude any support for water as renewable energy, yet offer them a solar or wind energy as a substitute for our rivers.

Comment: To investors and politicians It all comes to money.. , we have to exclude any support for water as renewable energy, yet offer them a solar or wind energy as a substitute for our rivers.

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Alex

Last name: C.

Email: engefpcameraman@gmail.com

Name of organisation:

Country of organisation:

QUESTIONS

Question 1: Yes

Comment: All those small hydropower creating a lot of problems for rivers. For live in the rivers and live around them. Only mafia has profit. More green energy we can get if we install solar panels on each roof. So please stop building that sh*t.

Question 2: Yes

Comment:

Question 3: No

Comment:

Question 4: No

Comment:

Question 5: No

Comment:

Question 6: No

Comment:

Question 7:

Comment:

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Zoran

Last name: Stojic

Email: zoran.stojic@geateh.si

Name of organisation: Geateh LLC

Country of organisation: Slovenia

QUESTIONS

Question 1: Yes

Comment: This risk is lately becoming more often present in permitting procedures. EIA is avoided in cases such as extension of plant operation period. However small HPP in Slovenia will be done in accordance with a water consent which includes expert opinions of relevant institutions like nature protection, fisheries or water management, so an EIA is not usually required.

Question 2: Yes

Comment: This was the case in the past, however the renewable energy production has been put under competitive terms within energy source, so presently the price of electricity is offered by bidding within same renewable source and best bidder would get feed-inn and/or investment incentive.

Question 3: No

Comment: Screening as an EIA step is done for plants of higher capacity. There is also threshold of power above it is obligatory to initiate EIA procedure. Smaller plants are build upon water permit which integrates key criteria for nature, fish and water management.

Question 4: Yes

Comment:

Question 5: Yes

Comment:

Question 6: Yes

Comment:

Question 7: The stress is any policy paper like the one for small HPPs should contain besides traditional solutions and equipment also recent developments for low head potential, urban area or kinetic energy use. An overview of modern water power technologies would be significant contribution. Besides in many instances small hydropower has become difficult to process and obtain license, so the mention of different possibilities on existing water supply pipelines, abandoned mills, spillways etc. would be useful for promoting water potential use. The stress is being on the use of existing infrastructure with minimum environmental impact. Another point is multipurpose use of water resources, so possibilities for combination of spawning capacity, recreation, water supply etc. should find place in a policy document as well.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Ivan

Last name: Zlatkov

Email: ivan.zlatkov@outlook.com

Name of organisation: n/a

Country of organisation: Republic of Serbia

QUESTIONS

Question 1: Yes

Comment: With the level of corruption in Republic of Serbia everything is circumvent-able. In case of Serbia, any assessment of environmental impact is just a paper signed by some corrupted experts and as such it brings no worth.

Question 2: Yes

Comment: Investors, with close ties to the corrupted government leaders, use this as an excuse to cash in on our natural

treasures in Serbia. Most of these people have no interest in renewable and green energy, nor they care about the consequences of disrupting our rivers ... they just want a quick return on their investment. The government supports this not because the Treaty has been signed (which looks cute in front of EU) but because they will share the profit with the investors.

Question 3: No

Comment: No, nothing is done in appropriate manner.

Question 4: No

Comment: They are not in line with the Section 4.7.4. Various organization and individuals have been very vocal and raised their concerns about some of the small hydro-power projects but the Contracting Party did very little to address those concerns and never gave space to the Public to be included in the discussion in any way. The public has the right to remain silent in Serbia.

Question 5: No

Comment: The justice system of Serbia is corrupted to the very top, nothing more I can add here.

Question 6: Do not know

Comment:

Question 7: Nothing to add, just please help regulate this madness since we Serbs cannot do it ourselves. Thank you.

Comment: Nothing to add, just please help regulate this madness since we Serbs cannot do it ourselves. Thank you.

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Vesna

Last name: Sremčević

Email: bilostabilokad@gmail.com

Name of organisation:

Country of organisation:

QUESTIONS

Question 1: Yes

Comment:

Question 2: No

Comment:

Question 3: No

Comment:

Question 4: No

Comment:

Question 5: No

Comment:

Question 6: No

Comment:

Question 7: Environmental Assessment is an Obligation, but Contracting Parties and Institutions in Serbia are highly corrupted and care only for the Profit and their own selfish Intereses.

Comment: Environmental Assessment is an Obligation, but Contracting Parties and Institutions in Serbia are highly corrupted and care only for the Profit and their own selfish Intereses.

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Negative

Last name: Stakeholder

Email: dragana195@yahoo.com

Name of organisation:

Country of organisation:

QUESTIONS

Question 1: Yes

Comment: According to our rules for small hydropower plants of power below 2 MW no environmental impact study is required. But their construction also causes adverse consequences as well as those of larger installed powers even worse because then a large number of them are often built. The main adverse impacts are reflected in causing erosion and landslides in mountainous areas, eutrophication of water in small water intakes built for the needs of each SHPP, reducing the abundance of rivers, and disrupting the water supply of cities in the foothills. The flow of Mountain Rivers in Serbia has been drastically reduced compared to the 1980s, when SHPP locations were designed, due to climate change and spring water bottling. Because of that, investors put the whole river in a pipe of kilometers long, leaving the population, domestic animal, and the whole living environment without water in that area, destroying agriculture also.

Question 2: Yes

Comment: Feed-in tariffs have certainly contributed to the extensive development of small hydropower projects in Serbia. But the mountain water potential in Serbia is not as rich as in Austria, Switzerland, or in Norway for example. It is not clear why energy efficiency was also not supported and other renewable sources like biomass since Serbia is abundant with it due to wide agriculture, or solar energy which is also a significant source in Serbia, even geothermal water - Serbia almost entirely lies on geothermal waters. It's not the reason why no one other renewable source was supported like SHPP. In Serbia, the prosumer concept is not allowed although Serbia has higher solar potential than for example Germany.

Question 3: No

Comment: Investors related to the government's establishment in Serbia, without proper studies, permits, and consent, forcibly confiscate land from people, enter into the property and carry out destructive actions, breakthrough roads to SHPPs, cut down forests, destroy crops, they lead bullies with them who beat local people because they protest. Also, the government sends the police to arrest the local people because they are protesting due to the left without water for their life.

Question 4: No

Comment: There was no public participation in Serbia regarding the decisions for SHPP installing.

Question 5: No

Comment: Since 2012, the Ministry of Environment in Serbia has been practically not doing its job. The judiciary is corrupt. There is an impression that such a system was deliberately set up in order for the government to exploit all natural resources without fear of the systems' institutions and the public.

Question 6: No

Comment: No one plan and the program covered issues related to the Strategic Environmental Assessment Directive regarding small hydropower and their environmental impacts. There are some studies of private companies that claim that SHPP even will increase the fish stock, probably because of their interest. It is not logical to increase the fish stock where there is no water. Our rivers are left without water due to the SHPP, the riverbeds are empty and rivers water is in the pipelines for kilometers. What kind of fish can live there?

Question 7: In the last years, a water supply problem arose in the small city Vasotince located in the southeast part of Serbia. More and more often the city was left without water from the water supply system, especially after strong precipitation in the hot summer period. Lack of water would happen for days in the continuity, but also the color of river water has changed. Citizens and employers in the water supply factory could not realize the origin of these problems. Vlasina River was the cleanest river in ex-Yugoslavia, always in the first category of purity. No one emission sources of pollution and any primary pollutants in the water did not find, but the problem of small hydropower plants in the Vlasina river noticed. At this time was built 15 SHPPs in the Vlasina river basin but it was planned to build a total of 55. The eutrophication of rivers waters occurs in water intakes of each SHPP. From the pure mountain waters enriched by oxygen are becoming swamps with marsh algae and animals. The second problem is the accumulation of crustal material in the water reservoir of the water supply facility. The crustal material is originating from fieldwork for SHPPs from where crustal material starts migrating due to erosion processes. Because of that water supply facility must be switched off since the factory is not able to process the mud into drinking water. Such a situation lasts for days. The investors for SHPPs pressed local authority to continue building SHPPs despite the study.

Comment: In the last years, a water supply problem arose in the small city Vasotince located in the southeast part of Serbia. More and more often the city was left without water from the water supply system, especially after strong precipitation in the hot summer period. Lack of water would happen for days in the continuity, but also the color of river water has changed. Citizens and employers in the water supply factory could not realize the origin of these problems. Vlasina River was the cleanest river in ex-Yugoslavia, always in the first category of purity. No one emission sources of pollution and any primary pollutants in the water did not find, but the problem of small hydropower plants in the Vlasina river noticed. At this time was built 15 SHPPs in the Vlasina river basin but it was planned to build a total of 55. The eutrophication of rivers waters occurs in water intakes of each SHPP. From the pure mountain waters enriched by oxygen are becoming swamps with marsh algae and animals. The second problem is the accumulation of crustal material in the water reservoir of the water supply facility. The crustal material is originating from fieldwork for SHPPs from where crustal material starts migrating due to erosion processes. Because of that water supply facility must be switched off since the factory is not able to process the mud into drinking water. Such a situation lasts for days. The investors for SHPPs pressed local authority to continue building SHPPs despite the study.

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Milija

Last name: Ćabarkapa

Email: mcabarkapa@wffadria.org

Name of organisation: WWF Adria / Eco-team

Country of organisation: Montenegro

QUESTIONS

Question 1: Yes

Comment: EIA regulation in Montenegro prescribes that EIA procedure for sHPPs above 1MW may be required (project under Annex II). For sHPPs below 1MW of installed capacity EIA procedure is not obligatory. The fact is that sHPPs make a huge damage, especially having in mind that such installations are being built on small watercourses, with no concerns on nature and/or potentially other users. Practice shows that in most cases, investors decide to construct several sHPPs (cascade) on

single watercourses that have significant cumulative effects on river ecosystem as well as local communities taking into account that river in length of a few km practically left without water. In previous years, investors have expressed interest in building sHPPs below 1MW to avoid EIA procedure. Also, incentive price is higher for sHPPs with lower installed capacity which is an additional reason for construction of sHPPs below 1MW

Question 2: Yes

Comment: Economic analysis that have been done in Montenegro demonstrate clearly that sHPPs may be economically sound only with strong financial support provided in a form of subsidies. Subsidies are strong factor that encourage investors to start sHPPs investment. Once the subsidies are suspended, sHPPs will not be attractive for investors.

Question 3: No

Comment: EIA regulation in Montenegro prescribes that EIA procedure for sHPPs above 1MW may be required. This situation creates space that competent authority in screening stage decides whether EIA will be conducted or not. In practice, Montenegro had such experience. EPA on 29.12.2014. made a decision that EIA for construction of sHPPs "Bistrica Majstorovina" with planned install capacity of 3.4 MW is not necessary. Experiences in the application of screening phase are different and include examples of good practice but also procedures in which the full effectiveness of elements of impact assessment is not achieved.

Question 4: No

Comment: Contribution of public consultation and participation is not at the level at which it should be which is why further incentives and improvements are needed - by applying different consultation methods, adequate informing (taking into account fact that local population are living in rural areas and they do not have daily access to internet and press) and taking into account opinions and suggestions given by interested bodies and general public to the greatest extent possible, as well as by informing on how public participation affected decision-making. As for implementation of the legislation, it is particularly necessary for additional efforts to be invested by all actors in the process in order for the procedures for informing the public, consultation and organization of public debates (which are complied with at this moment) to produce better results and make more significant contribution to the quality of EIA and SEA procedures in the way set out in EIA and SEA Directives

Question 5: No

Comment: Looking formally at the right to access to justice, national legislation ensures CSOs right to start a court case, and quick answer to this question may be "yes". On the other side, point of the access to justice right should be opportunity to have a fair procedure carried out by independent and competent third party (court of justice). Practice has shown that courts (and another bodies in charge) have very limited knowledge and commitment to explore potential lawsuit and most of decision are only about formal legal issues, without ruling about the substance. Such circumstances lead to conclusion that access to justice does not ensure fair proceeding in front of independent and neutral authority

Question 6: No

Comment: Most of concessions for sHPPs have been issued without existence of spatial planning documentation what was contrary to the Law on Spatial Planning and Construction of Buildings. Taking into account this situation sHPPs were constructed without implementation of SEA procedure. Also, SEA has not been implemented for acts for granting concessions (e.g. Annual plan for concession granting) for the use of watercourses for sHPPs so the cumulative impacts of such facilities on the same watercourse / in the same river basin has never been considered.

Question 7: This policy paper must request that EIA have to be obligatory for all sHPPs regardless of the installed capacity. Threshold of installed capacity doesn't have anything with the impact on environment, as most of the sHPPs are built on small streams and rivers and the impact on sHPP is the same as of big HP on bigger river. Especially when tyrol type of HP is built where km of rivers are left without water as all water goes to the pipes. Other key message of the Policy paper has to be strong and clear request to all countries involved, to abolish subsidies for sHPPs, having in mind that sHPPs are based on environmentally harmful technology, damages that sHPPs are making are obvious, huge and irreversible, only investor has financial benefit from sHPPs, which is paid from citizens (funds for subsidies are collected from end users i.e. citizens). Benefits for local community do not exist, no new employment, taxes from sHPPs are not significant income for local community.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Irma

Last name: Popovic Dujmovic

Email: ipopovic@wwfadria.org

Name of organisation: WWF Adria

Country of organisation: Croatia, answers are for WB countries in general

QUESTIONS

Question 1: Yes

Comment: Threshold on the installation capacity is usually misused by CPs as they manage to go without the EIA for most of the sHP projects. In papers there is one value of installed capacity, and when in construction no one is monitoring and checking the projects, so they make bigger plants. Also threshold of installed capacity doesn't have anything with the impact on environment, as most of the sHPPs are built on small streams and rivers and the impact on sHPP is the same as of big HP on bigger river. Especially when tyrol type of HP is built where km of rivers are left without water as all water goes to the pipes. Dry rivers beds can be seen allover the CPs. So all project should pass the screening phase, and allow public consultations. Without the screening phase public is often not informed at all about the projects, only when they face bulldozers on their rivers.

Question 2: Yes

Comment: We strongly advocate for not giving subsidies any more to the sHPPs as they are old technology that is not developing, and doesn't deserve financial support. In the same time devastating effects of sHPPs on all three pillars of sustainable development is more than evident, so it is time to stop this nonsense. The system is highly corrupted and open for any kind of criminal deeds. If the subsidies are not stopped it is a demonstration of approval of environmental crime (corruption and policy capture).

Question 3: No

Comment: No, micro and mini HPPs completely go below the radar in all the CP, which is not acceptable. Above that national inspection system do not work and are not in environment protection purpose (highly corrupted) so all basic environmental standards are broken. Also, public is not able to participate, as the room for that is not made, and public is faced with already made decisions, which is impossible or very hard to challenge (even on court).

Question 4: No

Comment: No, the public participation is usually not done like it is described in PG. There are several issues: a) if the project is small, there is no public participation at all; b) public participation is often faked; c) non of the comments is taken into account. Often public participation is done only provisionally, to satisfy the legal obligation without real intention to get any public opinion. The PG document should give clear message to the CP that "paper"public participation is not acceptable, and that it must be improved substantially to be able to say that public participation process serve its purpose.

Question 5: No

Comment: Unfortunately not, as the judges are not educated enough to follow the environmental procedures by it meritum, so usually they rule on procedural aspects. So if procedure is done by the law, there is no way to stop the project on court. The access to justice is therefore not encouraged and not used as it should be. Above that they are not independent while making decisions and their rulings are often politically colored. Since the investors are quite often in relation to local or national political elites, the rulings are done in favor to investments (no matter how bad they are for people or nature).

Question 6: No

Comment: The biggest issue is that in many of the CPs the SEA Directive was not introduced at all or completely, so it implementation is very weak. If it is implemented than the problem is that the cumulative impacts are not assessed (mainly due to lack of expertise and knowledge of the ones conducting the assessments), and at the end the quality of SEA is never questions so even the bad and incomplete ones are being adopted by the relevant authorities. Also alternatives are not assessed at all or very deficient, where zero alternative is described as no/yes power which is not correct. Other alternatives are just the variants of the same project. As well sHPPs are often hidden in textual part of the strategies and plans, so any kind of environmental assessment on strategic level is not possible. Therefore the cumulative effects cannot be assessed at all.

Question 7: This document should give clear instructions to CPs on quality of performed environmental and social safeguards. It is important to state what are the most often mistakes in EIA and SEA procedures and in conducting public participation process. The most common mistakes are: - - a) Baseline data: The need for "a good understanding" of the location (p.10 and p.24) needs to be explained. Biodiversity fieldwork is needed in locations that are not well-researched (ie. most of them). For too many EIAs the authors have needlessly measured some other environmental factor, not relevant for the sHPs. b) Avoiding the use of old data and defining "old". c) Cumulative impacts of existing + planned projects must be analysed, it is not enough that the word "cumulative" is mentioned in the study. d) Maps need to be clear and show what land is affected. d) Mitigation measures need to be realistic, effective, and enforceable. Additional section should be devoted to the mitigation measures, especially e-flow and fish passes, which are often violated and not implemented appropriately. Fish passes are dysfunctional and are not mitigating impacts on fish fauna. E-flow is neglected in most of the cases and there are dry river beds all over CPs. Since the key objective of the Energy Community is to extend the EU internal energy market rules and principles to countries in South East Europe, it is not met in the sense of EU Environmental Acquis.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Djordje

Last name: Stefanovic

Email: djstefanovic@wwfadria.org

Name of organisation: Udruuga Dinarica Mostar,

Country of organisation: Bosnia and Herzegovina

QUESTIONS

Question 1: Yes

Comment: EIA regulation in BiH prescribes mandatory EIA procedure only for HPPs with more than 5 MW of installed power. HPPs with a capacity of less than 5 MW have to pass only a screening process, which, in most of cases, leads to the decision of competent authority that EIA is not required. Screening studies and reports for HPPs of less than 5 MW, as practice has shown are on very low professional level; cumulative effect is not elaborated, conclusions are taken without any kind of research of potential impacts on biodiversity, geology, hydro-morphology, connectivity etc. Process of the study revision is weak, limited on checking if the study satisfy pure formal requirements. The fact is that small HPPs make a huge damage, especially having in mind that such installations are being built on small watercourses, with no concerns on nature and/or potentially other users.

Question 2: Yes

Comment: Economic analysis that have been done demonstrate clearly that HPPs may be economically sound only with strong financial support provided in a form of subsidies. In granting of the support, authorities ignored a fact that HPPs are based on old technology, their negative impact on the environment is huge, and contribution of general energy production in the country is negligible. Subsidies are strong factor that encourage investors to start HPPs investment. This is opinion of CSOs and most of experts dealing with HPPs. in the country. Once the subsidies are suspended, HPPs will not be attractive for investors.

Question 3: No

Comment: Screening must be understood correctly - checking of potential environmental impacts must be done in early stage of the project development - in the stage of pre-feasibility study and concession granting. As stated in Directive 2014/52/EU, Article 6.2 - public concerned must be informed about the project in very early stage and provided by the opportunity to participate in the process of decision making. This is at the same time requirement of the Aarhus Convention - all parties to the Agreement are also parties to the Aarhus Convention. This Guidance must underline this provision and its proper interpretation and full application in legal system of all Parties to the Agreement.

Question 4: No

Comment: The key question is when CSOs and other interested parties get info and may communicate the project. In this moment, it's only in stage of official EAI procedure, which is late. By application of the Directive, which considers the project in it's early stage (stage of very first stage, granting of the concession), CSOs would have opportunity to react on time. Legislation in BiH doesn't explicitly prescribes right of CSOs to participate in stage of screening process for sHPPs with less than 5 MW, which creates a platform for taking decisions about projects without any kind of influence by CSOs

Question 5: No

Comment: Looking formally at the right to access to justice, national legislation ensures CSOs right to start a court case, and quick answer to this question may be "yes". On the other side, point of the access to justice right should be opportunity to have a fair procedure carried out by independent and competent third party (court of justice). Practice has shown that courts (and another bodies in charge) have very limited knowledge and commitment to explore potential lawsuit and most of decision are only about formal legal issues, without ruling about the substance. Such circumstances lead to conclusion that access to justice does not ensure fair proceeding in front of independent and neutral authority.

Question 6: No

Comment: One of the problems in Bosnia and Herzegovina is that SEA procedure was introduced only in Entity Republika Srpska, as a legal requirement in plans and programs development procedure, by the Law on Environmental Protection from 2012. New Law of Entity Federation Bosnia and Herzegovina is still in parliamentary procedure (not officially adopted yet). Most of plans that are valid, relevant for development of HPP sector, have been adopted without SEA procedure conducted. Those plans and programs that have been fold under SEA regime, have not taken environmental aspects into consideration in adequate manner. Evidence for such statement is obvious damage on watercourses, aquatic biodiversity and eco systems depending on watercourses.

Question 7: This policy paper must demand countries to open possibilities for CSOs and other interested parties to receive information about projects in very early stage; to have simple and effective possibility to participate in decision making process before or, at least in stage of concession granting. The decision has to be made in open dialogue with relevant bodies in charge for spatial planning, environmental protection, water management, nature protection, protected areas, energy and concessions. One of the partner has to be local community and local development unit (Socio-economic Council). Other key message of the Policy paper has to be strong and clear request to all countries involved, to abolish subsidies for sHPPs, having in mind that sHPPs are based on environmentally harmful technology, damages that sHPPs are making are obvious, huge and irreversible; only investor has financial benefit from sHPPs, which is paid from citizens (funds for subsidies are collected from end users, citizens). Benefits for local community do not exist, no new employments are in place, taxes from sHPPs are not significant income for local community. sHPPs do not contribute to overall energy security of the country (at the moment contribution of sHPPs in BiH is around 2,3 percents of total energy production, so it is negligible. Finally, this document should have separate

chapters on conclusions and recommendations.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Pippa

Last name: Gallop

Email: pippa.gallop@bankwatch.org

Name of organisation: CEE Bankwatch Network

Country of organisation: Czech Republic

QUESTIONS

Question 1: Yes

Comment: In most of the Western Balkans countries, there are capacity thresholds. These are often mis-used to exempt projects of smaller capacity from environmental assessments, even when an examination using Annex III criteria would show the need for an EIA. Serbia has not even transposed the Annex III criteria. Also, due to the lack of Birds and Habitats Directive provisions, smaller plants that in the EU would undergo an Appropriate Assessment are not subject to any assessment in the Western Balkans, so the situation cannot be directly compared to the EU. So if no EIA is done, in some countries this means there is no public participation on the project level at all (eg. North Macedonia), while in other places (eg. Republika Srpska) there is a notice posted on the Ministry's website inviting written comments on applications for environmental permits, but no public consultation meeting.

Question 2: Yes

Comment: Small hydropower has disproportionately benefited from incentives in the Western Balkans (70% of renewable incentives in 2018). They had - and in some cases still have - much higher FIT quotas than solar or wind. In North Macedonia, solar and wind must now undergo auctions, while an unlimited amount of small hydropower can still benefit from feed-in tariffs, thus distorting the market - also the level of support has not changed since 2007! Also in Republika Srpska, small hydropower is practically the only form of renewable energy that can still receive support, since wind incentives were cut last year. Not only are most of the support schemes not in line with the Energy and Environment State Aid Guidelines (EEAG)'s requirement to avoid feed-in tariffs for plants larger than 500 kW (except wind), but they also do not contain the same sustainability criteria as the EEAG, requiring plants to be in line with the Water Framework Directive and other EU environmental legislation.

Question 3: No

Comment: Serbia has not even transposed Annex III of the EIA Directive, while those countries which have do not apply it consistently. Screening decisions are not always available to the public (eg. in Republika Srpska the law requires publication only 30 days after, but they are not all published) and do not contain any analysis of Annex III criteria. Also the screening process in Republika Srpska regarding changes in projects is completely secret by law and the decision does not have to be published, only communicated to the project promoter. Even within the same country, decisions on similar projects are often inconsistent with one another. In Bosnia and Herzegovina environmental permits are often extended (which is completely illegal in FBiH) without carrying out new screening processes or EIAs. Chapter 4 also needs to emphasise more cumulative impacts as a trigger for requiring an EIA as this is often ignored in the Western Balkans.

Question 4: No

Comment: NB: This part of the Guidelines needs to emphasise the need to duly take public comments into account, and the need for all options - including no project - to still be open when public participation takes place. In the W. Balkans the main issues with consultations are: The EIA process does not take place when all options are still open and there is usually no other project-level consultation prior to this. There is often no consultation at all when no EIA is required. Where public hearings are held, local people often do not know. Sometimes they are only advertised on the Ministry's website, or in obscure publications, or not at all or only specific people are invited. Sometimes they are held far from the project site. Deadlines are often too short (eg. sometimes 20 days in Serbia) and not clearly stated on the consultation announcement. Public comments are not taken into account. Even when comments are "accepted" they do not lead to real improvements in the project design.

Question 5: No

Comment: There are two main problems: a) becoming aware of a decision on time to challenge it and b) the judiciary's lack of independence and knowledge about environmental law/issues. In Serbia, poor legislative wording enables construction permits to be issued before EIA decisions are made, thus prejudicing the outcome of the EIA process and any legal challenges. In BiH

(non-hydro cases) the Aarhus Convention has been clearly violated, dismissing a legal challenge to an environmental permit by a Sarajevo-based organisation on a project in Tuzla, based solely on the organisation's address. In Republika Srpska, access to justice for screening decisions is usually impossible because those not requiring an EIA are not published, especially re. changes of projects, where publication is not required by law. Development consents (construction permits) often cannot be challenged in court because the deadline is too short to really allow this and it is not known on time that they have been issued.

Question 6: No

Comment: SEAs are still not regularly carried out in some countries in the Western Balkans (BIH, Kosovo, Albania). Where they are, they suffer from a lot of the same deficiencies as EIAs - all options are not still open, there is a lack of updated information, no real attempt to critically analyse the situation, public comments not taken into account.

Question 7: The Guidelines need to highlight all the most common deficiencies in EIA studies. Some that need to be emphasised more are: - Baseline data: The need for "a good understanding" of the location (p.10 and p.24) needs to be explained. Biodiversity fieldwork is needed in locations that are not well-researched (ie. most of them). For too many EIAs the authors have needlessly measured the air quality in the BIH mountains but did not do biodiversity fieldwork. - Avoiding the use of old data and defining "old". - Cumulative impacts of existing + planned projects must be analysed, it is not enough that the word "cumulative" is mentioned in the study. - Maps need to be clear and show what land is affected. - Mitigation measures need to be realistic, effective, and enforceable. We propose an additional section on mitigation measures, monitoring and inspection, as one of the frequent weaknesses of EIAs for small hydropower plants is that they propose unrealistic, ineffective (fish passes) or harmful (stocking, too little e-flow) mitigation measures, while implementation is not monitored and violations are not penalised. It is true that monitoring is very difficult given the locations of most small hydropower plants, and the use of ad-hoc measures such as blocking fish passes with boards. Operators can also install automated systems to increase the residual flow when someone approaches. So this has to be taken into account when deciding whether the impacts will be acceptable.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Velsa

Last name: Zeka

Email: velsa_z@hotmail.com

Name of organisation: Pro Cult

Country of organisation: Kosovo

QUESTIONS

Question 1: Do not know

Comment:

Question 2: Yes

Comment:

Question 3: No

Comment:

Question 4: Yes

Comment:

Question 5: Yes

Comment:

Question 6: Yes

Comment:

Question 7:

Comment:

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Ana
Last name: Colovic Lesoska
Email: ana@ekosvest.com.mk
Name of organisation: Eko-svest
Country of organisation: N. Macedonia

QUESTIONS

Question 1: Yes

Comment: Small HPPs with installed capacity below 10MW are listed in the Regulation on determining the activities for which an elaborate is mandatory. This studies are reviewed and approved by the Ministry of Environment without public consultations. The Regulation determining the list of projects and activities for which an obligatory EIA is necessary is listing only large dams with accumulation, and a general description Hydro-energy is stated in the list of projects for which a procedure for determining the need for an EIA according to the EIA Annex III criteria. In the last ten years, around 90 small HPPs were build and more than half of those fulfil at least one EIA Annex III criteria (protected area, cumulative impacts, capacity of natural resources, etc). But an EIA was not requested for them and all were approved with the so-called elaborate mentioned above. According to this, there is not only risk that the EIAs are circumvented, but they have been for a decade already.

Question 2: Yes

Comment: FiTs in Macedonia has greatly stimulated the development of small HPPs in the country. It is a well known, low-risk, technology and in combination with the low level of control and inspection and lack of application of environmental measures that would be costly, the investors are strongly interested in the development of these projects. In addition to this, when a project has a guaranteed income for the next 20 years it is also favoured by banks for financing, and all of this makes them very attractive. Out of 35 million EUR paid to RES projects as feed-in tariffs (in 2018), 15 million EUR went to small HPPs. In July 2019, a complaint to Energy Community Secretariat was submitted in which the case for favoring small HPPs over other RES technologies was presented in detail. <https://bankwatch.org/wp-content/uploads/2019/07/Complaint-Energy-Community-North-Macedonia-renewables-incentives-01.07.2019.pdf>

Question 3: No

Comment: In line with the comment to the first question, small hydropower plants under 10 MW installed capacity are not subjected to an EIA procedure. It is correct that the Annex II of the Regulation for determining the need for EIA (projects for which a decision needs to be made on case by case basis) only stated "Hydro-energy". In practice, no screening is implemented at all and the EIA procedure for small hydropower plants under 10 MW is not even considered.

Question 4: Yes

Comment: In general, current practices when it comes to the implementation of the Environmental Impact Assessment and Strategic Environmental Assessment are applied. For small hydropower plants specifically, public participation for the environmental study (so called elaborate) these practices are not required by legislation and are not implemented at all.

Question 5: No

Comment: There is low level of awareness as well as lack of training among judges on environmental topics. Even though N. Macedonia has ratified the Aarhus Convention, the third pillar has not been properly implemented. This can be noted by the low number of complaints and lawsuits on environmental assessment procedures from citizens. Environmental groups act as watchdog and submit complaints on selected cases, but this is not done systematically and continuously. Access to justice is discouraged.

Question 6: No

Comment: The general deficiency of Strategic Environmental Assessment when it comes to the small hydro power plants is the fact that it can generally assess impacts but not define them in a detailed way, due to the absence of specific locations of the projects. Often, SEA reports are limited to analysis which is generic and it does not address specific circumstances of regions, landscapes, areas of protection, etc. There has been a slight improvement in the case of the SEA for the Energy Strategy, which defines to some extent the general principles for small hydro power plants development and identifies unacceptable practices in protected areas. Specific locations of the future small hydropower projects are not publicised in order to protect the commercial interest of investors (according the creators of the Energy Strategy).

Question 7: The Policy Guidance needs to develop a set of specific recommendations under each chapter, applicable for each party in specific. It is necessary to define and describe in a detailed manner the changes in legislation and practices needed in order to meet these requirements. Without these, the policy guidance can be considered as a general analysis, but it will not drive any specific changes and improvements on the ground.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Maja
Last name: Pravuljac
Email: mpravuljac@clientearth.org

Name of organisation: ClientEarth

Country of organisation: Belgium

QUESTIONS

Question 1: Yes

Comment: In most of the Western Balkans countries, the capacity thresholds are set for the hydropower projects listed under Annex II. Although the EIA Directive allows a measure of discretion in establishing the thresholds, this discretion is limited by the obligation set out in art. 2(1). The Guidelines need to emphasise that projects need to be screened against all of the relevant criteria listed under Annex III, regardless of the capacity of the plant, especially since the capacity does not necessarily reflect the environmental impact. Thresholds are designed to facilitate the screening procedure, and not to exempt in advance from that obligation whole classes of projects listed in Annex II (art. 4(2) and 4(3)). The screening criteria particularly relevant to the HPPs, such as inter alia the use of natural resources, cumulative impact, environmental sensitivity of the area, nature reserves and parks, protection of species, need to be examined for all projects, regardless of their capacity.

Question 2: Yes

Comment: In the past years, feed-in-tariffs have been disproportionately directed towards small hydropower plants. In 2018, 70% of renewables support in the Western Balkans countries benefited small HPPs with a very modest contribution to electricity generation to the detriment of RES technologies with higher capacity and diversification potential. Granting and control authorities shall systematically verify that: - feed-in tariffs are limited to projects below 500kW; - projects comply with Union environmental laws including the Water Framework Directive, have undertaken an EIA where applicable and have received all relevant permits; - Operators do not artificially divide projects into small installations in cascade to benefit from feed-in tariffs or exemptions from auctions; - aid is granted only until the plant is fully depreciated to prevent overcompensation regardless of the duration of the general scheme. This is valid under the EEAG (para. 129) but also as a general criterion of State aid

Question 3: No

Comment: The current legal framework under the Serbian law does not provide for an adequate screening procedure for small HPPs. The law does not transpose properly the screening criteria listed in Annex III of the Directive, but only lists one of the listed criteria, which is the size of the plant (installation's capacity). This is only one example, but we suspect that similar problems exist in other countries as well. The Guidelines need to emphasise that the screening decisions need to state the main reasons for requiring (or not requiring) the EIA with a reference to the relevant criteria listed in Annex III, regardless of the threshold set under the national law. In cases where thresholds and/or criteria are established at a level such that, in practice, all projects of a certain type would be exempted in advance from the requirements of an EIA, that approach exceeds the limits of the discretion from the Directive.

Question 4: No

Comment: The screening decisions need to be available to the public (art. 4(5) of the EIA Directive) and need to state the main reasons for requiring (or not requiring) the environmental impact assessment. The Guidelines need to highlight that a proper screening procedure needs to be conducted and the results published, not only for new projects but also for changes or extensions of projects under the point 13(a) of Annex II. Notification of the public on the environmental impact assessment reports needs to be done more effectively (art. 6(2) of the EIA Directive) to ensure proper public participation in the decision-making procedure. Comments received from the public need to be taken into consideration, whilst the outcome of the EIA procedure and how the comments have been taken into account needs to be properly communicated to the public.

Question 5: No

Comment: The Guidelines should emphasise the right to challenge any decision, act or omission by the competent authorities concerning the EIA procedure. An EIA that is vitiated by errors, screening decisions, or the absence thereof, final permitting decisions, and final permitting decisions that are ratified by a legislative act need to be challengeable before the national authorities and the courts. For the SEA procedure, the Guidelines need to emphasise that although the Directive does not explicitly provide access to justice provisions, art. 9(3) of the Aarhus Convention applies to challenging acts and omissions that fall within its scope. The Commission Notice (no. C(2017) 2616, para. 47), clarifies that the procedural provisions which it lays down can also be relied on before the national courts. The Guidelines should also stress the access to justice rights for other acts, decisions and omissions affecting the environment that relate to hydropower developments, such as the water permit

Question 6: No

Comment: The Guidelines should further emphasise the need for a SEA procedure for small hydropower developments, especially those that are being planned on the same river basin, as well as the cadastre of small HPPs. This is especially relevant to the plans or programmes that are being developed at the local level, as such an assessment could identify different alternatives and means in which the objectives of the plan and programme could be achieved, especially in the areas where the environmental sensibility of the location is particularly significant. Any plan or programme likely to have significant effects on the environment should be subject to environmental assessment. The Guidelines need to underline that the screening procedure for plans and programmes using small areas at the local level and for minor modifications to plans and programmes is needed. Relevant criteria set out in Annex II should be taken into account, and the conclusions should be made available to the public.

Question 7: The section on climate change needs to be elaborated further. The EIA Directive requires not only the assessment of the impact of the project on climate change but also their vulnerability to climate change. The Guidelines need to highlight that reliance on the 'mitigation measures' during the screening process to convert a project that is likely to have significant effects on the environment into one which is judged not to do so and thus screen out the project from the assessment is not permitted. The EIA reports need to include realistic, effective and enforceable measures and not those that are designed only to ensure that the final approval would be granted. During the permitting procedure, the authorities should consider the low energy capacity of the proposed project as well as the impact that it would have on the renewable energy targets, as opposed to the environmental costs and the impact on water, species and other relevant factors. The Guidelines need to emphasise the most

common deficiencies in the EIA studies, such as the use of old scientific data, lack of baseline scenarios, alternatives, lack of proper assessment of cumulative impact, etc. In Section 5, the Guidelines need to emphasise that general principles of State aid law apply to the Contracting Parties regardless of the application of the EEAG. This is notably the case for the prohibition of overcompensation (when aid is granted beyond plant's depreciation period) and safeguards against abuses.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: David

Last name: Chipashvili

Email: dchipashvili@greenalt.org

Name of organisation: Green Alternative (Environmental NGO)

Country of organisation: Georgia

QUESTIONS

Question 1: Yes

Comment: Georgia adopted the Environmental Assessment Code on June 1st, 2017 and the norms on Environmental Impact Assessment (EIA) were enacted on January 1st 2018. The Code has two annexes: for the activities listed in Annex I the EIA is mandatory for 5 MW and higher Hydro Power plant projects (Annex 1; para 22); while activities listed in Annex II require the EIA only if the Ministry decides to do so (based on the screening decision). The annex II assumes construction of HPPs with installed capacities from 2 MW to 5 MW. If the Ministry decides that the activity does not need the EIA, the project developer is not obliged to conduct any, even a small-scale study of the potential results of their activities. The project developer is simply obliged to comply with generally binding environmental norms defined by the legislation (rules, standards, technical regulations).

Question 2: Yes

Comment: While feed-in tariffs or other general support schemes do not exist in Georgia, extensive development of HPPs including small ones started in 2008 within adopted national programme 'Renewable Energy 2008' to attract investments in the Hydro sector. The program established legal basis for construction of HPPs up to 100 MW under the Building, Own, Operating principles providing guaranteed power purchase agreements for generated electricity. In some cases, the Hydros may be granted necessary land for symbolic prices, under the governmental decision. However, the procedure were not defined. Lately in August 2013, the government changed the regulation for signing MoUs thus the rate of the prices and purchase period in PPAs is determined individually based on negotiation and differs from project to project while there is no generalised support scheme. Moreover there are contracts that remain confidential. In total, the Government signed more than 187 such agreements on construction of HPPs

Question 3: No

Comment: The Georgian Environmental Assessment Code complies with all requirements of Annex III, except the cumulation of impacts with the impact of other existing and/or approved projects

Question 4: No

Comment: In General the new Environmental Assessment Code returned to citizens the possibility to exercise participation right and introduced the procedures. Namely, an Environmental Decision on the annex I projects including HPPs above 5 MW is currently issued in three stages and, in all three stages (Screening, Scoping and Environmental decision), through public administrative proceedings. The public participation scheme in the code might be considered to be progressive if not one circumstance: the Environmental Assessment Code envisages the possibility of making changes to the decision at all three stages, meaning that the decision made with public participation can be changed at any time without notifying the public about proposed changes. The public will be able to learn about the decision only after it has been made For Annex II projects (HPPs from 2 MW to 5 MW) decisions and respectively public participation procedures apply based on screening decisions made by Ministry of Environment

Question 5: No

Comment: The major problems are: - The lack of independence of judiciary in general; And - The lack of knowledge about environmental law/issues, therefore judges are looking only at procedural violations, but not challenging the positive environmental decisions that as a condition usually requires all the documentation that developers are supposed to present during the EIA procedure itself.

Question 6: No

Comment: While carrying SEA is required by the legislation to assess plans and programs (Incl. Energy program and action plans) it has not been carried out as officially there has not been adopted any comprehensive energy strategy or action plans regarding energy sector development. Existing plans to develop HPPs in Georgia are based on the program “Renewable Energy 2008” adopted back in 2008 aiming to ensure energy security of the country firstly through the increased electricity export on Turkish and later the South-East European markets by 2015-2017. Lately the drastic drop of electricity prices in Turkey (2014), the orientation of the program to simply increase electricity generation without assessment of the problems within the sector planning, delaying the energy efficiency schemes and programs.

Question 7: Baseline data collection is biggest problem therefore we need that : - the hydrological data should be available for each river at least previous 5 year - The method of analogy for defining the water flows should be prohibited - In Depth biodiversity fieldwork especially in remote areas and/or near protected areas should be must - Leaving so-called 10% of Average Annual Flow downstream in the river as an “environmental flow” that has been widely spread in Georgia should be prohibited and instead the complex environmental flow methodology has to be applied (such as Building Block Methodology and/or others) with the objective to maintain and take into account environmental and social needs of the river; - Cumulative assessment should be based on river basin approach and it should also assess the impact on rural communities - Fishpasses/ladders installation should address the purpose and therefore more attention to that issue needs; - Each project has to be required to provide societal Cost and Benefit Analysis and justification of the best project alternative has to be made based on it.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Zaklina

Last name: Zivkovic

Email: pravonavodu@gmail.com

Name of organisation: Polekol

Country of organisation: Serbia

QUESTIONS

Question 1: Yes

Comment: The capacity thresholds for hydropower projects have been listed under Annex II in most of the Western Balkan countries. Unfortunately, those capacity thresholds have often been misapplied to exempt the projects of smaller capacity from environmental assessments, even in cases where an examination of Annex III' criteria shows the need for an EIA. Although the EIA Directive gives a discretion measure in establishing the thresholds, this discretion measure should be limited by the obligation set in article 2(1). Especially, because these thresholds should be designed to facilitate the screening procedure and not to exempt certain projects in advance from that obligation. The screening criteria are particularly important for the HPPs projects, due to the cumulative impact which they have on the environment of the area through endangering of the protected species, nature reserves and parks, and the overall use of the natural resources.

Question 2: Yes

Comment: In recent years, feed-in-tariffs have been mostly directed towards the small HPP projects. For example, in 2018. around 70% of the renewable incentives in the Western Balkans were given for the small HPP projects, which on the other hand, had slightly contributed to the electricity generation (comparing to the other RES technologies with higher capacity and potential). These projects, in many cases, still have much higher feed-in-tariffs' quotas than solar or wind (in Serbia, particularly, that is the case). Granting authorities for these projects should systematically verify that feed-in-tariffs remain limited to projects below 500kW. Besides that, the projects shall comply with the environmental laws of the EU, including the Water Framework Directive, and undertaking of the EIA where it is necessary and applicable in order to get all the necessary permits. It also needs to be emphasized that operators of projects do not artificially divide projects into small installations

Question 3: No

Comment: Considering that Serbia has not even transposed the complete Annex III of the EIA Directive, the current legal framework of the Serbian law does not provide nor obliges projects to an adequate screening procedure for small HPPs. The law does only list and recognizes one of the criteria from Annex III – and that is criteria that relate to the size of the plant (installation's capacity). Therefore, the Guidelines shall highlight the importance of stating the main reasons for requiring (or not) of the EIA with regard to the relevant criteria presented in Annex III. Chapter 4 should also emphasize more cumulative impacts as a trigger for requiring an EIA since this is often ignored in the Western Balkan countries.

Question 4: Yes

Comment: The Guidelines should clearly state that the public needs to be included in all projects in their local community on time (even during the planning process) and in the full extent (regardless of whether EIA exist or not). The public needs to be properly informed about plans and projects before public consultation, the time and place of public consultation need to be adequate for the public to be involved, in the way to give the public the opportunity to properly prepare and participate.

Question 5: Do not know

Comment:

Question 6: No

Comment: We suggest a stronger emphasis on the next very important elements: - Updated cadastre of small HPP - Strategic environmental assessment procedures for SHPP, including the effects of other plans with relevant impact on the environment. - The results of assessments should all be made available to the public - Public consultation should take place not only in administrative centers of the local municipalities but rather in the closest affected areas and communities.

Question 7: The very low energy capacity of the proposed projects and missing the targets for renewable energy are making the projects unjustified altogether from the very perspective of the renewable energy transition, even before assessing the environmental damage, cumulative effects, loss of biodiversity, etc. Climate change is not only impacted by the projects, but it is also a significant factor that enhances the damage done by the projects, not only in the far future but even today. It should be clear that the mitigation measures can never be a guarantee for saving the environment and should not be used to excuse the projects from scrutiny in the process before issuing the licenses. Mitigation has to have a defined and realistic implementation, monitoring, and sanctions for violations.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Redzib

Last name: Skomorac

Email: redzib.skomorac@czzs.org

Name of organisation: Center for Environment (Centar za zivotnu sredinu)

Country of organisation: Bosnia & Herzegovina

QUESTIONS

Question 1: Yes

Comment: The existing capacity thresholds in Republika Srpska exempt all projects of capacity under 5 MW from EIAs. Instead of undergoing EIA procedure, only pre-EIA analysis are screened which do not elaborate on crucial concerns and often use old information. In Federation of BiH no EIA is needed for SHPPs with installed power under 5 MW, or for 2 MW in case more than one plant is planned at the same water-course. Also, as the current legislation in both entities does not foresee a public consultation in screening (pre-EIA), the projects are being planned and realized without CSOs and local communities involvement or notification. In Republika Srpska the authorities invite interested parties to submit written comments on applications for environmental permits, but there is no public consultation meeting. No matter the installed power, there is a need to have mandatory EIA of high quality, as well as meaningful public participation in the screening phase, for every single planned SHPPs.

Question 2: Yes

Comment: The current support schemes have been the single most important driver for the wide spread construction of SHPPs, providing a quick and guaranteed return of investment. If the current support scheme was suspended, SHPPs would become less attractive and competitive when compared to other RES. Currently it fuels organized corruption, and has a negative impact on the environment. In BiH investors in SHPPs have disproportionately benefited from incentives. They have much higher feed-in-tariffs quotas than solar or wind. In Republika Srpska SHPP is the overwhelmingly dominant recipient of support, with support for wind energy cut last year, and solar having a meager quota. The support schemes are not in line with EEAGs requirement to avoid feed-in tariffs for plants over 500 kW (except wind), but they also do not contain the same sustainability criteria as the EEAG, requiring plants to be in line with the Water Framework Directive and other EU environmental legislation.

Question 3: No

Comment: The crucial problem is no transparency in an early stage (concession granting and pre-EIA phase), where CSOs and citizens do not have any possibility to be consulted. Decisions on identical or similar projects are often inconsistent with one another. In BiH environmental permits are often simply extended. This is illegal in FBiH, because it is done without carrying out new screening or EIAs, nor it gives public (locals or CSOs) a chance to actively participate in the process. Further, screening decisions are not available to the public (in Republika Srpska the law requires publication only 30 days after) and do not contain any analysis of Annex III criteria. Also the screening process regarding changes of installed power of a SHPPs seems to be legally secret, so the decision is only communicated to the project promoter and not to any other interested party. Also, Chapter

4 should stress out cumulative impacts more as a trigger for a mandatory EIA.

Question 4: No

Comment: Even when a public participation is done it is done only to satisfy the legal obligation without real intention to get any public opinion. So we have situation where locals basically unintentionally give legitimization to a concerned project, whereas none of the comments they provided are taken into account. The main issues with consultations are that the EIA process does not take place when all options are still open and there is usually no other project-level consultation prior to this. Often there is no consultation at all when no EIA is required, or when hearings are held, locals often do not show up due to lack of information, remoteness of the hearing venue or because it is only advertised online by the authority, or in hard-to-get gazettes. Even when there are locals involved, only specific people close to the protagonists of the project are being invited. If public comments are being taken into account, they usually do not lead to a real improvement in the EIA measures.

Question 5: No

Comment: Becoming aware of a decision to be able to challenge it in a timely manner, and the judiciary lack of independence and expertise on environmental issues, are the main obstacles in access to justice here. The legislation might be there, but due to poor implementation by official bodies (also including courts), the rights of a party are not been fully exercised, meaning the cases are dismissed on formal grounds, rather than on taking the whole argumentation into account and decide on the merits. The access to justice for screening decisions is usually impossible because they are not published, especially ones on changes of installed power, where publication is not required by law. Construction permits often cannot be challenged in court because the deadline is too short, rendering the access to justice as very limited, therefore it is not encouraged. Also, there is a concern that the judges are not always independent while making decisions.

Question 6: No

Comment: SEAs are still not regularly carried out in BiH. Additionally, they suffer from a lot of the same deficiencies as EIA procedures, such as the problem with cumulative impacts again not being assessed, there is a lack of information that is up-to-date, no real attempt to critically analyze the plans and programs, public comments not taken into account. The SEA procedure was partially introduced only in Republika Srpska, as a legal requirement in plans and programs development procedure, while in Federation of BiH it is so far not coherently exercised. The lack of knowledge, experience in managing the SEA procedure are also the deficiency in proper assessment and decision making.

Question 7: The Guidelines need to stress the importance of transparency and inclusiveness at all times and high level expertise when EIAs are carried out. Energy strategy and other strategies that have an impact on RES (e.g. water management) are not subject to SEA, which is required by the SEA Directive. The guidelines should prioritize conclusions such: - CSOs and other interested parties need to have information about projects in a very early stage (granting of concessions and/or pre-EIA phase), - abolishing subsidies for SHPPs, - encouraging local communities to participate in the whole process, without being patronized, - biodiversity fieldwork must be undertaken in most of the locations, - use of updated information must be ensured, - cumulative impacts of existing and planned projects must be analyzed thoroughly, - mitigation measures that are realistic, effective, and enforceable, - high penalties for violations for officials and for investors. ^[1] As one of the frequent weaknesses of EIAs for SHPPs is that they propose unrealistic, ineffective or harmful mitigation measures, while implementation is not monitored and violations are not penalized, we propose an additional section on mitigation measures, monitoring and inspection. Although monitoring can be difficult due to locations of most facilities, or detection of blocking of fish passes, this however has to be taken into account when justifying any SHPP or when deciding whether their negative impacts will be acceptable. ^[1]

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Boris

Last name: Jokic

Email: borisbugojno@gmail.com

Name of organisation: Eko Element Bugojno, BiH

Country of organisation: Bosnia and Herzegovina

QUESTIONS

Question 1: Yes

Comment:

Question 2: Yes

Comment:

Question 3: No

Comment:

Question 4: Do not know

Comment:

Question 5: No

Comment:

Question 6: No

Comment:

Question 7:

Comment:

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Igor

Last name: Vejnovic

Email: igor.vejnovic@tnc.org

Name of organisation: The Nature Conservancy (TNC)

Country of organisation:

QUESTIONS

Question 1: Yes

Comment: The threshold on the installation's capacity is not an adequate indicator if used as a "blanket exemption" from the obligation to carry out EIA (p. 21 of the Guidelines). Small hydropower plants disrupt the hydro-morphological conditions considerably regardless of their size. In Serbia, the risk of a "blanket exemption" is compounded in cases where a municipality acts a Competent Authority evaluating a need for an EIA (all projects below 10 MW outside of nature protected areas). The municipal authorities often lack capacity, so they tend to exempt small hydropower by default. TNC's Hydropower by Design approach provides a decision support tool to screen hydropower impacts across multiple metrics (TNC, The Power of Rivers: A Business Case, 2017, <https://bit.ly/3fpuAhB>). We believe that using a similar decision support tool, adapted to the Annex III criteria, can still simplify the screening while avoiding the risks of using only the installation's capacity threshold.

Question 2: Yes

Comment: Both NGOs and the EU were pointing out that state-support schemes mainly fueled the surge in development. Albania, Montenegro, and N. Macedonia made some progress in applying Energy and Environment State Aid Guidelines (EEAG). But, the new hydropower is still awarded feed-in-tariffs in all the Western Balkan countries (except for Montenegro with a possibility to reintroduce once 2030 targets are set). Contracting parties should fully transpose EEAG and introduce RES auctions. Sustainability should be included in qualification requirements for the technology-specific auctions to avoid excessive damage to the environment. If the countries opt for "early" auctions, environmental performance can be improved by organizing location-specific tenders where the projects are pre-selected by applying technical and ecological siting criteria (using, for instance, state-owned land: <https://bit.ly/2A5PnYL>)

Question 3: No

Comment: A lack of consideration of cumulative impacts, is a significant deficiency in the screening procedure in all the countries of the Western Balkans. This flaw leads to the development of environmentally non-viable hydropower cascades such as Josanicka banja, Serbia (14 power plants and 27 km of rivers diverted; a habitat of four fish species from the IUCN's Red List; EIA conducted on only one of the power plants). The knowledge about cumulative impacts can be improved if the analysis is done on the river basin level (TNC, The Power of Rivers, 2015, <https://bit.ly/2B0KIMU>). Such analysis could feed into the River Basin Management Plans under the Water Framework Directive so that the Competent Authorities have a better overview of the cumulative impacts when assessing individual power plants or the potential hydropower cascades.

Question 4: No

Comment: For most of the small hydropower plants in the Western Balkans, EIAs are not carried out. This means that there are limited options for public participation in designing the project. Sometimes the public is consulted about detailed spatial plans (e.g., in Serbia, N. Macedonia, Montenegro), but this is not sufficient since environmental impacts are not discussed. Another loophole is the consideration of reasonable alternatives to the project. The no-project option is usually not on the table, while the different designs are sometimes considered only from the cost-benefit, not from the environmental point of view. Ideally, specific sites of the alternative energy sources (solar, wind, hydropower) should be established before the project level discussion. This can be done on the national level (TNC, Power of the Place, 2019, nature.org/CACleanenergy) or on the regional or municipal level.

Question 5: No

Comment: There is a growing trend in the Balkans that the project developers apply the so-called SLAPP (strategic lawsuit against public participation). This can be interpreted as a form of pressure to discourage affected communities to use legal remedies. The practice has been noted in Bosnia-Herzegovina, Albania, and Serbia. The best-documented case is that of the

Valbona valley in Albania (<https://bit.ly/2Urxo5R>). The Valbona case is also illustrating other insufficiencies in access to justice for the affected communities, e.g., the court decisions in favour of the community were not enforced. Such deficits of the rule of law are creating additional tensions and conflicts. To defuse the conflicting situations, we suggest a multi-stakeholder dialogue between communities, governments, and developers prior to the project level development (TNC, Improving Hydropower Outcomes Through System-Scale Planning: An Example from Myanmar, 2018, <https://bit.ly/3dSYH0x>).

Question 6: No

Comment: The relevant spatial plans in some of the countries will give only the approximate description of locations of small hydropower plants in the textual part of the plan. Similarly, countries' energy strategies do not include locations. Consequently, a SEA cannot assess site-specific or cumulative impacts. SEAs were not carried out at all for the Serbian Cadastre of Small Hydropower Plants, or any of the calls for concessions in N. Macedonia. These are not considered "plans and programmes," but they contain the critical piece of information to assess the impact: the locations. SEAs in the region could be optimised through: (1) generating alternatives: multiple dam locations, designs, and operations alternatives, (2) providing quantitative trade-off for energy, economic, social and environmental values, and (3) highlighting alternatives that achieve energy goals and best address stakeholder concerns. (TNC/MER, A Strategic Approach to Hydropower Development, 2019, <https://bit.ly/2Y0Bkg1>)

Question 7: We applaud the Secretariat for a comprehensive document that is covering the relevant features of the Energy Community Acquis. The emphasis on public participation is vital to address the growing risk of conflicts related to hydropower in the region. It is a timely document, too: 2018 WWF's Living Planet Index showed an 83 percent decline in freshwater species populations in only the past 50 years. The proliferation of even small hydropower exacerbates this decline because of the impacts they have on up and downstream habitats. The document could benefit from the more specific recommendations to the Contracting Parties on how to overcome challenges in implementing legislation and what additional legislation needs to be adopted to ensure better environmental and social outcomes. Specific good practice examples can also help to guide the countries to improve their track record in designing low-impact renewable energy sources. Finally, it is essential to note the value of alternatives: many small hydropower plants could be supplemented with low-impact solar or wind (WWF/TNC, Connected and Flowing, 2019, <https://bit.ly/2YDROKq>). An early-stage system-scale planning designed as a part of the SEA or a separate process can identify the environmental and social conflicts, avoid them, making future EIAs later in the process much easier, and likely produce results that show compliance with the Energy Community Acquis.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Mirko

Last name: Popovic

Email: mirko.popovic@reri.org.rs

Name of organisation: Renewables and Environmental Regulatory Institute

Country of organisation: Republic of Serbia

QUESTIONS

Question 1: Yes

Comment: According to Serbian EIA law environmental impact assessment is not obligatory for small hydro projects with capacities less than 2 MW and this threshold is set up on List II (project with possible EIA requirements). The EIA Law is not aligned with Directive 2001/92 nor with amendments from 2014. Screening procedure for all hydro plants projects is not obligatory. Annex III of the Directive 2001/92 is not fully transposed. There are many projects implemented on rivers which are habitat of protected and endangered species (in particular related to crayfish which existence is highly endangered) without EIA procedure. There are projects implemented without conditions from Nature Conservation Institute which are obligatory according to the Law on Nature Protection and Regulation on Location Conditions).

Question 2: Yes

Comment: Feed-in tariffs are the key motive for construction of small hydro plants. Although small hydro plants contribute to only around 1% of renewable energy in gross final energy consumption. Serbia did not achieve its renewable energy target set up in Renewable Energy Action Plan. According to Serbian Energy Balance 2020 there are only 77,5 MW of installed capacities of small hydro plants which use feed-in tariffs (total installed capacities for electricity production is 8054 MW).

Question 3: No

Comment: Annex III of the EIA Directive is not transposed in Serbian EIA Law. There are only two relevant criteria being taken

into account in screening procedure - project capacity and location (protected area or not). Screening procedure is essential but quality of procedure is quite low. Collision between the EIA Law and the Law on Construction and Planning is a key problem. The Law on Construction and Planning requires screening procedure in very early stage - issuing of location conditions. But investors are allowed to apply for construction permit without EIA and public authorities do not require EIA report to be submitted before construction permit is issued. EIA report, or decision that EIA is not required should be provided in the latest stage of the project - when investor applies for confirmation of construction works. Confirmation of construction work is not an administrative act and can not be challenged by complaints to the responsible authority or Administrative Court.

Question 4: No

Comment: Regulation related to public participation in development of small hydro projects is implemented in quite outdated manner, particularly on local level. While the Ministry of Environmental Protection provide access to information on public participation via official web site it is not the practice on local level. Information on development consent procedure on local level is often published just in printed media which are not accessible to local communities being affected. Time frame for public participation in screening procedure is limited to 10 days. Serbian EIA law still provide less than 30 days for public consultations in the procedure of development of EIA study, 20 days in mandatory according to the Law. The information often are not available electronically. Lot of local authorities do not published list of EIA projects being conducted on their web sites.

Question 5: No

Comment: Public authorities do not provide support to the public in access to justice. Although the Law on Administrative Procedures (2018) provide legal standings for civil society organisation which defend public interests (Article 44.3) this procedural right is neglected by the Ministry of Construction and local authorities. There are identified practice that local public authorities do not inform public concerned on the outcomes of screening procedure. There are no court practice related to legal standings of civil society or public concerned. The Law on Planning and Construction provides framework for performing EIA in quite late stage, after the construction permit is already issued. It limits the right to legal remedies in case where significant environmental impacts are identified. Public concerned is not enable to submit complaints to the issued construction permits if they did not participated in the procedure which are not open for the public.

Question 6: No

Comment: Key problems are identified on the level of SEA for local spatial plans. Environmental impacts are not properly considered in SEA for local spatial plans, and there are cases where SEA is not performed at all. Local spatial plans are developed on the basis of Cadastre for Small Hydro Plants (1987) which is outdated and do not consider environmental impacts. SEA for National Water Management Strategy (2015) identified mayor adverse effects of small hydro plants but it is not recognized on local level and outcomes of SEA on national level are not integrated on local level. Process of adoption of SEA reports (on local and national level) do not properly considered outcomes of public consultations which are not taken into account by responsible authorities. Accurate data on state of environment (particularly related to protected and endangered flora and fauna) are not available.

Question 7: Although it is required by the Law on Nature Protection the appropriate assessment procedure for Natura 2000 sites is not enabled due to the lack of harmonization between different laws and bylaws. EIA procedure is not followed by appropriate assessment when it is applicable. There are no regulation on sustainable flows but concept on biological minimum is applied. When defining minimum of sustainable flow (Article 81 of the Law on Water Management) hydro-logical regime and characteristics of river flow is not taken into account. There are no accurate data on river flow and investors do not perform ground research related to river flows but use statistical data which are often outdated and not applicable. Monitoring of the state of environment related to protected species of fishes and birds often are not performed according to scientific practice and methodology and the research on the ground is lacking. Due to application of Article 57 of the Law on Planning and Construction outdated nature protection conditions are used for issuing of construction permits for small hydro plants projects. There are no conditions for performing environmental inspection over the implementation of EIA requirements and inspectors lack the support form other public authorities. There are extensive practice of administrative and court pressure over the environmental activists which are exhausted by misdemeanor and criminal charges against them due to their activism.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE PARTICIPANT

First name: Saša

Last name: Rančev

Email: sasa.rancev@gmail.com

Name of organisation: ORSP

Country of organisation: Serbia

QUESTIONS

Question 1: Yes

Comment: Yes there is. You can get additional info if you need it.

Question 2: Yes

Comment: Without feed-in tariffs, there would be no interest in building SHPPs. Although 85 small hydropower plants built so far in Serbia produce only 0.76 percent of the total amount of electricity at the national level, while, as environmentalists warn, there is immeasurable damage to rivers and natural resources, Serbia plans to continue building these hydropower plants. Experts warn that if all small derivation hydropower plants were built at about 850 planned locations, Serbia would receive between 2 and 3.5 percent of the required electricity annually, provided that they operate at full capacity (which is only a few months a year), but it would lose more than 2,200 kilometers of rivers and streams in hilly and mountainous areas, which would disappear in the long pipelines of these plants! <https://www.wwf.rs/vesti/?uNewsID=358790>

Question 3: No

Comment: In Serbia, there is no monitoring of small hydropower plants, the regulations themselves are bad, or it is fictitiously presented. If you are interested you can get official documents to confirm that.

Question 4: No

Comment: There are no public participations in Serbia or it is not done transparently. There is simply too much corruption, and all this is agreed "out of the public eye". Excavators just come and leave the devastation behind. Besides, many people do not even know what mini-hydro power plants are.

Question 5: No

Comment: Not at all. Many of them are fake. If you need more information about that, please contact me.

Question 6: No

Comment: It should be emphasized that even the best plans are worth nothing if they are not implemented on the ground, as they are not implemented in Serbia. For example, a lot of money was given to solve the air pollution from thermal power plants in Serbia, and not only it was not solved, but nothing was done. So it seems, that the money given by your taxpayers was spent non-transparently.

Question 7: For Serbia, it is necessary to find a way for constant supervision and dialogue over the implementation of all agreements and obligations that have been undertaken with the participation of the civil sector and stakeholders with you in the first place.

Comment: For Serbia, it is necessary to find a way for constant supervision and dialogue over the implementation of all agreements and obligations that have been undertaken with the participation of the civil sector and stakeholders with you in the first place.

DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Amelie

Last name: Huber

Email: amelie.huber@euronatur.org

Name of organisation: EuroNatur

Country of organisation: Germany

QUESTIONS

Question 1: Yes

Comment: Capacity thresholds are used in most Western Balkan countries, often to exclude smaller capacity HPPs from EIA obligations, and in disregard of Annex III criteria. This also effectively precludes proper public participation in project-related decision-making (e.g. through information and consultation of the concerned public). These Guidelines should emphasize the need of screening projects against all Annex III criteria, regardless of project size. While the guidelines do a good job at relativizing generalizing statements about environmental impacts of large vs. small HPPs, they should more explicitly refute the misleading distinction based on project size. Most often it is not possible to attribute certain impacts exclusively to small or big projects.

Question 2: Yes

Comment: Since 2009 at least 380 small hydropower plants were built in the Western Balkans supported by feed-in-tariffs, quadrupling the number of existing SHPPs. Despite being a mature technology with a modest energy output (3.6 percent of electricity in WB was generated by SHPPs below 10 MW in 2018), implemented by a well-connected industry, SHPPs have received 70 percent of state renewables support in 2018. This diverts funds from smaller electricity producers and from renewables with a higher innovation, diversification and capacity potential (e.g. solar and wind), whose costs are expected to decrease but which would not be viable without incentives yet. Apart from contributing to market distortion, most SHPP incentive schemes go against the EEAG's sustainability criteria and its requirements to avoiding feed-in tariffs for plants exceeding 500kW. This, along with perceived corruption and nepotism in the renewables incentives system endangers public acceptance of the energy transition.

Question 3: No

Comment: Annex III of the EIA Directive is not applied consistently in Western Balkans countries, with Serbia failing to transpose it altogether. Screening decisions are not publicized in a systematic, timely and transparent manner. In BiH, the screening process for project changes and any decisions taken are secret by law, there is no consistency between screening decisions on similar projects and environmental permits are often re-issued without new screening and EIA procedures. The present guidelines should make it clear that screening decisions need to be publicized and must include arguments for/against EIA requirements, with reference to the relevant criteria listed in Annex III, and taking into consideration potential cumulative impacts as a necessary requirement for an EIA.

Question 4: No

Comment: In the Western Balkans there are serious problems with the implementation of effective public consultations: • The EIA process and other project-level consultations are carried out only after decisions have been taken on alternative options. • Screening procedures are not necessarily conducted and decisions published for changes or extensions of projects. • Screening decisions are not always available to the public and do not explicitly state the main reasons for requiring (or not requiring) an EIA. • Where no EIA is required there rarely is a public consultation. • Accessibility to the consultations and to publicity about consultations is often logistically compromised. • Deadlines are often intransparent and too short to allow for attending consultations and communicating concerns. • Comments are not necessarily taken into account in the decision-making process, nor is there a consistent practice of publicly communicating how comments have been taken into account.

Question 5: No

Comment: Various loopholes are used, both by investors and state authorities, to circumvent interference by the public. This includes, for example, failure to communicate in a timely and transparent manner screening decisions, permitting decisions or development consent granted, as well as legislative loopholes compromising public participation in decision-making, legal challenges and hence the outcome of the EIA process. It is crucial, therefore, that the guidelines emphasize the right to legally challenge any decision or omission concerning the EIA procedure by the authorities and investors, as well as access to justice provisions under the Aarhus Convention.

Question 6: No

Comment: There is no consistent, regular practice of carrying out SEAs in Albania, Kosovo and BiH. In countries where SEAs are carried out, they are associated with similar problems as EIAs as listed in our response to question 4. It is important that these guidelines highlight the need for carrying out SEA procedures for small hydropower activities, especially where these are concentrated in one river basin and especially in potentially ecologically sensitive and valuable areas.

Question 7: The Guidelines should make it clear that HPPs (even small-scale) never have a negligible environmental impact. They always come at the expense of conservation objectives. Careful mitigation measures should therefore be part of the policy framework to minimize ecological damage. Sections 3 and 4.7.3 must highlight also the risk to human safety and property posed by the increasing occurrence of environmental hazard events (floods, landslides and erosion) in areas affected by HPP activities. In addition to being vulnerable to natural hazards, damaged project infrastructure increases disaster vulnerability in project-affected areas. Section 3.2 should highlight also the detrimental ecological impact of the diurnal flood and drought regime, induced by certain HPP designs, for riverine biodiversity, as well as environmental degradation caused by construction activities (e.g. road construction). Section 3 should take better account of the science on the climate impacts of HPPs, especially of sustained GHG emissions during the operational phase, including by certain small HPPs in temperate regions (see research on Switzerland's Wohlensee reservoir). Methane emissions tend to be highest in the initial years of operation, thus coinciding with the crucial time-frame for impactful climate action. The low priority hydropower investors and policy makers give to climate considerations in project design and construction may further aggravate climate impacts of HPPs.

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DISCLOSURE

Do you agree with the publication of your contribution: YES

QUESTIONNAIRE

PARTICIPANT

First name: Jugoslav

Last name: Brujić

Email: arbormagna@yahoo.com

Name of organisation: ARBOR MAGNA - Natural heritage protection society

Country of organisation: Bosnia and Herzegovina

QUESTIONS

Question 1: Yes

Comment: It is an interesting fact that the studies did not highlight two essential data: the magnitude of the water flow and the elevation of the power plant dam.

Question 2: Yes

Comment:

Question 3: Do not know

Comment:

Question 4: No

Comment:

Question 5: No

Comment:

Question 6: No

Comment:

Question 7: the legislation relating to environmental studies needs to be changed

Comment: the legislation relating to environmental studies needs to be changed

DISCLOSURE

Do you agree with the publication of your contribution: YES