

**Addendum to Findings and Recommendations further to a submission by Romania
regarding Ukraine (EIA/IC/S/1)**

Introduction

1. The Implementation Committee prepared findings and recommendations (ECE/MP.EIA/2008/6)¹ on 17 January 2008 further to decision III/2 on the review of compliance (ECE/MP.EIA/6, annex II) and to a submission by the Government of Romania on 23 January 2007 expressing concerns about Ukraine's compliance with its obligations under the Convention with respect to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta ("Bystroe Canal Project").
2. Before finalizing the findings and recommendations, in accordance with paragraph 9 of the description of the Committee's structure and functions (appended to decision III/2), the draft findings and recommendations had been sent to the two Parties, inviting their comments or representations within a period of five weeks, between 8 November and 14 December 2007. The Committee finalized its findings and recommendations, taking into account the representations received from both Parties.
3. The findings and recommendations, as finalized on 17 January 2008, were based on the declaration made by the Ukrainian delegation in the Committee's twelfth meeting (June 2007), that the final decision was not the approval by the Cabinet of Ministers but a construction permit to be granted by local authorities, which had not yet been granted (ECE/MP.EIA/2008/6, para. 27). The Committee, when considering the extent of Ukraine's non-compliance with its obligations under the Convention, did not challenge this declaration and assumed that, at the time of finalization of the findings and recommendations, the final decision had not been taken.
4. Consequently, some of the findings regarding Phase II of the Project were conditional upon actions being taken prior to the final decision. The Committee found that, in relation to Phase II of the project, Ukraine could not be considered as being in non-compliance with the Convention as long as the final decision regarding Phase II was not taken and, as long as before the final decision regarding Phase II was taken, all the necessary steps envisaged by the Convention were followed (ECE/MP.EIA/2008/6, para. 65(b)).
5. On 7 February 2008 the secretariat was informed by the Permanent Mission of Ukraine to the United Nations Office and Other International Organizations in Geneva that the final decision on Phase II of the Bystroe Canal Project had been taken by the Government of Ukraine on 28 December 2007.² The final decision included approval of the implementation of the Project, and had been provided to the Government of Romania.

¹ Findings and recommendations further to a submission by Romania regarding Ukraine (EIA/IC/S/1), Report by the Implementation Committee, document number ECE/MP.EIA/2008/6, 27 February 2008.

² Final Decision taken by Ukraine concerning the Full-scale Implementation of the Danube-Black Sea Navigation Route Project in the Ukrainian Part of the Danube Delta.

6. The Committee was not provided by Ukraine with information to prove that all necessary steps listed by the Committee in its draft findings and recommendations to be followed before taking the final decision on Phase II were indeed taken.

7. Bearing in mind the above developments, the Committee elaborated, by way of electronic decision-making, the following addendums to findings and recommendations with a view to bringing them to the attention of the Fourth Meeting of the Parties for formal adoption in accordance with paragraph 13 of the appendix to decision III/2.

ADDENDUM TO FINDINGS

8. The Committee agrees to insert the following after paragraph 65 of its findings and recommendations (ECE/MP.EIA/2008/6):

“65 bis Ukraine, despite the pending procedure before the Implementation Committee and despite a clear indication included in the draft findings and recommendations, did take the final decision on Phase II without taking all necessary steps envisaged by the Convention, in particular:

(a) EIA documentation had not been prepared following all the requirements of Appendix II including properly addressing transboundary impacts;

(b) Romania had not been given a proper possibility to submit comments on EIA documentation described in item (a);

(c) The public in Romania had not been given sufficient opportunities to deliver its comments;

(d) Proper consultations between Ukraine and Romania did not take place concerning, *inter alia*, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact.

65 ter Although Ukraine did submit the final decision to Romania, Ukraine could not take due account of the comments by Romania further to paragraph 65 *bis*, items (b), (c) and (d).

65 quater By failing to take the above steps Ukraine was not in compliance with its obligations under Articles 2, 3, 4, 5 and 6 of the Convention.”

ADDENDUM TO RECOMMENDATIONS

9. The Committee agrees to replace its recommendation in paragraph 66, item (a), of its findings and recommendations (ECE/MP.EIA/2008/6) by:

“(a) Endorse 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;”

10. The Committee also agrees to withdraw its recommendation in paragraph 66, item (b), of its findings and recommendations, as the Government of Ukraine has already taken the final decision on Phase II of the Project, and to replace it by:

“(b) Urge the Government of Ukraine to suspend 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 Implementation Committee at its fifteenth meeting (October 2008) and subsequent meetings if necessary;”

11. The Committee further agrees to renumber items (c), (d), (e) and (f) in paragraph 66 of its findings and recommendations to become items (d), (e), (f) and (g), respectively, and to insert before them:

“(c) Decide to issue a caution to the Government of Ukraine;”

PROPOSAL ON AMENDING DRAFT DECISION IV/2

12. Accordingly, the Committee proposes the following amendments to draft decision IV/2 on review of compliance (ECE/MP.EIA/2008/4):

(a) Replace paragraph 7 by the following:

“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;”

(b) Replace paragraph 8 by the following:

“8. *Urges* the Government of Ukraine to suspend 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 Implementation Committee at its fifteenth meeting (October 2008) and subsequent meetings if necessary;”

(c) Insert after paragraph 8 the following paragraph 9:

“9. *Decides* to issue a caution to the Government of Ukraine;”

(d) Renumber the paragraphs 9 to 17 to become paragraphs 10 to 18.