

Implementation by Ukraine of the Decisions by the Parties to the Espoo Convention with regards to the Danube – Black Sea Deep Water Navigation Rout, starting from the Decision IV/2 (Fourth Meeting of the Parties to the Convention, Bucharest, 19–21 May 2008)

Requirements according to the Decisions of the Parties	Status of implementation by Ukraine
<p>IV/2 (Fourth Meeting of the Parties to the Convention, Bucharest, 19–21 May 2008) II. Regarding Ukraine</p> <p>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;</p> <p>8. Decides to issue a declaration of non-compliance to the Government of Ukraine;</p>	
<p>9. Takes note of the commitment by 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 of 28 December 2007 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 Committee at its fifteenth meeting (October 2008) and at subsequent meetings if necessary;</p>	<p>The final decision of 28 December 2007 concerning the implementation of the project for the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta was repealed immediately at the Meeting. fulfilled</p> <p>The Phase II of the project was not implemented. All provisions of the Convention had been applied by Ukraine before the Final decision on the project "Development of the Danube-Black Sea Deepwater Navigation Route in Ukrainian section of the Estuary. Full Scale Development" was adopted in 2010. fulfilled</p>
<p>10. Decides to issue a caution to the Government of Ukraine to become effective on 31 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;</p> <p>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;</p>	<p>To avoid the caution Ukraine 1) stopped works, 2) repealed the final decision (done during the Meeting of the Parties immediately) and 3) has taken steps to comply with the relevant provisions of the Convention, namely: on October 4, 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Environmental Impact Assessment" and the Law of Ukraine "On strategic environmental assessment" (subsequently vetoed by the President of Ukraine on October 31, 2016). Amendments proposed by the President were considered by the relevant Parliamentary Committee which tendered the draft Law for second reading. In this context, Ukraine acted in good faith in fulfilling all the requirements laid out by the Parties in this paragraph. fulfilled</p>
<p>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 to report to the Committee on the implementation of the strategy;</p> <p>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;</p>	<p>The independent review of Ukraine's legal, administrative and other measures to implement the provisions of the Convention was conducted under the European Union-funded project Support to Ukraine to Implement the Espoo and Aarhus Conventions, Draft Final Report, August 2010. Since then Ukraine has undertaken a number of steps aimed at enabling its legislative administrative measures implement fully the provisions of the Convention:</p> <ul style="list-style-type: none"> - The Action Implementation Plan (Strategy) was approved by the Decree of the Cabinet of Ministers of Ukraine №9-p dated 06.01.2010 (hereinafter referred to as Strategy). Strategy provides for the development and submission to the Cabinet of Ministers of Ukraine the draft Law of Ukraine "On amendments to some Laws of Ukraine to Implement the Convention on Environmental Impact Assessment in a Transboundary Context". - on October 4, 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Environmental Impact Assessment" and the Law of Ukraine "On strategic environmental assessment". fulfilled partially, pending approval by the Parliament, with amendments proposed by the President taken into account. <p>The Action Implementation Plan (Strategy) was approved by the Decree of the Cabinet of Ministers of Ukraine №9-h dated 06.01.2010. Strategy provides for the development and submission to the Cabinet of Ministers</p>

	<p>of Ukraine the draft Law of Ukraine “On amendments to some Laws of Ukraine to Implement the Convention on Environmental Impact Assessment in a Transboundary Context”. The Strategy was sent on to the Implementation Committee (see par. 21 Report of the Meeting of the Parties on its Fifth Session). fulfilled</p> <p>Ukraine regularly reports to the Committee on the implementation of the Strategy (the last communication on 11.01.2017). fulfilled</p>
<p>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.</p>	<p>Ukraine entered into negotiations with neighboring Parties to cooperate in the elaboration of bilateral agreements (see par. 22 Report of the Meeting of the Parties on its Fifth Session). fulfilled</p> <p>The draft agreement with Romania has been developed and is now under review by the relevant Ukrainian authorities. in progress</p> <p>Summary: The Decision IV/2 contains 7 requirements to the Government of Ukraine, of which 3 demands were necessary to comply with to avoid the caution: <i>stop the works, repeal the final decision and take steps to comply with the relevant provisions of the Convention</i>. All 3 aforementioned requirements were met by the Ukrainian Side.</p> <p>Ukraine has taken all necessary steps to fully implement the Decision of the Parties IV/2, and almost all requirements set out by the Parties were met completely, and only one of them partially. The draft Laws “On Environmental Impact Assessment” and the Law of Ukraine “On strategic environmental assessment” after been vetoed by the President of Ukraine were analyzed by and received a positive assessment review from the Implementation Committee, and now are pending approval by the Parliament.</p> <p>From the point of view of the essence of the requirements to the Government of Ukraine, laid out in the Decision IV/2, there is no basis for caution to become effective.</p>

<p>Meeting of the Parties Fifth session Geneva, 20–23 June 2011 Decision V/4 II. Follow-up to decision IV/2 A. Regarding Ukraine</p> <p>17. Endorses the finding of the Implementation Committee at its seventeenth session that, while Ukraine had fulfilled some of its obligations under paragraph 10 of decision IV/2 with respect to both phases of the project for the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project),¹⁽²³⁾ it had not fulfilled all of these obligations (see ECE/MP.EIA/IC/2008/2, section V.B, ECE/MP.EIA/IC/2009/2, section II.C, and ECE/MP.EIA/IC/2009/4, section II.B);</p> <p>18. Declares therefore that the caution to the Government of Ukraine issued in its fourth session is effective (see ECE/MP.EIA/IC/2009/4, para. 16);</p>	<p>The main concern raised by the Committee as stated in its Report on Twenty-Fifth Session, 20 June 2011, Geneva, was the changes in the environmental impact assessment legislation, namely the Law on Regulating Urban Development adopted on 17 February 2010. The adoption of this Law was considered by the Parties as the main reason for the caution to the Government to become effective. In this regard the Ukrainian Side notes the following:</p> <ul style="list-style-type: none"> - the Law of Ukraine “On strategic environmental assessment” adopted on October 4, 2016 by the Verkhovna Rada of Ukraine. After been subsequently vetoed by the President of Ukraine, it was considered by the relevant Parliamentary Committee which tendered the draft Law for second reading. The draft Law contains a number of important amendments to the Law on Regulating Urban Development. These amendments met the concerns raised by the Implementation Committee. In this context, Ukraine acted in good faith in fulfilling all the requirements laid out by the Parties in this paragraph. fulfilled partially, pending approval by the Parliament with amendments proposed by the President taken into account.
<p>19. Welcomes the independent review of Ukraine’s legal, administrative and other measures to implement the</p>	<p>Draft Final Report (Report) of Support to Ukraine to Implement the ESPOO and Aarhus Conventions of August 2010 (developed by</p>

¹ 23 Making possible the deep-water fairway Danube-Black Sea through the Kilia Arm (E 80-09) identified in the 2011 white paper on the effectiveness and sustainability of inland waterway transport in Europe (ECE/TRANS/SC.3/189). 19 ECE/MP.EIA/15

provisions of the Convention (ECE/MP.EIA/IC/2009/5) and notes the report of the European Union-funded project to support Ukraine in its implementation of the Convention, and in particular the proposed measures to bring the project for the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta into compliance with the Convention,¹ and invites the Government of Ukraine to follow up the recommendations of the report and as appropriate cooperate in this respect with the Government of Romania;

NIRAS) presents with the list of measures (10 measures to be implemented in order of sequence) ensuring implementation of the Decision IV/2 of the Meeting of the Parties to the Espoo Convention as regards Phase I of the Project.

However, the Report was developed in August 2010 and now in 2017 its recommendations are, to a large extent, out of date. For example, an active bilateral Ukraine-Romania dialogue on the implementation of the provisions of the Espoo Convention and fulfillment of the Decisions of the Parties has evolved and been maintained. Romanian Side is currently in a state of consultations with Ukraine on a potential comprehensive agreement on the DBSDWNR project from the point of view of the Espoo Convention, as well as on the adjacent issues pertaining to the use by the two countries of the Danube Delta for navigation purposes.

Moreover, the Project was conducted simultaneously with the procedural steps carried out by Ukraine according to the Espoo Convention (attached herewith), following the repeal in May 2008 of the final decision of 28 December 2007 concerning the project for the Danube-Black Sea Deep Water Navigation Route (DBSDWNR) in the Ukrainian sector of the Danube Delta. These procedural steps, required by the Espoo Convention, carried out by Ukraine resulted in the approval on January 25, 2010 by the Government of Ukraine of the “Final Decision on Implementation of the Ukrainian Project “Development of the Danube-Black Sea Deepwater Navigation Route in Ukrainian section of the Estuary. Full Scale Development”.

Furthermore, the Report contains a raft of contradictory statements in relation to Decisions of the Parties, as well as misleading assessment of the legal basis of Ukraine of that time, resulting in giving an erroneous understanding on the state of the implementation by Ukraine of the Espoo Convention during the DBSDWNR Project. Namely, they are:

- par. 2 *The Ministry of Environment shall repeal the conclusion of the State Ecological Expertisa of Phase I of the Project (this will make it impossible from the legal point of view to carry out further works under the Project, including dredging activities under Phase I of the Project)*

In this regard, the Report did not take into account that to implement the Decision of the Fourth Meeting of the Parties IV/2 the Ukrainian Party started, followed and fulfilled the implementation of Espoo Convention procedures envisaged in Articles 2-7 (detailed info. see annex below).

These procedural steps by Ukraine were also recognized by the Parties as duly implemented (par. 20 of the Decision).

- par. 3 of the recommendations of the Report says: *“The State Ecological Inspection shall issue decision ceasing any works under Phase I of the Project”*. Permit of the State Ecological Inspection dated 18 July 2005 № 1691/05 on carrying out works according to the Phase I of the project expired on 31 December 2005 and currently is not valid.

- par. 4 of the recommendations states that *“The Ministry of Environment shall notify any potential affected Parties, and the notification shall follow the provisions of Art. 3.2. of the Espoo Convention. In the light of related Espoo procedures already followed by Ukraine under Phase II in relation to one affected Party the notification might additionally request the affected Party, to clearly indicate whether it consider procedures followed under Phase II to also cover Phase I of the Project. In case of the affirmative answer, Ukraine will be required to complete only those Espoo procedures under Phase I which have not been accomplished under Phase II. If, otherwise, the affected Party considers that the relevant Espoo*

¹ Support to Ukraine to Implement the Espoo and Aarhus Conventions, Draft Final Report, EuropeAid Development and Cooperation, European Commission, August 2010, prepared by NIRAS A/S, Denmark (mention of any commercial firm in this document does not imply endorsement by the United Nations).

procedures, undertaken under Phase II of the Project, do not cover Phase I, Ukraine will be required to follow all of the procedures foreseen by Espoo Convention. In that case along with the notification the Ministry of Environment shall provide the affected Party, with: a) relevant information regarding the EIA procedure, including an indication of the time schedule for transmittal of comments; and b) relevant information on the proposed activity and its possible significant adverse Transboundary impact, and shall request the affected Party to provide information relating to the potentially affected environment under its jurisdiction.” From this statement it is clear that: 1) procedures under Phase II are recognized as completed by Ukraine. Their validity is not questioned; 2) From the phrase “*the notification might additionally request the affected Party, to clearly indicate whether it consider procedures followed under Phase II to also cover Phase I of the Project*” it is understood that the decision on whether Ukraine needs to complete some additional Espoo procedures (under Phase I) depends on the affected Party (Romania). In this regard, it is worth noting that there is no provision in the Espoo Convention which delegates to the affected Party the right to decide whether all or a part of the Espoo Convention procedures have been fully or partially completed by the Party of origin. Also, given that Ukraine and Romania are currently in the process of intense consultations on finding a comprehensive resolution to the issues pertaining to the Danube Delta use, primarily with regards to the Ukrainian Project, this recommendation by the Project is questionable as it is being fulfilled.

- par. 5 of the recommendations states “*The Ministry of Environment shall negotiate with the affected Parties the time-frame for the duration of the procedures, foreseen by the Espoo Convention; including participation of the public and authorities in the areas likely to be affected in all the affected Parties that replied positively to the notification and including consultations under Article 5 of the Convention*”. In this regard, it is important to note that DBSDWNR passes through joint areas of the state border between Ukraine and Romania. There is no other country which could potentially be affected by the Project from the point of view of the Espoo Convention. The same conclusion could be made from the “*Report of possible significant adverse transboundary impact of the channel Danube – Black Sea on the border of Romania with Ukraine*” by the UNECE Espoo Convention Inquiry Commission which states that *dredging is operated at and on the state boundary between Romania and Ukraine. From the point of view of the Inquiry Commission the only affected Party was Romania.*

- par. 6 states that “*the Ministry of Environment shall furnish the affected Parties with EIA documentation and – possibly in co-operation with such Parties – ensure the possibility for the public and relevant authorities in the areas likely to be affected in the affected Parties to participate in the EIA procedure, including possibility to submit comments*”. In 2008-2010 Ukraine following the repeal of the Final Decision dated 28 December 2007 concerning the DBSDWNR in the Ukrainian sector of the Danube Delta Ukraine completed all Espoo Convention procedure, including EIA (detailed info. see annex below). On 15 January 2009 the EIA materials were sent to the Romanian Party. The same refers to the par. 9 of the recommendations.

- par. 9: “*The Ministry of Environment shall provide to the affected Parties the conclusion of Integrated State Expertise along with the reasons and considerations on which it was based, as well as shall inform the public in Ukraine via the mass media of the Final Decision within the period of not more than 30 days after the approval of the conclusion of Integrated State Expertisa*”.

- par. 7 “*Delta Pilot shall amend the EIA documentation accordingly taking due account of possible transboundary impact and shall hold*

State Ecological Expertisa and Integrated State Expertisa of the amended Project documentation of Phase I of the Project pursuant to the requirements of State Construction Norms A.2.2-1-2003, approved by the Order of the State Construction Committee of 15 December 2003 №214. EIA documentation shall include materials reflecting public opinion (both in Ukraine and the affected Parties)."

In this paragraph it was not taken into account that under the "Final Decision on Implementation of the Ukrainian Project "Development of the Danube-Black Sea Deepwater Navigation Route in Ukrainian section of the Estuary. Full Scale Development" of January 25, 2010 Ukraine took all procedural steps, required by the Espoo Convention, including reflection in documentation of public opinion (both in Ukraine and the affected Party).

Also, this recommendation refers to the legislative acts of Ukraine which are no longer in force. The Law of Ukraine "On regulation of urban development", which came into force on 12 March 2011, provides for another order of conducting state expertise, than that which is referred to in this paragraph of the recommendation.

- par. 8 calls on *"the Cabinet of Ministers of Ukraine to form an interministerial commission"* in order to conduct negotiations with concerned Parties. At the same time it was not taken into account that by the Decision of the Cabinet of Ministers of Ukraine № 295 of 02 April 2008 the Interministerial coordinative Council on the Implementation of the Espoo Convention in Ukraine was established.

- par. 10 of the recommendations says that *the Ministry of Environmental Protection shall conduct negotiations with the parties concerned as to the post-project analysis of the Project according to the Article and Annex V of the Convention*. However, this requirement does not set out whether it refers to the project as a whole or a specific part of it (Phase I or Phase II) and contradicts the par. 24 of this Decision which *requests the Government of Ukraine to report by the end of each year to the Implementation Committee, i.a. on the post-project analysis of the project*. Given that the term post-project analysis according to the Art. 7 *"shall include, in particular, the surveillance of the activity and the determination of any adverse transboundary impact"* and therefore refers to the activity already in place and not planned, it means that the Parties in their decision referred to the implemented part of the Project. From the point of view of the Convention and the Decisions, on the one hand, and the recommendations of the Report, on the other hand, it is not viable to conduct simultaneously Espoo Convention procedures referring to the *proposed activity* and *activity* where a decision of a competent authority in accordance with applicable national procedure has been taken – *post-project analysis* (given the decision of 25 January 2010 "The Final Decision on Implementation of the Ukrainian Project "Development of the Danube-Black Sea Deepwater Navigation Route in Ukrainian section of the Estuary. Full Scale Development" and the decision of the Government of Ukraine № 283-p of 12 May 2004 "On adoption of the working project and a title for construction of "Creation of the Deep Water Navigation Route the Danube River – Black Sea on the Ukrainian Part of the Delta. Phase I").

In this regard, it should be noted that par. 19 of the Decision of the Parties VI/2 confirms that such post-project analysis is being duly organized by Ukraine *"monitoring measures have been put in place"* with regard to the Danube-Black Sea Deep Water Navigation Route.

Among other main requirements to the Government of Ukraine, according to the Report, were:

1. The Central Service of Ukrinvestexpertisa shall repeal the conclusion of Integrated State Expertisa of Phase I of the Project.

	<p>State of implementation: Since 12.03.2013 the aforementioned Conclusions lost their validity (Law of Ukraine “On Regulation of Urban Development”¹. fulfilled</p> <p>The Report also states that “official Final Decision is premature (in a sense that it was taken before completing the procedure) and deficient in terms of meeting the formal requirements under Article 6 of the Espoo Convention.” (pages 52-53 of the Report). However, the Report lacks practical evidence proving the fact that the requirements under Article 6 were not met by Ukraine, and also it misses that 1) in its Final Decision of 25 January 2010 Ukraine took into account public comments (Art 3. par. 8 of the Espoo Convention), and opinions (Art. 4 par. 2, Art. 5 of the Espoo Convention) from the affected Party and 2) the validity of the Final Decision of 25 January 2010 was not questioned by the Parties.</p>
<p>20. Notes the steps taken by the Government of Ukraine in relation to phase II of the project for the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, including the repeal of the decision dated 28 December 2007 on the implementation of the project; the transmission of the notification on the project; and, following the positive response of Romania, the transmission of the environmental impact assessment (EIA) documentation on the project; the holding of a public consultation meeting in Tulcea (Romania) on 9 June 2009; and also the fact that Ukraine has received the comments in writing by Romanian non-governmental organizations, international organizations and the Romanian public and organized a bilateral meeting with Romania in Kyiv on 15 and 16 July 2009;^{ii 2}</p> <p>21. Appreciates the strategy of the Government of Ukraine to implement the Convention, as requested in the decision IV/2, paragraph 12, as an important step towards future compliance;</p> <p>22. Also appreciates in particular the steps taken by the Government of Ukraine to initiate negotiations with the aim of concluding bilateral agreements with the neighbouring countries that are Parties to the Convention;</p> <p>23. Notes with concern the insufficient progress with the realization of the strategy of the Government of Ukraine to implement the Convention, in particular the recent changes in the legislative framework for development control that appear to be not corresponding to the strategy, but in fact diminishing rather than strengthening the capacity of the legislative framework to ensure compliance with the Convention;</p> <p>24. Requests the Government of Ukraine to report by the end of each year to the Implementation Committee: (a) on steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, implementing the measures in accordance with paragraph 19, and on the post-project analysis of the project; (b) on the implementation of the strategy, in</p>	<p>Action Implementation Plan (Strategy) was approved by the Decree of the Cabinet of Ministers of Ukraine №9-p dated 06.01.2010 and practically all of its task have been completed.</p> <p>Ukraine regularly reports to the Implementation Committee. The last communication was on 11 January 2017, letter №5/25-13/136-17</p>

¹ The Law of Ukraine “On Regulation of Urban Development dated 17.02.2011 provides for the expert conclusions on the design and construction sites evaluation made before this Law entered into force, are valid within two years from the date of entry into force of this Act. See also: <http://zakon2.rada.gov.ua/laws/show/3038-17/page4>, Transitory provisions p. 5 “Вихідні дані для проектування, експертні висновки до проектно-кошторисної документації на будівництво об’єктів, експертні висновки до проектів містобудівної документації, отримані до набрання чинності цим Законом, є чинними протягом двох років з дня набрання чинності цим Законом”.

² ii Information distributed by Ukraine during the fifth session of the Meeting of the Parties, entitled “Procedural steps of Ukraine under the provisions of the Espoo Convention in respect of the deepwater navigation route Danube-Black Sea in 2004-2011”, on taking the so-called “Final Decision as to implementation of the project ‘Development of Danube — Black Sea Deepwater Navigation Route in Ukrainian section of the estuary. Full scale development’ on 25.01.2010”.

<p>particular on concrete legislative measures adopted to this effect;</p> <p>25. Also requests the Implementation Committee to report to the sixth session of the Meeting of the Parties on its evaluation of the steps taken by the Government of Ukraine to bring about compliance and to implement the strategy, and to develop, if appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention;</p> <p>26. Offers technical advice to the Government of Ukraine to assist it in bringing its legislation into line with the provisions of the Convention, subject to the availability of funding;</p>	
--	--

<p>Meeting of the Parties to the Convention Sixth session Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment Second session Geneva, 2–5 June 2014 Decision VI/2</p> <p>II. Follow-up to decision V/4 A. Regarding Ukraine</p> <p>15. Welcomes the efforts demonstrated by the Government of Ukraine to follow the recommendations by the Meeting of the Parties in decision V/4;</p> <p>16. Appreciates the timely reports received from the Government of Ukraine further to paragraph 24 of decision V/4;</p> <p>17. Welcomes the preparation by the Government of Ukraine of a new draft law on the implementation of the Convention, as a concrete legislative measure for the implementation of the strategy of the Government of Ukraine to implement the Convention;</p>	
<p>18. Expresses deep concern, however, that the strategy has not been fully implemented, and in particular that the respective legislative measures for the implementation of the Convention have not yet been adopted;</p>	<p>On October 4, 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Environmental Impact Assessment” and the Law of Ukraine “On strategic environmental assessment” (subsequently vetoed by the President of Ukraine on October 31, 2016). Amendments proposed by the President were considered by the relevant Parliamentary Committee which tendered the draft Law for second reading.</p>
<p>19. Appreciates that monitoring measures have been put in place with regard to the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (the Project);</p>	<p>As a part of post-project analysis in 2004 Ukraine launched a comprehensive environmental monitoring of the Danube Delta, including environmental and engineering monitoring programmes. Summary of the monitoring results for 2004-2012 allow to make the following conclusion with regard to ecosystems of the Ukrainian part of the Danube Delta during restoration of the DBSDWNR under stage I:</p> <ul style="list-style-type: none"> - the trend of ration of flow redistribution between the Kyilia arm and the Tulchia arm consists in a constant grow of the flow share of the Romanian Tulchia arm (from 33% to 51% over the last 50 years of observations) and corresponding reduction of the Kyilia arm. The main reason for this is the large-scale hydro-engineering works by Romania in its part of the Delta. - Extensive hydrobiological studies confirm that there is no direct impact of the operation of the DBSDWNR on biotic communities of plankton, zooplankton, zoobenthos and fish fauna in studied water bodies, except for some local

	<p>disturbances of community structures in the area of direct performance of engineering works.</p> <ul style="list-style-type: none"> - According to the monitoring conclusions, there were no cases registered of reduction of ecosystem diversity of protected areas during restoration and operation of the DBSDWNR. - The conclusions of the comprehensive environmental monitoring state that the impact of the DBSDWNR is local and limited (detailed description attached herewith).
20. Regrets, however, that no steps have been taken to bring the Project into full compliance with the Convention, implementing the measures in accordance with paragraph 19 of decision V/4;	See the comments to the paragraph 19 above.
21. Endorses therefore the finding of the Implementation Committee at its thirtieth session that, despite some steps taken, Ukraine has not yet fulfilled all its obligations under paragraph 24 of decision V/4;	
22. Endorses also the finding of the Committee that the recent decisions by the Government of Ukraine to continue dredging activities, such as the Action Plan adopted by decision No. 187 of 27 July 2013, may indicate a further breach of its obligations under the Convention; ECE/MP.EIA/20.Add.1 ECE/MP.EIA/SEA/4.Add.1 10	<p>The validity of the decision of 25 January 2010 “The Final Decision on Implementation of the Ukrainian Project “Development of the Danube-Black Sea Deepwater Navigation Route in Ukrainian section of the Estuary. Full Scale Development” and the decision of the Government of Ukraine № 283-p of 12 May 2004 “On adoption of the working project and a title for construction of “Creation of the Deep Water Navigation Route the Danube River – Black Sea on the Ukrainian Part of the Delta. Phase I” was not questioned by the Parties. Moreover, the Parties regard these decisions as valid (see par. 24 Decision V/4, as well as paragraphs 19 and 26 Decision VI/2, all referring to the post-project analysis of the project).</p> <p>From the point of view of the Convention and the Decisions of the Parties it is not viable to conduct simultaneously Espoo Convention procedures referring to the <i>proposed activity</i> and <i>activity</i> where a decision of a competent authority in accordance with applicable national procedure has been taken – <i>post-project analysis</i>. It should be noted that par. 19 of the Decision of the Parties VI/2 confirms that such post-project analysis is being duly organized by Ukraine “<i>monitoring measures have been put in place</i>” with regard to the Danube-Black Sea Deep Water Navigation Route.</p> <p>Taking into account mentioned above, adoption of the Action Plan by decision No. 187 of 27 July 2013 is in line with the provisions of the Convention and Decisions of the Parties.</p>
23. Declares therefore that the caution to the Government of Ukraine issued at its fourth session is still effective;27	
24. Requests the Government of Ukraine to adopt the relevant draft legislation and to bring the Project into full compliance with the Convention by the end of 2015;	<ul style="list-style-type: none"> - On October 4, 2016 the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Environmental Impact Assessment” and the Law of Ukraine “On strategic environmental assessment” (subsequently vetoed by the President of Ukraine on October 31, 2016). Amendments proposed by the President were considered by the relevant Parliamentary Committee which tendered the draft Law for second reading. Fulfilled partially, pending approval by the Parliament with amendments proposed by the President taken into account.
25. Also requests the Government of Ukraine to report by the end of each year to the Committee on how it implemented paragraph 24 above, and specifically: (a) On the implementation of the strategy by the end of 2015, in particular concrete legislative measures adopted to this effect, and to provide to the Committee relevant draft legislation for its review before it is adopted; (b) On steps taken to bring the Project into full compliance, implementing the measures in accordance with paragraph 19 of decision V/4, by the end of 2015, while refraining from any measure or programme	Ukraine reported to the Committee on the implementation of the Strategy (letters №5/1-13/1954-16 of 01.03.2016, №5/25-13/6270-16 of 02.07.2016) provided to the Committee draft legislation for its review (letter № 5/25-6/10702-16 of 18.11.2016), informed on the steps taken to bring the Project into full compliance (last communications on 11 January 2017 letter №5/25-13/136-17, and subsequent letter dated 10 February 2017 №5/25-13/944-17) fulfilled

which could jeopardize the fulfilment of these recommendations;	
26. Further requests the Government of Ukraine to inform Romania about existing monitoring results and to consult with Romania on the post-project analysis , according to article 7 of the Convention, as well as also to report to the Committee, eight months before the seventh session of the Meeting of the Parties, on the implementation of article 7 of the Convention;	On 20 October 2015 the Ministry of Ecology and Natural Resources of Ukraine sent to the Romanian Side (letter № 5/25-13/12909-15) the report “Comprehensive Environmental Monitoring during the Construction and Operation of the Danube – Black Sea Deep Navigation Route in 2014: Maritime Access Channel”. Ukraine and Romania are currently in the process of intense consultations on finding a comprehensive resolution to the issues pertaining to the Danube Delta use, primarily with regard to the Ukrainian Project in view of the Espoo Convention, including post-project analysis. fulfilled
27. Encourages the Governments of Romania and Ukraine to further develop the bilateral agreement for improved implementation of the Convention; 28. Requests the Committee to report to the Meeting of the Parties to the Convention at its seventh session on its evaluation of the steps taken by the Government of Ukraine to bring about compliance and to implement the strategy, and to develop, if appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention;	The Draft bilateral Agreement has been developed and currently is being considered by the Ukrainian relevant Ministries. fulfilled

27 ECEMP.EIA/IC/2009/4, para. 16.

Procedural steps by Ukraine to bring the implementation of the Project on Renovation of the Danube-Black Sea Deepwater Navigation Route into full compliance with the Espoo Convention

- By the Decision of the Cabinet of Ministers № 295 of 02 April 2008 the Interministerial coordinative Council on the Implementation of the Espoo Convention in Ukraine was established. In May 2008 the representative of the Ministry of Environmental Protection was designated as Focal Point for the Espoo Convention in Ukraine;
- On 10 June 2008 the Final Decision on the implementation of the Second Phase of the Ukrainian Project on Renovation of the Danube-Black Sea Deepwater Navigation Route (hereinafter referred to as ‘DBSDWNR’) was officially repealed. In 2008 the Ukrainian Party prepared the EIA for the DBSDWNR and started the implementation of Espoo Convention procedures envisaged in Articles 2-7;
- On 29 August 2008 the Ministry of Environmental Protection of Ukraine sent to the Romanian Side the Notification on the planned implementation of the Second Phase of the DBSDWNR;
- On 15 – 16 October 2008 in Kyiv the consultations between the Ukrainian and the Romanian experts took place. The result of it was the preparation of draft timetable on the implementation of Espoo Convention procedures. It sets a timetable for preparation of the Assessment of likely transboundary environmental impacts (EIA) and sending it to the Romanian Party, public hearings, consultations, and preparation of final Decision taking into account all observations and comments of public organizations and the Romanian Party, etc. All the discrepancies on timetable for implementations of the Espoo Convention procedures were fixed;
- On 15 January 2009 the EIA materials were sent to the Romanian Party;
- On 9 June 2009 public hearings on Articles 3.8 and 4.2 of the Espoo Convention on the implementation of the Project were held in Tulcea (Romania). During the hearings the Ukrainian experts answered all the questions of representatives of the Romanian governing bodies, NGOs,

general public and mass media on the assessment of the transboundary impact on the environment of the Second Phase of the Ukrainian part of the DBSDWNR;

- On 15 – 16 June 2009 consultations on the Second Phase of the Project between the Ukrainian and the Romanian experts took place. The hearings were held following Article 5 of the Espoo Convention. As a result the agreement on crucial issues was achieved and protocol was signed;
 - On 30 August 2009 the Report by Ukraine on the Implementation of the Decision of the Parties IV/2 was sent to the Implementation Committee;
 - On 22 January 2010 the Reply of Ukraine to the comments and objections of the Romanian state bodies and public as to the DBSDWNR was sent to the Romanian Side;
 - On 25 January 2010 the “Final Decision on Implementation of the Ukrainian Project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development” was approved.
 - On 26 January 2010 the “Final Decision on Implementation of the Ukrainian Project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development” was sent to the Romanian Side.
-