

APPROVED

**Deputy Prime Minister of Ukraine,
Head of the Intergovernmental
Council on the implementation of
Espoo Convention in Ukraine**

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_____ **October, 2008**

**REPORT
OF THE GOVERNMENT OF UKRAINE
on the implementation of Decision IV/2
of Parties to the Convention on environmental impact assessment
in a transboundary context (Espoo Convention)
adopted on the 4-th Meeting of Parties to the Convention
held on 19-21st May, 2008 in Bucharest**

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ABSTRACT

Following to the letter signed by Deputy Prime Minister of Ukraine dated 19th of May, 2008, presented during the 4th Meeting of Parties under Espoo Convention held in Bucharest on 19th-21st of May this year, Ukraine undertook the strong commitments **to repeal the Final Decision** on the project on Renovation of Deep-Water navigable Route “Danube-Black Sea” in the Ukrainian Sector of Danube Delta (hereinafter called Project) and **not to start its Phase 2** until applying fully the provisions of the Convention to the Project (enclosed, Annex 0.1).

On the 21st of May, the Ukrainian delegation took commitments to carry out the “immediate consultations with Secretariat of Convention, Implementation Committee members, EU Commission, Romanian Party or other delegations concerned **to work out the concrete Action Plan** on implementation of the commitments taken by Ukraine”.

The Decision IV/2 of Parties to the Convention on environmental impact assessment in a transboundary context (Espoo Convention) adopted on the 4-th Meeting of Parties to the Convention held on 19-21st May, 2008 in Bucharest (enclosed, Annex 0.2):

1. “Urges the Government of Ukraine **to repeal without delay the final decision**, 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” (Dec. IV/2, Para. 9);
2. “Decides to issue a caution to the Government of Ukraine to become effective on 30th 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” (Dec. IV/2, Para. 10);
3. “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” (Dec. IV/2, Para. 11);

4. “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 report to the Committee on the implementation of the strategy (Dec. IV/2, Para. 12);

5. “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” (Dec. IV/2, Para. 14).

I. Repealing of the Final Decision regarding Phase II of the Project on the Renovation of Deep-Water Navigation Route “Danube – Black Sea” in the Ukrainian part of the Danube Delta taken on 28th December, 2007 (Dec. IV/2, Para. 9, 10)

An appropriate decision was taken on the 3rd Meeting of the Intergovernmental Coordination Council on the implementation of Espoo Convention by Ukraine which took place on 10th June, 2008 (Para. 1 of the Protocol #3 of the Meeting, Annex 1.1.).

The letter on repealing of Final Decision regarding Phase II of the Project dated 11th August, 2008 (#10577/18/10-08, registered at Ministry of Environment Protection of Ukraine) was signed by Deputy Prime Minister of Ukraine, Head of the Intergovernmental Council on the implementation of Espoo Convention in Ukraine Mr. Nemyrya, Acting Minister of Environmental Protection of Ukraine Mr. Chornokur, Acting Minister of Foreign Affairs of Ukraine Mr. Gnatyshyn, Minister of Transport and Communications of Ukraine Mr. Vinsky (Annex 1.2-1.2a).

The letter on repealing of Final Decision regarding Phase II of the Project was sent to Romanian Party (Verbal Note of the Embassy of Ukraine to Romania #1538 dated 15th August, 2008, Annex 1.3.-1.3d), to the Secretariat of Espoo Convention (Verbal Note of the Permanent Mission of Ukraine to the United Nations Office and other International Organizations in Geneva # 263/016 dated 12th August, 2008, Annex 1.4.-1.4.a). The information on repealing of the Final Decision was also sent to representatives of Bern Convention, UNECE, Ramsar Convention, UNESCO, European Commission, ICPDR etc. (e-mail posting, Annex 1.5), placed on the web-sites of Ministries engaged.

Ministry of Environmental Protection of Ukraine –

http://www.menr.gov.ua/documents/povid_vidkl_rishen.rar

Ministry of Transport and Communication of Ukraine –

http://www.mtu.gov.ua/control/uk/publish/article?art_id=106136&cat_id=75493

II. Steps taken by Ukrainian party to comply with the relevant provisions of the Espoo Convention (Dec. IV/2, Para. 9, 10)

2.1. Notification on the proposed activity

After notifying the affected parties and the Secretariat of the Espoo Convention on a Repealing of the Final Decision regarding Phase II of the Project, the Ukrainian Party started to take steps to fully comply with the provisions of the Espoo Convention to the Project, inter alia, by sending the Notification on a proposed activity to affected party (Article 3), EIA documentation (Article 4), carrying out the Consultations with affected public (Article 5), promoting bilateral and multilateral cooperation and research programs (Articles 8, 9) etc.

In order to implement Article 3 of the Convention, Ukrainian Party sent a **Notification on proposed activity** on a Project to Romanian Party (Verbal Note of the Embassy of Ukraine to Romania #1670 dated 8th September, 2008 and #1691 dated 10th September, 2008, Annex 2.1.1.a - 2.1.1.e.) and to the Secretariat of the Espoo Convention (Verbal Note of the Permanent Mission of Ukraine to the United Nations Office and other International Organizations in Geneva # 290/016 dated 8th September, 2008, Annex 2.1.2.). The information on Notification on proposed activity was also sent to representatives of Bern Convention, UNECE, Ramsar Convention, UNESCO, European Commission, ICPDR etc. (e-mail posting, Annex 2.1.3), placed on the web-sites of Ministries engaged.

Ministry of Environmental Protection of Ukraine -

http://www.menr.gov.ua/documents/opovishen_fazy2_proek_vidnov.rar

Ministry of Transport and Communication of Ukraine –

http://www.mtu.gov.ua/control/uk/publish/article?art_id=106133&cat_id=75493

In accordance with the provisions of Appendix to the “Format for Notification under the Convention” adopted on the first Meeting of the Parties to the Espoo Convention (Decision I/4), assuming that the Romanian Party wishes to participate in the EIA of the Project, Ukrainian Party has chosen an option to proceed with stages one and two of Notification concurrently. In this context, Ukrainian Party requested the information from Romanian Party in frames of stage two of Notification procedure and asked the Romanian Party to provide the following information **in a six week period**:

- Confirmation of participation to the application of the Convention (Article 3.3);
- Information from the Romanian Party in the table form “Reply to a Notification of a proposed activity under Article 3 of the Convention” (Article 3.6).

By this moment, Ukrainian Party didn't receive any response concerning the information requested in the abovementioned letter.

2.2. Environmental impact assessment (EIA) of the Project

According to the Notification on a proposed activity sent to Romanian Party (see Para. 2.1 above), at the end of year 2008, the amended and updated EIA Documentation according to the requirements of the Espoo Convention and international practice of the EIA Documentation design will be sent to the affected Party.

The EIA Documentation designed in 2004 and updated in 2005 was sent to the affected party and concerned parties in 2007.

The amended EIA of the Project will take into account the results of the Inquiry Commission Report, especially regarding the Transboundary impacts.

Ukrainian Party is waiting for the information from Romanian party concerning the Reply to Notification (in a table form) as well as the negotiations on an Action Plan for sending the table on public participation scheme and making further request to the Secretariat for support in the revision of the EIA report according to the preliminary agreement with the Secretariat of Espoo Convention and document “Information requested from Ukrainian Authorities concerning the proposed navigable waterway through the Bystroe estuary (Danube Delta)” (see Chapter 4, Annex 4.2).

According to the Conclusions of the Inquiry Commission of the Espoo Convention, the six transboundary impacts were defined as likely significant (being outside the limits of natural variations). The Inquiry Commission came to the following final conclusions:

The likely significant adverse transboundary impacts are:

1) impact of dredging or deepening of the rifts on the distribution of the flow discharge between the Bystre and the Starostambulski branches and on the water level dynamics along the Bystre branch, resulting in loss of floodplain habitats, important for fish (spawning and nursery) and birds (nesting, feeding).

2) impact of habitat loss by coverage of riparian dump sites and dredging through the offshore sandbar and measures for bank protection on birdlife and fish.

3) impact on the increase of suspended sediment concentration, downstream of the dredging site on fish.

4) impact on the turbidity of marine waters as a result of dumping of spoil at the dump-site at sea, under conditions of southbound alongshore currents.

5) impact of repeated maintenance dredging hampering the recovery processes of affected areas for fish in the long term.

6) cumulative impact of loss and/or disturbance of habitats and by shipping traffic on fish and bird life on a large scale and long time.

Other impacts were considered to be unlikely or not significant transboundary impacts.

2.3. Consultations with the affected parties to the Project

The Ukrainian Party is ensuring that the affected party gets a proper access to the information on the Project (Article 2.6 of the Convention).

For that purpose, in accordance with Article 5 of the Espoo Convention, the Notification on the proposed activity sent to Romanian Party includes the possibility to carry out the Consultations with the public of affected areas, to consider the EIA documentation and to give the comments to be taken into account when amending the EIA of the Project and taking the Final Decision (see Notification on proposed activity, Annex 2.1.1.c).

The draft plan of the time-frames of activities stated in the Notification documents is the following:

Stage 1. Consideration of the information presented in the Notification – 6 weeks from the moment when affected party receives the Notification

Stage 2. Consideration of the information presented in the updated EIA Documentation – from the moment when affected party receives updated EIA Documentation up to the stage 5

Stage 3. Presenting the comments from the public – from the moment when affected party receives Notification up to the stage 5

Stage 4. Direct Consultations with Romanian Authorities and Consultations with the potentially affected public – within 2-4 weeks after transmitting of the EIA Documentation

Stage 5. Consideration of the comments and their inclusion to the EIA Documentation – within 2-4 weeks after the Stage 4

Stage 6. Adoption of the Final Decision – within 2-4 weeks after stage 5

2.4. Bilateral agreements and other arrangements with affected parties (Dec. VI/2, Para. 10, 14)

In accordance with Article 8 of Espoo Convention, in order to further promote the cooperation in the Danube Region, the Ukrainian Party fostered the work towards signing of the **Agreement between the Government of Romania and the Government of Ukraine in the field of environmental protection.**

Currently, after the Ukrainian-Romanian Consultations, which took place in February, 2008 in Kyiv, Ukraine, the Parties are working on the authenticity verification of the English text of the abovementioned Agreement (the draft text of the Agreement enclosed, Annex 2.4.1.).

3. Current status of works on a Project

In accordance with the commitments of Ukraine taken during the 4th MoP under Espoo Convention not to start Phase II of the Project until applying fully its provisions to the Convention (see Abstract, Annex 0.1), the Ukrainian Party informs on the following:

1. the works on the Phase II of the Project are not going to start until the appropriate procedure under the Convention is being implemented;
2. currently the Ukrainian Party is carrying out the maintenance works and construction of the protection dam under the Phase I of the Project;
3. the abovementioned information was sent to Romanian Party with Verbal Notes of the Embassy of Ukraine in Romania #1380 dated 17th July, 2008 and #1538 dated 15th August, 2008 (enclosed, Annex 1.3-1.3.a.) .

4. Cooperation with other relevant International Environmental Conventions and International Organizations on a Project

On the 28-31st of July, 2008 Ukraine hosted the on-the-spot appraisal visit led by the Council of Europe (Secretariat to the Bern Convention) in relation to the case-file opened on the Bystroe project, agreed at the 2007 Standing Committee meeting of the Bern Convention. Its objective was to assess the works in the navigable waterway through the Bystroe estuary, analyze the status of project works with respect to the EIA and the proposed ecological compensation measures. The delegation of 7 representatives from environmental organizations (Bern Convention, Espoo Convention, Ramsar Convention, UNESCO and European Commission) and an independent expert met with relevant authorities and representatives of the socio-economic sector, as well as civil society (Program of the visit enclosed, Annex 4.1.).

As an outcome of the visit it was agreed to work out the list with the information requested from Ukrainian authorities concerning the Project implementation. Such a list was sent by Council of Europe and currently Ukrainian Party is working on its implementation (enclosed, Annex 4.2).

5. Miscellaneous

According to the commitments of the Ukrainian Party taken during the 4th MOP to the Espoo Convention concerning the intention **to work out the concrete Action Plan** and to **carry out “immediate consultations** with Secretariat of Convention, Implementation Committee members, EU Commission, Romanian Party or other delegations” (see Abstract), the Ukrainian Party undertook the following activity:

- sent letters signed by Deputy Prime Minister of Ukraine Mr. Nemyrya to the Executive Secretary of the UNECE H.E. Mr. Belka, European Commissioner for Environment H.E. Mr. Dimas, former President of EU General Affairs and External Relations Council, Minister of Foreign Affairs of Slovenia H.E. Mr. Rupel with a request to send experts for preparing the Action Plan (enclosed, Annex 5.1.-5.4.);
- sent letter signed by Minister of Environmental Protection of Ukraine Mr. Philipchuk to Minister of Environment and Sustainable Development of Romania H.E. Mr. Attila Korodi with an invitation to the delegation of Romania for Action Plan negotiations to be held in Kiev, Ukraine in the period of 1-4 July, 2008 (enclosed, Annex 5.5.) sent by Verbal Note of the Embassy of Ukraine in Romania #1197 dated 25th June, 2008;
- sent Verbal Notes of the Embassy of Ukraine in Romania #1139 dated 17th June, 2008 inviting the Romanian Party for the Action Plan negotiations at any convenience (Annex 5.6-5.6.a);
- reported on the progress in implementation of the Decision IV/4 of MOP during the Meeting of the Sub-Committee #4 “Energy, Transport, Nuclear Safety and Environment” of the Committee EU-Ukraine on the 4-5th June, 2008;
- on the 25th June, 2008 carried out the Consultations with Secretariat of Espoo Convention on implementation of the Decision IV/4 of MOP to Espoo Convention and Report to Implementation Committee before its 15th Meeting;
- reported on progress in implementation of the Decision IV/4 of MOP during the meetings of the Deputy Prime Minister of Ukraine, the Head of the Intergovernmental Council on the implementation of Espoo Convention in Ukraine Mr. Nemyrya, Minister of Foreign Affairs of Ukraine Mr. Ogryzko with Minister of Foreign Affairs of Romania on the 18 July, 2008;
- sent Verbal Notes of the Embassy of Ukraine in Romania #1380 dated 17th July, 2008 and #1538 dated 15th August, 2008 (enclosed, Annex 1.3 – 1.3.a) informing the Romanian Party that the works in frames of Phase II of the Project are not carried out and emphasized its commitments not to start the Phase II until fully complying with Espoo Convention provisions;

- sent letter signed by Minister of Environmental Protection of Ukraine Mr. Philipchuk to State Secretary of the Ministry of Environment and Sustainable Development of Romania H.E. Ms. Ana Varga (enclosed, Annexes 1.3.b–1.3.c) with a recurring third invitation to Romanian delegation to come for negotiations on Action Plan sent by Verbal Note of the Embassy of Ukraine in Romania #1538 dated 15th August, 2008;
- sent Verbal Note of the Embassy of Ukraine in Romania #1744 dated 19th September, 2008 inviting the Romanian Party for the Action Plan negotiations on 23-24th September, 2008 with Draft Agenda and list of participants enclosed (Annex 1.3.d, 5.7-5.7.b).

In order to implement the Decision VI/2 (Para. 11-12), the Ukrainian Party emphasizes its readiness to ensure that its legislation and administrative measures are able to implement fully the provisions of the Convention, and welcomes the support by Convention in the undertaking of an independent review for consideration by the Implementation Committee in the first half of 2009.

The Government of Ukraine is currently working on strategy in order to submit it to the Implementation Committee by the end of 2009, 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 report to the Committee on the implementation of the strategy.