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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

32nd meeting
Strasbourg, 27-30 November 2012

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**Proposed navigable waterway in the Bystroe Estuary
(Danube delta)
(Ukraine)**

REPORT BY THE GOVERNMENT OF ROMANIA

*Document prepared by
the Ministry of Environment and Forest, Romania*

- INFORMATION PROVIDED IN OCTOBER 2012 -**COMMENTS OF ROMANIA IN RESPECT OF THE ENVIRONMENTAL IMPACT ASSESSMENT
PREPARED BY UKRAINE IN RESPECT OF THE NAVIGATION CANAL CONSTRUCTED BY
UKRAINE IN THE DANUBE DELTA**

Romania is grateful for the opportunity given by the Bureau of the Standing Committee to present its comments on the Environmental Impact Assessment prepared by Ukraine.

Romania recalls that the said EIA was forwarded to Romania by a diplomatic note of 26 of January 2010 of the Embassy of Ukraine to Bucharest as an annex to the “final decision” of Ukraine regarding the construction of the deep navigation channel Danube – Black Sea. On 4 February 2010 Romania transmitted a diplomatic note which pointed out that the “final decision” was adopted prematurely as the procedures provided by the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) were not properly fulfilled (*Annex 1*).

On 29 June 2010 the assessment of the Romanian experts on the “final decision” and on the EIA underpinning it was transmitted to the Ukrainian side, by cover of a letter of the Romanian Minister of Environment (*Annex 2*).

The detailed comments of the Romanian side are annexed to the present communication (*Annex 3*).

It should be noted that Romania has raised several issues in respect to the adequacy of some of the responses provided in the EIA prepared by Ukraine to its comments, e.g:

- the entry data employed for the mathematical modeling used by the Ukrainian side were not transmitted to the Romanian side, despite repeated requests;
- the environmental impact assessment prepared by the Ukrainian side is focused almost exclusively on the impact on the Ukrainian side of the Delta while the transboundary impact on the territory of Romania was not considered properly;
- in the Ukrainian documentation it is asserted that no major hydro-morphological changes will occur as a result of the implementation of Phase II of the project, but massive dredging as well as the construction of the flowing guide dam at the entrance to Bastroe Channel and of the long retaining dam at the mouth of the Bastroe Channel are certain to result in a supplementary flux of sediment, which will occur in an extremely sensitive area like the Musura and Stambulul Vechi branches;
- the conservation area value of the Bystroe branch is estimated as low by the Ukrainian experts, while in previous documentation it was estimated as high; no convincing explanation was proffered for this discrepancy.

Romania concluded that the assessment conducted by the Ukrainian side did not deal with all the environmental consequences arising out of the project and that Romania’s concerns were not properly taken into account. These shortcomings limit the capacity of the assessment undertaken by the Ukrainian side to be a solid basis for a sound decision in respect of the implementation of the project.

Romania fully maintains these conclusions, as no adjustment of the EIA was done by Ukraine since receiving Romania’s views.

Romania also wishes to point out the following. In the updated Report on the implementation of the Recommendation 111 (2004), submitted by Ukraine, dated 13 March 2012, it is stated that “activities within the Phase 2 were not initiated”. In fact Ukraine has long ago completed some of the works in the framework of Phase II of the project. Thus, the retaining dam off the mouth of the Bystroe channel was continuously extended until it reached the length envisaged for Phase II. Also, dredging in order to maintain navigational depths is routinely undertaken by the Ukrainian side, and

for Romania is not possible to ascertain whether the depths reached have stayed within the limits set for Phase I.

Romania has informed the Implementation Committee of Espoo Convention of the reports in the Ukrainian media on such work. Following the failure of Ukraine to provide adequate clarifications, the Committee, at its seventeenth session (Geneva, 14-18 September 2009) found that "Ukraine remains in non-compliance with its obligations under the Convention with respect to both phases of the Project". These findings were endorsed by the meeting of the Parties at Meeting of the Parties to the Convention at its fifth session (Geneva, 20-23 June 2011).

Romania kindly requires the Standing Committee to take into account the information presented above when assessing this issue in its next meeting, scheduled to take place on 27-30 November 2012.

- INFORMATION PROVIDED IN MARCH 2012 -**REPORT ON THE CURRENT STATE OF THE SITUATION AND ON THE IMPLEMENTATION OF THE PROVISIONS INCLUDED IN RECOMMENDATION 111 (2004) OF THE STANDING COMMITTEE OF THE BERN CONVENTION**

This document is submitted following the request of the Standing Committee of the Bern Convention that Romania provide the Secretariat with a short, although highly informative report on the current state of the situation and on the implementation of the provisions included in Recommendation 111 (2004).

The current state of the situation

Recommendation 111 (2004) of the Standing Committee of the Bern Convention concerns the project of a waterway undertaken by Ukraine in the Danube Delta (the “Bystroe project”).

It is useful to recall that Phase I of the said project was finalized in 2004 (the canal being now fully functional at the parameters envisaged for Phase I). Ukraine has also completed certain works in the framework of Phase II (*such as the retaining dam off the mouth of the Bystroe branch of the Danube, which was continuously extended until it reached the length envisaged for Phase II of the project*). Following the adoption of Decision IV/24 Meeting of the Parties to the Espoo Convention¹, Ukraine did take certain steps in order to comply with its obligations under international law in respect of the project, repealing the “Final Decision” of 28 December 2007 in respect of Phase II, conducting meetings with the Romanian public and with the Romanian experts and responding in writing to the comments submitted by both Romanian experts and the Romanian public.

However, while undertaking these steps, Ukraine has steadily continued the works in the framework of the project. Maintenance dredging in order to reach navigational depths was routinely undertaken by the Ukrainian side; also, work at the engineering structures emplaced by the Ukrainian side has continued, including in the framework of Phase II of the project, as shown above.

Also, Ukraine abruptly interrupted the consultation process being conducted with Romania under the Espoo Convention. Thus, by a diplomatic Note of 26 of January 2010, the Embassy of Ukraine to Bucharest communicated the “final decision” of Ukraine regarding the construction of the deep navigation canal. Romania considered that the transmittal by Ukraine of the final decision was premature, as Ukraine did not properly and comprehensively assess the issues raised by the Romanian public and the Romanian authorities in respect of the project. Romania has informed Ukraine that the assessment conducted by the Ukrainian side did not deal with all the environmental consequences arising out of the project and has raised several problems in respect to the adequacy of some of the responses provided to its comments. However Ukraine did not reply to the communications of Romania regarding the persistence of gaps of the environmental impact assessment. Thus, the meetings and exchanges conducted failed to fulfil the purpose of the bilateral consultations, namely to ensure that Romania’s concerns were properly taken into account.

Given the above Romania considers that Ukraine is still in no-compliance with international law in respect of the project. Romania maintains its view that, in its current design, the project poses significant risks of an adverse impact on the environment, including on the territory of Romania.

It’s important to note that the decision V/4 adopted by the Meeting of the Parties to the Espoo Convention at its fifth session (Geneva, 20-23 June 2011) endorsed the finding of the Implementation Committee established under this Convention that, while Ukraine had fulfilled some of its obligations

¹ During its fourth session which was held in Bucharest from 19 to 21 May 2008, the Meeting of the Parties adopted Decision IV/2, by which a caution was issued to Ukraine, to become effective on 31 October 2008, unless the Government of Ukraine fulfilled certain conditions, namely stop the works, repeal the Final Decision, and take steps to ensure the relevant provisions of the Convention were applied to the project.

under paragraph 10 of decision IV/2 with respect to both phases of the Bystroe Canal project, it had not fulfilled all of these obligations; the Meeting of the Parties declared therefore that the caution to the Government of Ukraine issued in its fourth session was effective. The finding of Implementation Committee was caused by the failure of Ukraine to comply with the request of the Committee to provide a written statement confirming clearly and unambiguously that the conditions imposed in the Decision IV/2 of the Meeting of the Parties have been met.

Also, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, during its session held in Chişinău during 29 June–1 July 2011 decided to issue a caution to Ukraine given the continued non-compliance with the provisions of this Convention.

The implementation of the provisions included in Recommendation 111 (2004)

Romania has continued its efforts aimed at a constructive dialogue with Ukraine, in accordance with Recommendation 111 (2004), in particular in the framework of the Agreement concluded between the authorities competent for environmental protection of Romania, the Republic of Moldova and Ukraine on cooperation in the zone of the Danube Delta and Lower Prut, signed at Bucharest on 5 June 2000, an Agreement concluded under the aegis of the Council of Europe.

On 22 March 2011 took place in Bucharest the first meeting of the Joint Commission established under Article 3 of the said Agreement. During this meeting some tangible results were achieved, such as the adoption of the Rules of procedure of the Commission. The participants discussed the means to reinforce direct links between relevant scientists, national authorities and local authorities within the territories of the protected areas in the zone of the Danube Delta and Lower Prut. Another issue discussed referred to the steps to take towards the establishment of a trilateral biosphere reserve in the area falling under the scope of the Agreement.

As a follow-up to the meeting of the Joint Commission, on 19 May 2011 a list of priority activities was transmitted by the Ministry of Environment Protection and Forests of Romania to the relevant authorities of the Republic of Moldova and Ukraine, including such matters as the coordination of the initiatives of the parties regarding the natural protected area of the Danube Delta and Lower Prut, including common fishing prohibitions, the development of programs for joint monitoring of the environmental factors and economic activities within the protected areas, the identification of joint projects which could be financed under EU financed support projects.

Romania planned for the second meeting of the Joint Commission to be held in November 2011, and has sent an invitation to both Ukraine and the Republic of Moldova, but the proposal was not accepted. The Ukrainian side forwarded a proposal to hold these talks on the margin of the meeting of the Permanent Committee in Strasbourg (29 November - 2 December 2011) but due to the fact that this proposal was transmitted only a week prior to the meeting of the Permanent Committee and to the unavailability of the Romanian experts, the Romanian side could not agree to this proposal. A new date for the second meeting of the Joint Commission shall be established as soon as feasible.

Also, Romania has entered into talks with Ukraine with a view to ensure the fulfilment of Espoo Convention requirements in respect of projects undertaken on the territories of the two States. A first round of talks in respect of an agreement on the implementation of the Espoo Convention took place in Kiev on 17-18 May 2011.