

**IMPLEMENTATION COMMITTEE**  
**CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**  
**PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSMENT**

Mr. Romas Svedas  
Telephone: +370 677 42699  
E-mail: romas.svedas@tspmi.vu.lt

Institute of International Relations and Political Science  
Vilnius University  
Vokieciu str. 10, LT-01130  
Vilnius, Lithuania

Secretariat: Ms. Elena Santer, UNECE  
Telephone: +41 (0)22 917 2090  
E-mail: Elena.Santer@unece.org, eia.conv@unece.org

Palais des Nations  
CH-1211 Geneva 10  
Switzerland

Ref. Follow-up on decision VI/2 of the Meeting of the Parties  
(EIA/IC/S/1 Bystroe Canal Project)

20 December 2017

Dear Mr Tarasenko,

I am writing to you on behalf of the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) and its Protocol on Strategic Environmental Assessment (Kyiv, 2003).

At its fortieth session, held in Geneva from 5 to 7 December 2017, the Committee continued the consideration of the follow-up by Ukraine on decision VI/2 and the review of draft decision VII/2 in relation to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (Bystroe Canal Project).

Based on the curator's analysis of the information from Romania dated 1 November 2017 and from Ukraine dated 22 November 2017, the Committee noted that Ukraine had made only limited progress in bringing the project into compliance with the Convention as required by the Meeting of the Parties to the Convention since 2008 in decisions IV/2, V/4 and VI/2. The Committee also noted that Ukraine had not responded to the invitation by Romania of September 2016 to provide comments and inputs to the draft text bilateral agreement that the two countries were encouraged to conclude by decision VI/2.

Further to its deliberations at the thirty-ninth session and taking into account the discussions in the margins of Meeting of the Parties in Minsk, the Committee discussed and agreed on a draft action plan or a draft road map with concrete steps to be taken by Ukraine to bring the Bystroe Canal Project into full compliance with the Convention. The aim of the road map was to assist Ukraine in addressing its persistent non-compliance with the Convention.

In light of the above, I am now sending you on behalf of the Committee the draft road map (see Annex to this letter) and inviting your Government to provide by **12 February 2018** its comments and the indicative time frame for implementation of the draft road map. In addition, I am kindly inviting your Government to participate at the forty-first session of the Committee (Geneva, 13-15 March 2018) for informal consultations on the proposed steps to bring the project into full compliance with the Convention and a discussion on the time frame for their implementation. More details about the timeline of the meeting will be provided by the secretariat at a later stage.

Mr. Alexandr Tarasenko  
Focal Point for Administrative Matters  
regarding the Espoo Convention  
Ministry of Ecology and Natural Resources of Ukraine  
V. Lypkivskogo street, 35  
03035 Kyiv, Ukraine  
E-mail: o.tarasenko77@gmail.com

cc : Mr. V. Buchko (vbuchko@menr.gov.ua)

Also, to enable the Committee to finalize its draft recommendations to the “intermediary” session of the Meeting of the Parties regarding Ukraine, I would like to kindly ask your Government to report by **12 February 2017** on:

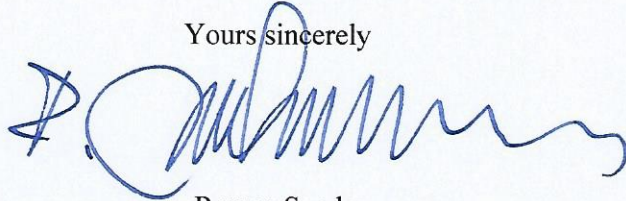
- (a) Existing monitoring results and further consultations with Romania on the post-project analysis, according to article 7 of the Convention in accordance with paragraph 26 of decision VI/2;
- (b) Progress achieved in developing the bilateral agreement with Romania for improved implementation of the Convention as set out in paragraph 27 of decision VI/2.

Referring to paragraph 25 of decision VI/2, I would like to invite your Government on behalf of the Committee to report by the same date, on progress achieved with regard to:

- (a) The implementation of the Action Plan (Strategy) of 6 January 2010 as amended on 9 February 2011;
- (b) The concrete measures to bring the Bystroe Canal Project into conformity with the Convention, especially in relation to the measures in accordance with paragraph 19 of decision V/4 (see ECE/MP.EIA/15).

You are kindly invited to provide the requested information **in English** by **12 February 2017** through the secretariat for consideration by the Committee at its forty-first session. To enable the secretariat to make all necessary arrangements for the access of your delegation to the Palais des Nations, you are kindly invited to provide the secretariat by that same date with a confirmation of your country’s participation at that session and the composition of your delegation.

Yours sincerely



Romas Svedas  
Chair, Implementation Committee,  
Convention on Environmental Impact Assessment  
in a Transboundary Context  
Protocol on Strategic Environmental Assessment

Annex: Draft Road Map on bringing the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta hereinafter the Project into full compliance with the Convention ((EIA/IC/S/1 Bystroe Canal Project).

## DRAFT ROAD MAP

on bringing the Danube-Black Sea Navigation Route in the Ukrainian Part of the Danube Delta hereinafter the Project into full compliance with the Convention  
26 November 2017

	MOP decision	Steps to be taken
Phase I	1. Stop works 2. Repeal FD 3. Take steps to comply with the convention	<p><u>1. Stop works.</u></p> <p>1.1. Suspend (at least temporally) any works (including operation, maintenance or dredging).</p> <p>1.2. Assessment of any damage to the environment (at least in the transboundary context) resulted from already implemented works related to the Project.</p> <p>1.3. Development of the plan for compensatory and mitigations measures.</p> <p><u>2. Repeal final decision.</u></p> <p>2.1. In case it is not valid any more, the State Ecological Inspection should issue decision ceasing any works under Phase I of the Project.</p> <p><u>3. Take steps to comply with the Convention.</u></p> <p>3.1. The Ministry of Environment shall <u>notify</u> any potentially affected Parties, and the notification shall follow the provisions of Art. 3.2 of the Espoo Convention.</p> <p>In the light of related Espoo procedures already followed by Ukraine under Phase II in relation to one affected Party, the notification might additionally request the affected Party, to clearly indicate whether it consider procedures followed under Phase II to also cover Phase I of the Project. In case of the affirmative answer, Ukraine will be required to complete only those Espoo procedures under Phase I which have not been accomplished under Phase II. If, otherwise, the affected Party considers that the relevant Espoo procedures, undertaken under Phase II of the Project, do not cover Phase I, Ukraine will be required to follow all of the procedures foreseen by Espoo Convention. In that case along with the notification the Ministry of Environment shall provide the affected Party, with: a) relevant information regarding the EIA procedure, including an indication of the time schedule for transmittal of comments; and b) relevant information on the proposed activity and its possible significant adverse transboundary impact, and shall request the affected Party to provide information relating to the potentially affected environment under its jurisdiction;</p> <p>3.2. The Ministry of Environment shall negotiate with the affected Parties the <u>time-frame for the duration of the procedures</u>, foreseen by the Espoo Convention; including participation of the public and authorities in the areas likely to be affected in all the affected Parties that replied positively to the notification and including consultations under Article 5 of the Convention.</p> <p>3.3. The Ministry of Environment shall furnish the affected Parties with <u>EIA documentation</u> and - possibly in co-operation with such Parties - ensure the possibility for the public and relevant authorities in the areas likely to be affected in the affected Parties to participate in the EIA procedure, including possibility to submit comments.</p> <p>3.4. Delta Pilot shall amend the EIA documentation accordingly taking due account of possible transboundary impact and shall hold State Ecological Expertisa and Integrated State Expertisa of the amended Project documentation of Phase I of the Project pursuant to the requirements of State Construction Norms A.2.2-1-2003,</p>

		<p>approved by the Order of the State Construction Committee of 15 December 2003 № 214. EIA documentation shall include materials reflecting public opinion (both in Ukraine and the affected Parties).</p> <p>3.5. The Cabinet of Ministers of Ukraine shall establish a commission composed of representatives of the Ministry of Environment, Ministry of Healthcare and other authorities (as appropriate) aiming into entering into <u>consultations</u> with the affected Parties, concerning the Project pursuant to Art. 5 of Espoo Convention.</p> <p>3.6. The Ministry of Environment shall provide to the affected Parties, the <u>conclusion of Integrated State Expertisa</u> along with the reasons and considerations on which it was based, as well as shall inform the public in Ukraine via the mass media of the Final Decision within the period of not more than 30 days after the approval of the conclusion of Integrated State Expertisa.</p> <p>3.7. The Ministry of Environment shall consider entering into consultations with the affected Parties concerning the <u>measures of post-project analysis</u> pursuant to Art. 7 and Appendix V of the Espoo Convention.</p>
Phase II	<ol style="list-style-type: none"> <li>1. Stop works</li> <li>2. Repeal FD</li> <li>3. Take steps to comply with the convention</li> </ol>	<ol style="list-style-type: none"> <li>1. Stop works</li> <li>1.2. Works stopped (completed).</li> <li>1.3. However, an extension of the offshore wall was built (IC16). Assessment of any damage (at least in a transboundary context) and development of compensatory or mitigation measures (see points 1.2 and 1.3 of Phase I).</li> <li>2. <u>Repeal final decision.</u> FD repealed (completed).</li> <li>3. <u>Take steps to comply with the conventions.</u> <ol style="list-style-type: none"> <li>3.1. Notification transmitted (completed).</li> <li>3.2. EIA documentation prepared (completed?).</li> <li>3.3. Public consultations organized (completed?).</li> <li>3.4. Final decision provided by Ukraine on 25 January 2010 – to be revised in accordance with the requirements Art 6 of the Convention.<sup>1</sup></li> </ol> </li> </ol>
Monitoring, post-project analysis	<ol style="list-style-type: none"> <li>1. Conduct monitoring</li> <li>2. Report regularly</li> <li>3. Inform Romania</li> </ol>	<ol style="list-style-type: none"> <li>1. Monitoring measures put in place (completed).</li> <li>2. Regularly report for the Committee.</li> <li>3. Confirmation from Romania on monitoring reports received with comments and observations.</li> </ol>
Bilateral agreements	Encourages UA and RO to develop bilateral agreement	<ol style="list-style-type: none"> <li>1. Report on further efforts to develop bilateral agreement.</li> </ol>

<sup>1</sup> European Commission, EuropeAid Co-Operation Office, Framework contract Beneficiaries LOT 6 – Environment, Ukraine, „Support to Ukraine to implement the ESPOO and AARHUS Conventions”, Request for services No 2008/164491, NIRAS, Draft Final Report, August 2010.

Taking into account that the Official Final Decision in the absence of positive conclusion of State Ecological Expertisa and positive conclusion of Integrated State Expertisa (which are able to establish other ecological parameters) does not authorize or permits to undertake works towards implementation of Phase II of the Project, such a decision cannot be considered as a final decision within the meaning of the Espoo Convention and does not entail any legal consequences of a final decision. A conclusion of Integrated State Expertisa should be considered as a final decision. Therefore, until the conclusion of Integrated State Expertisa of Phase II of the Project (or complete Project) is issued – there has not been taken any final decision concerning Phase II of the Project within the meaning of Art. 6 of the Espoo Convention. Page 52.

“The Official Final Decision does not provide sufficient evidence that all the procedural details required by the Espoo Convention were followed in the procedure conducted after the Espoo MoP decision to issue a caution. Ukraine followed only certain steps and has not provided evidence that they comprehensively followed the entire procedure in order to eventually take the final decision. Relevant Espoo procedures, started by Ukraine, did not lead to any changes in the process of decision-making which originally led to the decision to construct Bystroe Canal. In other words, the Official Final Decision was taken on top of the normal decision-making procedure which has been in clear contradiction to the requirements of the Espoo Convention. Therefore, Official Final Decision is premature (in a sense that it was taken before completing the procedure) and deficient in terms of meeting the formal requirements under Article 6 of the Espoo Convention.” Pages 52-53.

National legislation	Ensure compliance with the Convention	<ol style="list-style-type: none"><li>1. Adopt Strategy (completed in 2009, revised in 2010).</li><li>2. Implement Strategy.<ol style="list-style-type: none"><li>2.1. Adopt EIA law (completed).</li><li>2.2. Conduct legal evaluation of the EIA law (completed).</li><li>2.3. Adopted / amend supportive / implementation acts as stipulated in the Strategy.</li><li>2.4. Conduct legal evaluation on compliance of Ukrainian legal system to the requirements of the Convention (ESPOO Secretariat ?).</li></ol></li></ol>
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