

**МІНІСТЕРСТВО
ЕКОЛОГІЇ ТА
ПРИРОДНИХ
РЕСУРСІВ УКРАЇНИ**



**MINISTRY
ECOLOGY AND
NATURAL
RESOURCES OF
UKRAINE**

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Secretariat of the Espoo Convention

The Ministry of Ecology and Natural Resources of Ukraine presents its compliments to the Implementation Committee and Secretariat of the Espoo Convention and, referring to the letter by the Committee of 20 December 2017 and in addition to the letter of the Ministry № 5/3-10/1478-18 of January, 12, 2018, has the honour to inform on the following.

The Ministry conveys the list of Ukrainian delegation to take part in the 41st session of the Implementation Committee (IC) (enclosed) concerning the review of submission EIA/IC/S/1 Danube-Black Sea Deep Water Navigation Route Project (hereinafter referred to as Bystroe Route Project). Please also note that as the delegation list is currently under approval procedures the minor changes can occur on which the Secretariat will be duly informed, if the case.

Ukraine also reiterate its support to the draft decision VII\2 regarding Bystroe Route Project which the IC had informally agreed in the margins of the MOP 7 but which the MOP had no time to consider during the plenary session.

The Ministry commends the efforts of the IC aimed at assisting Ukraine in meeting the requirements provided for in the Espoo Convention in relation to the Bystroe Route Project and appreciate the approach on developing of respective Roadmap with the concrete measures that need to be taken to bring the Bystroe Canal Project into full compliance with the Convention, taking into account newly adopted legislation, as it was discussed during the MOP 7.

In this regard and following the paras 7 and 11 of the MOP Decision IV/2 as well as para 24 of the Decision V/4 of the MOP the Government of Ukraine dully reported on all respective issues (see letters of the Ministry of Ecology and Natural Resources of Ukraine as of 11.01.2017 # 5/25-13/136-17, 10.02.2017 # 5/25-13/945-17, 22.11.2017 # 5/3-10/10472-17, 12.02.2018 # 5/3-10/1478-18 and the email as of 01.06.2017), i.e. on:



- steps taken to bring into full compliance the Danube-Black Sea Route Project with the provisions of the Espoo Convention, including the adoption of new EIA legislation – primary and secondary legislation;
- the measures of Post-project Analysis that were being conducted under the Bystroe Route Project;
- the implementation of the strategy, in particular on concrete legislative measures adopted and conducted monitoring.

At the same time, the following should be noted:

- Ukrainian scientists had not identified the transboundary impact of project implementation on the environment as regards countries located upstream of the Danube and Prut rivers (see MENR letters as of 01.03.2016 # 5/1-13/1954-16, 12.02.2018 # 5/3-10/1478-18);
- Final Report of the EU Commission on request of the UNECE Espoo Convention (June 2006) does not contain references to the possibility of transboundary environmental impact of any country, except Romania. Therefore the respective consultations with Romania were conducted.

It should also be noted that the Ukrainian-Romanian bilateral dialogue aimed at conclusion of the Agreement according to the article 8 of the Espoo Convention progressed and currently the respective draft is being finalized internally in Ukraine to continue with the next phase of consultations.

Also it is very important to mention the issue of maintenance and dredging:

- In its findings the IC address this issue, i.e. in the Report EC\MP\EIA\2008\2 (adopted by the MOP decision ECE\MP\EIA\10) para 69 b) refer to requirement to “*suspend works*” under Phase I. The MOP’s decision # IV/2 (para 9) request to “*stop works*” in relation to Phase II. Consecutively in its further documents the IC provided its interpretation that in fact the term *stop works* implicitly refer also to Phase I while admitting that the wording was ambiguous and could leave to other interpretation (see ECE/MP.EIA/IC/2008/2 paras 28, 30). However, this interpretation was not endorsed formally by the MOP. Therefore the issue still need to be explicitly clarified in terms of practical steps.
- There is proven need to prevent the rapid redistribution of water flow, which in turn, can disrupt the ecological balance in the area. This conclusion was directly specified during the mission of the European Commission, which investigated the conditions, state of play and the fulfilment of international obligations in the Delta of the Danube river in Romania and Ukraine in 2015 (report published in October 2015).

However even within this conditions Ukraine wish to demonstrate its willingness and sufficient steps to follow the essential elements of MOP’s decision in this regard aimed at restoration of compliance with the Convention as well as to take respective compensatory measures.

Moreover Ukraine intends to make a full use of the newly adopted EIA legislation which as a game changer in the area provides a completely different legal and administrative frameworks – which are in compliance with respective international and EU standards in the area as it was mentioned by respective conclusions provided by the EU as well Espoo Secretariat - to genuinely reach the aim of bringing the Bystroe Channel Project into full compliance with the Convention.

In this regard respective subject in Ukraine intends to develop a new project for Bystroe Route and respectively launch and conduct the transboundary EIA procedure according to the Convention and internal EIA legislation.

Considering all the above information and reported developments numerous decisions and recommendations of the Convention bodies on the Bystroe Route Project provide over-cross-referenced and already inconsistent base for understanding the steps that need to be taken to bring the Project into compliance with the Convention. Especially this relates to situation where they refer to internal technical, administrative or procedural issues which does not already exist.

Thus, the abovementioned Roadmap provides for the opportunity to put essential elements of the previous decisions and recommendations into concrete, clear, updated and adjusted steps that needs to be taken.

With this intention the Ministry presents for the IC's consideration its proposals to the Roadmap to bring the Bystroe Route Project into full compliance with the Convention (enclosed).

The Ministry believes that successful implementation of the Roadmap with the IC's assistance will ensure bringing this longstanding Bystroe Route Project into compliance with the Convention and allow to close the case.

Looking forward to continuing cooperation.

Enclosure: pages.

**Deputy Minister for
European Integration**



Mykola Kuzyo

DRAFT ROAD MAP

on bringing the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta
hereinafter the Project
into full compliance with the Convention 26 November 2017

Steps		Measure's, key elements	Steps to be taken, Indicators
1	Phase I	1. Stop works 2. Repeal FD 3. Take steps to comply with the convention	<p>1. Suspend works and repeal final decision.</p> <p>1.1. Suspend (temporally for September – November 2018) any works (including maintenance or dredging).</p> <p>1.2. Within that period:</p> <ul style="list-style-type: none"> - conduct an assessment of any damage to the environment (at least in the transboundary context) resulted from already implemented works related to the Project. - develop the plan for compensatory and mitigations measures. - approve the plan of compensatory measures (by the Interagency Coordinating Council decision and necessary administrative act if needed). <p>1.3. As Ukraine will launch the procedure for the new project Danube-Black Sea Navigation Route according to the newly adopted EIA legislation the Ministry of Ecology and Natural Resources (EIA competent authority) provide the scoping decision for the new project Danube-Black Sea Navigation Route (see step 3) in accordance with the relevant provisions of the above ICC decision and damage assesement under step 1.2 (bullet 1).</p> <p>The steps 1.1-1.3 made to fulfill the MOP Decision regarding the need to stop works are considered as sufficient.</p> <p>The Implementation Committee is to be informed on respective decisions under steps 1.1, 1.2 and 1.3 with respective confirming documents (decisions, orders etc).</p> <p>[UA Comment regarding the Repael of FD: - see step 3 - according to Article 5 of Chapter V "Final Provisions" Law of Ukraine "On regulation of urban development" # 3038-VI dated 17.02.2011 conclusions of experts to design estimates for construction of facilities which had been received prior entering into force of mentioned Law shall be valid for two years from the date of the entering into force of this Law. Taking into account the entry into force of the mentioned Law of Ukraine (12 March 2011) since 12 March 2013, the conclusions of experts which were provided earlier are invalid. Thus, legally there is no possibility to cancel the conclusion of State complex expertise on Phase I of the project as such conclusion is not in force. The permission of the State Ecological Inspection on Environmental Protection of North-Western Black Sea region dated 18 July 2005 # 1691/05 for carrying out the project "Creation of Deep Danube – Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Phase I" was valid until 31 December 2005 and at present is not valid. Other decisions on granting permission for the first phase of the project were not taken.]</p>

2	Phase II	<ol style="list-style-type: none"> 1. Stop works 2. Repeal FD <p>Take steps to comply with the convention</p>	<ol style="list-style-type: none"> 1. Stop works 1.2. Works stopped (completed). 1.3. However, an extension of the offshore wall was built (ICI6). Assessment of any damage (at least in a transboundary context) and development of compensatory or mitigation measures will be conducted within the steps 1.2 of Phase I. 2. Repeal final decision. FD repealed (completed). 3. Take steps to comply with the conventions. <ul style="list-style-type: none"> - Steps to comply will be taken under steps I Phase 1, 1.2 Phase II as well as Step III
3	New project EIA procedure launched		<p>The new project of planned activity is being assessed according to the new EIA law that entered into force on December, 18,2017.</p> <ol style="list-style-type: none"> 1. EIA Notification on planned activity – new project Danube-Black Sea Navigation Route – submitted to the competent authority 2. Transboundary procedure launched 3. Competent authority scoping provided.
4	Monitoring & post-project analysis	<ol style="list-style-type: none"> 1. Conduct monitoring 2. Report regularly 3. Inform Romania 	<ol style="list-style-type: none"> 1. The UA's EIA Law envisages procedures for project monitoring and analysis, and how the respective steps are to be taken, i.e. Article 11 and 13 of the EIA Law (see the EIA Law (English version) submitted to the Secretariat by e-mail dated June, 1, 2017). Given that the New project EIA procedure is to be launched under the step 3 all further steps will be covered by the new EIA legislations. 2. The joint monitoring program "Harmonized transboundary monitoring network of the environmental status of Danube delta", which was sent to the Romanian side by letter dated 15.12.2015 № 5/25-13/15187-15. On November 23, 2015 there was discussion of the common integrated environmental monitoring The Danube Delta with the participation of Romanian experts. Additional monitoring results were provided to the Implementation Committee by the MENR (Ukraine) Letter № 5/3-10/1478-18 January, 12, 2018. The Romanian Side may wish to comment on this monitoring as it was discussed during respective meeting as well as to express its views and proposal as regards the scoping and requirements to the New project EIA procedure launched under Step 3 within the respective transboundary consultations. 3. According to the results of monitoring, that were annually held on a regular basis in 2004 – 2017, adverse negative effects of the operation of DNR Danube – Black Sea on the environment in transboundary context were not identified. Besides a significant negative environmental impact on work of the recreation and maintenance of DNR in a transboundary context was not identified either. MENR sends monitoring reports to the Romanian side annually.

5	Bilateral agreements	3. Encourages UA and RO to develop bilateral agreement	<p>1. Report on further efforts to develop bilateral agreement.</p> <p>The draft bilateral agreement between Ukraine and Romania on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context was considered and generally approved by the concerned ministries during year 2017, but on December 18, 2017 the new law "On Environmental Impact Assessment" came into force.</p> <p>Thus, the draft bilateral agreement between Ukraine and Romania was to be adjusted to and harmonized with the new law and the draft Agreement. Currently the draft Agreement is under in the process of interministerial consideration.</p> <p>The draft bilateral agreement will be immediately forwarded to the Romanian side when the interministerial consultations are completed.</p> <p>Ukraine informed the Romanian Side on the above.</p>
6	Post-case monitoring		<ol style="list-style-type: none"> 1. Sufficient and tangible progress made on Steps 1-4, sufficient steps were taken under Step 5. 2. Conclusion that UA made necessary steps to bring the Bystroe Canal project in line with the Convention. 3. The Committee may wish to continue to do the post-case monitoring and closely track the new Bystroe project procedure. In that case UA will inform it regularly on each EIA procedure stage.

Ukrainian delegation to participate in the meeting of the Espoo Implementation Committee to be held March 13-15, 2018 in Geneva, Switzerland Confederation

Mykola Kuzyo - Deputy Minister of Ecology and Natural Resources of Ukraine for European Integration, Head of Delegation

Dmytro Matiushchenko - Head of the Unit for International Sectorial and Investment Cooperation of the MFA, member of the delegation.

Vita Pshenychna - Chief Specialist of the River Transport Development Unit of the Department for the Reforming of the Sea and River Transport Operations, Ministry of Infrastructure, member of the delegation.

Oleksandr Popov - the head of the department of canals and water areas of the administration of the SE "Administration of Seaports of Ukraine", member of the delegation

Oleksandr Golodnitsky - the head of the branch "Delta-pilot" of the State Enterprise "Administration of Seaports of Ukraine", a member of the delegation.

Igor Shevchenko - Deputy Head of Unit of production organization of the branch "Delta-pilot" of the State Enterprise "Administration of Seaports of Ukraine", member of the delegation.

Victor Oganesyanyan - a leading engineer of the department of canals and water areas of the administration of the SE "Administration of Seaports of Ukraine", a member of the delegation.