



MINISTERUL MEDIULUI



STATE SECRETARY CABINET

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To: Mr. Romas SVEDAS
Chair of the Implementation Committee of the Convention on Environmental Impact Assessment in a Tranboundary Context and Protocol on Strategic Environmental Assessment
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Dear Chair,

In your letter of 4 April 2018, you invited the Government of Romania to provide the Committee with relevant information concerning the Ukrainian project of building the Danube-Black Sea Deep Water Navigation Canal in the Danube Delta. I therefore have the honor to convey such information the Government of Romania considers useful for the Committee's deliberations before finalizing draft decision IS/If.

This information concerns several issues, as follows:

- 1) the Ukrainian decision to launch a new Bystroe Canal project;
- 2) the road map prepared by the Ukrainian authorities;
- 3) the need for consultations with the Romanian Government;
- 4) the bilateral draft agreement between Romania and Ukraine concerning the implementation of the Espoo Convention;
- 5) the monitoring performed by Ukraine;
- 6) draft decision IS/If

I would like to begin by conveying the satisfaction of the Government of Romania for Ukraine's, the European Union's and the Committee's ongoing efforts to ensure that the Ukrainian legislation is in full compliance with the Convention. The Government of Romania is looking forward to the practical implementation of the legislation, particularly in a transboundary context.

1. The Ukrainian decision to launch a new Bystroe Canal project

The Government of Romania has noted the intention of the Government of Ukraine, as stated in its Roadmap, to construct a "new project Danube-Black Sea Navigation Route", and expects the Ukrainian

authorities and the Committee, to pay particular attention to the implementation of the Espoo Convention in this respect. The Government stresses that the Danube Delta is a transboundary biosphere reserve and therefore Ukraine must seriously consider the no action alternative.

The Romanian Government would also like to recall that the Ukrainian project envisaged substantial works to be performed on the Kilia branch. Since this is a shared watercourse that forms the border between Ukraine and Romania, Ukraine should develop any project only after agreeing with Romania on the works to be performed.

2. The road map prepared by the Ukrainian authorities

The Government of Romania has reviewed the Roadmap prepared by Ukraine “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” and welcomes the willingness stated by Ukraine to respect the provisions of the Espoo Convention. The Romanian Government is nevertheless concerned about several statements included in the document.

The Ukrainian intention to suspend works for a 3 months period and to conduct within these 3 months an assessment of the damage that was inflicted by the already performed construction works and the uninterrupted maintenance raises both legal and practical questions. Ukraine is and remains under an obligation to suspend works until it complies with the provisions of the Convention. The suspension of works has a practical purpose, to avoid aggravation of harmful consequences. Therefore, had the Ukraine authorities been concerned about such consequences, they would have decided to suspend works over the entire year or at least particularly during the migration and breeding seasons of birds and fish.

Moreover, from a practical point of view, Ukraine has anyway performed the maintenance irregularly, because of financial constraints. The 3 months suspension period might be as well connected more to such constraints than to a concern for the environment. Therefore, we kindly ask the Committee to ask Ukraine to suspend all work until it complies with the provisions of the Convention.

Romania is well aware of the Ukrainian position concerning the lack of a significant transboundary environmental impact. This has been the position of the Ukrainian Government since the very beginning of the project. It is therefore highly likely that the assessment to be undertaken by Ukraine will reach the same conclusion. The Romanian Government believes, however, that in assessing the damage, the Ukrainian experts are disregarding areas and species that might be indeed significantly affected. In some aspects, such as adult sturgeon monitoring, Romanian experts are ready to assist, if the Ukrainian authorities would allow them to expand the territorial scope of current Romanian sturgeon studies into the Ukrainian waters. We kindly ask the Committee to request Ukraine to work together with Romania in this respect, since an effective plan of compensatory measures for the loss of fish/biodiversity and any other damage to the environment can be developed only on the basis of a sound assessment. The active involvement of Romania in the preparation of such plan would greatly aid its implementation.

I would like to stress that before any preparation of further studies, Ukraine should officially acknowledge, in writing, that both the 2010 and the 2005 final decisions are no longer valid / have been repealed, if possible, in a letter addressed to the affected party, Romania.

The Roadmap indicates that while works for Phase II of the project have stopped, an extension of the offshore wall (dike) was finalized. Since this extension was supposed to be performed during Phase II of the project, it would be useful, both for the Committee and for Romania, if Ukraine informed in detail about the works it has already performed for the two phases. The offshore wall (dike) has a significant impact on the deposit of sediments at the mouths of the Delta on the Romanian territory and, for this reason, Romanian authorities should be involved in the assessment of damages and the development of compensatory or mitigation measures.

3. The need for consultations with the Romanian Government

In the previous paragraphs, we have stressed the imperative of conducting consultations regarding any project that Ukraine intends to carry out in the Danube Delta. Romania strongly believes that previous misunderstandings could have been easily avoided, had the Ukrainian authorities engaged in constructive bilateral discussions.

It also should be kept in mind that the project raises issues of compliance not only with the Espoo Convention, but also with several other multilateral and bilateral treaties in force between the two States, such as the treaties regulating the border and the border waters between Romania and Ukraine.

4. The bilateral draft agreement between Romania and Ukraine concerning the implementation of the Espoo Convention

The finalization of the bilateral agreement seems crucial, under the current circumstances, to allow for such bilateral discussions. Unfortunately, more than half a year since the entry into force of the new Ukrainian EIA law and more than a year since Romania submitted its counterproposal, Ukraine has still not provided its reaction.

The Romanian counterproposal, was prepared by experts, taking into account the practice of other states in this field. Should the Committee request so, Romania is ready to provide it with the Romanian counterproposal that was sent to Ukraine.

5. The monitoring performed by Ukraine

Ukraine has been performing over the last years an unusual *monitoring* leading invariably to the same result – "... monitoring studies [conducted in 2017] indicate that there is no significant transboundary impact". The so called "monitoring studies" have two major problems: a) the lack of baseline data that would allow the assessment of changes and b) no assessment of impact from the operation of the project (regular maintenance dredging and traffic of ships) has been carried out.

For example, the "Study of rare ichthyofauna" chapter of the Annotated Report on Scientific Research – Complex environmental monitoring program for the Danube-Black Sea Deep-Water Navigation Canal operation in 2017-2018. The Sea Approach Canal zone indicates that "... as a result of fishing with driftnets conducted during the reporting period, youth of following rare fish species were registered: beluga sturgeon with length of 38-45, stellate sturgeon – 34-36, sterlet – 32-39 ..." without mentioning the number of fish, whether there was an increase or decrease compared with the baseline or previous data, and the possible reasons for changes (Romanian authorities are regularly restocking the river with juvenile sturgeon). Nevertheless, the conclusion of the chapter is clear: "During the reporting period of 2017 there was no impact of the Danube – Black Sea DWNC operation on the representatives of the rare ichthyofauna at the area of research".

While the document uses the word "operation" of the canal, nowhere can the word "ship" be found. The questions concerning the number of ships, their tonnage and possible discharge of waste are not addressed. Therefore, we can conclude with certainty that the impact of the operation of the Canal was not actually assessed.

The Romanian experts from the Danube Delta Biosphere Reserve have advised the Romanian Government that the Ukrainian monitoring study does not follow international scientific standards for achieving and efficient monitoring (i.e. lack of baseline data; the investigations were not carried out during

relevant periods - birds nesting/wintering, and both periods of passage migration; lack of ornithological monitoring data). Therefore, the study cannot lead to any conclusion concerning the environmental impact of the Ukrainian project on the Danube Delta.

We would like to bring to the attention of the Implementation Committee the document attached to this letter containing the points of view expressed by the Romanian authorities and scientific research institutes on the Ukraine's document "Annotated Report on Scientific Research - Complex Environmental Monitoring Program for the Danube -Black Sea Deep Water Navigation Canal operation in 2017-2018. The Sea Approach Canal Zone".

6. Draft decision IS/1f

Even if Ukraine declares that it has a genuine wish to bring the Bystroe Canal Project into compliance with the Convention, as recorded in operative paragraph 10 of Draft decision IS/1f, this should be substantiated with more than a Roadmap, of which Ukraine prepared several over the years under different names. For this reason, as well as for the reasons specified above, the Romanian Government would suggest the redrafting of paragraphs 13-17 as follows:

13. Takes note of Ukraine's intention to develop a new project of Bystroe Route and to carry out a transboundary environmental impact assessment procedure according to the Convention;

14. Urges Ukraine to genuinely involve Romania in all decision-making regarding such future project;

15. Requests Ukraine to inform Romania about the Roadmap and to consult on its implementation;

16. Reiterates its request to the Government of Ukraine to bring the project into full compliance with the Convention without delay;

17. Urges the Government of Ukraine and Romania to finalize the bilateral agreement for adequate implementation of the Convention;

I would like to use this opportunity to express my gratitude for your continuous efforts to assist Romania and Ukraine in finding a solution to one of the major problems affecting the Danube Delta.

Yours sincerely,

STATE SECRETARY

Laurențiu Adrian NECULAESCU

