



UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

The Executive Secretary

Under-Secretary-General

Ref.: ECE/EHLM/132/2009/L

20 March 2009

Sir,

The Implementation Committee under the UNECE Convention on Environmental Impact Assessment in a Transboundary Context met in Berlin from 10 to 12 March 2009. The Committee considered a report submitted by the Government of Ukraine on steps taken recently to apply the Convention. Further to its deliberations the Committee has asked me to convey to you the following:

“The Committee recalled that at the Fourth Meeting of the Parties to Convention, held in May 2008, the Parties considered, inter alia, the Committee’s findings and recommendations with regard to the construction of the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (hereinafter, the Project). In this respect, the Meeting of the Parties decided to issue a caution to the Government of Ukraine to become effective on 31 October 2008 unless the Government of Ukraine fulfilled three conditions: first, stops the works; second, repeals the final decision; and, third, takes steps to comply with the relevant provisions of the Convention (ECE/MP.EIA/10, decision IV/2, para. 10). At its fifteenth session, from 28 to 30 October 2008, the Committee decided that the caution should not become effective. However, the Committee also 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.

At its session earlier this month, the Committee noted the report submitted by the Government of Ukraine on 27 February 2009, and the progress reported therein in the application of the Convention to Phase II of the Project. The Committee observed, however, that the report did not confirm that: (a) works, including operation and maintenance, on Phase I had stopped; and (b) steps had been taken to apply the relevant provisions of the Convention to any further works related to Phase I of the Project.

On the contrary, section 2.3.1 of the report together with a press release by the Ministry of Transport and Communications of Ukraine, dated 7 February 2009, seemed to be suggesting that works under Phase I had continued on: (a) dredging and (b) extension of the protective wall to a length of 1,040 metres (the length specified for Phase I).

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



In the understanding that the information in the press release was correct, the Committee considered that this would be contrary to the requirements imposed by the Committee when deciding that the caution should not become effective (ECE/MP.EIA/IC/2008/2, para. 31). Further, this would represent a continuing breach of the Convention, as explained in paragraphs 69(b) and 73 of the Committee's findings and recommendations (decision IV/2, annex I).

Moreover, the Committee was concerned that the above-mentioned press release stated that works have been carried out under Phase II, pertaining to the extension of the off-shore protective wall from 1,040 to 1,600 metres in length, and that the report of the Government of Ukraine omitted mention of these Phase II works. The Committee was of the opinion that this would represent a further breach of Ukraine's obligations under the Convention as the transboundary environmental impact assessment procedure for the "full-scale development" of the Project (Phases I and II) is on-going and, as declared by the Government of Ukraine, no final decision on Phase II is in force.

The Committee is expecting the Government of Ukraine to provide the secretariat by 15 April 2009 with a written statement confirming clearly and unambiguously that the conditions imposed in the decision of the Meeting of the Parties have been met. In particular, the statement should: (a) demonstrate that all works, including operation and maintenance, on Phase I have stopped; and (b) show, separately for Phase I and for Phase II, that the Convention is being applied fully to the Project.

After having received the written statement, the Committee will decide on the appropriate measures to be taken, in the light of paragraphs 8, 9 and 10 of decision IV/2 of the Meeting of the Parties.

In addition, the Government of Ukraine provided to the Committee a summary report on the assessment of likely transboundary environmental impacts of the Project. The Committee was grateful for receiving the summary report but, on the basis of an initial review, was concerned by some of the conclusions contained therein, in particular with respect to fauna and flora. The Committee was also concerned about the way in which the project was presented in the light of international obligations, especially with regard to the transboundary environmental impact assessment procedure. The Committee was also of the opinion that the chapter entitled '8. Summary and findings' did not satisfy the requirements of the Convention as included in Appendix II, item (i), which are that the non-technical summary should outline in non-technical language the findings included in each of the earlier chapters corresponding to items (a)-(h) of Appendix II. The Committee also wished to remind the Government of Ukraine of paragraph 43 of the Committee's findings and recommendations (ECE/MP.EIA/10, decision IV/2, annex I).

The Committee agreed that the Chair of the Committee will report to the forthcoming meeting of the Working Group on Environmental Impact Assessment, from 11 to 13 May 2009, accordingly. The Committee expected that the Government of Ukraine will have an opportunity to provide further explanation directly to the Working Group."

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



Ján Kubiš