

To:
Government of Republic of Moldova
Cabinet of Ministers of Ukraine

Copy:
European Commission
(*Directorate General for Environment,
Directorate General for Agriculture and Rural Development,
Directorate General for Energy,
Directorate-General for Neighbourhood and Enlargement Negotiations*),
Energy Community Secretariat,
Delegation of European Commission in Moldova,
Embassy of United States of America in Moldova,
Embassy of Germany in Moldova,
Embassy of Romania in Moldova,
Embassy of United Kingdom in Moldova,
Embassy of Sweden in Moldova,
Embassy of Austria in Moldova,
Swiss Cooperation Office in Moldova,
World Bank, IMF, EBRD, EIB,
UN Resident Coordinator in Republic of Moldova

POSITION PAPER

on the negotiation of Agreement concerning the functioning of the Dniester Hydro Power Complex and its impact on the Dniester River basin

In 2017 the negotiations for an Agreement between Moldova and Ukraine concerning the functioning of the Dniester Hydro Power Complex (further **Agreement**) were amplified. In this context it should be outlined that the Ukrainian counterpart transformed at the beginning of the 1990s the dam of buffer water reservoir into Hydroelectric Power Plant II of the Dniester Hydro Power Complex. At the same time starting with 2001 Ukraine raised on Dniester a pumped storage water lake, one of the largest in Europe, and managed to commission three electricity generation units. Despite the fact that consultations with the affected side of hydropower infrastructure having a transnational impact are mandatory, the above mentioned actions took place without consulting the Government of Republic of Moldova, the civil society and the directly affected population of Republic of Moldova and Odessa region. In the past civil Society insisted and the World Bank refused to financially endorse this project on Dniester. Nevertheless works on this hydroelectric infrastructure is continuing to take place.

Civil society managed to obtain the draft of the project of this *Agreement*¹. If the proposed draft won't suffer radical changes, then this *Agreement* will lead to the degradation and destruction of the Lower

¹ See the draft of the *Agreement* as of 25th August 2017, issued on the website of Jurnal.md, <http://www.ic.md/wp-content/uploads/2017/11/13-1.pdf>

Dniester ecosystems and will generate enormous economic costs for identifying alternative sources of drinking water ranging from several hundred million to over one billion USD.

The way this draft Agreement was drafted and negotiated - without consulting the civil society and the population that will be directly and seriously affected over a period of several decades, and the rush to sign this Agreement by the end of 2017, are not in the public interest of the Republic of Moldova and Ukraine. According to the draft *Agreement*, Moldova which has an outlet to the buffer reservoir will be deprived of the right to use water from its territory, because the entire bank of Moldova will be granted to Ukraine for a long term period without the right to access the water for Republic of Moldova.

In addition, the provisions of the draft Agreement excluded the requirement for the payment of compensation for the damages produced by the Dniester Hydro Power Complex (costs of lost ecosystem services), and there is no mentioning of the 6 (six) additional hydropower plants in the minor meadow on the upper course of Dniester planned by the Ukrainian Government, and that will *de facto* belong to this Complex.

The draft *Agreement* deliberately disregards the environmental provisions of the **EU-Moldova and EU-Ukraine Association Agreements**. Four **environmental Directives** are totally neglected:

- i. Directive 2000/60/EC establishing a framework in the field of water policy.
- ii. Directive 98/83/EC on the quality of water intended for human consumption.
- iii. Directive 2003/35/EC providing public participation in respect of the drawing up of certain plans and programmes relating to the environment.
- iv. Directive 2011/92/EU on environmental impact assessment of certain public and private projects (that improves the Directive 85/337/EEC).

There are also four Directives that both Republic of Moldova and Ukraine committed to comply under the **Treaty of the Energy Community**:

- i. Directive 85/337/EC on environmental impact assessment of certain public and private projects.
- ii. Directive 79/409/EC on the conservation of wild birds.
- iii. Directive 2001/42/EC concerning the assessment of impact certain plans and programmes on environment.
- iv. Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage.

The obstruction of the European Union's environmental protection mechanisms is hard to understand for two states that have formally committed themselves to modernize, reform and integrate into the EU legal, economic and spiritual space through these Treaties. The lack of reference to all the relevant documents which are part of the Association Agreements and the Energy Community Treaty, cannot be accidental and suggests that the negotiations pursue private agenda rather than the public interest. Similarly, the total ignorance of the EU regulatory framework suggests that both governments are aware about the disastrous impact upon Dniester that will be produced by this hydropower infrastructure.

Currently, the negotiation of the *Agreement* on the functioning of the Dniester Hydro Power Complex has been "packed" with other issues of the Moldovan-Ukrainian bilateral agenda, such as: joint customs posts, recognition of the Moldovan properties in Ukraine, demarcation of the Moldovan-Ukrainian border, Transnistrian settlement problem, etc. Besides the fact that the issues from bilateral agenda are also in the interest of Ukraine and should be negotiated in separate blocks, the consequences of silting and destruction of Dniester River are disproportionately high relative to any potential gains in any of these separate problems negotiated in one "package". That is why this *Agreement* must be concluded separately from the other bilateral issues and only in the context of the commitments assumed by both states towards the European Union and within the framework of the Energy Community Treaty.

In the context of the above we strongly request the following:

1. The abandonment of the "package" negotiation approach and the termination of the negotiations on the operation of the Dniester Hydro Power Complex until a specialized international company will carry out a study on the Environmental, Social and Economic Impact Assessment for the remaining generation units of the Dniester Pumped Storage Reservoir expected to be commissioned in the future as well as for the 6 hydropower plants planned for construction on the Ukrainian side of Upper Dniester.
2. Publication of the updated draft Agreement on the operation of the Dniester Hydro Power Complex together with all annexes and its submitting to the public consultations as required by the national legislation, the Association Agreements of the Republic of Moldova and Ukraine with the European Union and the Energy Community Treaty
3. Introducing in the preamble to this Agreement of clear references to the Association Agreements of Moldova and Ukraine to the European Union, the Energy Community Treaty and all relevant international agreements and treaties and their reflection under the conditions of the Dniester Hydro Power Complex.
4. The introduction in the text of the Agreement of clear guarantees for environmental flows and mechanisms to compensate for the loss of ecosystem services as a result of the Complex's operation.
5. Giving up to the idea of signing such an important document in a rush by the end of 2017 as the main body of the Agreement, its annexes and the additional technical back-up documentation needs more time for a thorough and careful elaboration.

SIGNATORIES:

Ion Sturza,

Former Prime Minister of Republic of Moldova _____

Dr. Arcadie Barbăroșie

Executive Director, Institute for Public Policies _____

Dr. Ilya Trombitsky

Executive Director, International Association of River Keepers Eco-Tiras _____

Ion Efros

Energy & environment research analyst, Institute for Public Policies _____

Victor Parlicov

Former General Director of Moldovan Energy Regulator _____

Ivan Ignatiev

ONG Ecospectrum, Bender, Transdnierster Region of Republic of Moldova _____

Alecu Reniță

Ecological Movement of Moldova _____

Valeriu Munteanu

Former Minister of Environment _____

Dorin Dușciac

Former Deputy Minister of Environment _____

Veaceslav Ioniță

Economist, IDIS Viitorul _____

Vasile Ernu,

Writer _____

Petru Negura

Sociologist, Platzforma.md _____

Iulian Groza

Executive Director, IPRE _____

Dionis Cenușa

Program Director, Expert-Grup _____

Valentin Lozovanu

Independent expert _____

Vitalie Sprânceană

Sociologist, Civic Urban Network _____

Sergiu Tofilat

ASPE _____

Sergiu Ungureanu

Energy expert _____

Ruslan Surugiu

Executive Director, Pro-Energy Centre _____

Victor Chironda

Urbanist _____