



**МІНІСТЕРСТВО ЕКОЛОГІЇ ТА ПРИРОДНИХ РЕСУРСІВ УКРАЇНИ  
(Мінприроди)**

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на № \_\_\_\_\_

Secretariat of the Espoo Convention

Ministry of Ecology and Natural Resources of Ukraine presents its compliments to the Secretariat of the Convention on environmental impact assessment in a transboundary context and has the honour to inform.

In addition to letter dated 11.01.2017 № 5/25-13/136-17 Ministry of Ecology and Natural Resources of Ukraine transmits answers to the questions of the Implementation Committee of the Espoo Convention about Deep Danube – Black Sea Navigation Route (case EIA/IC/S/I Bystroe Canal Project) and information about 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.

The Ministry avails itself of this opportunity to renew the assurances of its highest consideration.

Deputy Minister for  
European Integration

Mykola KUZYO

0020782



## **The answers to the questions of the Implementation Committee of the Espoo Convention**

### *Introduction*

Since 2010 till present there are several significant changes to the legislation of Ukraine and regulatory acts, including adaptation of national regulations to the EU standards. As a result, the recommendations of Fifth Meeting of the Parties are considerably not relevant.

At the same time, the following should be noted:

Ukrainian scientists had not identified the possibility of transboundary impact of project implementation on the environment of countries located upstream of the Danube and Prut rivers;

Final Report of the Commission on request UNEP/CEP Espoo Convention (June 2006) does not contain references to the possibility of transboundary environmental impact of any country, except Romania

It should also be noted bilateral Ukrainian-Romanian dialogue and draft the Agreement for execution of the provisions of article 8 of the Espoo Convention, recently obtained from the Romanian side. This draft Agreement is in the process of internal approval.

On the need to maintain the depths in order to prevent the rapid redistribution of water flow, which in turn, can disrupt the ecological balance, directly specified during the mission of the European Commission, which investigated the condition of Affairs and the fulfilment of international obligations in the Delta of the Danube river in Romania and Ukraine in 2015 (report published in October 2015).

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

Ministry of Ecology and Natural Resources informs that according to Article 5 of Chapter V "Final Provisions" Law of Ukraine "On regulation of urban development" # 3038-VI dated 17.02.2011 is determined that 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:

"5. Initial data for planning, the conclusions of experts to design estimates for construction of facilities, the conclusions of experts to the urban project planning documentation which had been received prior entering into force of this 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 mentioned the Law of Ukraine (12 March 2011) since 12 March 2013, the conclusions of experts which were provided earlier are invalid.

Thus, in our opinion, the legal bases for canceling of conclusion of State complex expertise on Phase I of the project are absent.

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.

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

The issue on cancellation conclusions of expertise is described in comments to paragraph 1 of the questionnaire (see above).

*3. The State Ecological Inspection shall issue decision ceasing any works under Phase I of the Project;*

Permit of the State Ecological Inspection for protection of Environmental northwestern Black Sea region from 18.07.2005 №1691 / 05 on carrying out works according to the project "Creation of DNR p. Danube-Black Sea in the Ukrainian part of the delta. Phase I was valid until 31.12.2005 and at present is not valid.

Dredging works on Phase I of the project have not carried out since 2008 (described above).

From 2008 to the present, both capital and maintenance dredging in the river part of the DNR. The Danube -- Black sea was not performed.

Starting in 2009 with the aim of ensuring safety of navigation on the sea approach channel of DNR. The Danube -- Black sea (length - 3,4 km) will be done exclusively operational dredging to maintain the achieved parameters within the characteristics of the project And stage.

*4. The Ministry of Environment shall notify any potentially 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 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;*

4.1. According to the Consolidated complex conclusion of SE Central Service Ukrinvestexpertise "Ukragroinvestexpertise" as for the project " Creation of Deep Danube – Black Sea Navigation Route in the Ukrainian sector of the Danube Delta.

Full development »№116 / 04 dated 26.10.2006, in the framework of the working draft on the full development are included the following activities:

- elimination of silting of the sea channel and the slots in the shallows;
- Completion of Phase I of the channel;
- Construction of the channel on full development after the implementation of work of Phase I, or simultaneously with them.

As part of this working draft on the full development has been carried out environmental impact assessment of these works in full (including for phase I).

4.2. Environmental impact Assessment of effects of the project on full development as a whole (as a mandatory component) has been implemented during the development of the project to the full development and further developed during the procedure according to the provisions of the Espoo Convention pursuant to decisions IV / 2 of the Meeting of the Parties to the Espoo Convention (including taking into account the conclusions of the Commission at the request of the UNECE and the comments of the Romanian community and the Romanian scientists) in 2006-2010.

Due to the Fifth Meeting of the Parties have been noted steps taken by Ukraine in respect to the project of DNR- Danube-Black Sea according to the provisions of the Espoo Convention (p.20 V / 4):

*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 Route 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.*

4.3. With the Note of the Embassy of Ukraine in Romania dated from 22.01.2010 №93 Ukrainian side forwarded response to the comments and remarks of the Romanian authorities and community organizations to Environmental impact assessment (EIA) for Phase II of the rehabilitation project of the DNR "Danube-Black Sea".

4.4. Procedure of Environmental impact assessment in a transboundary context according to the provisions of the Espoo Convention has been done by Ukraine.

*5. 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.*

At the same time we pay attention that Ukrainian party forwarded prepared Notification to meet the requirements of Espoo Convention on the project " Creation of Deep Danube – Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Full development " to the Romanian Party (Note of the Embassy of Ukraine in Romania dated from 08.09.2009 number 1670) as the party which may be considered as regarded. This probably came from the following:

1) DNR takes part in joint areas of the state border of Ukraine - Romania. Commission of UNECE Espoo Convention, in the "Report of possible significant adverse transboundary impact of the channel Danube - Black Sea on the border of Romania and Ukraine" has turned to the following conclusions (quote):

*All impacts of the dredging of the Navigation Route in the Chilia Branch and the Starostambulski Branch are ipso facto transboundary, because the dredging is operated at and on the state boundary between Romania and the Ukraine. The question is whether the effects are likely significant and adverse (apx. 6. Executive summary. Espoo inquiry commission report on the likely significant adverse transboundary impacts of the Danube - Black sea navigation route at the border of Romania and the Ukraine, july, 2006.)*

2) Ukrainian scientists have not identified transboundary effects of the project on the environment of countries that are located upstream river Danube and river Prut:

Final Report of the Commission on request UNECE Espoo Convention (June 2006) does not contain references to the possibility of transboundary environmental impact of any country, except Romania

*6. 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;*

Ukrainian scientists have not been identified the possibility of cross-border effects of the project on the environment of which are located upstream Danube River and Prut River:

the final report of the Commission on request of UNECE Espoo Convention (July 2006) contains no reference on the possibility of environmental impact any country except Romania.

*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 );*

"Assessment of the possible environmental impact of DNR- Danube-Black Sea in the Ukrainian part of the delta. 2. Annex to the EIA application in the working project " Creation of Deep Danube -- Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Full development " (including remarks of the Romanian party to transboundary EIA and the results of consultations) UNSIEE, Kharkiv, developed for the SE" Delta-pilot "in 2009.

In further stated transboundary EIA was not corrected. At the same time, annually comprehensive environmental monitoring of the environment is held, appropriate conclusions are developed , including in a transboundary context.

With the Note of the Embassy of Ukraine in Romania from 22.01.2010 №93 response was forwarded to the Ukrainian party to recent comments and remarks of Romanian authorities and public organizations to environmental impact assessment (EIA) for Phase II of the rehabilitation project of the DNR «Danube - Black Sea».

All changes and additions to environmental impact assessment of the project effects of the DNR- Danube-Black Sea (in order of SE "Delta-Pilot") were made during the procedure according to the provisions of the Espoo Convention (executor - UNSIEE of the Ministry of Ecology and natural Resources of Ukraine).

As for today the requirement paragraph 7 of the questionnaire is not relevant in terms of the changes that were made to the legislation of Ukraine, starting from the time of the development of these recommendations.

For example, according to the Law of Ukraine "On regulation of urban development", which came into force on 12.03.2011, set another order of state expertise, than that given in paragraph 7 of the questionnaire of the Compliance Committee. In particular, the State expertise currently is not provided by national law.

If the relevant decision to adjust any part of the project "Creation of Deep Danube – Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Full development", we consider that it is possible to order and execute the appropriate adjustment of construction documents, including part of environmental impact assessment.

*8. The Cabinet of Ministers of Ukraine shall establish a commission composed of representatives of the Ministry of Environment, Ministry of Healthcare and other authorities (as appropriate) aiming into entering into consultations with the affected Parties, concerning the Project pursuant to Art. 5 of Espoo Convention;*

Due to Resolution of the Cabinet of Ministers of Ukraine dated from 02.04.2008 number 295 "On establishment of the Interagency Coordinating Board on implementation in Ukraine Convention on environmental impact assessment in a transboundary context" it was created a mechanism of inter-agency cooperation to

solve problem issues related to the implementation of the provisions of the Espoo Convention.

*9. The Ministry of Environment shall provide to the affected Parties, the conclusion of Integrated State Expertisa 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;*

Please note that all necessary procedural steps according to the Article 6.3 of the Espoo Convention in relation to the project "Creation of Deep Danube -- Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Full development" for 2008-2010 years was fulfilled, that was noted on V-th and VI th Meeting of the Parties to the Espoo Convention.

In particular, in paragraph 20 of decision V / 4 of the Conference of the Parties it is noted:

*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;*

Decision VI / 2 of the Conference of the Parties to the Espoo Convention also defines:

*15. Welcomes the efforts demonstrated by the Government of Ukraine to follow the recommendations by the Meeting of the Parties in decision V/4 (the decision of the Meeting of the Parties ECE/MP.EIA/20/Add.1--ECE/MP.EIA/SEA/4/Add.1);*

*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);*

*9. The Ministry of Environment shall provide to the affected Parties, the conclusion of Integrated State Expertisa 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;*

Please note that all necessary procedural steps according to the Article 6.3 of the Espoo Convention in relation to the project "Creation of Deep Danube -- Black Sea Navigation Route in the Ukrainian sector of the Danube Delta. Full

development" for 2008-2010 years was fulfilled (see annex), that was noted on V-th and VI th Meeting of the Parties to the Espoo Convention.

In particular, in paragraph 20 of decision V / 4 of the Conference of the Parties it is noted:

*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;*

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*15. Welcomes the efforts demonstrated by the Government of Ukraine to follow the recommendations by the Meeting of the Parties in decision V/4 (the decision of the Meeting of the Parties ECE/MP.EIA/20/Add.1 - ECE/MP.EIA/SEA/4/Add.1);*

*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);*

*10. The Ministry of Environment shall consider entering into consultations with the affected Parties concerning the measures of post-project analysis pursuant to Art. 7 and Appendix V of the Espoo Convention.*

05.03.2015 at the Ministry of Ecology and Natural Resources of Ukraine were held consultations with the Romanian party together with representatives of the Ministry of Ecology and Natural Resources of Ukraine, Ministry of Foreign Affairs and the Ministry of Infrastructure of Ukraine regarding to the enforcement of the Meeting of the Espoo Convention on DNR Danube - Black Sea, during which a number of issues were discussed.

09.10.2015 at the Ministry of Ecology and Natural Resources of Ukraine in the second round of Ukrainian-Romanian consultations on the issues, the DNR Danube - Black Sea in the context of the requirements of the Espoo Convention.

On November 23, 2015 there was discussion of the common integrated environmental monitoring The Danube Delta with the participation of Romanian experts. The updated joint monitoring program directed to the Romanian party with the letter dated 15.12.2015 number 5 / 25-13 / 15187-15.

Also, the Ministry of Ecology and Natural Resources of Ukraine repeatedly



with the letter of 20.10.2015 number 5 / 25-13 / 12909-15 sent the Romanian party the report "Integrated environmental monitoring during construction and operation deep navigating route Danube - Black Sea in 2014: Sea access channel."

At the same time we pay attention to the following:

According to the results of monitoring, that were annually held on a regular basis in 2004 - 2015, adverse negative effects of the operation of DNR Danube - Black Sea on the environment 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.

Thus, taking into account that dredging works in a building part (recovery) DNR were not conducted in 2008, then the annual implementation of integrated environmental monitoring in present time can be considered as an activity performed within the requirements according to the Article 7 of the Espoo Convention "post-analysis" and the compliance solutions of V-th and VI-th Meeting of the Parties to the Espoo Convention)

*the decision V/4 of the Meeting of the Parties*

*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;*

*the decision VI/2 of the Meeting of the Parties*

*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);*

*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;*

Comprehensive environmental monitoring of the environment when installing and operating DNR Danube - Black Sea has been performed on order SE "Delta-Pilot" (from 2013. - SE "AMPU") since 2008., a group of research institutions and organizations under the supervision of the Scientific research organization "Ukrainian scientific research Institute of ecological problems" (USRIEP) of the Ministry of Ecology and Natural Resources of Ukraine.

Results of monitoring in the form of annotated annual reports developed under the supervision of USRIEP, a branch of "Delta-pilot" SE "AMPU" provides to the Ministry of Ecology and Natural Resources of Ukraine (last - in 2014 - a letter of 13.03.2015 №1155).

In further, according to agreement with the Romanian party, it is possible to expand program of monitoring researches in related areas of the Danube Delta. Thus, given that dredging works in the construction (restoration) of DNR was conducted in 2008, the implementation of the annual integrated environmental

monitoring the present time can be considered as an activity carried out within the requirements of article 7 of the Espoo Convention post-project analysis and requirements solutions V-th and VI-th conference of the Parties to the Espoo Convention)