

APPROVED

Deputy Prime Minister of Ukraine,  
Head of the Intergovernmental Council on  
the implementation of Espoo Convention  
in Ukraine



Hryhoriy Nemyrya

\_\_\_ August, 2009

# REPORT OF THE GOVERNMENT OF UKRAINE

on the implementation of

Decision of the Implementation Committee of Espoo Convention  
taken on its fifteenth Session (28-30<sup>th</sup> October 2008, Geneva)

and

Decision IV/2 of Parties to the Espoo Convention  
adopted on the 4-th Meeting of Parties to the Convention  
(19-21<sup>st</sup> May 2008, Bucharest)

CONFIRMED

by the Members of the Intergovernmental Council on the implementation of Espoo  
Convention in Ukraine:

Deputy Minister of Environmental  
Protection of Ukraine

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Deputy Minister of  
Foreign Affairs  
of Ukraine

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Deputy Minister of Transport  
and Communications of Ukraine

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Focal Point to the Espoo Convention,  
Secretary of Council

Volodymyr Buchko

Kyiv, Ukraine

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**31<sup>st</sup> August, 2009**

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# CONTENT

## ABSTRACT

### **I. Steps taken by Ukrainian Party to comply with the relevant provisions of the Espoo Convention**

1.1. Work of the Intergovernmental Council on the implementation of provisions of Espoo Convention in Ukraine

1.2. Steps taken to undertake an independent review of legal, administrative and other measures of Ukraine to implement the provisions of Espoo Convention

### **II. Steps taken by Ukrainian Party to comply with the relevant provisions of Espoo Convention regarding the Project on the Renovation of Deep-Water Navigation Route “Danube – Black Sea” in the Ukrainian part of the Danube Delta**

2.1. Consultations on the Project

2.2. Bilateral agreements and other arrangements with affected parties

2.3. Status of works under the Project

### **III. Cooperation with other relevant International Environmental Conventions and International Organizations**

2.1. Aarhus Convention

2.2. Cooperation with European Commission (EC)

### **IV. Miscellaneous**

## ANNEXES

## ABSTRACT

This Report is based on the implementation by Ukraine of the following main documents worked out by the relevant bodies of the Espoo Convention\*:

**2) The Decision of the Implementation Committee of Espoo Convention taken on its fifteenth session held from 28-30<sup>th</sup> October 2008 in Geneva (enclosed, Annex 0.1).**

It includes, *inter alia*:

2. The request the Government of Ukraine to ensure that:

“(a) The steps taken to comply with the relevant provisions of the Convention **cover also any further works related to Phase I of the Project, including operation and maintenance works;**

(b) The **EIA documentation** currently under preparation for the Project **addresses, inter alia:** (i) possible **alternatives** to the whole Project discussed with the affected Party, including the no-action alternative; (ii) the **combined impact** of the two phases of the Project; and (iii) the **mitigation measures** to minimize this combined impact” (Dec. V-b, Para. 31);

3. “The request to the Government of Ukraine **to report in writing to the Committee** on steps taken to apply the relevant provisions of the Convention to:

(a) Any further works related to **Phase I** of the Project, including operation and maintenance works;

(b) **Phase II** of the Project” (Dec. V-b, Para. 32).

4. “The request that:

(a) the **first report** on these steps should be submitted to the Committee by **28 February 2009**, for the Committee’s consideration at its next session in March 2009;

(b) the **second report** should be submitted by **31 August 2009**, for the Committee’s consideration at its seventeenth session in September 2009” (Dec. V-b, Para. 33).

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\* The first Report submitted by Ukraine before the fifteenth session of the Implementation Committee held from 28-30<sup>th</sup> October, 2008 in Geneva is available on the Convention’ web-site

[http://www.unece.org/env/eia/documents/ImplementationCommittee/Report\\_of\\_Ukraine\\_Danube-Black%20Sea\\_Oct08\\_main.pdf](http://www.unece.org/env/eia/documents/ImplementationCommittee/Report_of_Ukraine_Danube-Black%20Sea_Oct08_main.pdf)

**3) The Decision IV/2 of Parties to the Espoo Convention adopted on the 4<sup>th</sup> Meeting of Parties to the Convention held on 19-21<sup>st</sup> May, 2008 in Bucharest (enclosed, Annex 0.2).**

The abovementioned Decision:

1. “Urges the Government of Ukraine **to repeal without delay the final decision**, concerning the implementation of the project for the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta, and **not to implement Phase II of the project** before applying fully the provisions of the Convention to the project, taking into account the findings of the Implementation Committee, and **to report to the Implementation Committee at its fifteenth meeting** (October 2008) and subsequent meetings if necessary” (Dec. IV/2, Para. 9);
2. “Decides to issue a caution to the Government of Ukraine to become effective on 30<sup>th</sup> October 2008 unless the Government of Ukraine **stops the works, repeals the final decision** and **takes steps to comply** with the relevant provisions of the Convention” (Dec. IV/2, Para. 10);
3. “Requests the Government of Ukraine **to ensure that its legislation and administrative measures** are able to implement fully the provisions of the Convention, and agrees to support the Government of Ukraine in the undertaking of an **independent review** of its legal, administrative and other measures to implement the provisions of the Convention for consideration by the Implementation Committee in the first half of 2009. This independent review shall be undertaken by a consultant to be nominated by the Committee and financed from the budget of the Convention” (Dec. IV/2, Para. 11);
4. “Requests the Government of Ukraine **to submit to the Implementation Committee by the end of 2009 a strategy**, taking into account the efforts by the Government of Ukraine to implement the provisions of the Convention and based on the outcome of the independent review, including its time schedule and training and other actions to bring about compliance with the Convention, and thereafter report to the Committee on the implementation of the strategy (Dec. IV/2, Para. 12);
5. “Invites the Government of Ukraine **to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements** in order to support further the provisions of the Convention, as set out in Article 8, and **to seek advice from the secretariat**. The Government of Ukraine is invited **to report on progress** with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth meeting of the Parties” (Dec. IV/2, Para. 14).

## **I. Steps taken by Ukrainian Party to comply with the relevant provisions of the Espoo Convention**

### **2.1. Work of the Intergovernmental Council on the implementation of provisions of Espoo Convention in Ukraine**

Since the last Report sent by the Government of Ukraine on the 25<sup>th</sup> February, 2009, the one meeting of the Intergovernmental Council on the implementation of provisions of Espoo Convention in Ukraine (IC) Chaired by the Deputy Prime Minister Mr Hryhoriy Nemyria took place on the 3<sup>rd</sup> July, 2009 (Protocol # 6 of the Meeting, Annex 1.1.1).

The next meeting of the Intergovernmental Council on the implementation of provisions of Espoo Convention in Ukraine (IC) is planned for the 8<sup>th</sup> of September with the participation of Executive Secretary of the Convention Mr Wiek Schrage and national experts from selected countries during their visit to Ukraine from 7<sup>th</sup> to 8<sup>th</sup> September, 2009.

## **2.2. Steps taken to undertake an independent review of legal, administrative and other measures of Ukraine to implement the provisions of the Espoo Convention (Dec. IV/2, Para. 11)**

According to the Paragraph # 11 of the Decision IV/2 adopted by the 4<sup>th</sup> Meeting of the Parties to the Convention, in order to ensure that the Ukrainian legislation and administrative measures are able to implement fully the provisions of the Convention, the Ukrainian Party is in the process of preparation for the visit to Ukraine from 7<sup>th</sup> to 8<sup>th</sup> September, 2009 of the Executive Secretary of the Convention Mr Wiek Schrage and national experts from selected countries (Annex 1.2.1).

During the visit Mr Schrage and the experts are expected to meet with representatives from the line-ministries and Office to Deputy Prime Minister, members of the Intergovernmental Council on the implementation of provisions of Espoo Convention in Ukraine, scientists and NGOs representatives (Draft Program of the visit enclosed, Annex 1.2.2). The participants would discuss the Strategy of Ukraine, based on the outcome of the independent review, including its time schedule and training and other actions to bring about compliance with the Convention.

## **II. Steps taken by Ukrainian Party to comply with the relevant provisions of the Espoo Convention regarding the Project on the Renovation of Deep-Water Navigation Route “Danube – Black Sea” in the Ukrainian part of the Danube Delta**

### **3.4. Consultations on the Project**

The Public Debate under the Phase II of the Project were planned to be held in Tulcea, Romania on the 28<sup>th</sup> of April, 2009. Ukrainian Party received the Verbal Note of the Embassy of Romania in Ukraine (#1502 dated 10<sup>th</sup> April 2009) with the letter signed by Minister of Environment of Romania (#1166 dated 11<sup>th</sup> March 2009) confirming the above-mentioned date and venue. On the 28<sup>th</sup> of April, 2009 the Ukrainian delegation arrived to Tulcea, but **the Romanian Delegation didn't arrive to the venue of Public Debate**. On the 30<sup>th</sup> April, 2009 the Embassy of Romania in Ukraine with its Verbal Note #1700 dated 29<sup>th</sup> April, 2009 transmitted the letter signed by Minister of Environment of Romania (#2947 dated 28<sup>th</sup> April 2009) with a proposal to hold the Public Debates on the 9<sup>th</sup> June, 2009.

In accordance with Article 3.8 and Article 4.2 to the Espoo Convention, the Parties held the **Public Debate under the Phase II of the Project on the 9<sup>th</sup> of June, 2009 in Tulcea, Romania** (Minutes of the Debates enclosed, Annex 2.1.1).

Ukrainian delegation included representatives from Ministry of Environmental Protection, Ministry of Transport and Communication, Embassy of Ukraine in Romania, scientists etc.

In the course of Public Debates, the Ukrainian experts answered the questions of Romanian authorities, NGOs, individuals and mass-media as regards the environmental impact assessment of the Phase II of the Project (<http://menr.gov.ua/cgi-bin/go?node=4475>). As it was mentioned in the Minutes of Public Debates by Ms. Daniela Pineta, the Focal Point to the Convention in Romania, “In September 2008, Ukraine notifies Romania on the phase II of the project for the waterway construction, in accordance with the provisions of Article 3, paragraphs 1 and 2 of the Espoo Convention... In January 2009, Ukraine transmits to Romania the study "Assessment of the likely transboundary environmental impacts of the Danube - Black Sea navigation route in the Ukrainian part of the Danube Delta. This study is an annex to the environmental impact assessment Report, as part of the detailed design documentation drafted for the large scale development phase of the navigation project, in accordance with the provisions of paragraph 1 of Article 4 of the Convention...The current public debate has been organized in accordance with the provisions of Article 4, paragraph 2 of the Convention, providing the public of the affected party with the possibility to express its views in this respect. As a next step, we expect the party of origin of the project to request consultations with the Romanian authorities in the near future, in accordance with the provisions of article 5 of the Convention”.



After the Public Debate, on **15-16<sup>th</sup> July, 2009 in Kyiv, Ukraine**, the Romanian and the Ukrainian Parties held **Consultations under Article 5 of the Espoo Convention** regarding the implementation of the Project (the Minutes, Agenda and the list of participants are enclosed, Annexes 2.1.2-2.1.5).

During the meeting, the Romanian and the Ukrainian Parties discussed the issues in relations with the adverse impact of the project on the Romanian territory (including the following: the mathematical models used, their calibration and verification; the physical models used for verification of the solutions obtained theoretically; the limitation of the assessment to the secondary Kilia Delta, without taking into account the impact of works on the whole Kilia branch; the quantities of dredged material and the way of storage, particularly the location of the sea deposit; the impact of the dam constructed at the mouth of the Bystroe branch; the impact of the sediments discharged into the sea; the discrepancies between the documents presented by the Ukrainian side concerning the ecological value of the Bystroe area).

After discussions, the Parties agreed on the following:

- The Romanian Party will send in written form until the 3<sup>rd</sup> of August 2009 a list of detailed questions which are needed to clarify all concerns related to this project and the Ukrainian Party will send in written form the answers to these questions.  
The Parties agreed that they shall take further steps in accordance with the provisions of the Espoo Convention;
- The Romanian Party will provide, by 24<sup>th</sup> of July 2009, the Minute, the written comments and audio records of the public debate held in Tulcea, on 9<sup>th</sup> of July 2009;
- The Parties will consider the possibilities of further cooperation based on the possible mutual assistance (Article 5), including requests for the support from the Espoo Convention Secretariat; Post-Project Analysis (Article 7) by launching the relevant system of joint monitoring of the Danube Delta; Bilateral and Multilateral Cooperation (Article 8) and Research Programs (Article 9).

The Parties agreed to continue further cooperation in order to fully implement the EIA Procedure regarding the Project in accordance with provisions of the Espoo Convention.

The information on Consultations on the Project was sent to representatives of Bern Convention, UNECE, Ramsar Convention, UNESCO, European Commission, ICPDR etc. (e-mail posting, Annex 2.1.6) and placed on the websites of the following Ministries engaged:

Ministry of Environmental Protection of Ukraine -

<http://menr.gov.ua/cgi-bin/go?node=4475>

<http://menr.gov.ua/cgi-bin/go?node=4640>

Delta Pilot State Enterprise (Ministry of Transport and Communication of Ukraine)

<http://delta-pilot.ua/index.php?mode=events&id=724>

<http://delta-pilot.ua/index.php?mode=events&id=742>

The Comments of Romanian Party were transmitted by Letter signed by Minister of Environment of Romania #0435 dated 31<sup>st</sup> of July, 2009 (Annex 2.1.7-2.1.7a). Currently the Ukrainian Party is considering the questions stated in the letter and would send the answers in the written form at earliest convenience in order to take them into consideration whilst taking the Final Decision on the Project in accordance with Article 6 of the Espoo Convention.

### **3.5. Bilateral agreements and other arrangements with affected parties (Dec. VI/2, Para. 10, 14)**

In accordance with Article 8 of Espoo Convention, in order to further promote the environmental cooperation in the Danube Region, the Ukrainian Party fostered the work towards signing of the **Agreement between the Government of Romania and the Government of Ukraine in the field of environmental protection.**

After Ukrainian-Romanian Consultations, which took place in February, 2008 in Kyiv, Ukraine, the Parties are working on the authenticity verification of the English text of the abovementioned Agreement (the draft text of the Agreement enclosed, Annex 2.2.1).

The Ukrainian Party received the English version of this Draft Agreement from Romanian Party only in September, 2008 and started the procedure of authenticity verification. After going through all the formalities and confirmations with the line-Ministries, the Ukrainian Party transmitted the Proposals to the Draft Text to Romanian Party on the 16<sup>th</sup> of February, 2009 (enclosed, Annex 2.2.2, 2.2.2a).

**As of August, 2009, the Proposals of Romanian Party were not submitted.** Only after submission of the final Proposals by Romanian Party, the Ukrainian Party will be able to put the Agreement on the agenda of the Meeting of the Cabinet of Ministers of Ukraine for further adoption.

### 3.6. Status of works under the Project

Ukraine currently implements the **maintenance dredging works** on the maritime approach canal of the Navigation Route in order to provide the safety of navigation in accordance with international navigation rules. This works are being held under the Phase I project documentation.

On the 7 July, 2007 Ukraine officially notified Romania on the continuation of construction of the **protective dam of the maritime approach canal** in frames of the Project. The protective dam is located on the Ukrainian maritime zone on the exit from the Bystroe arm and is situated more than 30 km away from the Romanian border. Works on construction of the protective dam are being held in order to provide the safe vessel traffic.

*Para. 50-51 of the “Implementation Committee’s findings and recommendations further to a submission by Romania regarding Ukraine (EIA/IC/S/1)” (ECE/MP.EIA/10) define that*

2. *“50. The Convention does not clearly stipulate what are the legal consequences of the final opinion of the Inquiry Commission, in particular whether it has a retroactive effect (a so-called ex tunc effect) or whether the obligations stemming from the Convention apply in such a case only after the Inquiry Commission has found the activity likely to have significant adverse transboundary impacts (a so-called ex nunc, or non-retroactive, effect), and whether the request for establishment of the Inquiry Commission has any suspensive effect in relation to an activity.*
3. *51. The Committee is of the opinion that, in the absence of clear legal grounds in the Convention for accepting ex tunc effect, **the final opinion of the Inquiry Commission should be understood as having only ex nunc effect**”.*

*Para. 51 also stipulates that the provisions of the Convention are to be applied from the moment when the Inquiry Commission publishes its Findings and Recommendations on likely **significant adverse impact from the project implementation**.*

*According to the Report of the Inquiry Commission under UNECE Espoo Convention “On a likely significant transboundary impact of the Danube – Black Sea Navigation Route on the border between Romania and Ukraine” published in July, 2006, in its Chapter 6, Para. 6.8 “Findings of the Inquiry Commission”, the following list refers to the **likely adverse transboundary impacts**:*

- *discharge between the Bystre and the Starostambulski branches and on the water level dynamics along the Bystre branch, resulting in loss of floodplain habitats, important for fish (spawning and nursery) and birds (nesting, feeding)*
- *impact of habitat loss by coverage of riparian dump sites and dredging through the offshore sandbar and measures for bank protection on birdlife and fish*
- *impact on the increase of suspended sediment concentration, downstream of the dredging site on fish*
- *impact on the turbidity of marine waters as a result of dumping of spoil at the dump-site at sea, under conditions of southbound alongshore currents*
- *impact of repeated maintenance dredging hampering the recovery processes of affected areas for fish in the long term*
- *cumulative impact of loss and/or disturbance of habitats and by shipping traffic on fish and bird life on a large scale and long time.*

*Moreover, in its Report, the Inquiry Commission “identifies the following important subjects for which **no conclusive evidence was available to judge the transboundary consequences** of the Navigation Route:*

- *effect of dredging on the turbidity of the river and marine waters*
- *effects of increase of suspended sediment concentration at and near the dredging site*
- *effects on the Chilia delta resulting from the **construction of the retention dam** and the maintenance dredging in the Bystre Channel*
- *effects on the coastal morphology of the Romanian coast”.*

## I. Cooperation with other relevant International Environmental Conventions and International Organizations

### 2.1. Aarhus Convention

In framework of implementation of **Aarhus Convention** provisions, the Ukrainian Party undertook the following activity:

- The Cabinet of Ministers of Ukraine adopted the Ruling # 1628-p “On the Approval of Action Plan on Implementation of the Decision of the Parties to Aarhus Convention #III/6f” dated December 27<sup>th</sup>, 2008 (enclosed, Annex 3.1.1):
  - The abovementioned Ruling contains the Action Plan on implementation of the Decision of the Parties to Aarhus Convention #III/6f;
  - This document was sent to the Secretariat of Aarhus Convention on the 30<sup>th</sup> December, 2008 # 18791/0/2-08 (enclosed, Annex 3.1.2).

From 31<sup>st</sup> March, 2009 to 3<sup>rd</sup> April, 2009 the 23<sup>rd</sup> Meeting of Compliance Committee of Aarhus Convention took place. As it is stated in the Report of the Compliance Committee, ([http://www.unece.org/env/pp/compliance/ece\\_mp\\_pp\\_c\\_1\\_2009\\_2\\_advance%20copy.pdf](http://www.unece.org/env/pp/compliance/ece_mp_pp_c_1_2009_2_advance%20copy.pdf)) “The Committee took note of the report and action plan submitted by the Government of Ukraine on 31 December 2008 in connection with the recommendations in decision III/6f of the Meeting of the Parties as well as supplementary information provided by the Government on 27 March 2009 at the request of the Committee. Following a presentation by a representative of the Government of Ukraine, the Committee sought further clarity from the representatives of the Government of Ukraine as to the specific step-by-step activities that implementation of the action plan would involve.... Following deliberation in closed session, the Committee concluded that Ukraine had fulfilled the conditions set out in paragraph 5 (a) to (d) of decision III/6f to the extent that the **caution imposed by the Meeting of the Parties to the Aarhus Convention should not become effective on 1 May 2009**. However, it also concluded that Ukraine was not yet fully in compliance with its obligations under the Convention. It therefore reserved its right to make further recommendations to the Meeting of the Parties, including to recommend to the Meeting to issue a new caution, if the Committee subsequently found that its concerns relating to a number of points had not been satisfactorily met. The Committee’s findings are set out in annex II to this report. The Committee agreed to ask the UNECE Executive Secretary to convey the Committee’s findings to the Government of Ukraine”.

## **2.2. Cooperation with European Commission (EC)**

- The progress in implementation of obligations under the Espoo Convention by Ukraine was discussed during the **4th Joint Meeting of the Subcommittee #4 “Energy, Transport, Nuclear Safety and Environment”** of the EU-Ukraine Cooperation Committee on the 25-26th May, 2009 in Brussels;
- In the context of the discussions during the abovementioned Meeting, the EC sent the notification on the launching of the **Project “Assistance to Ukraine in implementation of the Espoo Convention’ and the Aarhus Convention’ provisions”** and sent Contract Terms of Reference for the consideration of Ukrainian Party (letter of EC # AK/im/D(09) 2316 dated 22th July, 2009 (Cover letter enclosed, Annex 3.2.1).

## **II. Miscellaneous**

In the framework of implementation of obligations under Espoo Convention provisions, the Ukrainian Party is currently participating in the **EIA procedure regarding the following Projects:**

- **Romanian Project** “Technical Assistance for Improvement of Navigation Conditions on the Romanian-Bulgarian common sector of the Danube and accompanying studies”;
- **Romanian Project** “The Extention of waste incineration activity to neutralize dangerous wastes and heat recovery by generation warm water which is necessary in the technological process of the existing meat factory (property of SC SUPERSTAR COM SRL RADAUTI)”;
- **Belorus Project** “Construction of Nuclear Station (facility 2000MW) on the territory of Belorus”;
- **Belorus Project** “Chalk deposit “Khotyslavske” (Phase II) in Maloryt District of Brest Region”;
- **Slovak Project** “Construction of Nuclear Stations on the territory of Slovak Republic”.





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**ECONOMIC COMMISSION FOR EUROPE**

MEETING OF THE PARTIES TO THE CONVENTION  
ON ENVIRONMENTAL IMPACT ASSESSMENT  
IN A TRANSBOUNDARY CONTEXT

Implementation Committee

**REPORT OF THE IMPLEMENTATION COMMITTEE ON ITS FIFTEENTH  
SESSION, HELD FROM 28 TO 30 OCTOBER 2008 IN GENEVA**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
INTRODUCTION .....	1–3	2
I. ADOPTION OF THE AGENDA .....	4	2
II. MEMBERSHIP OF THE IMPLEMENTATION COMMITTEE.....	5–7	2
III. REVIEW OF DECISIONS BY THE MEETING OF THE PARTIES	8	3
IV. SECOND REVIEW OF IMPLEMENTATION .....	9–18	3
V. SUBMISSIONS .....	19–35	5
A. New submissions .....	20–21	5
B. Follow-up to decision IV/2 regarding Ukraine (paras. 7–14)...	22–35	5

VI.	COMMITTEE INITIATIVE .....	36–43	8
	A. Follow-up to decision IV/2 regarding Armenia (paras. 15–17)	37	8
	B. Information provided to the Committee.....	38–43	8
VII.	REVISED QUESTIONNAIRE .....	44–45	9
VIII.	STRUCTURE AND FUNCTIONS AND OPERATING RULES .....	46	9
IX.	OTHER BUSINESS .....	47–51	9
X.	PRESENTATION OF THE MAIN DECISIONS TAKEN AND CLOSING OF THE MEETING .....	52–53	10

## INTRODUCTION

1. The fifteenth session of the Implementation Committee took place in Geneva from 28 to 30 October 2008.

2. The following members of the Implementation Committee attended the session: Ms. Tatyana Javanshir, replacing Mr. Gahraman Khalilov (Azerbaijan); Ms. Nina Stoyanova (Bulgaria); Mr. Nenad Mikulic (Croatia); Mr. Matthias Sauer (Germany); Ms. Rakia Kalygulova, replacing Mr. Kubanychbek Noruzbaev (Kyrgyzstan); Mr. Jerzy Jendroska (Poland); Ms. Diana Olaru (Republic of Moldova); and Ms. Vesna Kolar-Planinsic (Slovenia).

3. Delegations from Romania, Turkey and Ukraine were present as observers during those parts of the session that were open to observers (see para. 6 below).

### I. ADOPTION OF THE AGENDA

4. The secretariat opened the meeting and welcomed the members of the Committee. The Committee adopted the agenda as set out in ECE/MP.EIA/IC/2008/1.

### II. MEMBERSHIP OF THE IMPLEMENTATION COMMITTEE

5. The members of the Committee introduced themselves. **The Committee then elected Mr. Sauer as Chair, and both Ms. Kolar-Planinsic and Ms. Olaru as Vice-Chairs**, while recalling paragraph 1 (a) of the appendix to decision III/2 (ECE/MP.EIA/6, annex II).

6. The Committee agreed that observers might not be present during the Committee's deliberations under agenda items 4, 5 and 6 (as reported in chapters IV, V and VI below, respectively), but that there should be a presumption that the Committee's sessions generally be open to observers, in accordance with rule 17, paragraph 1, of the Committee's operating rules (ECE/MP.EIA/10, decision IV/2, annex IV). The Committee invited the observers to join the session and informed them of its conclusions.

7. The Chair introduced the new members of the Committee (those nominated by Azerbaijan, Bulgaria, Republic of Moldova and Slovenia) to the key documents used by the Committee, including:

- (a) The text of the Convention;
- (b) The Meeting of the Parties' decision III/2 on review of compliance, including its appendix on the structure and functions of the Implementation Committee and procedures for review of compliance (ECE/MP.EIA/6, annex II);
- (c) The Meeting of the Parties' decision IV/2 on review of compliance, including its annex IV on the operating rules of the Implementation Committee (ECE/MP.EIA/10);
- (d) The second review of implementation, as set out in the annex to decision IV/1 (ECE/MP.EIA/10).

### III. REVIEW OF DECISIONS BY THE MEETING OF THE PARTIES

8. On the basis of an informal document prepared by the secretariat, the Committee reviewed decisions taken by the fourth meeting of the Parties, particularly on the review of implementation (decision IV/1), the review of compliance (decision IV/2), the adoption of the workplan (decision IV/7) and the budget and financial arrangements (decision IV/8), as included in the report of the fourth meeting (ECE/MP.EIA/10).

### IV. SECOND REVIEW OF IMPLEMENTATION

9. The secretariat presented an informal document highlighting general and specific compliance issues identified in the second review of implementation (decision IV/1, annex), and in the completed questionnaires on which it was based. The Committee took this document into account in its work (decision IV/1, para. 4).

10. The Committee agreed that the findings of the second review (listed in decision IV/1, para. 3) should also be taken into account in its work and reflected in the revised questionnaire. The revised questionnaire would ask what Parties were doing to address these issues, or to explain why no action was envisaged. The Committee noted that the Working Group on Environmental Impact Assessment (EIA), when reviewing the revised draft questionnaire, would therefore become aware that the Committee was following up on these findings. **The Committee also agreed to ask the Bureau to include in the agenda for the next meeting of the Working Group an item requesting delegations to report on their follow-up to the findings of the second review.**

11. The Committee agreed that each member would examine a part of the second review to identify additional possible general compliance issues, as set out in the table.

Subject	References (section of review, within part II, annex to decision IV/1: question numbers)	Reviewer
General provisions (article 2), including public participation	A: Q1–6 B: Q12 C: Q25, Q27 N: Q53 (clarity of the Convention) K: Q50(e) (experiences)	Mr. Jendroska
Notification (article 3)	B: Q7–11, 13–16 K: Q50(a)	Mr. Mikulic
Preparation of the EIA documentation (article 4)	C: Q17–24, 26 K: Q50(b)–(d)	Ms. Javanshir and Ms. Kalygulova
Consultation (article 5)	D: Q28–30 K: Q50(f)	Ms. Stoyanova
Final decision (article 6)	E: Q31–35 K: Q50(g)	Mr. Sauer
Post-project analysis (article 7), Bilateral agreements (article 8), Research programmes (article 9)	F: Q36–37 G: Q38–39 H: Q40 K: Q50(h)–(i)	Ms. Olaru
Cases	J: Q44–47 K: Q48–49, Q50(j)	Ms. Kolar- Planinsic

12. Mr. Sauer and Ms. Stoyanova agreed to present the findings of their respective reviews at the Committee's next session.

13. The Committee recalled that Albania was the only Party not to have returned a completed questionnaire on its implementation of the Convention in the period 2003–2005. **The Committee requested the Chair to write on its behalf to Albania to inquire into its implementation of the Convention.**

14. The Committee noted that Greece and Slovenia had not notified any Party under the Convention in the period 2003–2005, and that Austria and Hungary had notified only once, despite each of these Parties having a relevant level of economic activity (reflected in gross domestic product), a relevant population density and land borders with other Parties. The Committee also noted that the Walloon region of Belgium had no experience in application of the Convention in the period reviewed. **The Committee agreed that it might wish to come back to this matter at a later date and requested the secretariat, in the meantime, to contact the focal points in these Parties on behalf of the Committee to seek clarification of why these Parties had no, or little, experience as Party of origin in the reviewed period.**

15. The Committee noted that the response of Hungary to the questionnaire could indicate that its legislation does not require the identification of "reasonable alternatives". **The Committee requested the Chair to write on its behalf to Hungary to seek clarification of how Hungary identified reasonable alternatives in accordance with appendix II, paragraph (b).**

16. The Committee noted that the response of Latvia to the questionnaire could indicate that its list of activities subject to the transboundary EIA procedure was not equivalent to that in appendix I to the Convention. **The Committee requested the Chair to write on its behalf to Latvia to seek clarification of whether all activities listed in appendix I were also identified as subject to transboundary EIA in the legislation of Latvia.**

17. The Committee noted that the response of Liechtenstein to the questionnaire could indicate that its EIA procedure, whether or not transboundary, did not influence the decision-making process for a proposed activity. **The Committee requested the Chair to write on its behalf to Liechtenstein to seek clarification of whether the EIA procedure, whether or not transboundary, influenced the decision-making process for a proposed activity (art. 6, para. 1).**

18. The Committee noted that the response of Azerbaijan to the questionnaire could indicate that there was no national legislation on the application of the Convention. The member nominated by Azerbaijan (Ms. Javanshir) left the room in accordance with rule 17 of the Committee's operating rules. The Committee recalled that it had considered the provision in the Constitution to directly apply international agreements as being insufficient for proper implementation of the Convention without more detailed provisions in the legislation (decision IV/2, annex I, para. 64). **The Committee therefore requested the Chair to write on its behalf to the Minister of Environment of Azerbaijan, copied to the focal point and the Permanent Mission in Geneva, to seek clarification of how Azerbaijan implements the Convention.**

## V. SUBMISSIONS

19. This agenda item was not open to observers according to rule 17, paragraph 1, of the Committee's operating rules.

### A. New submissions

20. The Committee reviewed a letter from the Minister of the Environment of Slovenia to the European Commission, and copied to the secretariat, regarding planned activities in Italy for which Croatia considers itself a potentially affected Party. The Committee noted that the letter included a request that the Committee react to the matter addressed in the letter. Ms. Kolar-Planinsic agreed that she, as focal point for Slovenia, would make a submission directly to the secretariat to this effect. The Committee asked the secretariat to reply to the letter from the Minister once the submission addressed to the secretariat had been received.

21. The secretariat informed the Committee that there had not been any other submissions by Parties since the fourth meeting of the Parties.

### B. Follow-up to decision IV/2 regarding Ukraine (paras. 7–14)

22. The Committee considered under this agenda item the question of whether to issue a caution to Ukraine (decision IV/2, para. 10), further to the January 2007 submission to the

Committee by Romania regarding the project for the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta (the so-called Bystroe Canal Project, hereinafter “the Project”).

23. The Committee considered the following documentation provided by the Government of Ukraine further to paragraph 9 of decision IV/2:

- (a) A report submitted by the Government of Ukraine and dated 6 October 2008;
- (b) A report submitted by the Government of Romania and dated 24 October 2008;
- (c) Information provided by both Parties on a bilateral meeting between the Governments of Romania and Ukraine held from 15 to 16 October 2008;
- (d) Information provided by the Government of Romania regarding a notification by the Government of Ukraine of dredging under Phase I of Project, dated 25 July 2008.

24. The Committee invited the delegations of Romania and Ukraine to make brief presentations and to reply to questions.

25. The delegation of Ukraine confirmed that construction and maintenance works were continuing under Phase I and that the ongoing procedure under the Convention did not address Phase I. The delegation of Ukraine also indicated that the EIA documentation for Phase II would be based on the version of the EIA documentation issued in 2007, would address the significant adverse transboundary impacts identified by the Inquiry Commission and would include a chapter on transboundary impacts.

26. The delegations of Romania and Ukraine agreed that their reports to the Committee be made available on the website of the Convention.

27. The Committee then considered whether the Government of Ukraine had fulfilled the conditions set out in paragraph 10 of decision IV/2, i.e. whether it had:

- (a) Stopped the works;
- (b) Repealed the final decision;
- (c) Taken steps to comply with the relevant provisions of the Convention.

28. The Committee considered that the first condition related to all works, but recognized that this condition was ambiguously expressed in decision IV/2 and that Ukraine could have interpreted it to mean that it related only to works in Phase II of the Project. **The Committee agreed that this first condition had been fulfilled for Phase II, but it was concerned that the Government of Ukraine had not taken steps to apply the Convention to continuing works for Phase I.** In this respect, **the Committee agreed to remind the Government of Ukraine of the findings in paragraph 69 (b) and (c) of the Committee’s findings and recommendations**

**further to a submission by Romania regarding Ukraine (decision IV/2, annex I), as endorsed by the Meeting of the Parties.** These findings require, as a minimum, that no further works, including operation and maintenance works, should be undertaken for Phase I without taking steps to comply with the relevant provisions of the Convention.

29. The Committee considered that the second condition related to the final decision of 28 December 2007 on Phase II of the Project. **The Committee agreed that this second condition had been fulfilled** by the Government of Ukraine in its repeal of the final decision on 11 June 2008.

30. The Committee considered that the third condition related to the application of the Convention to both Phases I and II of the Project, and, more broadly, to implementation of the Convention by Ukraine. The Committee accepted that report by Ukraine to the Committee demonstrated that the Government of Ukraine had taken steps to:

- (a) Apply the Convention to Phase II, through its notification of Romania and its meetings with Romania;
- (b) Improve the implementation of the Convention more broadly, including through the establishment under the Vice Prime Minister of Ukraine of an inter-ministerial council on the implementation of the Convention.

31. **The Committee welcomed the steps taken by the Government of Ukraine and agreed that the third condition had been broadly satisfied. However, the Committee agreed to request the Government of Ukraine to ensure that:**

- (a) **The steps taken to comply with the relevant provisions of the Convention cover also any further works related to Phase I of the Project, including operation and maintenance works;**
- (b) **The EIA documentation currently under preparation for the Project addresses, inter alia: (i) possible alternatives to the whole Project discussed with the affected Party, including the no-action alternative; (ii) the combined impact of the two phases of the Project; and (iii) the mitigation measures to minimize this combined impact.**

32. **The Committee consequently decided to request the Government of Ukraine to report in writing to the Committee on steps taken to apply the relevant provisions of the Convention to:**

- (a) **Any further works related to Phase I of the Project, including operation and maintenance works;**
- (b) **Phase II of the Project.**

33. A first report on these steps should be submitted to the Committee by 28 February 2009, for the Committee's consideration at its next session in March 2009, and a second report by 31 August 2009, for the Committee's consideration at its seventeenth session in September 2009.

34. **The Committee decided that, in the light of the above, the caution should not become effective.** The Committee approved the draft of a letter by the Executive Secretary of the United Nations Economic Commission for Europe to the Vice-Prime Minister of Ukraine, presenting the Committee's deliberations as set out above.

35. The Committee also discussed the nomination and financing of a consultant to undertake an independent review of legal, administrative and other measures of Ukraine to implement the provisions of the Convention for consideration by the Committee in the first half of 2009 (decision IV/2, para. 11). **The Committee selected a shortlist of candidates for the consultant and asked the secretariat to make the necessary arrangements for the independent review to be carried out.**

## VI. COMMITTEE INITIATIVE

36. This agenda item was not open to observers according to rule 17 of the Committee's operating rules.

### A. Follow-up to decision IV/2 regarding Armenia (paras. 15–17)

37. The Committee discussed the nomination and financing of a consultant to undertake technical assistance in drafting the necessary legislation to support Armenia in ensuring its full implementation of the Convention (further to decision IV/2, para. 17, and the Committee's initiative on Armenia). **The Committee nominated the same consultant who had provided a review of Armenian legislation for the Committee in 2007.** That review had formed the basis for the Committee's findings and recommendations further to a Committee initiative on Armenia (ECE/MP.EIA/10, decision IV/2, annex II). **The Committee asked the secretariat to make the necessary arrangements for the technical assistance.**

### B. Information provided to the Committee

38. The Committee may examine any other compliance matter of which it may become aware, including further to the second review of implementation (part IV above), in accordance with rule 15 of the Committee's operating rules.

39. **The Committee agreed that a form for such information, developed by the secretariat, be used, with minor modifications, by sources of information in the future.** Sources of information should be encouraged to attach supporting information.

40. **The Committee agreed that it would make reference to sources of information when contacting Parties to request additional information.**



41. The Committee reviewed information provided by the Government of Ukraine, several Ukrainian non-governmental organizations (NGOs) and the secretariat regarding ongoing and planned activities in Romania. **The Committee asked the Chair to write on its behalf to Romania to request clarification as to whether, how and when the Convention would be applied to those activities within the National Territory Master Plan of Romania, adopted in 2006, relating to navigation on the Danube River.**

42. The Committee agreed that the secretariat reply to the Ukrainian NGOs indicating the actions taken.

43. The Committee agreed to consider the other information provided by the secretariat at its next session.

## VII. REVISED QUESTIONNAIRE

44. The Committee deliberated modification of the questionnaire on the implementation of the Convention in the period 2003–2005. The Committee was expected to provide a revised questionnaire, for the period 2006–2009, for consideration by the Working Group on Environmental Impact Assessment (decision IV/1, para. 5). The Committee considered a draft detailed timetable for the submission of completed revised questionnaires, and for the generation of the subsequent review of implementation, to be put before the Working Group (decision IV/2, appendix III, para. 53).

45. **The Committee agreed that Ms. Kolar-Planinsic and Mr. Mikulic would compile a draft revised questionnaire by 15 January 2009, on the basis of suggestions received from other members, and from the secretariat, by 10 December 2008.** The revised questionnaire would include a question on the application by the Parties of article 3, paragraph 8, and article 4, paragraph 2, of the Convention (decision IV/1, para. 6), and reflect the findings of the second review (see para. 10 above). The Committee requested that the secretariat provide an informal Russian translation of revisions, if possible, and agreed to consider at its next session both the draft revised questionnaire and the detailed timetable.

## VIII. STRUCTURE AND FUNCTIONS AND OPERATING RULES

46. The Committee noted that it was expected to keep under review and, if necessary, develop its structure and functions as well as its operating rules, in the light of the experience it has gained (ECE/MP.EIA/10, decision IV/2, para. 6). In particular, rule 17 of the operating rules might be addressed.

## IX. OTHER BUSINESS

47. **The Committee requested the secretariat to prepare, for its next session, a first draft of a leaflet or booklet introducing briefly the Committee and its role, and presenting the possibility for bodies and individuals to provide information to the Committee,** further to rule 15, paragraph 1(b), of the Committee's operating rules. The leaflet would be written

particularly for local authorities and NGOs, and would be available electronically on the Convention's website.

48. **The Committee suggested that the secretariat provide information on this Convention's compliance mechanism within a training course on the use by NGOs of the compliance mechanism under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.** The course was to be held from 16 to 19 December 2008 in Geneva.

49. Mr. Mikulic and Ms. Stoyanova noted difficulties arising from the interaction between the application of the Convention and of the European Union Birds and Habitats Directives<sup>1</sup>. The Committee suggested that this issue might be raised at the next meeting of the Working Group on Environmental Impact Assessment.

50. The delegation of Romania made a statement regarding the application of the Convention to the Bystroe Canal Project.

51. The Chair invited the observers to comment on their presence in the session. The delegation of Romania asked that it be made clearer in the provisional agenda during which items observers might be present. The delegation of Ukraine asked that the Committee might consider whether observers might participate actively in substantive discussions.

## **X. PRESENTATION OF THE MAIN DECISIONS TAKEN AND CLOSING OF THE MEETING**

52. **The Committee decided to meet next from 10 to 12 March 2009 in Berlin.**

53. **The Committee adopted the draft report of its session prepared by the Chair and the secretariat.** The Chair then closed the meeting.

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<sup>1</sup> Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

## Decision IV/2 on the review of compliance

*The Meeting of the Parties,*

*Recalling* Article 11, paragraph 2, of the Convention and decision III/2 on the review of compliance,

*Recalling* Article 14 bis of the second amendment to the Convention,

*Determined* to promote and improve compliance with the Convention,

*Having considered* the analysis made by the Implementation Committee on general compliance issues in the Review of Implementation 2003, as summarized in the appendix to decision III/1,

*Having also considered* the findings and recommendations of the Implementation Committee on a submission made to the Committee in accordance with paragraph 5 (a) in the appendix to decision III/2 (ECE/MP.EIA/6, annex II), **and also having noted the letter of 19 May, 2008 from the Deputy Prime Minister of Ukraine to the Executive Secretary of the UN ECE, and the announcement by the Ukrainian Delegation made during the Fourth Meeting of the Parties,**

*Having further considered* the findings and recommendations of the Implementation Committee further to its initiative in accordance with paragraph 6 in the appendix to decision III/2 (ECE/MP.EIA/6, annex II),

*Having reviewed* the structure and functions of the Implementation Committee, as described in the appendix to decision III/2 bearing in mind the possible involvement of the public, and being aware of the consequences for the composition of the Implementation Committee resulting from the entry into force of the Protocol on Strategic Environmental Assessment,

*Recognizing* the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the second review of the implementation of the Convention in the annex to decision IV/1 based on Parties' answers to the revised and simplified questionnaire on the implementation of the Convention,

*Recalling* that the compliance procedure is assistance-oriented and that Parties may make submissions to the Committee on issues regarding their compliance with the Convention,

### **I. General part**

1. *Adopts* the Implementation Committee's report on its activities (ECE/MP.EIA/2008/5), welcomes the reports of the meetings of the Committee in the period after the third meeting of the Parties, and requests the Committee:

(a) To keep the implementation and application of the Convention under review,

(b) To promote and support compliance with the Convention, including to provide assistance in this respect, as necessary;

2. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

3. *Requests* the Implementation Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to decision IV/6 on the workplan;

4. *Urges* Parties to take into account in their further work the recommendations for further improving the implementation of and compliance with the Convention, based on but not limited to the analysis on general compliance issues from the Review of Implementation 2003 as requested by the Meeting in its decision III/1, and as presented in section V of the Implementation Committee's report on its activities;

5. *Adopts* the operating rules of the Implementation Committee set out in the annex to this decision including sources and criteria for dealing with information other than submissions from Parties, which should be applied to any meeting and to any other conduct of business of the Committee and should be read together with and in furtherance of the structure, functions and procedures described in the appendix to decision III/2;

6. *Decides* to keep under review and develop if necessary the structure and functions of the Committee as well as the operating rules at the fifth meeting of the Parties in the light of experience gained by the Committee in the interim, and in this context requests the Implementation Committee to prepare any necessary proposals for the fifth meeting of the Parties;

## **II. Regarding Ukraine**

7. *Endorses* the findings of the Implementation Committee that Ukraine has been in non-compliance with its obligations under the Convention, in particular Articles 2, 3, 4, 5 and 6;

8. *Decides* to issue a declaration of non-compliance to the Government of Ukraine.

9. *Takes note* of the commitment of the delegation of the Government of Ukraine made during the Fourth Meeting of the Parties, to reconsider the final decision of 28 December 2007, and **urges the Government of Ukraine to repeal without delay the final decision concerning the implementation of the project for the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta, and not to implement Phase II of the project before applying fully the provisions of the Convention to the project**, taking into account the findings of the Implementation Committee, and to report to the Implementation Committee at its fifteenth meeting (October 2008) and subsequent meetings if necessary;

10. *Decides* to issue a caution to the Government of Ukraine to become effective on 30<sup>th</sup> October 2008 unless the Government of Ukraine **stops the works, repeals the final decision and takes steps to comply with the relevant provisions of the Convention** ;

11. *Requests* the Government of Ukraine **to ensure that its legislation and administrative measures** are able to implement fully the provisions of the Convention, and agrees to support the Government of Ukraine in the undertaking of an independent review of its

legal, administrative and other measures to implement the provisions of the Convention for consideration by the Implementation Committee in the first half of 2009. This independent review shall be undertaken by a consultant to be nominated by the Committee and financed from the budget of the Convention;

12. *Also requests* the Government of Ukraine to submit to the Implementation Committee by the end of 2009 a strategy, taking into account the efforts by the Government of Ukraine to implement the provisions of the Convention and based on the outcome of the **independent review**, including its time schedule and training and other actions to bring about compliance with the Convention, and thereafter report to the Committee on the implementation of the strategy;

13. *Further requests* the Implementation Committee to report to the fifth meeting of the Parties on the strategy and its implementation and to develop if appropriate further recommendations to assist Ukraine in complying with its obligations under the Convention;

14. *Invites* the Government of Ukraine **to enter into negotiations with its neighbouring Parties to cooperate in the elaboration of bilateral agreements or other arrangements** in order to support further the provisions of the Convention, as set out in Article 8, and **to seek advice from the secretariat**. The Government of Ukraine is invited to report on progress with the elaboration of such agreements, particularly with Romania, to the Implementation Committee by the end of 2010 and to the fifth meeting of the Parties.

**EXTRACT**

**PROTOCOL # 6  
of the Meeting of the Intergovernmental Coordination Council  
on the implementation of Espoo Convention by Ukraine**

(Resolution of Cabinet of Ministers of Ukraine  
#39439/0/1-09 dated 14<sup>th</sup> July, 2009)

**Kyiv**

**10<sup>th</sup> July, 2009**

The Meeting was chaired by Deputy Prime Minister of Ukraine Mr. Hryhoriy Nemyria, the Head of Intergovernmental Coordination Council on the implementation of Espoo Convention by Ukraine

Present: members of the Coordination Council and invitees

**1. “On the results of implementation of Protocol # 5 of the Meeting of the Intergovernmental Coordination Council on the implementation of Espoo Convention by Ukraine dated 20<sup>th</sup> February, 2009**

**To the Ministry of Environment and Ministry of Foreign Affairs:**

To take into consideration the information presented by Mrs. Iryna Makarenko, the Deputy Head of the Office to Deputy Prime Minister of Ukraine Mr. Hryhoriy Nemyria and to agree in general with findings and propositions on questions raised.

**2. On steps taken by the Ukrainian Party to further resolve issues related to the Renovation of the Deep Water Navigation Route “Danube – Black Sea”.**

**To the Ministry of Transport, Ministry of Environment and Ministry of Foreign Affairs:**

to consider the necessity of carrying out of the Public Debates regarding the Project of Renovation of the Deep Water Navigation Route “Danube – Black Sea”.

**To the Ministry of Environment, Ministry of Transport and Ministry of Foreign Affairs:**

to organize the Consultations under Article 5 of the Convention with the Romanian Party on 15-16<sup>th</sup> July, 2009.

**To the Ministry of Environment, Ministry of Transport and with participation of experts of Scientific-Research Institutes:**

to develop the text of the Final Decision on the Project of Renovation of the Deep Water Navigation Route “Danube – Black Sea” based on the provisions of the Convention.

**To the Ministry of Foreign Affairs:**

to address to the Romanian Party to provide the Comments of the Romanian public on the Project of Renovation of the Deep Water Navigation Route “Danube – Black Sea”, inter alia, the verbatim, audio and video records of the Public Debates on the Project of Renovation of the Deep Water Navigation Route “Danube – Black Sea” held in Tulcea, Romania on 9<sup>th</sup> July, 2009.

**To the Ministry of Foreign Affairs, Ministry of Environment and other line-ministries concerned:**

to take additional steps to launch with the Romanian Party the Complex Ukraine-Romania Environmental Monitoring of the whole Danube delta, taking into consideration the experience of other countries in joint monitoring and possible financial support from the EC and other organizations.

**Deputy Prime Minister of Ukraine**

**Hryhoriy NEMYRIA**



UNITED NATIONS  
ECONOMIC COMMISSION FOR EUROPE

The Executive Secretary

*Under-Secretary-General*

Ref.: ECE/EHLM/ *244*/2009/L

3 June 2009

Sir,

In reply to your letter of 20 May I would like to take this opportunity to commend you personally and, through you, the relevant authorities for the setting up of the Intergovernmental Council in your country to implement the provisions of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). However, I also would like to inform you that we are concerned with recent press releases from your country which seem to indicate that works on the Bystroe Canal have been finalized so that traffic can start using the canal.

I am pleased to inform you that we accept your invitation for Mr. Wiek Schrage, Secretary of the Espoo Convention, to come to Kiev together with experts from selected countries. Unfortunately, for practical reasons it is not possible for him to come in June of this year. Therefore, I propose 7 and 8 September 2009 for the visit.

I suggest that Mr. Schrage will contact soon your assistant to make the necessary practical arrangements for the visit.

I reiterate our commitment to support your Government in fully implementing the Espoo Convention.

Please accept, Sir, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read 'J. Kubiš'.

Ján Kubiš

H.E. Mr. Hryhoriy NEMYRYA  
Deputy Prime Minister of Ukraine  
The Head of Intergovernmental Council  
on the Implementation of the Espoo Convention  
Kiev, Ukraine



**Draft Programme of the visit  
of the Executive Secretary to Espoo Convention  
Mr Wiek Schrage and national experts  
(Kiev, 7-8<sup>th</sup> September 2009)**

<b><i>The 6<sup>th</sup> of September, Sunday</i></b>	
Flight _____ _____ - Arrival	Arrival of the delegation to the International Airport "Boryspil"
	Transportation from the International Airport "Boryspil" to the hotel "Kozatskiy" (Address: 1/3 Mihaylivska Street, Kiev)
	Arrival to the hotel "Kozatskiy"
<b><i>The 7<sup>th</sup> of September, Monday</i></b>	
09.00-9.30	Transportation from the hotel "Kozatskiy" to the Ministry of Environmental Protection of Ukraine (35, Urytskogo str.)
9.30-9.45	Meeting with the representatives of the Ministry of Environmental Protection, Ministry of Foreign Affairs, Ministry of Transport and Communication, Ministry of Fuel and Energy, Ministry of Justice, Ministry of Regional Development and Building, scientific organizations and Office to Deputy Prime Minister of Ukraine  Opening remarks. Introduction
9.45 -10.15	General presentation of the Convention, Mr. Wiek Schrage
10.15 – 10.45	Presentation by Ms. Seija Rantakallio (Finland)
10.45-11.15	Discussion
11.15-11.30	Coffee break
11.30-12.00	Presentation by Ms. Marianne Richter (Germany)
12.00 – 12.30	Discussion
12.00-12.30	Presentation by Mr. Piotr Poborski(Poland)
12.30 – 13.00	Discussion
13.00-14.00	Lunch
14.00-14.30	Presentation on the EIA system in Ukraine
14.30-15.00	Discussion
15.00-15.30	Presentation on the EIA system in Ukraine
15.30-16.00	Discussion
16.00-16.30	Conclusions
16.30-17.00	Transportation from the Ministry of Environmental Protection of Ukraine to the hotel "Kozatskiy "
<b><i>The 8<sup>th</sup> of September, Tuesday</i></b>	
	Transportation from the hotel " Kozatskiy" to the Cabinet of Ministries of Ukraine
	Meeting with Mr Nemyria – the Deputy Prime Minister of Ukraine/Head of Intergovernmental Council on the implementation of Espoo Convention in Ukraine
	Participation in the Meeting of Intergovernmental Council on the implementation of Espoo Convention in Ukraine
	Transportation to the hotel "Kozatskiy"
<b><i>The 9<sup>th</sup> of September, Wednesday</i></b>	
Flight _____ _____ - Departure	Departure form the hotel " _____" to the International Airport "Boryspil"

June 9<sup>in</sup>, 2009

## *Minutes*

of the Public Debate

on the project "Renovation of the deep water navigation route Danube - Black Sea in the Ukrainian part of the Danube Delta"

time:15.00- 19.00

place: TULCEA

The public debate in respect of the project "Renovation of the deep water navigation route Danube-Black Sea in the Ukrainian part of the Danube Delta" was organized by the Romanian Ministry of Environment together with the Administration of the Danube Delta Biosphere Reserve.

Moderator of the meeting was Mr. Nicolae Chichi, vice-president of the Tulcea County Council, who acted on behalf of neither of the parties, but played an impartial role, aimed at ensuring a fair public debate.

In accordance with the legal provisions regarding public debates on projects with a likely transboundary effect, representatives of the Ministry of Environment, Ministry of Foreign Affairs, as well as of local environmental protection agencies and other environmental organizations from Romania and Ukraine participated at the meeting.

48 persons from Romania participated: representatives of central and local public authorities, research institutions, nongovernmental organizations, mass media and local communities.

9 persons from Ukraine participated: authors of the environmental impact assessment study, the project designer, as well as representatives of the environmental authorities and other authorities which presented the works before the public.

Romania was represented by:

Mr. Vasile Gudu - Prefect of the Tulcea County;

- Ms. Daniela Pineta, focal point of the Espoo Convention, Mr. Constantin Pulbere, legal adviser, Ms. Carla Busuioc, counsellor within the Organization and Communication Directorate - Ministry of Environment;
- Ms. Veronica Anghel, third secretary, Mr. Ovidiu Naftanaila, third secretary - Ministry of Foreign Affairs;

Mr. Grigore Baboianu, Governor, Ms. Cornelia Bene, head of the Regulation, Authorization and Development Service, Mr. Neculai Bahaciu, head of the Environmental Guard Service - Administration of the Danube Delta Biosphere Reserve.

The delegation of **Ukraine** which participated to the debate consisted of:

- Mr. Viktor Morozov - Director of the Danube Hydrometeorology Observatory
- Mr. Olexandr Vasenjo - Deputy Director of the Institute of Scientific Research on Environmental Issues of Ukraine;

- Ms. Lyudmila Anishchenko - Director of the Laboratory on Environmental Impact Assessment of the Institute for Scientific Research on Environmental Issues of Ukraine;
- Mr. Igor Shevchenko - Deputy Head of the Technical Service operating channels of the State Company "Delta-lotman";
- Mr. Mykola Berlinskiy - Deputy Director of Ukrainian Scientific Center for the Ecology of the Sea;
- Mr. Borys Patrash - Deputy Head of the Economic and Trade Mission within the Ukrainian Embassy in Romania;
- Mr. Ivan Shnaider - Second Secretary within the Ukrainian Embassy in Romania;
- Mr. Vasyl Sihnenko - Ukrainian Institute Transproiect Kiev;
- Mr. Volodemir Buchko - representative of the Ministry of Environment of Ukraine, Espoo Convention.

Translation was provided by Mr. Victor Hrihorciuc and by Mr. Ananie ivanov. The Secretariat of the meeting was ensured by the staff of the Administration of the Danube Delta Biosphere Reserve, entrusted with the task of drawing up the minutes, the list of participants and the list of persons who took the floor.

After opening the meeting and introducing the delegates, the moderator introduces the agenda:

- Project description and assessments made by Ukraine;
- Break - so that the public may register on the list of speakers, held by the Secretariat of the debate;
- In the order of registration, each speaker shall take the floor;
- The Ukrainian delegation shall answer each question;
- Recording of the the discussions in the minutes of the debate, drawn-up in one copy by the Romanian party, containing the main debated issues. The Ministry of Environment of Romania shall transmit the minutes to the Ukrainian side after having translated it into English.

### **1. Presentation of the procedure**

The representative of the Ministry of Environment of Romania, **Ms. Daniela Pineta**, makes a presentation of the procedural stages of the project, in accordance with the provisions of the Espoo Convention.

In September 2008, Ukraine notifies Romania on the phase II of the project for the waterway construction, in accordance with the provisions of Article 3, paragraphs 1 and 2 of the Espoo Convention. Ukraine thus resumes the dialogue in respect of this issue with the Romanian party. Romania replies to this notification in October 2008, indicating its intention to participate in the EIA procedure and providing information on the geographical and biodiversity characteristics of the area, in accordance with Article 3, paragraphs 3 and 6 of the Convention.

In accordance with paragraph 8 of Article 3 of the Convention, the Romanian Party provided the public with information in this respect, inviting it, as well as the competent

authorities, to make comments and objections. In November 2008, Romania sends to Ukraine, through the Ministry of Foreign Affairs, the comments on the received notification, made by the public and by the environmental authorities. In January 2009, Ukraine transmits to Romania the study "Assessment of the likely transboundary environmental impacts of the Danube - Black Sea navigation route in the Ukrainian part of the Danube Delta."

This study is an annex to the environmental impact assessment Report, as part of the detailed design documentation drafted for the large scale development phase of the navigation project, in accordance with the provisions of paragraph 1 of Article 4 of the Convention. In order to comply with the provisions of paragraph 2 of Article 4, the Romanian Ministry of Environment decided:

- to display the entire study, as it was received, on its own web page;
- to translate Chapter 8 (Summary and Findings) into Romanian and display it on its own web page;
- to inform the Romanian public through press releases and webpage announcements, establishing, in this respect, deadlines for comments and observations.

The Administration of the Danube Delta Biosphere Reserve undertook similar actions to provide the public with information, at a local level.

The current public debate has been organized in accordance with the provisions of Article 4, paragraph 2 of the Convention, providing the public of the affected party with the possibility to express its views in this respect. As a next step, we expect the party of origin of the project to request consultations with the Romanian authorities in the near future, in accordance with the provisions of article 5 of the Convention.

The response of the party of origin should be transmitted in writing, so that the Romanian Party could set a final point of view.

In accordance with Article 6 of the Convention, Ukraine should transmit to Romania the final decision regarding the project.

The moderator then gives the floor to the Ukrainian party in order for it to make a presentation of the study.

**The representative of the Ukrainian Ministry of Environment** in charge with the Espoo Convention, appreciated the presentation of the procedure, followed in accordance with the Espoo Convention, but underlined that, under Article 6, all comments, made as required by Article 5, are to find an answer in the final decision. Therefore, the Ukrainian party could not provide written answers to the Romanian public. The final decision will reflect the answers according to the Espoo Convention.

**Ms. Daniela Pineta:**

The comments should be reflected in the final decision in terms of the measures provided. Nevertheless, it does not mean that the Ukrainian party should not answer in writing, too,

to the questions put forward during this debate. Romania's experience, as affected country, should be taken into account in applying the Convention.

**The representative of the Ministry of Environment of Ukraine:**

Should the Ukrainian Party provide the final decision, concordant with the requirements of the Convention, we do not see any reason why we should answer two times.

**Ms. Daniela Pineta:**

The final decision does not answer all the questions put forward by the public and by the authorities.

**The representative of the Ministry of Environment of Ukraine:**

Some answers are to be provided right away and recorded by the Minutes. The Romanian party shall communicate in writing the rest of the questions, to which the Ukrainian Party is to answer in writing. For further questions sent in writing to the Ukrainian Party, the latter is to answer in writing, as well.

## 2. Presentation of the project

**The designer of the Ukrainian project:**

This issue might need a longer time to analyse. The written material was provided for the purposes of this meeting, and it presents a point of view on the further development of the project. A number of questions have already been answered by this material.

The restoration of the Danube-Black Sea deep water canal was initiated in 1958, so this is not a new construction, but a rebuilding of the deep water canal - as it may be revealed by the navigation maps of the Danube up to the Rhine area. The design documentation, which is also technically supported, as well as the project data for the construction of the Danube-Black Sea deep water navigation canal, were drafted in concordance with one another, taking into account the decisions taken under environmental, economical and technical aspects. Mathematical and physical models were developed during the design phase, which gave the possibility to forecast the parameters of the impact caused by subsequent influences.

The support parameters of the canal have been done and the location of the deposit for the dredged soil during the construction phase has been determined.

The dynamics and the technical feasibility parameters of the project are:

- Bar area into the sea, 3.4 kilometers long, 100 m wide, 8.2 m deep;
- Bystroe canal mouth, 8.3 km long, 60 m wide and 8.4 m deep;
- Bystroe-Vilcovo mouth, 10 km long, 120 m wide, 8.4 m deep;
- Vilcovo - Ceatal Izmail area, 95.4 km long, 120 m wide, 8.4 m deep;
- Between Km 117 and Km 164, on a length of 10 km, and a width of 120 m, from Ceatal Izmail to Reni, being also used by Romania, on a total length of 172.4 kilometers;

The hydrometeorology observatory carried out the hydrological classification of the project: the conclusion was that it belonged to class 7, according to the European classifications. The depth of the water ensures the movement of medium tonnage ships. Since the beginning of the works, a complex monitoring has been undertaken in phase I, comprising: hydrochemistry, hydrology, ichthyology and tracking the impact of pollutants. Complex monitoring actions have also been taken.

The banks consolidation has also been included in the project, as well as a dam construction in front of the river mouths, aimed at maintaining and regulating the quantity of water flowing through the canal, in order to prevent an excessive decrease of the water level on the Stara Stambul branch. The dam built into the sea was meant to prevent the silting of the mouth of the canal under restoration.

(power point presentation of the Ukrainian Party)

**Ms. Lyudmila Anishchenko:**

The Institute carried out an impact assessment in respect of all the phases: the first phase, the phase of the full development and in accordance with the map drawn up jointly by Romania and Ukraine, when an analysis in a transboundary context was proposed. A study of this kind was elaborated, translated into English and then sent to the Romanian party. This document was aimed at providing answers to all Romania's questions and comments. This supplementary document, in a transboundary context, was elaborated on the basis of the answers and remarks which the Inquiry Commission had revealed as prone to have a transboundary impact. Based on the Inquiry Commission's remarks, additional thorough researches have been carried out.

The current version of the construction of the canal was elected out of 10 possible options, and the documentation presented analyzed the transboundary issues.

According to the Espoo Convention, when assessing the various options, alternative 0 should also be analyzed. Navigation in the Ukrainian Danube Delta has existed ever since the 18<sup>th</sup> - 19<sup>th</sup> centuries, and it is a traditional activity in the region, therefore reestablishing the navigation traffic was considered as a last option. A combined analysis of choice 0, on the restoration of shipping movements, could be considered as a last possible option. Taking into account the complexity of the issue and the need to consider various factors, a combined analysis was used in choosing among the envisaged options. Factors and variations (environmental impact assessment multi-criteria) were included in the scheme analysis and a matrix was elaborated, showing which factors had a greater impact.

The result of global prioritization - a superior method. During the calculations, all intermediate results are printed and alternatives are prioritized, thus making possible the drawing of conclusions (power point presentation).

The items discussed in a transboundary context answer the 6 points acknowledged by the Inquiry Commission as having a possible impact or the strongest impact:

(1) Impact on the works aimed at deepening the water level between the Bystroe canal and the Stanbul canal, the dynamics of the water in the Bystroe canal. The Inquiry Commission concluded that there might be possible changes in the volume of water between the two arms and thus the Ukrainian experts carried out a mathematical modeling, envisaged all possible scenarios and used the most modern mathematical calculation patterns.

Results: an insignificant change of the water volume in Stara Stanbul cannot affect fish species and biodiversity.

Conclusion: there is no major impact following the redistribution of the water volume between the two canals.

(2) The impact of the dam situated at the bifurcation of the canal was also considered. Its construction compensates the possible redistribution of water between the Stara Stanbul and Bystroe canals. The impact of the full development of the waterway canal, as well as the impact of the water redistribution between the two canals was assessed as insignificant.

The second issue which was considered: the loss of the breeding sites for fish and of the nesting sites for birds, due to the dredging activities and the construction of the protection banks. The researches carried out by monitoring showed the absence of a cross-border impact of the works. There is the possibility to limit the deepening works and to quit depositing the dredged soil, so the impact is unlikely for the future, while sedimentation on the left side of the Chilia arm is beyond the limits of the reserve and has no significant negative influence on it.

Feedback on the impact on the wildlife at the bottom water. The riverbed sections where deepening works are being carried out are places where there are thresholds and they are normally subject to natural destruction, as the underwater fauna is usually little developed there. These places are not important for fish breeding and birds nesting.

The bank restoration works and the dredging of the thresholds have no major transboundary impact on the area. When analyzing the transboundary effect, which is a process with many factors of influence, the same system of analysis as the one used for choosing the alternatives was utilized: purpose - to ensure environmental safety under the cumulative impact conditions; criteria - protection of birds, protection of sturgeon, keeping the herring populations into the Danube. An analysis of the factors of influence shall follow, as well as of the sources of impact, of the measures of environmental protection, to prevent environmental impact. The results were transmitted to the Romanian party. There are a few possible measures.

### **3, Questions from the audience**

#### **Mr. Grigore Baboianu:**

The general issues of the project have been pointed out, based on the premise that the public debate should focus on the project of the construction of the deep water navigation canal itself. This kind of presentation would aim at presenting the potential impact of the functioning of the canal and especially the measures proposed by the author of the impact

study for this impact to be eliminated or ameliorated. However, the material presented by the Ukrainian party contains some pages which do not make reference to the canal, but to the situation of navigation in Romania. This information is not accurate. For example, references to the "navigation canal St. George" are made, which is not a navigation canal. It has never been a navigation canal. This information can be confirmed by many colleagues from Ukraine who were there. If the maps presented had the intention to illustrate the navigation canals from the Danube Delta, information on the canals existing on the Ukrainian territory should have been also provided, for the sake of objectivity. This presentation should be as objective as possible, in order to correctly inform the public. The actual situation in the field has been often stressed by the Romanian party.

**Ukrainian party's reply (the designer of the project):**

The material provided does not concern the transboundary impact of the project, but the point of view of the Ukrainian party in respect of the restoration of the canal. If the material contains some erroneous references to certain situations, the Romanian party should provide the correct data, in order to make the material as accurate as possible. A joint monitoring of the settled points should be made. We welcome any additional information that might complete the existing materials. These are supplementary materials and do not regard the assessment of the transboundary impact. Any additional material received from the Romanian party for completion and correction is more than welcome.

**Mr. Baboianu:**

I am referring to the material provided, but also to the impact study, which analyses the same situation, the canals of Romania.

**Ukrainian reply (the designer):**

I emphasize: if there are any observations, they should be transmitted for corrections and completion. We are here to answer questions. The final decision should include also these corrections or additional information.

**Ms. Veronica Anghel:**

A brief question, requesting a brief, clear answer: is Ukraine currently undertaking any kind of work in respect of the canal?

**Ukrainian reply (representative of the Embassy of Ukraine):**

This public debate has a well defined theme, that is, the impact assessment of the project in phase II. The discussions should stick to this very theme. The Ukrainian party does not carry out any works in phase II.

**Ms. Veronica Anghel:**

I am repeating the question, referring to any kind of works, either in phase II or not.

**Ukrainian reply:**

What kind of works are you possibly referring to, since the theme of these discussions is phase II of the project.



**Ms. Veronica Anghel:**

You have previously mentioned the monitoring of the effects of some carried out activities. So, it's not about the project, but it is about something that has been already implemented. The debate must take place before any activity is undertaken. We can not dissociate the impact from the works and their progress. It is as if we did not have an object of the discussions. We cannot separate them because this would be an artificial separation.

**Ukrainian reply:**

Ever since the restoration works of the canal were started, the Ukrainian party had developed and implemented a comprehensive monitoring program of the initial and operational works. Those observations which are made in respect of the canal are recorded by monitoring, as well as any changes noticed on the canal following the exploitation works and the passages of vessels. The comprehensive monitoring program has been submitted, the Ukrainian party has displayed the results on the web-site and we have provided this information within the meetings with our Romanian colleagues. The monitoring program includes research institutes and none of the results is available to public without it being first discussed with all the parties involved. We make observations regarding the local impact on the environment, make impact assessments, hold information on measurements and forecast analysis; we have projections of a possible impact on the area for the future.

Initially, in the design phase, those changes were made. According to the Ukrainian legislation, when a likely impact is envisaged, appropriate compensation measures should be taken. The calculation is required and due regard should be paid to compensations.

The purpose of monitoring is to track the transboundary impact. At this stage, there is no transboundary impact. In order to have a full picture, we proposed to the Romanian party (see point 4 of the Protocol between the presidents of Romania and Ukraine) to set up a joint monitoring, so that to avoid suspicions. There is no agreement of the Romanian party in this regard.

**Ms. Veronica Anghel:**

So simple a question put so many difficulties!... Are you currently working or not? Could you answer by yes or no?

**Ukrainian party's reply:**

The answer could be a story for children. The question needed an explanation.

**Mr. Adrian Tudor (Evenimentul Zilei newspaper):**

During phase I of the project a concrete impact on the colony of birds was detected, as well as on the natural breeding of fish, on the migration of marine fish and, at the same time, a restriction on fishing was implemented, because of the construction. Money compensation was thus provided. Is there any compensation provided for phase II? What are the concrete measures envisaged for the mitigation of the impact? Where is the dredged material going to be deposited? Is radioactive waste to be transported from or to Europe on

this waterway? I am asking, as similar accidents occurred - see for example the Rostock ship.

**Ukrainian reply (Mr. Mykola Berlinskiy):**

The questions are interesting and important.

I shall now answer the questions regarding the negative impact on birds, fish, regarding the money compensations, as well as the despositing of the dredged soil.

4-5 years ago, when Ukraine started the works, the issue of the impact on birds and fish was highly profiled in Ukraine. Many questions were raised, such as the issue of noise which would lead to the disappearance of the colonies of birds, all along the canal. Further to subsequent research, these observations were no longer scientifically supported. The noise caused by the construction works was not high enough to reach the nesting areas. The most important places for nesting, 95% of them, are located south of Stara Stanbul arm. As regards the impact on fish - the National Academy of Sciences of Ukraine noted in 2004 that [the construction] would have a negative impact on the the mackerel banks, because the sapling fish moves on the Bystroe canal and every 4 years a renewal cycle occurs, which would lead to a catastrophe.

Thus, the current situation will have negative impact on the local population, the mackerel fishermen. Last year, a record mackerel harvest was registered. How to explain? The works did not have a crucial impact, as a factor occurred, which determined the appropriate distribution of fresh water to the sea, and due to a higher volume of water, this sapling was guided on the arm. The mackerels go upstream from the Black Sea to the Bystroe arm, towards fresh water.

The compensation issue - when dredging works are undertaken on the canal, and the dredged soil is deposited in the established locations, with negative impact on the respective ecosystem. The parameters taken into account, which can be negatively influenced, are bottom water life forms, plankton. Considering the quality of the dredged soil, its content of toxic substances (heavy metals, petroleum products) and its impact, according to the Ukrainian law, compensatory payments are calculated and paid to the State by the organization operating the canal.

Storage sites in Romania and Ukraine are set in different ways. Storage sites must meet certain criteria, at least:

- from the environmental point of view - places with a small amount of life form that exists there. It is easier to trace a road through a desert place than through a garden. So desert places are preferred as places for storage.

- from the economic point of view - in order to maintain the economical efficiency of the project there is a proposal for the dredged soil to be deposited into the sea, in an area which has been already affected. But this option is expensive and not profitable. A compulsory precondition to set a depositing area is to exclude the consequences of a transboundary impact. Depth has to be 22 m. At depths below 10 m, the currents, due to waves, will bring the deposited soil to the Romanian side. Ukraine has such concentrated places for depositing the dredged soil. In Romania, the dredged soil is taken beyond the 20

m bathymetric contour and is naturally dispersed into the sea. Ukraine does not claim that its version is better. Example - Sulina channel.

In conclusion - we ask to minimize the impact on the respective ecosystem, in accordance with the Romanian and Ukrainian laws.

**The moderator of the meeting, Mr. Nicolae Chichi:**

The question was whether or not specific dumping places had been established.

**Ukrainian party's reply:**

This place had been set one year before any works started (4-5 years ago).

**Question from Mr. Adrian Tudor (Evenimentul zilei newspaper):**

What about my question regarding the transportation of radioactive waste, in order to avoid a tragedy similar to the Rostok case?

**Ukrainian party's reply:**

As regards the possibility of transportation of radioactive waste, there is no plan. There are official guarantees in this respect, as Ukraine is a civilized state and meets all international requirements regarding the transportation of dangerous and radioactive. Ukraine guarantees that this will not happen, as all dangerous materials will be transported according to the agreements signed by Ukraine. Perhaps only from Giurgiulesti customs such a transport should leave.

**Mr. Viorel Dima (Tulcea Express newspaper):**

- (1) Why the construction of this canal is so much wanted, using important funds, when there is already a navigable canal approved by the international convention signed in Belgrade, the Sulina channel, which can be used also by Ukraine?
- (2) Has an economical analysis been made with respect to the costs of this canal? How long the recovery of the investment will take, given that the required fees are reduced as compared to those entailed by the Romanian party?
- (3) In the context in which the Ukrainian officials affirmed that the canal had also a military character, how will NATO regard this issue, considering that Ukraine wishes to join this alliance? Are the environmental interests neglected as compared to the military ones, considering the experience?

**Ukrainian party's reply:**

The only thing we shall not comment on is the military issue. This delegation does not have any knowledge of such intention. Given the state of the national fleet, this delegation does not see what military purpose the canal might have. At the same time, one can also take into consideration Ukraine's possible joining the European Union.

As regards the first question - Why?

Corridor 7 of maritime navigation was provided by the Sulina channel and the charges were 1.54 USD per tone. One of the reasons to construct the canal is the fact that these charges were increased to up to 2.50 USD / tone, in respect of the Ukrainian ships, but

also as regards other vessels sailing to the Ukrainian ports on the Danube. The charges were reduced by 30% for the Romanian ships - so how could the Ukrainian ports on the Danube still be operational? Port Reni dropped to few employees, 50 out of several hundreds, not to talk about Izmail, which used to be a highly developed port.

As regards the second question - the entire investment is estimated to be recovered under normal operational conditions, in 8 years and 3 months. The cost is now difficult to assess, as the crisis has created difficulties in calculating the costs.

In respect of the third question - When drafting the project, which is framed under corridor 7 of European river transport, only the navigation of civil transportation was taken into account, not the military one. According to a procedure established for this corridor, there are 4 vessels downstream and 5 upstream, but this data is not very accurate.

**Mr. Eugen Petrescu (SOR-the Romanian Ornithological Society):**

I am handing a material signed by 6 of the non-governmental environmental organizations in Romania. After going through the impact study, the 6 organizations found that there was still a lack of updated information, such as the list of species and habitats which would be affected. Existing data were deemed as out of date and the maps were not relevant. Has a mathematical model been envisaged in order to foresee the impact of the works on the alluvia on the entire delta, knowing that the biggest increase has been registered in the secondary delta?

May the dredging works undertaken along the river influence the current state of the border? Dredging on the Chilia arm may have an influence on the currents. Could the dam situated at sea determine erosions of the Romanian bank, at Periprava? Is there a comparison between the way the situation looks like without these works and how it will look like after the dredging?

**Ukrainian party's reply:**

This question refers to two aspects: a hydrological aspect and a biological one. Regarding the fauna, the two reserves of Romania and Ukraine, the Institutes of Zoology and Botanic of the Academy have constantly made complex observations, through comprehensive monitoring and following their own research. We have objective data not only for previous years, but also as regards the current situation.

As far as the hydrological aspect is concerned, the issue referring to the alteration of the riverbed and the border: the modification of the water volume ratio between the Sulina and Chilia arms is currently 50 to 50. The current trend favours the Tulcea branch. During the latest 70 years, a decrease of the flow of the Sulina arm has been noticed. This is due to the deepening of the Sulina and St. George arms. Currently, a "washing" phenomenon of the St. George arm can be noticed. As regards the deepening of the Chilia arm, the envisaged works in this respect are less complex, but they will have an influence on the water distribution trend; further to calculations, we reached the conclusion that the water distribution could be stabilized in the Danube Delta as a result of the deepening of the rifts on Chilia.

**Ms. Lyudmila Anishchenko:**

You appreciated the Ukrainian method of impact assessment. This method and the principles used in this respect will allow the elaboration of a model for the entire Danube Delta, with the participation of Romania, in order to contribute to the accuracy of the model. Using this method may prospect the future development of the impact.

**Ms. Ileana Ene (NGO "Save the Danube and the Delta"):**

(1) The study indicates 10 alternatives, but presents and compares only 8 and later on (see section 4) only 6. To distinguish between the alternatives and assess their advantages and disadvantages, an annex to the study should be added, because there is insufficient information on how the various alternatives were considered and how the data were used. Does the Ukrainian party agree with the necessity of such an annex?

(2) Is there a complete and updated list of the species likely to be affected?

(3) Does Ukraine consider that it has provided sufficient public information during the first phase, under the UNECE Convention of 20 March 2009 and ICPDR of 3 April 2009?

**Ukrainian party's reply (Lyudmila Anishchenko):**

As regards the first question, relating to the 10 variants, out of which 8 have been analysed and 6 thoroughly studied, the material under discussion underlines that, from a technical perspective, two of them have been eliminated, as they were considered economically unfeasible. When assessing each of the alternatives, tables 4.1 and 4.2 were analyzed, which highlighted the impact factors, as well as the impact processes, characteristic to the construction of the waterway. They were taken into consideration every time each of the alternatives was analysed. There are more detailed reports in respect of each variant. This is a synthetic material.

Regarding the second question, the lists we receive from the research institutes contain chapters referring to the species mentioned by the Red Book and it is on them that we focus our attention. For all the species in the Danube Delta, there are lists available to the public and we think that the Romanian and the Ukrainian Reserve have a good collaboration and they exchange such information. The exchange of information is permanent between them.

Regarding the third question, with respect to the Espoo Convention, Ukraine has provided all necessary information as regards the work performed or planned to be performed.

**Ms. Ileana Ene (NGO "Save the Danube and the Delta"):**

My question referred to the list of species likely to be affected, and not to the list of all the threatened species or to the inventory made.

**Ukrainian party's reply (Mrs. Lyudmila Anishchenko):**

in assessing the impact, the factors likely to affect the birds that live in the area close to the works were taken into account. The list of birds likely to be affected had no main role. The species mentioned by the Red Book were important. Therefore, the impact has been assessed as regards those species in the area, not in respect of all. The impact of noise and loss of nesting sites was also taken into account. In this context, the possible impact on the flora and fauna of the area has been analyzed as well.

**Mr. Mihai Marinov (INCDDD):**

I attended another meeting with the Ukrainian colleagues. On that occasion, we discussed the possible impact of the works on biodiversity in general; at that time, the discussions mentioned the likely negative effect on the most numerous pelican colony, as well as the potential negative impact on the Letea island (a protected area since 1938) - but dredging and hydrotechnical works have already been undertaken. We'll see what happens in the future. Romania has the experience of the works carried out for the construction of the Iron Gates, which still affects the Romanian litoral, even many years after its completion. Ukraine should consider the subject twice before taking any decision. We can no longer talk about analysis, we shall see the impact of everything that has already been achieved.

The question is whether, besides dredging, other works (such as submersible hydrotechnical constructions, under the shape of stone dams, named EPI-s) have been envisaged to be built at the mouths of the canals. These constructions are known for their major impact on ecosystems.

**Ukrainian party's reply:**

Modifications determined by the economical works in the area. The subject was addressed to Romania so that the results of the Romanian researches in the Danube Delta with respect to the modifications determined by the hydrotechnical works may be used and negative effects avoided. The information requested has not been received. As to the submersible hydrotechnical constructions, the designer has envisaged only one water conducting dam at the entrance on the Bystroe canal. Its role is to stabilize the water volume flowing on the canal. The project envisages but this dam at the entrance, there are no other dams to be constructed on the Bystroe canal. Only bank consolidation works are envisaged.

**Mr. Nicolae Chichi (moderator of the meeting):**

Thank you all for participating to this public debate. Further comments and observations may be transmitted up to 19 June 2009, in writing, to the following e-mails: [arbdd@ddbra.ro](mailto:arbdd@ddbra.ro) and [mihaela.macelaru@mmediu.ro](mailto:mihaela.macelaru@mmediu.ro). The public debate now closes.

**4. End of meeting**

Closing Words:

**Mr. Vasile Gudu:**

Let me thank you all for participating to this debate and for the interest showed. A week ago, the Ambassador of Ukraine visited Tulcea, now you are our guests here. Preparing these meetings, I updated my information. I consider that this meeting reveals the good relations between the Romanian and Ukrainian parties. We hope that this meeting provides solutions that we all wish, in respect of the issue of the construction of the Danube-Balck Sea deep water navigation canal. All EU standards should be adopted and respected, as well as the rules of International Law, in accordance with the principles of a sustainable development, of interest for Romania and Ukraine. The Danube Delta should be inherited by our successors.

**Ms. Daniela Pineta:**

Let me thank the Ukrainian party and the Romanian public for their involvement. The English version of the minutes shall be transmitted to the Ukrainian party, together with any other comments and observations received from the public, as well as the comments and observations of the Romanian institutes that analyse the study. We express our hope for the procedure to be further applied, up to its completion.

**Ukrainian party:**

We express our appreciation for the organization of this meeting, we deem that the cooperation between the parties is on a good track. Another step in the implementation of the Espoo Convention was thus made. The Convention is aimed at strengthening the relations between the parties.

**ARBDD Secretariat**

Gabriela Anitei  
Alina Codreanu  
Gabriela Morozov  
Cristina Parceog  
Mihaela Mauna  
Gabriela Bucur

**Consultations under Article 5  
to the Convention on the Environmental Impact Assessment in a  
Transboundary Context (Espoo Convention)  
regarding the implementation on the Phase II of the Ukrainian Project on the  
Deep-Water Navigation Route "Danube-Black Sea" in the Danube Delta**

*15-16 July, 2009*

*Kyiv, Ministry of Environmental  
Protection of Ukraine, 35 Urytskogo st.,  
the facility of Aarhus centre*

**Modus Operandi**

<b>15 July 2009</b>	
10.30	Arrival of the delegations. Registration. Welcoming Coffee
11.00	Opening remark  From the Ukrainian side: Deputy Minister of Environmental Protection Ukraine Dmitry Gursky  From the Romanian side: The Governor of the Delta Danube Reserve George Baboianu
11.15-14.00	The beginning of the consultations Discussion
14.00 – 15.00	Lunch
15.00 – 16.00	Continued consultations Discussion
16.00 – 16.15	Coffee- Break
16.15 – 17.15	The development of the proposals for the protocol of the consultation
17.15	The end of the consultation

<b>16 July 2009</b>	
10.00	The beginning of the second consultation day. The delegations exchange the draft protocols of consultations
10.00 – 12.00	Discussion
12.00 – 12.15	Coffee-Break
12.15 – 13.30	The final discussion and the approval of the protocol
13-30 – 14-00	The end of the consultations. The signing of the protocol






**The List of Participants  
of the consultations under Article 5  
to the Convention on the Environmental Impact Assessment in a  
Transboundary Context (Espoo Convention)  
regarding the implementation on the Phase II of the Ukrainian Project on  
the Deep-Water Navigation Route “Danube-Black Sea”  
in the Danube Delta**

(July, 15-16, 2009)

**Venue:** Ministry of the Environment Protection of Ukraine (Urytskogo Str., 35, Kyiv, Room 104)

**Time:** 11 a.m.

Ukrainian-English Translation is provided

<b><i>FROM UKRAINIAN PARTY</i></b>		
<b><i>Representatives from the Ministry of the Environment Protection of Ukraine</i></b>		
1.	Mr Stepan Lyzun	Fist Deputy Minister
2.	Mr Volodymyr Buchko	The Deputy Director of the Law Department, the Focal Point to the Espoo Convention in Ukraine
3.	Mr Oleksandr Deziron	The Head of Protection and Rational Use of Water Resources Department
4.	Mr Andriy Skrypnyk	Deputy Head of Environmental Insurance Policies, Auditing, Certification and Expertise Department
5.	Ms Maryna Diachenko	Deputy Head of International Cooperation and European Integration Department, the Head of the Unit
<b><i>Representative from the Secretariat of the Cabinet of Ministers of Ukraine</i></b>		
6.	Ms Iryna Makarenko	Deputy Head of the Office to the Vice Prime Minister
<b><i>Representatives from the Ministry of Transport and Communications of Ukraine</i></b>		
7.	Ms Svitlana Opanasenko	Senior Specialist of Sector for the External Communications of the State Administration of Maritime and Inland Water Transport
8.	Ms Mariya Pelekh	Representation Office of State Enterprise "Delta-Lotsman" in Kyiv




***Representatives from the Ministry of Foreign Affairs of Ukraine***

9.	Ms Nataliya Zhynkina	Attache, Division for Environmental Issues, Directorate General for Economic Cooperation
10.	Mr Serhiy Horopakha	Attache, Fourth Territorial Department

***The Experts from the Ukrainian Party***

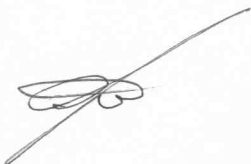
11.	Mr Oleksandr Vasenko	Deputy Director on the Scientific Work of the Ukrainian Research Institute of Ecological Problems
12.	Ms Liudmyla Anischenko	The Head of the EIA Laboratory of the Ukrainian Research Institute of Ecological Problems
13.	Mr Mykola Berlinskyi	Deputy Director of the «Ukrainian Scientific Center of the Sea Ecology» Research University
14.	Mr Sergiy Bushuiev	Director of the State Enterprise „Odessa center SouthNIRRO“
15.	Mr Victor Morozov	Director of the Danube Hydrometeorological Observatory
16.	Mr Igor Shevchenko	Deputy head of department of the State Enterprise "Delta-Lotsman"
17.	Mr Vasiliy Prokopenko	Deputy head of department of the State Enterprise "Delta-Lotsman"
18.	Mr Vasyl Shyhnenko	The Main Engineer of the "Ukrrivertransproject" Institute

***FROM ROMANIAN PARTY***

19.	Mr Grigore Baboianu	Governor of the Danube Delta Biosphere Authority Reserve
20.	Ms Angela Filipash	Director for EIA Directorate, Ministry of Environment
21.	Mr George Constantin	General Director for Water Management, Ministry of Environment
22.	Ms Liliana Bara	Director for European Affairs and International Relations, Ministry of Environment
23.	Mr Ioan Jelev	Scientific Advisor, National Institute of Hydrological and Water Management, Bucharest
24.	Ms Marian Tudor	Biologist, Danube Delta National Institute For Reserch and Development, Tulcea, Romania
25.	Mr Alexandru Bologna	Scientific Director, National Institute for Marine Research and Development "Grigore Antipa",



		Constanta
26.	Mr Victor Popescu	Director for Water Management, National Administration "Romanian Waters"
27.	Mr Liviu Dumitru	Representative from Ministry of Foreign Affairs of Romania, Head of Office, Legal Affairs General Directorate
28.	Ms Ludmila Tonchia	Geographer, National Administration "Arele Romane"



**MINUTE**  
**of the consultations under Article 5**  
**to the Convention on the Environmental Impact Assessment in a Transboundary Context**  
**(Espoo Convention)**  
**regarding the implementation on the Phase II of the Ukrainian Project on the Deep-Water**  
**Navigation Route "Danube-Black Sea" in the Danube Delta**

After the public debate under Article 3.8 and Article 4.2 to the Espoo Convention on the Phase II of the Ukrainian Project on the Deep-Water Navigation Route "Danube-Black Sea" in the Danube Delta (hereinafter referred to Project) which took place in Tulcea, Romania, on the 9<sup>th</sup> June, 2009,

Given the views of the Parties on the Draft Time Schedules for the implementation of the EIA Procedure on the Project, expressed during the Romanian-Ukrainian experts meeting which took place in Kyiv, Ukraine, on the 15-16<sup>th</sup> October, 2008,

In conformity with the obligations taken by Ukraine during the 4<sup>th</sup> MoP to Espoo Convention which took place in Bucharest, Romania, on 19-21<sup>st</sup> May, 2008,

The Romanian and the Ukrainian Parties held consultations under Article 5 of the Espoo Convention regarding the implementation of the Project (15-16<sup>th</sup> July, 2009, Kyiv, Ukraine). The agenda of the meeting and the list of participants are enclosed.

During the meeting, the Romanian and the Ukrainian Parties discussed the issues in relations with the adverse impact of the project on the Romanian territory (including the following: the mathematical models used, their calibration and verification; the physical models used for verification of the solutions obtained theoretically; the limitation of the assessment to the secondary Kilia Delta, without taking into account the impact of works on the whole Kilia branch; the quantities of dredged material and the way of storage, particularly the location of the sea deposit; the impact of the dam constructed at the mouth of the Bystroe branch; the impact of the sediments discharged into the sea; the discrepancies between the documents presented by the Ukrainian side concerning the ecological value of the Bystroe area).

After discussions, the Parties agreed on the following:

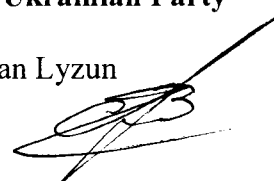
- The Romanian Party will send in written form until the 3<sup>rd</sup> of August 2009 a list of detailed questions which are needed to clarify all concerns related to this project and the Ukrainian Party will send in written form the answers to these questions.  
The Parties agreed that they shall take further steps in accordance with the provisions of the Espoo Convention;
- The Romanian Party will provide, by 24<sup>th</sup> of July 2009, the Minute, the written comments and audio records of the public debate held in Tulcea, on 9<sup>th</sup> of July 2009;
- The Parties will consider the possibilities of further cooperation based on the possible mutual assistance (Article 5), including requests for the support from the Espoo Convention Secretariat; Post-Project Analysis (Article 7) by launching the relevant system of joint monitoring of the Danube Delta; Bilateral and Multilateral Cooperation (Article 8) and Research Programs (Article 9).

The Romanian Party considers that all procedures provided by the Espoo Convention must be completed.

The Parties agreed to continue further cooperation in order to fully implement the EIA Procedure regarding the Project in accordance with provisions of the Espoo Convention.

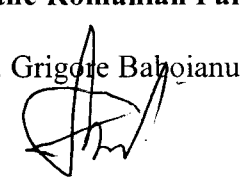
**For the Ukrainian Party**

Mr Stepan Lyzun



**For the Romanian Party**

Mr. Grigore Bahoiianu





**Iryna Makarenko**

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**Sent:** 12 серпня 2009 р. 11:36  
**Attach:** 1.pdf; 2.pdf; 3.pdf; Minutes.pdf  
**Subject:** Minutes of the Consultations under Article 5  
 Dear Wiek,

Herewith I am sending you the Minutes of the Consultations under Article 5 of the Espoo Convention regarding the implementation of Phase II of the Ukrainian Project on the Deep-Water Navigation Route "Danube-Black Sea" in the Danube Delta which took place on 15-16<sup>th</sup> July, 2009 in Kyiv, Ukraine (the Minutes, Agenda and the list of participants are enclosed).

Best regards,

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**GOVERNMENT OF ROMANIA  
MINISTRY OF ENVIRONMENT  
Cabinet of the Minister**

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Nr.: 6435 /NN/ 31.07.2009

Ref.: transmittal of the Romanian authorities comments and questions on the Ukrainian project „*Renovation of the Danube - Black Sea Navigation Route in the Ukrainian Part of the Danube Delta*”

**Dear Mr. Philipchuk,**

With reference to the Ukrainian project „*Renovation of the Danube - Black Sea Navigation Route in the Ukrainian Part of the Danube Delta*” and following the Ukrainian-Romanian experts meeting held in Kiev, on 15-16<sup>th</sup> of July 2009, we have the pleasure to send you, attached to the present letter, the Romanian authorities comments and questions which are aimed to clarify our concerns related to this project.

As we agreed during the above mentioned meeting we expect the answers to our questions and concerns in written form as soon as possible. Furthermore, as we discussed during the public debate held in Tulcea on 9<sup>th</sup> of June 2009, the Romanian party expects also the Ukrainian answers to the public questions, in written form, as soon as possible.

I am looking forward to receive all the information in response to the questions raised by the Romanian authorities and the public.

Please accept, dear Mr. Philipchuk, the assurance of my highest consideration.

**Nicolae NEMIRSCHI**

**MINISTER**

**Mr. Heorhii Philipchuk  
Minister  
Ministry of Environmental Protection of Ukraine**

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## **Comments and questions of the Romanian public authorities on the Ukrainian project “Deep Water Navigation Route Danube-Black Sea in the Danube Delta”**

The following questions and comments are submitted by Romania in the framework of the consultations conducted under article 5 of the Espoo Convention.

For the purposes of this document, it is convenient to group these comments and queries as follows: issues related to hydraulics and hydrology; issues related to biodiversity; issues concerning the coastal area.

### **I. Hydraulic and hydrologic issues**

#### **A. General Comments**

The Romanian side appreciates the modern mathematical models used by the Ukrainian specialists, including two-and three-dimensional models. The Romanian side does not want to enter in debates concerning the theoretical aspects, even if some aspects in relation with the three-dimensional models are in dispute between scientists, like the  $k-\varepsilon$  model of isotropic turbulence, which is not in full conformity with the reality.

One of our deep concerns is related to the input data and calibration procedures used. The outputs can be very variable as a function of the inputs data and calibration methods used.

Taking into account the above mentioned aspects, the computed impacts, using mathematical models, seem to be very small, compared with the volume of works developed for the deep-water navigation route Danube –Black Sea in the Danube Delta. In the conditions of execution of the flow guide dam at the entrance to Bystroe Channel and of the long retaining dam at the mouth of Bystroe, a corresponding increase in sediment flux from Stambulul Vechi and Bastroe mouth is expected. In such a way, a supplementary pressure on the mouth of Sulina Channel will appear, inducing supplementary dredging of waterways at the outputs of Sulina Channel. We note that such a supplementary flux of sediment will happen in an extremely sensitive area like Musura and Stambulul Vechi branches, with big advancement of the Chilia secondary Delta towards the Romanian territory. This is proved even by the Annex to the Ukrainian EIA Report in fig. 4.2, which indicates an advancement of the Secondary Delta of Chilia, with more than 150 – 190 m/yearly in the direction of the Sulina mouth.

We strongly consider that both the flow guide dam and the long retaining dam at the mouth of Bastroe will have a negative effect, by concentrating the sediment flow towards the Sulina Channel.

Another general aspect of concern is the lack of references to the works performed on the Chilia Branch and the contributions of this works to the general impact on the Chilia and Danube Delta. In this respect, the mathematical models presented by the Ukrainian party were developed only for the Chilia Secondary Delta, downstream of Valcovo, without any references to the Chilia branch. We need also note the absence of any studies performed on physical models, supplementary to the mathematical ones.

#### **B. Specific comments**

The study elaborated by the Ukrainian party includes seven chapters with one summary and three annexes. The study is an annex of the previous elaborated EIA study.

The following observations are to be taken into account:

1. The whole documentation, as the title shows, refers to the Ukrainian part of the Danube Delta and even in this frame, the reference is made only for the secondary delta of Chilia branch.

2. Within chapter 3, the data concerning the “extensive” development of the canals networks by Romania are mistaken.

Thus in the table 3.1 named *Existing Navigation Routes located in the Danube Delta*, existing and planned, Sulina branch appears as being operational since 1858. In fact, between 1857 and 1861 works have been executed only at the Sulina branch mouth. Sulina branch was built up in the period between 1858- 1902 and has a length of 62.6 km and not of 79.6 km.

In the same table, works on the Sfântu Gheorghe branch with a length of 104.6 km are presented as being in execution – information which is not in conformity with the reality. The works were stopped in 1992, following the adoption of the new status of the Delta as a protected biosphere reserve.

Also, within this chapter is anticipated that for the Reni – Vilcovo section, the volume of dislocated material through dredging will be of 5,785,000 m<sup>3</sup> during construction (of which 1,727,000 m<sup>3</sup> during phase 1) and 800,000 m<sup>3</sup>/year during the medium scale operations. The estimated area which could be daily disturbed because of the river bed modifications resulted from the dredging activities will be of 2,336,000 m<sup>2</sup> during construction and of 1,020,000 m<sup>2</sup> during operations, that is 2.9% and 1.3% from the whole respectively river bed area. It is argued that these dredging works will not cause a significant impact on the common Chilia branch river bed/bottom.

This aspect is debatable because dislocation of such quantities of material by dredging could determine a change of the suspended alluvia transit.

3. In principle, within the chapter 4 the types of potential impact caused by waterway are presented, including their potential consequences. The aspects regarding the hydrological regime of Delta islands or the maritime delta morphodynamics (fig. 4.12 of the Ukrainian document) which are presented within the study are only secondary impacts, resulting from the main impact on the hydrological regime of the Chilia Delta.

4. Within the chapter 5, the description of the potential impact of the proposed activities and the assessment of the magnitude signification, does not includes significant impacts:

- the impact of flows distributions between Stambulul Vechi and Bastroe branches on Musura branch and on the gulf with the same name;
- the impact of Chilia branch dredging and the impact of Bastroe canal building on the Chilia branch hydrological regime and implicitly as transboundary



impact on the Danube sector comprised between Chilia and Sulina branches (hydrological impact and the impact on flora and fauna etc).

Also, within the category of the unlikely significations, the dredging impact on nutrients increasing concentrations is presented as being insignificant, without offering a clear argumentation.

5. With respect to the point 5.2.1.1. *One-Dimensional model of flow distribution in the Danube Delta river network*, we have to mention that leaving aside the fact that the application of the one-dimensional model is debatable for the delta hydrographic network, especially at high flows, the equations 5.2.1 expressing the relation of continuity and dynamic equation of motion (Saint – Venant) are correctly written and developed to solve the equations system, using the finite differences method.

We consider that the general procedures for calibration and verification of the hydraulic modeling are not entirely respected. In this way, the calibration of the model parameters, including the roughness parameters, as mentioned by the authors, is made using the hydrological data from the period between August – September 2002 (page 59). This period is a very short one for a calibration process and does not cover the Danube flows/levels range for the analyzed area. The model verification has been done using the data since 2001 and 2002 (as stated in page 59 of the Ukrainian document), but further (page 101) a reference is made to the year 2007 for verification.

Regarding the calibration, as concrete results, nothing is mentioned. Also, regarding the verification, the study is limited only to the presentation of the daily hydrographic flows recorded at Kilia town, on the Chilia and Bastroe branches or as daily hydrographic levels at Kilia.

But this is only one of the limit conditions for the mentioned equations, which means that for  $x=0$  (Kilia), the obtained function is  $Q_0 = Q_0(t)$ . Nevertheless, no results of the function  $Q=Q(x)$  and  $Q(y)$  have been presented and respectively stage-discharge relationship curve in the characteristic (sections) points. It was expected that the model would finally lead to a system of relations between flows and levels in Kilia section and between flows and corresponding levels for the 43 sections taken into account (in the merging or splitting nodes of the branches and respectively on the sea discharge) and to be related to the Reni hydrometric mira levels.

The presentation of the roughness coefficients for each branch within the table 5.1 is useless in analyses; the study doesn't explain if these coefficients have resulted in the model calibration process or were determined by other considerations.

Moreover, the graphs analyze within the figure 5.4 and 5.5 indicates that the model constantly overestimates the recorded values; this demonstrates again that the calibration process did not comply with the standard conditions for such procedure and this questions the veracity of the obtained values related to the establishment of the works impact on the flow regime (flow rates, levels, speed etc.).

Calibration and verification should be done for long data strings and for extreme flow conditions (maximum and minimum flows). The model does not allow the evidence of trends and although it doesn't allow predictive estimates. In other words, the water flow under extreme conditions is not analyzed (under high and low level waters, respectively under flooding and drought conditions) and practically, the model does not achieve a convincing forecast under limit situations.

The need of model testing for long data strings consists in the fact that the available data show a decreasing levels trend in that area.

In addition, the study contains contradictions between data provided/included by the Ukrainian party within the previous studies related to the impact of this project, too.

Also, it is necessary to make at the level of experts the correlation of the data provided by the Ukrainian party and those of the Romanian party.

Although the flow repartition is not mentioned in respect to the 43 sections or on the Chilia delta branches, within the table 5.3. *Minimum Yearly Flow Discharge Rates at the 95% Confidence Level*, a repartition of the minimum yearly flow is presented, having a probability of 95% (1350 m<sup>3</sup>/s) on a series of Chilia delta branches, from which results that this repartition distributes as follows:

- on the Oceacov branch – 22.1% (298.3 m<sup>3</sup>/s);
- on the Bystroe branch– 39.3% (530.6 m<sup>3</sup>/s).
- on the Stambulul Vechi branch (downstream of the Bastroe branch detachment – 36.1% (487.4 m<sup>3</sup>/s).

This spectacular growth of the flow on the Bystroe branch, produced during the last years, points out the fact that the works carried out have a notable effect on the flows repartition on Stambulul Vechi and Bystroe branches.

The same spectacular growth of the Bastroe branch flow share from the Chilia branch flow is mentioned within this documentation and also in the table 5.4 *Flow Distribution Among The River Branches Before And After The Implementation of the Navigation Route Project*. Within this table there are presented the shares for the Stambulul Vechi and Bystroe branches, for flows of 1,500 m<sup>3</sup>/s, 3,300 m<sup>3</sup>/s and 7,000 m<sup>3</sup>/s on the Chilia branch. See the following table:

Branch	Scenario	Flow m <sup>3</sup> /s	%	Flow m <sup>3</sup> /s	%	Flow m <sup>3</sup> /s	%
Chilia	-	1,500		3,300		7,000	
Bâstroe	before	575	38.3	1,170.0	35.4	2,390	34.14
	after	605	40.3	1,240.0	37.5	2,530	36.1
Stambulul Vechi	before	550	36.6	1,340	40.6	2,900	41.4
	after	530	35.3	1,300	39.4	2,800	40.0

As a matter of fact, the data concerning the flows which convey through Bystroe branch are contradictory within the studies presented by the Ukrainian Party. If, within this study, in table 5.3, for the flow with probability of 95% on the Chilia branch (1,350 m<sup>3</sup>/s), Bystroe branch has 39, 3% (530, 6 m<sup>3</sup>/s), while within the study from 2004, in the table 4.3.13 *Minimal Annual Discharges Of The Branches At 95% Provision*, for the same flow of 1,350 m<sup>3</sup>/s on the Chilia branch, Bystroe branch has 33.2 % (448.2 m<sup>3</sup>/s). By comparing these two values from these two studies, we note that, for the same values of the Kilia flow, between the flows for the Bystroe

branch there is a difference of almost  $100\text{m}^3/\text{s}$ . So, it is difficult to establish which the real figures are.

Regarding the sediment flow, it is statistically analyzed (chapter 5.2.1.2), based on insufficient data set; the evolution in time is not taken into account.

At the point 5.2.3.5 (about the “Data Inputs and Assumptions used in the Modeling Exercise”) with a synthetic results of the modeling activities, we stress that the study and the model must be tested for a long series of input data values.

## 6. Other observations

No transversal section through the Bystroe branch bed is presented; such sections are needed for a correct analysis of the variation of the flow splitting on this branch, for different flows on the Stambulul Vechi, upstream of the Bystroe branch splitting.

It is impossible to verify the results of some calculations of some mathematical models presented within this chapter only in graphics (such as the modifications of the water levels on the Stambulul Vechi branch before and after the project implementation phase, the repartition of the flows among the Delta branches etc). The very small water levels dropping, of 0.2 cm at  $1,500\text{ m}^3/\text{s}$ , respectively 1.5 cm or 4.0 cm, produced on the Stambulul Vechi branch through the mathematical computation, by the carrying out navigable way, aren't plausible (although mathematically are possible), having in mind the errors in the estimation of the roughness coefficients, of the water depths measuring and the shape of the bad which influences the water free surface.

The lack of the constructive data regarding some engineering structures (flow guide dam at the Bystroe branch entrance, the long retaining dam from the Bystroe mouth) allows only the formulation of some general observations. So, the guide dam situated at the entrance on Bystroe branch is designed, according to the study, to limit the liquid/solid flow derived by this branch – see table 3.3: “Protective engineering structures included in Navigation Route Design” (pg. 21). But, from the data presented in the table 5.7 *Changes Flow Discharge*, relative to the before scenario, we can say that the presence of this guide dam has minimum effects concerning the impact reduction. The flows remain reduced on the Stambulul Vechi branch and high on the Bastroe branch – for all the flows take into consideration in the study (of  $6,000\text{ m}^3/\text{s}$ ,  $3,400\text{ m}^3/\text{s}$  and  $1,800\text{ m}^3/\text{s}$ ). It is true that these growths are not high, but a flow decreasing even with  $4\text{-}9\text{ m}^3/\text{s}$  on the Stambulul Vechi branch will have a negative influence on the Musura branch, situated on the Romanian territory.

In these circumstances the reason for carrying out such a guide dam at the derivation of the Bastroe branch from the Stambulul Vechi branch will only be that of change of velocity field of the river bottom area and of training of alluvia from the convex area of the connection of the left bank of the Bystroe arm with the left bank of the Old Stambulul branch.

We could say, in addition, that the reduction of the water speeds is not significant, being of 3 cm/s. Taking into consideration the present study, in chapter 4.2 “*Description of environmental condition and features*”, on pg. 30, it is specified that the banks and the beds from the delta are build up on dusty clay having dimensions under 0.01 mm. Or, for particles of such dimensions, the hydraulic size of which depend the phenomena of training, transport and deposit, is approximate 0.01 cm/s. So, any reduction of the flow current speed has effects on the sedimentation process.

## 7. Conclusions:

- The modeling results, as shown in the study, could not be verified; so, the aim to demonstrate the works impact on hydraulic regime and on the solid sediment flow is not reached; if the obtained results are correct, they are not explicitly presented within the study.
- The theoretical aspects are largely developed, including the theoretical relations such as those regarding flows distribution within the delta branches network, the sediment transport and movement, the coastal currents modeling etc. This extensive mathematical presentation is not supported by adequate results. In general, the results are summarily presented and without the necessary comments to justify the adoption of the minimizing measures of the potential impacts.
- By the opening of the Bystroe the phenomenon of closing of the Musura Bay by the shallow that extends parallel to the line of the shore, favoring the transit of gross alluvia towards the mouth of the Sulina Canal, was considerably accelerated, thus adversely impacting the morphological processes in the area.
- It is certain that Bystroe canal building and Chilia branch deepening on a such long distance, will modify the hydrological regime of the water flow not only on the Danube main branches, but they will strongly affect the delta role of “hydrological regime regulator”. These negative effects will be emphasized during the drought periods, having in mind that in the actual unmodified conditions, during the low water levels period, the distribution coefficient between Chilia branch and Stambulul Vechi is by 12% lower than in the medium and high level waters cases. In the same time, it is noticed that the transit flow on Musura branch represents almost 0.7% of the Chilia branch flow in Periprava section (km 20); during flows/levels decreasing conditions on Stambulul Vechi branch in favor of Bystroe branch flows/levels, the Musura branch flow might be drastically decreased and even the branch could be clogged.
- Therefore, it is considered that the study has to be completed in respect to the used data for the modeling. Moreover, the calculations should be reiterated by using more conclusive data strings.

## C. Questions

1. Why was it necessary to build the dam at the mouth of the Bystroe and why is it shaped as a golf stick, with a southward opening?
2. The material dredged during the realization of Phase I of the project was transported in a deposit placed in the Black Sea; which are the precise coordinates of this deposit? Is there any modeling of the southward circulation of this material?
3. Which are the norms to which the results of the monitoring of the quality of the water resources realized by the Ukrainian side are referred to?
4. Why does the study not include data on the quality of water sources, collected following recent measurements?
5. Which is the impact of the flow on the Bystroe branch on the Romanian part of the Danube Delta, in particular on the Musura Bay and the Sulina Canal?

6. Which is the course of the new navigable channel that shall be created on the Chilia branch in relation to the common border between Romania and Ukraine?
7. Only dredging works are envisaged in order to ensure the optimum depths on the Chilia branch?
8. Which is the technology used for the dredging works, given that the dredged material will be deposited on the left bank of the branch and that the navigable channel is created in a border area?
9. Which is the impact of the dredging works on the quality of the waters of the Chilia Branch?
10. Was there any assessment of the impact of the maintenance works of navigable channel of the deep water canal and which is the impact of these works on the aquatic medium, fish, ichthyofauna?

## **II. Biodiversity issues**

### **PREAMBLE:**

The EIA 2008 study mentions at page 14 that “Bystroe branch is located away from the most valuable ecological areas, according to a map from 1995: As can be seen from this Figure, while the Bystroe Branch route runs across the core zone of the Danube Biosphere Reserve (DBR), it lies away from the most valuable ecological sites, while this is not the case for the majority of alternatives considered”.

Previous documentation received from the Ukrainian party, stated that Bystroe branch and adjacent area are habitats for valuable species, including migratory species of fauna for which the impact has transboundary character.

Extracts from previous documentation received from the Ukrainian Party, which contradict the statements of the EIA sections 3-4

“The nesting bird community inhabiting the Bystroe Branch area comprises ground-nesting plover birds (especially speckled tern and river tern), dwelling on the Ptichiya Spit. In 2004, the population and structure of nesting-bird community of the Ptichiya Spit (currently representing key nesting area for bird colonies in the Danube Biosphere Reserve) remained the same as in the previous year. This is attributed both to a highly conservative nesting pattern of bird colonies, and the same levels of nesting capacity of the Ptichiya Spit in the years under examination.”(The assessment of transboundary impact of the navigation route reopening in the Ukrainian part of the Danube Delta, Annex 6, 2005, Ukr. Sci. And Res. Inst. Of Ec. Problems)

“The impact of the navigable channel on biocenoses, populations and individual plant species will be of a double character: on the one hand, wave-breaking effects during ships’ movement may result in changes of vegetative cover in the riverside of the Bystry distributary and falling out of many species and communities, including rare ones, and on the other hand, navigation will contribute to saturation of flora with newly arrived species, including quarantine ones.”(Environmental Assessment (EA) within the framework of the project “Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 “, 2003, Ukr. Sci. And Res. Inst. Of Ec. Problems Kharkov, page 121)

“The distinctive feature of the Bystry distributary with its increased current velocity is that reophilic rare fish species, such as little and big chops, striped ruff, gudgeons, madder, sturgeons, etc. are found here more often than elsewhere. Here a significant

downstream migration of sturgeons' whitebait – stellate sturgeon, Russian sturgeon, beluga and starlet takes place. Because of the greater estuary hydraulicity, it is some of the main ones along which passively drifting Danube herring fry migrate downstream“.(Environmental Assessment (EA) within the framework of the project “Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 “, 2003, Ukr. Sci. And Res. Inst. Of Ec. Problems Kharkov, page 127)

“In this way the version of the Deep – Water Navigation Passage, providing for the passage of the track along the Bystry branch, considering the complex of ecological criteria, was accepted as preferable, though in the Environment Impact Evaluation of the feasibility study has been recognized that the fulfillment of the each variant would be impossible without the decision on the State level of the problem, concerning the ways of the projected economical activity on the territory of the Danube Biosphere Reserve, which would not contradict the environmental regulations. In 2003 some steps were taken in this directions (see the chapter 1 of the Environment Impact Evaluation). As the result now the proposals about the scientifically grounded zoning of the territory of the Danube Biosphere Reserve with allocation of the water area of the Bystry branch and the adjacent riversides to the zone of the anthropogenic landscapes.”(Environmental Assessment (EA) within the framework of the project “Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 “, 2003, Ukr. Sci. And Res. Inst. Of Ec. Problems Kharkov, page 52)

“The chosen variant of line of Bystry branch are satisfied according to the following criteria :

It is one of :

the least size of operational dredging ;

the least size of dredging during construction from a similar in operational dredging size

and obtains competitive cost of construction.”(Environmental Assessment (EA) within the framework of the project “Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 “,2003, Ukr. Sci. And Res. Inst. Of Ec. Problems Kharkov, page 72)

Analyses of the situation in the other possible routes of DWCS concerning the territory of DBR shows that the acceptance of any choice affects in some ways the functioning of the reserve and the requirement of National Academy of Sciences about the choice of a variant not affecting the interests of DBR is impracticable.(Environmental Assessment (EA) within the framework of the project “Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 “, 2003, Ukr. Sci. And Res. Inst. Of Ec. Problems Kharkov, page 119)

Previous documentation prepared by the Ukrainian party, from 2003, mentioned the existence of migratory species in the area, because the Ukrainian party was not aware that the Guide for the application of the Espoo Convention specifies that the impact on migratory species has a transboundary character. They took note of this provision during the activity of the Inquiry Commission (2005-2006), which considered that the impact on species of flora and fauna in that region has a transboundary character.

By Decree of the Council of Ministers of Ukraine in 2008, the Bystroe area was declassified, from strictly protected area to anthropogenic area (in 2004 according to the documentation received in 2008, page 150, or 2008 according to the latest

documentation examined, page 15: "According to the current DBR Zoning Scheme approved by the Resolution of the Cabinet of Ministers of Ukraine of 22.10.2008, the 50 m wide riparian strip extending along the Bystre and Starostambulske Branches is classified as the zone of anthropogenically modified landscapes where the development and operation of navigation activity, including the implementation of all related maintenance measures, are fully eligible under the national environmental legislation".).

Romania has the right to comment on the accuracy of the information. Contradictory statements coming from the same source have low confidence.

Question 1: In this particular case is the statement - "Bystroe branch is located away from the most valuable ecological areas" - correct? In our opinion is not and has implications for the analysis of alternatives in Section 4.

#### PREAMBLE:

Ukrainian previous studies, including the study which the examined documentation is annexed, have recognized the existence of the impact on fish species and migratory birds (transboundary) at the mouth of the channel Bystroe:

Previous information from reports received from Ukraine which contradict the statements from the documentation entitled Assessment of Likely Transboundary Environmental Impacts of the Danube Black Sea Navigation Route in the Ukrainian Part of the Danube Delta and confirm the findings of the Inquiry Commission are:

"Dredging operations carried out in the period of official fishing ban (May through June 2005) had a significant adverse impact on fish larvae migrating near the dredging locations. This impact was assessed and taken into account in the evaluation of damage and related compensation payments.(Summary Report on the Results and Progress in Implementing the Integrated Environmental Monitoring Programme as Part of the Danube-Black Sea Navigation Route Restoration Project, 2007, pag. 11).

The most serious consequences may take place with respect to wetland birds population, that constitute the main wealth of the DBR and include a large number of protected species, in case of transformation of the Ptichya spit and destruction of the channel banks.("Environmental Assessment (EA) within the framework of the project "Creation of the Danube – the Black sea deep-water navigable passage in the Ukrainian part of the delta. Stage 1 ", 2003, Ukr. Sci. and Res. Inst. Of Ec. Problems Kharkov, page 192).

However, the level of disturbance increased significantly during the dredging activity in the sandbar section of the Bystre Branch. According to the DBR experts, this resulted in a dramatic reduction (by 9-15-fold) in successful reproduction rates in 2004, especially in the immediate vicinity to the navigation route, where this rate dropped to zero level. Specific reductions were as follows: from historically recorded 50-70% to 3-5% in 2004 in speckled tern (as the major colonial species in the outer delta), and from 60-80% to 7-10% in 2004 in river tern (the second major species).(The assessment of transboundary impact of the navigation route reopening in the Ukrainian part of the Danube Delta, Annex 6, feb. 2005).

In 2005, the bird colonies nesting on the Ptashyna Spit set their nests further from the Bystre arm, which might be attributed to be the result of disturbances occurred in 2004. The bird colonies moved over a half kilometer further from the navigation route

to the lowland area less suitable for nesting. The sea storm, which normally occurs every year during the nesting season, has nearly completely destroyed their nesting areas, with only one remaining. Therefore, the overall breeding efficiencies of these species were as follows: 13.5% for common tern (*Sterna hirundo*), and 10.3% for sandwich tern (*Thalasseus sandvicensis*), as opposed to the normal efficiency ranging between 60-80%. (Summary Report on the Results and Progress in Implementing the Integrated Environmental Monitoring Programme as Part of the Danube-Black Sea Navigation Route Restoration Project, 2007).”

Question 2: Taking into account the obvious evidences from previous Ukrainian studies and from the findings of the Inquiry Commission, why do the conclusions of the last EIA deny the significant transboundary impact?

**PREAMBLE:**

EIA study mentions at page 25: “For over 90% of its length, the navigation route within the Ukrainian part of the Danube Delta runs along the Chilia Branch, where depths and widths are sufficient to meet the requirements set for an international waterway of the highest category. Dredging will be only required in the shallow sections (Figure 3.6). For the Reni-Vilkove section, the total volume of earth material anticipated to be dredged is 5,785,000 m<sup>3</sup> (1,727,000 m<sup>3</sup> for Phase 1) during construction, and 800,000 m<sup>3</sup>/year on the average during operation. The estimated area of physical disturbance caused to the river bottom by dredging activities would be at 2,336,000 m<sup>2</sup> during construction and 1,020,000 m<sup>2</sup> during operation, i.e. 2.9% and 1.3% of the total area of river bottom, respectively, and would not cause any significant impact to bottom communities present in the Chilia Branch” (ASSESSMENT OF LIKELY TRANSBOUNDARY ENVIRONMENTAL IMPACTS (EIA) OF THE DANUBE-BLACK SEA NAVIGATION ROUTE IN THE UKRAINIAN PART OF THE DANUBE DELTA, Annex to the EIA Report Produced as Part of the Detailed Design Documentation for the Full-Scale Development Phase of the Danube-Black Sea Navigation Route Project in the Ukrainian Part of the Danube Delta, Contract No. 1660/2.10 of 01.08.2008).

Question 3: Which is the impact of dredging 46.1 km of the river bottom between Reni and Vilkovo and why was it not assessed?

Question 4: Why the figures for dredging (both cubic and square meters) in the EIA 2008 study are lower than the ones in 2004?

**PREAMBLE:**

In Section 4 pag. 33 of the EIA it is written: “The DBR represents a varied and unique pattern of ecosystems that reflects the diversity of local landscapes and transitional setting of the delta as an ecotonic system lying between the major river and the Black Sea. [...]Aquatic ecosystems present within the boundaries of the Danube Biosphere Reserve are mainly of freshwater type, with the brackish-water ecosystems developing in the numerous small streams, lagoons and lakes concentrated in the outer delta of the Chilia Branch. A contact zone providing interface between the Danube and the Black Sea supports a highly specific maritime estuarine ecosystem. Apart from suspended solids and dissolved nutrients, the river flow emptied into the sea via this zone also contains freshwater plankton and other organisms whose annual load ranges between 100,000 to 200,000 tonnes. As this living matter dies off, it is deposited on the bottom to create the stock of organic matter. This process plays



a decisive role in shaping the biological productivity in the north-western part of the Black Sea itself, thereby providing food stocks for valuable migratory fish species present in the Danube (especially sturgeon and Danube shad species).”

From the biodiversity point of view the data given on species and habitats is insufficient. The study presents only a list of species and habitats instead of dealing with the impact on these species and habitats.

The documentation provided by the Ukrainian party does not make any statement regarding the impact of biodiversity loss throughout the Danube Delta.

Question 5: Would not have been more effective to analyze separately each species and habitat and to specify which was the projected impact during works and during the channel operation? (In our opinion impact analysis should be done on short, medium and long-term in order to have a real picture as to possible impairment of species and habitats in the area).

PREAMBLE:

In EIA Section 2 figure 3.1. page 12 is written, regarding “Bastroe Estuary – Danube - Black Sea Ship Channel”: ”dredging continues”.

Question 6: Is this true? Are the works ongoing in the area nowadays?

PREAMBLE:

EIA section 2 page 13: “Since the mid-1800s, the Chilia Arm of the Danube Delta, including the Starostambulske and Bystre mouths, have been used for navigation. This can be illustrated by the fact that the maritime ports of Ismail, Reni and Kilia, located along the Chilia Arm, were established 180, 160 and 120 years ago, respectively. Between 1950 to 1957, the proportion of ship traffic routed via the Bystre mouth was about 40% of traffic received by the Sulina Canal (Source: The 1950-1974 Danube Commission Reference Book). At that time, the Bystre Branch was used to operate the Reni-Ismail-Kilia-Vylkove-Odesa passenger line served by the Kyiv shuttle steamer. There was no specially engineered/constructed navigation channel in that period in the Bystre Branch, because the natural river channel, wide and almost straight, was able to offer sufficient depths for vessel draughts of 2.5 m and higher, while the depths in the sandbar section were adequate to handle draughts of up to 4.6 m.”

Question 7: In this case why dredging up to 7.2 m draught is called “restoration”?

PREAMBLE:

EIA section 2 page 13 “In 1957, a pilot navigable passageway was cleared in the Prirva mouth to provide access to the Ochakiv and Chilia Arms for the combined fluvial/naval ships with the 3.5–4.0 m draught. The Prirva route represented a very heavy and continuously growing burden in terms of maintenance dredging requirement, which was at 150–200 thousand m<sup>3</sup> of soil per year in the early years of operation and swelled 20-fold by mid-1980s, when dredging had to be carried out on a continuous basis”.

Question 8: As for the Bastroe alternative the maintenance dredging amount is 800 000 m<sup>3</sup>/year for fluvial/naval ships with the 7.2 m draught, would this be possible without transboundary impact?

PREAMBLE :

In Figure 3.7.(page 25) is presented the “Flow Guide Dam and Strengthened Riverbank Sections at the Bifurcation of the Bystre and Starostambulske Branches”. The water flow is wrongly presented as straight after the flow guide dam, the real flow going to be towards the right shore(in Romania).

Question 9: Why the possible erosion was not evaluated? Did the Ukrainian party realize any simulation on it?

PREAMBLE

For the Section 4 of the EIA, which present the alternative analyses, we have the following comments:

The multi-criteria analysis is supported by the Ukrainian allegation that the Bystroe Channel area is far from the ecological important areas. By a forced assignment of a low ecological value of the Bystroe area and of protection status declassification, the analysis concluded the Bystroe option to be optimal.

The method used is laborious and it is a useful tool in making decisions but with the condition that the criteria and the assumptions are correct. In this case, the assumptions are not correct.

It should be noted that the decision regarding Bystroe alternative has been taken since 2001, and it was a decision taken at state level. The documentation elaborated in 2008 entitled Assessment of likely transboundary environmental impacts of the Danube Black Sea Navigation Route in the Ukrainian part of the Danube Delta could not contradict a state decision.

Question 10: Why the criteria considered for the Bystroe alternative were only economic - environmental interests being ignored by assigning a low ecological value of the Bystroe area and by declassification of protection status - and by this leading to the wrong conclusion that Bystroe is the best alternative?

PREAMBLE:

The modeling conclusion made by the Ukrainian party regarding ”Sediment dumping dredged into the sea” (5.3.2) is that the impact at the border with Romania was overestimated by the neutral expert of the Inquiry Commission (van Gils), respectively the increase would be 2-3 mg/l versus 5 mg/l estimated by the neutral expert under continuous dumping conditions.

Question 11: In this case, is it significant an increase of 2-3 mg/l (added to 4-5 mg/l that represents the natural background)?

PREAMBLE:

The documentation (EIA - The dredging impact on Danube (5.3.4) tries by modeling exercises to state that dredging of 6 million tons of sediment on the common border does not have significant transboundary impact.

The model used in this study concludes that the transboundary impact is minor.

In contrast, Inquiry Commission concluded:

“Likely significant adverse transboundary impact:

- impact on the increase of suspended sediment concentration, downstream of the dredging site on fish

- impact of repeated maintenance dredging hampering the recovery processes of affected areas for fish in the long term”

Documentation prepared by the Ukrainian party in 2007 (received in October 2008) mentioned that the dredging works done in 2005 (during May-June, although all previous impact studies provide dredging to be stopped during this period, as a measure to mitigate the impact) had a significantly adverse effect on the larvae of herring that migrate to the sea.

“The Danube remains the only river in the Black Sea Basin where the migratory sturgeon species spawn naturally. The major part of sturgeon’s spawning habitats is outside the Ukrainian boundaries. The Danube within Ukraine is the main migratory route for spawning individuals and larvae, and the outer delta also provides an important breeding habitat for juveniles. According to [9], the total area of breeding habitats used by the migratory sturgeon species in the Ukrainian part of the Danube Delta and extending along the 5-km coastal zone is 16,250 ha. Another species that ranks second in terms of commercial value, and first in terms of landings (56.1%) is the Black Sea (Danube) shad, which is a typical migratory species with its spawning areas located outside the Ukrainian part of the Danube Delta”.

Question 12: The transboundary impact being confirmed by Ukrainian party and declared as “significant” by the Inquiry Commission, why the EIA continues to deny it?

#### PREAMBLE:

In case a potential negative impact on species or habitats is possible, measures to reduce this impact should have been provided. These measures must be consistent with the species or habitat requirements, which are expected to be affected.

The documentation provided by the Ukrainian party does not make any statement regarding the impact of biodiversity loss throughout the Danube Delta.

At the same time, we mention that within the Danube Delta Biosphere Reserve territory, there are designated, under the specific European Directives, Sites of Community Importance and Special Protection avifaunistic areas. These have been communicated to the Ukrainian party in the Romanian Reply to notification with Note verbal no. H2/4847/20.10.2008, sent by diplomatic channels.

Question 13: Why the Ukrainian party did not provide for measures to reduce the negative impact for species and habitats and why did not take into account the need to protect the avifaunistic areas indicated by the Romanian party?

### **III. Impact on the coastal area**

As to the assessment of water and sediment balance of Kilia branch and their effects on the Romanian coastal zone following aspects are under consideration:

- a) lack of data on water turbidity,
- b) obvious changes in sediment distribution in Kilia secondary delta, illustrated, e.g., by formation of a new island next to Musura gulf (see remote sensing data) which has increased with about 300 m in 2008,

- c) expected silting effect on Sulina bar (with related economic prejudice), no sufficient information on quality of dredged and discharged sediments in the sea (heavy metals, hazardous substances) as related to the Protocol on Biodiversity Conservation and Nature in the Black Sea Convention on the Protection of the Black Sea against Pollution (signed by Ukraine as well), expected impact on marine benthic/pelagic flora and fauna / biodiversity is evinced to generally,
- d) poor information on impact on ichthyofauna - anadromous species,
- e) models/modeling not sufficiently justified as to validation requests.

Therefore we do consider that the project has significant environmental impact and persistent medium and long term effects after conclusion of hydro-technical works.

Additional questions to above mentioned issues:

1. What hydrological data have been used for Kilia branch modeling exercises?
2. What is expected effect of hydro-morphological changes off the Danube mouths?
3. What remote sensing data which could provide a synoptic view on intensification of morphological processes off the Danube mouths after starting Bystroe shipping channel works have been used?
4. Does considered constructive alternative of Bystroe shipping channel exclude formation of a bar at channel pouring out in the sea?
5. What is the estimated impact of dredging and maintenance works as to their related hydro-geomorphologic and ecological effects?
6. Are there modeling and forecast attempts of long-term effects due to navigation?
7. What about validation of methods / data sets / models used in project related environmental impact assessment in transboundary context?

### **General conclusions of the Romanian Party**

The core of the Ukrainian documentation consists of the use of mathematical models to assess the impact of the works. Romania considers that the study has many shortcomings in relation to the input data and calibration procedures used (e.g. the computed impacts are very small, compared with the volume of works developed). Moreover there is no assessment of the effect of the flow guide dam and the long retaining dam at the mouth of Bystroe branch. Both these structures will have a negative effect, by concentrating the sediment flow towards the Sulina Channel.

The study is focused on the Chilia Secondary Delta, an assessment of the impact on the entire Chilia branch is missing. Significant impacts, such as the impact of flows distributions between Stambulul Vechi and Bystroe branches on Musura branch and on the gulf with the same name and the impact of Chilia branch dredging and the impact of Bystroe canal building on the Chilia branch hydrological regime are not assessed.

Also, the general procedures for calibration and verification of the hydraulic modeling are not clearly indicated and there is no sufficient information on quality of dredged and discharged sediments in the sea.

We must underline that no modeling and forecast long-term effects due to navigation are presented.

Furthermore, the criteria considered for the Bystroe alternative were only economic - environmental interests being ignored by assigning arbitrarily a low ecological value to the Bystroe area and by declassification of its protection status - and by this leading to the wrong conclusion that the Bystroe channel is the best alternative.

Besides, the Ukrainian documentation does not provide for measures to reduce the negative impact for species and habitats.

With respect to the provisions of letter (i) of the Appendix II of the Espoo Convention, the chapter named "Summary and Findings" which stands for the "non-technical summary including a visual presentation as appropriate (maps, graphs, etc)", does not respond to the requirements of Appendix II. Thus, it does not represent a summary of the whole EIA documentation in a non-technical language.

In conclusion, the documentation of the Ukrainian side does not provide sufficient and adequate information on the impact of the canal on the Romanian territory. Major areas of concern are not addressed and the predictive methods used are flawed. The documentation provided should be supplemented in order to address in detail the points raised by the Romanian party.

**Agreement between the Government of Romania and the Government of Ukraine in the field of environmental protection**

The Government of Romania and the Government of Ukraine, hereinafter referred to as "Parties",

**Recognizing** the fact that each human being has the right to live in the most favorable environmental conditions and each state is responsible for the environmental protection at national level,

**Considering** the interdependence between different types of economic activities and their ecological consequences,

**Confirming** the necessity to promote sustainable development in both states,

**Expressing** their availability to develop international cooperation between the two states in the field of environmental protection,

**Considering** the necessity and importance of European environmental policy development and implementation,

**Considering** the fact that the territories of their states lie in the catchment areas of the Danube River and the Black Sea basins,

**Respecting** the provisions of bilateral and multilateral environmental agreements concluded by both Parties, their states and the coordinators of the application of the present Agreement,

**Wishing** to cooperate in the field of sustainable development and environmental protection on the basis of sovereignty, equality, reciprocity, mutual benefit, precaution and polluter-pays principles,

Have agreed as follows:

**Article 1**

The Parties shall jointly develop and promote, on the basis of equality and mutual benefit, the cooperation in the field of environmental protection and sustainable development.

**Article 2**

The Parties shall cooperate in the following fields of environmental protection:

1. air protection in the context of long-range transboundary pollution;
2. conservation, protection and rehabilitation of the Black Sea marine environment;
3. biodiversity protection and protected areas management in a transboundary context, including the identification and the declaring of new common protected areas and potential eco-corridors, also the ecological reconstruction of affected protected areas;

4. prevention of transboundary effects of industrial accidents;
5. environmental impact assessment in a transboundary context;
6. development of common criteria for assessing the environmental damages of industrial accidents in a transboundary context;
7. complex environmental monitoring in a transboundary context;
8. waste management for environmental and human health protection;
9. economic instruments for environmental protection;
10. transboundary control, according to international environmental agreements, of international trade with endangered species of wild fauna and flora. Genetically Modified Organisms, import and export of waste, dangerous chemicals and ozone depleting substances.

### **Article 3**

Cooperation between the Parties shall be carried out in the following forms:

- preparation and realization of joint programs and projects;
- joint researches and monitoring the sources of transboundary environmental pollution;
- joint meetings, seminars, conferences, consultations and technical working groups;
- exchange of scientific and technical information, exchange of know-how that does not represent national secrets.

The Parties can further agree on other forms of cooperation.

### **Article 4**

The Parties shall immediately notify each other on situations with risk of natural disasters, industrial accidents and other special situations that could endanger the environment, human health, the border ecosystems and the activities undertaken to prevent and/or mitigate their consequences, according to a commonly agreed procedure.

In case of a critical situation, at the request of one of the Parties, the other Party shall deliver mutual assistance, according to the procedure to be established through a regulation by the Joint Romanian-Ukrainian Commission on environmental protection (hereinafter referred to as "the Joint Commission").

### **Article 5**

The Parties, acting within their competence and in compliance with their specific national legislation and international obligations, shall assist the establishment and the development of direct relations and contacts between the institutions of both Parties with competences in the environmental field.

### **Article 6**

The provisions of the present Agreement shall not prejudice the interests of third state-parties, the rights and obligations of the Parties, which result from other agreements and conventions

concluded by each of the two Parties, their States and the coordinators the present Agreement implementation, under international law.

### **Article 7**

1. The Parties entrust the coordination of the present Agreement implementation to the central public authority of environmental protection from Romania and Ukraine, respectively.
2. To ensure the enforcement of the present Agreement, the Parties shall establish the Joint Commission as follows:
  - within 30 days from the entry into force of the present Agreement, the Parties shall notify each other the name of their chairman of the Joint Commission and its members;
  - each Party may nominate a deputy chairman at any time by written notice to the other Party;
3. The Joint Commission shall draw-up the guiding rules for its organization and functioning, which have to be approved by both Parties. The central public authorities for environmental protection of (he Parties shall fulfill the secretarial duties of the Joint Commission.
4. The first meeting of the Joint Commission shall take place within thirty days from the reciprocal notification of its chairpersons.
5. The Joint Commission shall have ordinary annual meetings, alternatively in Romania and Ukraine, and if necessary, extraordinary meetings, at the request of one of the Parties.
6. The organizing Party shall cover the preparation and organization expenses, whereas the accommodation, the external travel expenses and daily allowances shall be covered by the sending Party.
7. Meetings of the Joint Commission shall be conducted in Romanian and Ukrainian languages and all correspondence before the meetings shall be in English language.
8. A Protocol shall be elaborated at every meeting of the Joint Commission, in Romanian and Ukrainian languages, signed by both chairpersons, all copies being equally authentic.

### **Article 8**

The financial contribution within the frameworks of joint projects shall be discussed for each specific case.

### **Article 9**

1. Any dispute concerning the interpretation or application of the present Agreement shall be settled through consultations between the Parties and, in case this will not be possible, through diplomatic channels.
2. The present Agreement shall enter into force on the thirtieth day from the date of the last notification through which the Parties inform each other, in writing, that all the internal procedures needed for the entering into force of this Agreement have been fulfilled.
3. The present Agreement shall remain in force for an indefinite period.
4. The present Agreement may be amended with the consent of the Parties. The amendments shall enter into force on the thirtieth day from the date of the last notification by which the Parties inform each other, in writing, about the fulfillment of the internal procedures needed for their entering into force.



5. Each Party shall have the right to denounce the present Agreement by a written notification sent to the other Party. The Agreement shall be terminated six month after the receipt of the denunciation note, The denunciation of the Agreement shall not affect ongoing cooperation projects and programmes.

Signed at.....on..... in two original copies in Romanian, Ukrainian, and English, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**For the Government of Romania**

**For the Cabinet of Ministers of Ukraine**

**Attila KORODI**

**Heorhiy FILIPCHUK**

**Minister of environment and sustainable  
development**

**Minister of environmental protection**

**Embassy of Ukraine  
in Romania  
#321**

The Embassy of Ukraine in Romania presents its compliments to the Ministry of Foreign Affairs of Romania and has the honor to convey the Proposals and Comments of the Ukrainian Party on the Draft Agreement between the Cabinet of Ministers of Ukraine and the Government of Romania in the field of environmental protection.

The Embassy of Ukraine in Romania would appreciate receiving the Reply of the Romanian Party on the above mentioned Proposals and Comments.

The Embassy of Ukraine in Romania avails itself of this opportunity to express to the Ministry of Foreign Affairs of Romania the assurances of its highest consideration.

Bucharest, 20<sup>th</sup> February, 2009

Annex: on 6 pages

**MINISTRY OF FOREIGN AFFAIRS OF ROMANIA**

Bucharest



**ПОСОЛЬСТВО УКРАЇНИ  
В РУМУНІЇ**

Nr. 321

Посольство України в Румунії засвідчує свою повагу Міністерству Закордонних Справ Румунії та має честь передати пропозиції та зауваження Української Сторони до проекту Угоди між Кабінетом Міністрів України та Урядом Румунії про співробітництво в галузі охорони навколишнього природного середовища.

Посольство України в Румунії було б вдячне за отримання відповіді Румунської Сторони щодо згаданих пропозицій та зауважень.

Додаток: на 6 арк.

Посольство України в Румунії користується цією нагодою щоб поновити Міністерству Закордонних Справ Румунії запевнення у своїй високій повазі.



Бухарест, 20 лютого 2009 р.

**МІНІСТЕРСТВО ЗАКОРДОННИХ СПРАВ РУМУНІЇ**

**м.Бухарест**



**CABINET OF MINISTERS OF UKRAINE**

**R U L I N G**  
**dated December 27<sup>th</sup>, 2008**  
**# 1628-p**  
**Kyiv**

**On the Approval of Action Plan on Implementation of the  
Decision of the Parties to Aarhus Convention #III/6f**

Aimed at the implementation the provisions of Aarhus Convention, to approve the Action Plan on implementation of the decision of the Parties to Aarhus Convention #III/6f as attached.

Prime Minister of Ukraine

Yulia Tymoshenko

APPROVED by  
 Ruling of Cabinet of Ministries of Ukraine  
 of December 27<sup>th</sup>, 2008 # 1628-p

**Action Plan  
 on the implementation of the Decision of the Parties to Aarhus Convention III/6f**

Action	Responsibility for implementation	Terms of implementation
1. Designing and providing for consideration to the Cabinet of Ministers of Ukraine:		
- Draft Laws of Ukraine:		
<ul style="list-style-type: none"> <li>• On amendments to Laws of Ukraine concerning the obligations under the Aarhus Convention</li> </ul>	Ministry of Environmental Protection of Ukraine	September 2009
<ul style="list-style-type: none"> <li>• On ratification of amendments to Aarhus Convention (concerning the genetically modified objects)</li> </ul>	Ministry of Environmental Protection of Ukraine	November 2009
- Draft Rulings of Cabinet of Ministers of Ukraine:		
<ul style="list-style-type: none"> <li>• On procedure of Public Participation in Decision-Making Process concerning the environmental issues;</li> </ul>	Ministry of Environmental Protection of Ukraine	June 2009
<ul style="list-style-type: none"> <li>• On procedure of Publishing the Environmental Information;</li> </ul>	Ministry of Environmental Protection of Ukraine	June 2009
<ul style="list-style-type: none"> <li>• On approval of the Statement on Public Environmental Automated Informational Network for ensuring the proper access to environmental information</li> </ul>	Ministry of Environmental Protection of Ukraine	August 2009
2. Designing and approval of the Model Statute for Regional Aarhus	Ministry of Environmental	March 2009

<b>Action</b>	<b>Responsibility for implementation</b>	<b>Terms of implementation</b>
Centres	Protection of Ukraine	
3. To ensure the publication of Statements and Conclusions of State Ecological Expertise on the web-portal of Ministry of Environmental Protection of Ukraine, web-sites of the regional divisions and in separate column of "Ecotyzhden" periodical	Ministry of Environmental Protection of Ukraine	March 2009
4. Establishing of the Inter-ministerial Working Group on the implementation of the Decision of the Parties to Aarhus Convention	Ministry of Environmental Protection Ministry of Justice Ministry of Transport and Communication Ministry of Emergency Ministry of Regional Development Ministry of Housing Ministry of Industrial Policy Ministry of Agriculture Ministry of Fuel and Energy Ministry of Health Protection State Committee for Land Resources State Committee for Forestry State Committee for Water Resources	March 2009
5. To carry out the following events:		
- lectures for civil servants and judges related to the implementation of Aarhus Convention in Ukraine	Ministry of Environmental Protection of Ukraine	During the year
- seminars and workshops on issues related to the access to information on environment and public participation in environmental	Ministry of Environment Protection of Ukraine	September 2009

<b>Action</b>	<b>Responsibility for implementation</b>	<b>Terms of implementation</b>
decision-making for civil servants working with mass-media at the local level		
6. Designing and publishing of the scientific and methodological handbooks and manuals	Ministry of Environmental Protection of Ukraine	October 2009
15. Preparation and publishing of the booklet “Environment and Law: mechanisms of implementation of Aarhus Convention” for chief executives of enterprises in industry, transport, construction spheres etc.	Ministry of Environmental Protection of Ukraine	January 2008



КАБІНЕТ МІНІСТРІВ УКРАЇНИ



ВІЦЕ-ПРЕМ'ЄР-МІНІСТР

18791/0/2-08 від 30.12.08

Kyiv, \_\_\_\_ December, 2008

Dear Mr. Wates,

May I take this opportunity to extend my best wishes for the coming year 2009 and to express my gratitude for significant support of attempts made by Ukraine to implement the appropriate decisions issued under Aarhus Convention.

The Government of Ukraine pays an utmost attention to the implementation of the provisions of Aarhus Convention as its Party. In this context, I have a pleasure to send you the Report of the Government of Ukraine on the implementation of the Decision III/6f taken by Parties to the Aarhus Convention concerning Ukraine during the Third Meeting of Parties to Aarhus Convention (11-13th June, 2008 in Riga, Latvia) approved by myself and signed by Minister of Environmental Protection of Ukraine Mr. Heorhii Philipchuk (enclosed).

I would also like to inform you that the Action Plan on the implementation of the Decision 3/6f concerning Ukraine was considered on the recent Meeting of the Cabinet of Ministers of Ukraine dated 27<sup>th</sup> December, 2008 where the appropriate decision was taken (Order of the Cabinet of Ministers of Ukraine #1628-p dated 27<sup>th</sup> December, 2008).

I am looking forward to our continued cooperation.

Please accept, Mr. Wates, the assurances of my highest consideration.

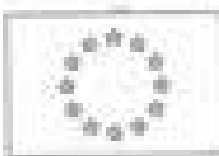
Appendices: Report of the Government of Ukraine on the implementation of the Decision III/6f

Hryhorii NEMYRYA

Deputy Prime Minister of Ukraine

Mr. Jeremy Wates  
Secretary to Aarhus Convention  
Environment, Housing and Land Management Division  
United Nations Economic Commission for Europe  
Palais des Nations, Av. de la Paix 10  
1211 Geneva 10  
Switzerland





Kyiv, 22 July 2009  
AK/im(D09)2316

Mr. Heorhii PHILIPCHUK  
Minister,  
Ministry for Environmental  
Protection of Ukraine,  
15, Urytskogo street  
Kyiv, 03035, Ukraine  
Fax: +380 44 206 31 07

Subject: **The Terms of Reference for the Framework Contract "Support to Ukraine to implement the Espoo and Aarhus Conventions"**

Dear Minister,

With reference to discussions in the context of the PCA Sub-Committee 4 meetings, please find attached the Terms of Reference to the Framework Contract (FwC) "Support to Ukraine to implement the Espoo and Aarhus Conventions".

The FwC would be launched in September 2009 and is planned to be located in the premises of the Aarhus Information Centre in Kyiv. We kindly ask you to facilitate the contractor to be located in the mentioned centre as one of the his task is to strengthen its capacity and increase the transparency in relations with public and NGO institutions.

I avail myself of this opportunity to extend to you the assurance of my highest consideration, and thank you in advance for your co-operation.

Yours sincerely,

Laura GARAGNANI

cc: Mr Hryhorii NEMYRYA, Deputy Prime Minister of Ukraine

Ex. № 297/07.09	2009
22	07
Міністерство охорони навколишнього середовища України	
Служба з питань взаємодії з громадськістю	