

## Decision VIII/4d

### **Compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta**

*The Meeting of the Parties to the Convention,*

*Recalling* article 11, paragraph 2, and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context,

*Recalling also* its decisions IV/2, paragraphs 7–14,<sup>1</sup> V/4, paragraphs 17–26,<sup>2</sup> VI/2, paragraphs 15–28,<sup>3</sup> and IS/1f<sup>4</sup> concerning compliance by Ukraine in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (Bystroe Canal Project),

*Recalling further* its decision VIII/4<sup>5</sup> on general issues of compliance with the Convention adopted at the eighth session,

*Having considered* the report on the activities of the Implementation Committee to the Meeting of the Parties to the Convention at its eighth session, in particular, the section concerning the steps taken by Ukraine further to decision IS/1f,<sup>6</sup>

*Referring* to a declaration of Ukraine of its genuine wish to bring the Bystroe Canal Project into compliance with the Convention,<sup>7</sup>

*Recalling* the road map developed by Ukraine to bring the Bystroe Canal Project into compliance with the Convention that contains a non-exhaustive list of measures with regard to Phases I and II of the Project, including the readiness to stop works, to repeal the final decision, to conduct an assessment of the damage to the environment and to develop a plan for compensatory or mitigation measures,<sup>8</sup>

*Recalling* the intention of Ukraine to develop a new project for a “Bystroe Route” and to carry out a transboundary environmental impact assessment procedure on the new project in accordance with the Convention,<sup>9</sup>

1. *Expresses its appreciation* for the information received from the Government of Ukraine, further to paragraph 19 of decision IS/1f;

2. *Welcomes* the efforts demonstrated by the Government of Ukraine to follow the recommendations by the Meeting of the Parties in decision IS/1f, including with regard to the:

(a) Adoption by Ukraine of all the pieces of secondary legislation developed in order to fully align its national legislation with the provisions of the Convention;

(b) Implementation of a number of steps listed in the road map, such as carrying out an assessment of the damage to the environment and developing a draft plan of compensatory or mitigation measures;

<sup>1</sup> See ECE/MP.EIA/10.

<sup>2</sup> See ECE/MP.EIA/15.

<sup>3</sup> See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

<sup>4</sup> See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

<sup>5</sup> ECE/MP.EIA/30/Add.2–ECE/MP.EIA/SEA/13/Add.2.

<sup>6</sup> ECE/MP.EIA/2020/4–ECE/MP.EIA/SEA/2020/4, paras. 35–40.

<sup>7</sup> ECE/MP.EIA/IC/2018/2, para. 34, and ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1, para. 10.

<sup>8</sup> ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1, paras. 11 and 12.

<sup>9</sup> *Ibid.*, para. 13.

3. *Also welcomes* the decision of the Government of Ukraine to start developing a new “Bystroe Route” project and its notification of the affected Party, Romania, in accordance with the Convention;

4. *Encourages* the Government of Ukraine:

(a) To continue the implementation of the road map, including with a view to:

(i) Completing the assessment of the damage to the environment – in particular in a transboundary context – that resulted from works carried out under Phases I and II of the Bystroe Canal Project;

(ii) Finalizing and approving the plan of compensatory or mitigation measures;

(b) In that context, to cooperate closely and to consult with the Government of Romania in an open and transparent manner;

5. *Also encourages* the Government of Ukraine to ensure that the planned activity, the new “Bystroe Route” project, encompasses Phases I and II of the Bystroe Canal Project;

6. *Requests* the Government of Ukraine to carry out all the subsequent steps of the transboundary environmental impact assessment procedure with regard to the new “Bystroe Route” project in accordance with its obligations under the Convention;

7. *Welcomes* the confirmation by the Government of Romania of its intent to participate in the transboundary procedure under the Convention with regard to the new “Bystroe Route” project and of its readiness to closely cooperate with Ukraine concerning the assessment of the damage to the environment resulting from already implemented works related to Phases I and II of the Bystroe Canal Project and the development of compensatory or mitigation measures;

8. *Expresses deep concern* that, since 2008, only limited progress has been made by the Government of Ukraine in bringing the Bystroe Canal project into full compliance with the Convention and that the road map has not been fully implemented;

9. *Endorses* the findings of the Implementation Committee at its forty-eighth session that, despite a number of steps taken, the Government of Ukraine has not yet fulfilled all its obligations under paragraphs 9 and 11 of decision IV/2, paragraphs 17 and 19 of decision V/4, paragraphs 24, 25 and 26 of decision VI/2 and paragraphs 5, 14, 15, 17 of decision IS/1f;

10. *Declares*, therefore, that the caution to the Government of Ukraine issued at its fourth session (Bucharest, 19–21 May 2008) is still effective;

11. *Reiterates* that the continuation of dredging activities constitutes a further breach of the Convention;<sup>10</sup>

12. *Reaffirms* its decision IS/1 f and requests the Government of Ukraine to:

(a) Bring the Bystroe Canal project into full compliance with the Convention without delay;

(b) Consult with Romania on the implementation of the road map;

(c) Continue regularly reporting to the Implementation Committee and to continuously inform Romania about the monitoring results;

(d) Provide Romania with a copy of the Research Report on analysis of the impact of the environment of the Danube River Delta<sup>11</sup> for comments and observations;

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<sup>10</sup> ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1, para 8.

<sup>11</sup> Full title of the report “Analysis of the impact on the environment of the Danube River Delta which follows from the already implemented work related to the project ‘Danube-Black Sea Deep-Water Navigation Channel on the Ukrainian Section of the Delta’ (stage 1 and full development) with the development of compensatory measures and measures to mitigate the likely impact based on the materials of the integrated environmental monitoring 2004–2017 and the results of field monitoring

13. *Encourages* the Governments of Ukraine and Romania to:
- (a) Accelerate the preparation of the bilateral agreement or other arrangement to support further their implementation of the provisions of the Convention, as set out in article 8 of the Convention;
  - (b) Agree on a harmonized transboundary network for the monitoring of the environmental status of the Danube Delta;
  - (c) Consult on post-project analysis, according to article 7 of the Convention.
14. *Urges* the Government of Ukraine to ensure that the Convention is duly applied in the context of any future decision-making regarding similar activities, including the new “Bystroe Route” project;
15. *Requests* the Government of Ukraine to regularly report to the Implementation Committee on the progress made;
16. *Requests* the Implementation Committee to report to the Meeting of the Parties at its ninth session on its evaluation of the steps taken by the Government of Ukraine to comply with its obligations under the Convention, including the national legislation it has adopted.
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observations at least in a transboundary context”. The analysis was conducted and the report was prepared by the Ukrainian Scientific Research Institute of Ecological Problems in 2019, see ECE/MP.EIA/IC/2020/2, para. 28 (a).