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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee
28th meeting

Strasbourg, 24-27 November 2008

**On-the-spot appraisal concerning
the project for a waterway in the Bystroe estuary
(Danube delta, Ukraine)**

On-the-spot appraisal
(28-31 July 2008)

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***ON-THE-SPOT APPRAISAL
OF THE PROJECT FOR A WATERWAY
IN THE BYSTROE ESTUARY, DANUBE DELTA, UKRAINE
28-31 July 2008***

APPRAISAL VISIT REPORT

I TERMS OF REFERENCE

The delegation conducted the visit from 28 to 31 July 2008 (see Appendix 1); it was accompanied by the Head of the Biological Diversity Unit, DCCNH/DG IV, of the Council of Europe, and representatives of the following international organisations were present:

- Secretariat of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context¹;
- Secretariat of the Ramsar Convention on Wetlands²;
- UNESCO Man and Biosphere programme³;
- European Commission, DG IV and Relex⁴.

In keeping with the terms of reference appended to the assignment letter, the purpose of the visit was to⁵:

- Examine the project for a waterway in the Bystroe estuary, the Ukrainian part of the Danube delta;
- Assess the possible negative impacts of the project on fauna and flora species and their natural habitats;
- Study the current situation compared to the situation at the time of the previous visit in 2004 and in relation to Recommendation 111(2004) of the Standing Committee;
- Exchange views with the relevant authorities and the representatives of associations and NGOs;
- Make appropriate recommendations to the government.

II BACKGROUND

In February 2004, the Bern Convention Secretariat received a complaint concerning the possible ecological impact on biological diversity in the Danube delta of the project for a waterway in the Bystroe estuary⁶.

The Convention Secretariat notified Ukraine that the project could have significant effects on populations of species protected under Appendix II of the Convention and be incompatible with Ukraine's obligations, particularly under Articles 4 and 6 of the treaty⁷.

At the request of the Bureau of the Convention Committee and in agreement with the Ukrainian authorities, an appraisal visit was made to the site from 22 to 24 July 2004. The visiting delegation concluded that Ukraine's obligations under Articles 4 and 9 of the Convention were not satisfactorily fulfilled⁸ and strongly recommended that the contracting party be invited to examine the alternative solutions in greater depth, with the assistance of the international community.

¹ Mr Wiek Schrage.

² Mr Tobias Salathé.

³ Ms Meriem Bouamrane.

⁴ Mr Andrzej Januszczyński, Mr Andras Demeter and Mr Marcin Stryjecki.

⁵ Assignment letter DG-IV EFG/vdc of 7 July 2008.

⁶ Letter from the Danube Environmental Forum of 10 February 2004.

⁷ Letter from the Secretariat, dated 26 February 2004.

⁸ T-PVS/Files (2004)03.

On 3 December 2004, the Standing Committee adopted Rec. No. 111⁹, inviting Ukraine to take a number of measures to ensure that the Convention was properly applied. Subsequently, the European Parliament also said that it was concerned about the project, on account of its environmental impact and of the “disregard” in this connection “of the relevant international environmental conventions that Ukraine is a party to”¹⁰. At the same time, several other international organisations expressed concern with regard to the project¹¹ and some of them pointed out irregularities committed by Ukraine in relation to its international obligations.

III CURRENT SITUATION

III-1 Progress made

The delegation noted that the situation did not appear to have changed significantly since the previous visit it had made, at the Standing Committee’s request, in 2004.

There were no significant changes in the structures built during Phase 1 of the construction work and there were no visible signs of major changes to the ecosystem in the natural habitats on either side of the waterway, in particular at the point where the waterway opened out into the Black Sea.

Nevertheless, the delegation expressed doubts about the real effects of the construction work, including the work required to ensure the regular maintenance of the waterway carried out during and at the end of Phase 1. This work may have had an effect on the quality and the functioning of aquatic ecosystems without it being possible to ascertain this during the short visit to the area by boat.

Nor was it possible for the delegation to confirm its initial impressions and remove any doubts concerning the negative effects of the work carried out during Phase 1, given that the Ukrainian authorities did not provide any precise information in the form of inventories or with regard to monitoring.

The fact that in 2005 the Ukrainian Court of Audit claimed that not all the required environmental measures had been taken reinforces the delegation’s opinion that the situation is not fully satisfactory from this point of view. It endeavoured to obtain detailed information on the steps taken to monitor the effects of the project on flora and wildlife and on changes in the ecological balances and natural processes necessary for their preservation. However, its efforts were in vain and it was unable to obtain any relevant information on the protocols used or the results obtained.

At the end of the visit to the site¹², it received some information from the manager of the biosphere reserve which the waterway crosses, referring to a substantial decrease in colonies of the bird species mentioned in Appendix II of the Convention¹³. The manager clearly considered the changes he had observed in 2007 to be the direct consequence of the project. It should be pointed out that, despite the insistence of the members of the delegation, it was NOT possible to meet the manager of the reserve during its visit to the site. This is regrettable, as it would have provided an opportunity to discuss the matter with him in detail in the presence of the Ukrainian government authorities.

Lastly, Ukraine has still not sent the Convention Secretariat the documents and scientific reports which would enable the situation to be assessed on a sounder basis¹⁴.

In conclusion, the delegation is of the opinion that the content and methods of monitoring the impact of Phase 1 on flora and wildlife do not fully reflect the concerns expressed by the Standing Committee in Recommendation No. 111. Given the probable transboundary impact

⁹ Recommendation No. 111 (2004) on the proposed navigable waterway through the Bystroe estuary (Danube Delta, Ukraine).

¹⁰ Resolution 1444 (2005).

¹¹ UNESCO, Aarhus, Espoo and Ramsar Conventions, Convention for the Protection of the Danube, European Commission.

¹² E-mail of 6 August 2008.

¹³ E.g.: *Thalasseus sandvicensis*, *Sterna hirundo*, *Gelochelidon nilotica*, *Larus genei*, *Recuvirostra avosetta*, *Charadrius dubius*, *Ch. Alexandrinus*.

¹⁴ See in particular T-PVS (2007)24, p. 9 et seq.

of the project, it is of the opinion that, notwithstanding its obligations under the Espoo Convention, Ukraine should ask the international scientific community to help it establish and implement monitoring arrangements and to analyse the data and results obtained. It also recommends that Ukraine implement the measures provided for in the trilateral agreement, which came into force on 4 October 2007, on the creation and management of a cross-border protected area between Moldova, Romania and Ukraine in the Danube Delta and the lower River Prut nature protected areas, in particular Article 2.

Owing to the contradictory information provided by Ukrainian sources¹⁵, the delegation also asked Ukraine to confirm its undertaking not to begin Phase 2 of the project without applying the provisions of the Espoo Convention and Decision IV/2 of the parties to the Convention¹⁶. For information, this Decision approved the conclusions of the committee responsible for implementation of the said Convention that the work to be undertaken during Phase 2 of the project would probably have significant cross-border consequences.

The delegation took note of the decision with great satisfaction and congratulated the Ukrainian authorities.

The following paragraphs take a closer look at the application of Recommendation No. 111 of the Standing Committee.

III-2 Application of Recommendation No. 111(2004)

- Phase 1 has been completed and Phase 2 has not yet been carried out. **Ukraine's undertaking not to carry out this work until it has met all its obligations under the Espoo Convention is a major step forward in resolving this issue;**
- In 2007, the Council of Europe received a copy of a scientific report which was part of a study on the environmental impact of the project¹⁷; this report, which dates back to 2004, confirms the presence in the area of plant and animal species (insects, reptiles, amphibians, fish, birds and mammals) protected by the Bern Convention¹⁸. The question of the impact of the project and the state of conservation of these species is, however, addressed in a very superficial manner. Assuming that Phase 2 of the work is launched, a much more detailed preliminary environmental impact assessment will be required. **In such an event, the environmental impact study would have to be conducted in keeping with international rules and standards, including those concerning the choice of measures to be taken to prevent, limit and offset the impacts of the project on flora and fauna protected by the Convention, and in accordance with the principle of the independence of environmental impact studies and the need to keep the public informed; for the time being, special efforts are required when monitoring the environmental impact of the work carried out during Phase 1 to improve knowledge of the status of the species protected by the Convention;**
- No further information was given concerning alternative solutions to the project for a navigable waterway as it now stands. This is an important aspect of the issue, given the ongoing debate on the environmental impact of the work to be carried out if Phase 2 is launched and on the anticipated consequences for the sustainable development of the region. **The need to give closer consideration to such alternatives in due course was stressed; the discussion of these alternatives should be conducted in the spirit of the Odessa Conference (2006), with a strategic vision aimed at the sustainable development of the region and based on socio-**

¹⁵ See the letter from Bernard Snoy, OSCE co-ordinator, to Mr Vyacheslav P Galas, Ukrainian Ministry of Transport and Communications, on 16 July 2008 concerning a press release by the Ukrainian Minister of Transport and Communications of 25 June 2008.

¹⁶ Letter from Hryhoriv Nemyrya, Deputy Prime Minister of Ukraine, to Mr Marek Belka, Executive Secretary of the United Nations Economic Commission for Europe, dated 19 May 2008, and from Kostiantyn Tymoshenko, Ukrainian Ambassador to UNESCO, dated 21 August 2008.

¹⁷ Report on scientific research work – Environmental Impact Assessment (EIA) within the framework of the project – Creation of the Danube-Black Sea deep water navigation route in the Ukrainian part of the delta, full development; final 1.3-19, 2004.

¹⁸ p 119 to 135 of the report.

economic activities that are compatible with the need to preserve the environmental integrity of the area¹⁹;

- The protected area has not been extended and the question of the delimitation of the biosphere reserve is still being debated by UNESCO, which has exhorted Ukraine to provide a zonation plan for the reserve as soon as possible. Nor was any fresh information obtained on special measures for ecological compensation or mitigation of the effects of the work carried out during Phase 1 on flora and wildlife. **The status and extent of the protected area therefore still need to be consolidated, in keeping with Recommendation No. 111. Nor does the poor quality of the relations between the local parties involved in managing the Ukrainian part of the delta help to create the best conditions for the protection of flora and wildlife; the parties concerned should be urged to improve their relations in the general interests of biodiversity and with a view to establishing a more constructive approach.**
- In 2006, the Convention Secretariat was invited to attend an “International Conference for the Conservation and Sustainable Development of the Danube Delta”²⁰, at Ukraine’s invitation. The conference was preceded by a preparatory meeting in Vienna, on 13 and 14 December 2005. A memorandum was also produced by the relevant international organisations²¹, stating their joint position on the project²². The Odessa conference provided a reply to the Standing Committee’s proposal that there should be constructive dialogue between all of the parties in the Danube delta. Its conclusions²³ encourage the parties to agree on a common approach to the conservation and sustainable development of the Danube delta. However, there was no real follow-up to these conclusions as shown by the fact that the technical meeting that was to be held at Romania’s invitation in late 2006, in the context of the joint committee set up under the trilateral agreement, has still not taken place. **The dialogue launched at the Odessa Conference needs to be renewed, on the basis of the conclusions of the meeting, which continue to be of relevance.**

CONCLUSION

Some positive developments have taken place since the Standing Committee adopted Recommendation No. 111.

Nevertheless, the progress made is still inadequate and the results achieved from the standpoint of the protection of flora and wildlife in the delta are still not substantial enough to consider the matter closed.

In keeping with the recommendation of the Standing Committee, the Council of Europe should continue to support and facilitate dialogue between the states in the Danube delta, on the basis of the roadmap outlined in the conclusions of the Odessa conference, in close co-operation with the other international organisations involved to date.

St Cergue, 6 October 2008

Hervé LETHIER

¹⁹ See, in this connection, the letter from Stavros Dimas, Member of the European Commission, to Mr Hieorhiy Philipchuk, Ukrainian Minister for the Protection of the Environment, dated 22 April 2008.

²⁰ Odessa, 27-28 February.

²¹ ICPDR, UNESCO, UNDP, Ramsar Convention, European Commission, WWF, and Wetlands International.

²² See Appendix 1 to the mission report EMCPI (Contract No. 11/06).

²³ Appendix 2 of the aforementioned mission report.

PROGRAMME OF THE VISIT

28 July	Arrival in Kyiv Preparatory meeting of the international delegation
29 July	Meetings at the ministries responsible for the environment and transport Transfer to Odessa
30 July	Visit to the site and meetings with the authorities and local NGOs Meeting of the international delegation to take stock of the situation
31 July	Departure from Odessa