

**Comments and answers on EU Energy Community  
questionnaire regarding  
“Guidance on the environmental assessments of  
small hydropower plants”**

**QUESTIONS:**

***1. Is there a risk in your Contracting Party that the obligation to carry out an environmental impact assessment for project with foreseen significant environmental effects is circumvented in the case of small hydropower projects due to a threshold on the installation’s capacity in the transposing national legislation? (1000 characters)***

**Comment and answer:**

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).

***2. Do you consider that the support schemes for renewable energy projects (e.g. feed-in tariffs) contributed to the extensive development of small hydropower projects in your Contracting Party? (1000 characters)***

**Comment and answer:**

While feed-in tariffs or other general support schemes do not exist in Georgia, extensive development of Hydro power plants including small ones started in 2008 when the government adopted the national programme ‘Renewable Energy 2008’ in order to attract investments in the Hydro sector. The program established legal basis for construction of the numerous Hydropower plants up to 100 MW and high voltage transmission lines under the Building, Own, and Operating principles providing guaranteed power purchase agreements for generated electricity. In total, more than 24 MoUs and agreements were signed for the construction of over 45 hydropower plants. In some cases, the Hydros may be granted necessary land for symbolic prices, under the governmental decision. However, the procedures were not defined.

Lately in August 2013, the government adopted new Resolution (#214) and subsequently changed the regulation for signing MoUs regarding the construction of hydropower plants. It is also notable that the rate of the prices and purchase period in PPAs is determined individually based on negotiation between government and developer and therefore differs from project to project while there is no generalised

support scheme. Moreover there are contracts that remain confidential and the public does not have access to the data. In total, the Government signed more than 187 such agreements on construction of HPPs with guaranteed PPAs.

***3. In light of the information provided in Chapter 4 of the draft document, do you consider that screening of small hydropower projects are carried out in your Contracting Party in an appropriate manner? (1000 characters)***

Comment and answer:

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

Screening decisions are not always available to the public (eg. 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 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.

***4. Section 4.7.4 of the draft document presents the key considerations on public participation. Are the current practices in your Contracting Party in line with the information provided therein? (1000 characters)***

Comment and answer:

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 Hydros 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 very progressive if not one circumstance: the Environmental Assessment Code envisages the possibility of making changes to the decision at all three stages, however, not through public but simple administrative proceedings. It means 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 already been made.

Moreover, for Annex II projects (HPPs from 2 MW to 5 MW) decisions and respectively public participation procedures apply based on screening decisions made by the Ministry of Environmental Protection and Agriculture.

**5. Are the current practices in your Contracting Party sufficient to ensure access to justice in environmental assessment procedures? (1000 characters)**

Comment and answer:

The major problems are

1. The lack of independence of judiciary in general
2. 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.

**6. Do in your view, plans and programmes falling under the scope of the Strategic Environmental Assessment Directive sufficiently address the issue of small hydropower and their environmental impacts? (1000 characters)**

Comment and answer:

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.

**7. Please indicate any other comments you see of relevance for the draft Guidance (1500 characters)**

Comment and answer:

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.

**DISCLOSURE:**

**Do you agree that your contribution is published on the Energy Community website? \***

Comment and answer:

Yes we agree to publish our comments on the Energy Community website.