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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
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**Proposed navigable waterway in the Bystroe Estuary
(Danube delta)
(Ukraine)**

REPORT BY THE GOVERNMENT

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**2010 Report of the Ukrainian Party about the Implementation Status of
Recommendation No. 111 (2004) of the Standing Committee of the Bern Convention on
the Bystre Estuary Deep Navigation Route Project (Danube Delta, Ukraine)**

Throughout 2010, the Ukrainian party has taken all the necessary measures to implement Recommendation No. 111 (2004) of the Berne Convention. A report about the performed works and implementation of the Recommendation terms and conditions is hereby provided.

General aspects of the deep Danube – Black Sea navigation route (DNR)

The Cabinet of Ministers of Ukraine adopted Order No. 351-r dated 30.05.2007 “On Approval of the Working Draft and the Title of Building “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development”.

On December 25, 2009, at the meeting of the Interdepartmental Coordination Council for implementation of the Convention on Environmental Assessment in a Trans-Boundary Context in Ukraine, Vice Prime Minister of Ukraine, in consultation with the Minister of Environmental Protection of Ukraine, the Minister of Transport and Communication of Ukraine, and the Minister of Foreign Affairs of Ukraine, approved the “Final Decision on Implementation of the Ukrainian Project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development” (phase II of the Project) Pursuant to Article 6 of the Espoo Convention”.

The text of the decision was posted on the website of the Ministry of Environmental Protection (<http://www.menr.gov.ua/cgi-bin/go?node=Ekoleksper>).

It should be noted that the final decision includes the EIA improved on the basis of the results of completing the procedural steps pursuant to Articles 3, 4, and 5 of the Convention, EIA materials, and responses to comments received as a result of the public and expert consultations. The final decision was sent by the MFA diplomatic note to Romania on January 26, 2010.

Concerning recommendations to Ukraine:

1. Suspend works, except completion of phase 1, and not to commence phase 2 of works until:

- **pursuant to the international standards, no EIA of phase 2 will be performed and this assessment will not be submitted to the relevant international organizations and experts**

The Ukrainian party has taken all the necessary legislative, administrative, and other measures to comply with the Espoo Convention provisions. It has developed a comprehensive national regulatory framework for assessing the impact on the environment, which meets the international standards. Under the Law of Ukraine “On Environmental Expert Evaluation”, all the government investment programs are to undergo government environmental expert evaluation.

Given recommendations of the international organizations, in 2004 Ukraine developed an EIA consisting of phases 1 and 2 (EIA of the full development project). The said EIA Report was returned twice to be improved (the last time in 2006), based on the final Report of the Inquiry Commission of the Espoo Convention.

Ukraine has organized an international expert evaluation of the EIA in which 17 specialists participated: experts and researchers of various national and foreign institutions, including 10 Doctors of Science, one Master of Natural Sciences from the University of Athens (Land Science Department, Greece), a Professor of the Moscow State University, Philosophy Doctors, etc.

Final Opinion of the government environmental expert evaluation No. 345, dated April 19, 2006, about the Report dedicated to the EIA of the full development project prepared in 2004 and improved over the period from 2004 to 2006, states that this working draft is considered positive from the environmental perspective and is permitted to be implemented, taking into account the national and international standards.

Besides, the field-specific research institutes have prepared the Environmental Impact Assessment in the cross-border context and sent it for consideration to the Government of Romania and the Executive Body of the Espoo Convention.

In January 2009, the MFA delivered to the Romanian party the DNR EIA “Danube – Black Sea” in the Ukrainian Section Delta. Annex to the EIA incorporated in the working project “Creation of the DNR “Danube – Black Sea” in the Ukrainian Section of the Delta. Full Development”. Works were performed by the Ukrainian Research Institute of Environmental Problems (UkrRIEP) of the Ministry of Environmental Protection under the agreement signed with the Delta-Lotsman SOC of the Ministry of Transport and Communication. The aforesaid materials were developed by the Ministry of Environmental Protection and positively assessed as materials implementation of which is admissible from the environmental perspective.

On October 08 2008, the Ukrainian party sent to the Secretariat of the Espoo Convention the report approved at the governmental level about implementation of the Decision of the 4th meeting of the Espoo Convention Contractual Parties (Bucharest, May 19-21, 2008).

During October 28-30 2008, the 15th meeting of the Convention Implementation Committee was held. The final decision was made based on the results of studying the previously sent Report of Ukraine, explanations concerning the report given by the delegation of Ukraine, unofficial consultations, and replies to the questions asked by the Committee’s members.

- **until public hearings of the EIA of phase 2 are held and until the given proposals are duly taken into account.**

Pursuant to the national laws of Ukraine, the public is able to examine the EIA (for stage one and for the full development project) on the website of the Ministry of Transport and Communication and the Delta-Lotsman state-owned company. Throughout 2004-2006, a number of public consultations dedicated to the said project were held including:

Project’s feasibility study – 2003, Ismail;

First stage project – March 2004, Vylkove;

Full development project – December 2004, Ismail;

Full development project improvement – December 2006, Ismail.

The materials of public hearings dedicated to the full development project improvement were delivered to the Romanian party in January 2007.

Each hearing resulted in resolutions supporting renewal of navigation under the Danube – Black Sea project. Managers and researchers of the engineering and research institutes, which developed the Project of renewing navigation and the EIA, participated in all the aforesaid events. It made it possible to take into account remarks expressed during the public consultations in the project documentation.

On April 28, 2009, the Ukrainian delegation came to Romania to participate in public hearings on the EIA of the Phase II DNC project, however hearings were not held because of unavailability to them of the Romanian party. The secretary of the Espoo Convention B.Shrage was informed about this situation.

On June 09, 2009, public hearings were held in Tulcea under the full development project of renewing the deep Danube – Black Sea navigation route.

On July 15-16, 2009, public hearings were held in Kyiv under the full development project of renewing the deep Danube – Black Sea navigation route.

On October 15-16, 2009, Kyiv hosted the common consultations of Ukrainian and Romanian experts resulting in the development of the so-called Road Map to determine the stages of holding the relevant consultations.

- **until information gathered during the additional monitoring by international experts is analyzed and the appropriate recommendations are developed**

Ukraine has held numerous Ukrainian – Romanian meetings at which both parties studied in detail the materials of the comprehensive additional environmental monitoring:

unofficial consultation with the representatives of the UNEP, the UNESCO, the European Commission, the International Commission for Protection of Danube River (ICPDR), secretariats of the Ramsar and Aarhus Conventions and the Espoo Convention, the World Wildlife Fund, the Centre for International Environmental Law, and the International Union for Conservation of Nature dedicated to implementation of the Danube – Black Sea DNR project by Ukraine (September 21, 2004, Geneva);

a visit to the Ukrainian section of the Danube delta of an international delegation of representatives of the UN European Economic Commission, the Ramsar, Berne, and Aarhus Conventions, and the International Commission for Protection of Danube River (October 06-08, 2004);

an international research and practical seminar “International Expert Evaluation of the Results of Monitoring of the First Stage of the Renewal Works in the Deep Danube – Black Sea Navigation Route, Taking into Account the Impact of Other Types of Economic Activities on the Danube Delta Natural Complexes” (April 27-28, 2005, Odesa);

an international research and practical conference “Conservation and Stable Development of the Danube Delta”, February 26-28 – March 01, 2006, Odesa;

working meetings between the authorized representatives of the Governments of Ukraine and Romania dedicated to water management in cross-border rivers (Tulcea, Baya-Mare, and Kyiv);

an international environmental expedition “Danube – 2”, which is held under the auspices of the ICPDR. The expedition ships took samples in the territory of Ukraine near Reni and Vylkove and in the very place where works are performed to renew navigation at the exit from the Bystre estuary (26.09.2007);

an international expert evaluation conference “Navigation Safety and Environmental Safety in the Cross-Border context in the Black Sea Basin”, in which representatives from over 15 countries participated, including Romania (June 24-26 2008 in Odesa and in the very place where works are carried out under the Danube – Black Sea DNC);

a visit of experts from the international environmental organizations under the auspices of the Council of Europe in order to visit the place where the project of renewing the deep Danube – Black Sea navigation route is implemented pursuant to Recommendation No. 111 (2004) of the Convention for the Protection of Wild Flora and Fauna and Natural Habitats in Europe of the Council of Europe (July 28-31, 2008).

Appropriate recommendations have been prepared based on the results of the said international meetings and study of the additional monitoring programs.

2. Provide additional information about the environmental, social and economic aspects of the alternative approaches and viable projects of the future development of navigation in the Ukrainian section of the Danube delta; for this purpose, prepare the Environmental Impact Assessment report, engaging international independent experts, including from the neighboring countries.

All the alternative variants of the navigation route were examined in the process of developing the project "Creation of the Deep Navigation Route in the Ukrainian Section of the Delta". All of the 10 variants were classified into two groups:

DNR creation using the existing water flows: through the estuaries such as Starostambulske – Bystre, Starostambulske – Tsyganka, Ochakivske – Zyednuvalny Kanal;

DNR creation in the manmade route: Solomonove estuary – Bazarchuk backwater – Zhebryanska bay, and in the route from 6 km of the Ochakiv estuary to the water area of the Ust-Dunaysky port.

Based on the results of a detailed study of all the 10 variants, it was decided to choose the final route through the Bystre estuary as the most optimum one from the social and economic perspective and as the

least harmful to the environment.

The EIA of the phase 1 projects and the full development project was presented to the international community, the national research and public organizations, was translated into English, and posted in the Internet: on the websites of the Delta-Lotsman SOC and the Ministry of Transport and Communication of Ukraine. The said documents were examined by international experts and specialists from the neighboring countries. The final document included remarks and was amended in 2008 with a separate analysis of impacts in the cross-border context. All these documents were translated into English and sent to the Romanian party for consideration.

3. Take measures to provide environmental compensation and reduce the negative environmental impact; in this context, complete approval of zoning, which means quality and quantity expansion of the conservation area; analyze phase 1 of the project.

Based on the comprehensive monitoring results, measures have been developed to provide environmental compensation, determine the payment amount for water pollution and damages caused to fish reserves due to performance of dredging works. These measures are part of the project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development”.

By virtue of Order No. 538 of the Ministry of Environmental Protection of Ukraine dated 22.10.2008, the Regulations on the Danube Biosphere Reserve was adopted and a differential mode of protection, reproduction, and utilization of natural complexes was established in accordance with the functional zoning. By virtue of Order No. 435 of the Ministry of Environmental Protection dated 04.10.2010, the Project of Organization of the Danube Biosphere Reserve Territory and Protection of its Natural Complexes was adopted and the functional zoning of the reserve was improved. The said project of the territory organization approved the issues of managing additional territories included in the Danube Biosphere Reserve.

According to the results of analyzing the impact of the navigation route on the natural complexes of the biosphere reserve, it was concluded that implementation of phase 1 of the project is not harmful to the protection, conservation, and sustainable use of the natural complexes of the Danube Biosphere Reserve.

Besides, Section VI “Mitigating Measures” of the document “Final Decision on Implementation of the Ukrainian Project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development” (phase II of the Project)” includes the Technological Measures subsection, one of which is “Implementation of the Environment Comprehensive Monitoring Program in Order to Reveal Trends of Occurrence of Possible Negative Effects Caused by the Project Activities”.

One of the clauses of the final decision includes:

Regular execution of comprehensive environmental monitoring works and the post-project analysis during the project implementation and the Danube – Black Sea DNC operation in order to forecast and prevent in due time possible negative effects of the DNC on the environment by improving the mitigating measures.

Furthermore, negotiations with the World Wildlife Fund were held during the period under review on possible environmental compensation measures.

4. Invite the international community to participate in the creation of the strategic plan of development for the region, which would ensure priority of the balanced development principles and support the unique environmental properties of the territory in the long run.

In order to create the environment for the sustainable development of the Danube area, improve the efficiency of utilization of its internal natural, resource, and economic potential, the population’s living standards, solve social, economic, and environmental problems, Decree No. 428 of the Cabinet of

Ministers of Ukraine dated March 31, 2004 approved the “Comprehensive Development Program for the Ukrainian Danube Area for 2004-2010”. The Program’s key objectives include:

- conserving, reasonably utilizing, and restoring natural resources;
- enhancing the importance of the Danube region in the development of International Transport Corridor No. 7, overcoming its transport communication isolation;
- creating conditions to increase the population occupancy;
- achieving the stable energy and water supply;
- meeting the cultural needs of the ethnic minorities of Ukraine living in the area;
- improving the environmental situation and environmental safety of the region;
- developing the population sustenance infrastructure, the sea and transport complex, industrial and agricultural businesses, the travel and recreation area;
- restoring the reserve territory networks;
- protecting the population from the consequences of natural and technogenic emergency situations.

According to the aforesaid strategic plan, Ukraine officially proposed to the Romanian party to set up a bilateral Ukrainian and Romanian working group to prepare the common standards and assess the anthropogenic impact on the natural complexes.

5. Unite the large territories of strict reservation and prevent human and industrial interference, economic activities negatively affecting the bio diversity (in particular, related to shipbuilding) beyond the strict reservation area.

Ukraine has taken all the necessary measures to enhance the environmental status of the Danube Biosphere Reserve and expand its territory. By virtue of Order of the President of Ukraine No. 117/2004 dated 02.02.2004 "On Expanding the Danube Biosphere Reserve", its territory has increased by 3,850 ha, and 1,295 ha have been given to the Danube Biosphere Reserve for permanent use, which has increased the strict reservation area.

The Project of Organization of the Danube Biosphere Reserve Territory and Protection of its Natural Complexes (2010) regulates in detail measures to provide strict protection of the natural complexes and the biosphere reserve entities pursuant to the UNESCO Man and Biosphere program.

Recommendations to Moldova, Romania, and Ukraine

6. Complete national legal procedures to make effective the Agreement between Moldova, Romania, and Ukraine for cooperation in the area of the protected natural territories of the Danube delta and the lower part of Prut River.

The Agreement between the Ministry of Environment and Territorial Planning of the Republic of Moldova, the Ministry of Water, Forest, and Environmental Protection of Romania, and the Ministry of Environment and Natural resources of Ukraine for cooperation in the area of the protected natural territories of the Danube delta and the lower part of Prut River was signed by Ukraine on June 05, 2000. The Agreement became effective on October 04, 2006. Under this Agreement, the first meeting of the trilateral coordination commission must be hosted by Romania.

7. Develop a meaningful dialogue between all the interested parties and ensure open decision making.

With the participation of the Romanian party, on 18.06.2007 Consultations were held in Vylkove to assess the impact on the environment in the process of implementing the project “Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development”.

Along with the Romanian party, on 18.07.2007, new consultations were held in Tulcea (Romania) to assess the impact on the environment in the process of implementing the project "Creation of the Deep Danube – Black Sea Navigation Route in the Ukrainian Section of the Delta. Full Development".

On 25.07.2007, the Delta – Lotsman state-owned company, as the project customer, held an online conference dedicated to the Danube – Black Sea project implementation, taking into account the international conventions. The Romanian party sent no written questions through diplomatic routes.

In September 2007, Ukraine held the International Danube Media Forum dedicated to renewal of navigation in the Ukrainian section of the Danube delta and the likely cross-border impact in the process of implementation and operation of the deep Danube – Black Sea navigation route. Based on the results of the Forum, the Resolution and Address to the governments of the countries located in the Danube delta was adopted.

On October 08, 2010, consultations with the European party were held in Kyiv about the Danube – Black Sea DNR project. During these consultations, the Parties considered the issue of the Danube – Black Sea DNR Restoration project context, performance of works under Phase I and Phase II of the project, information about monitoring the Ukrainian section of the Danube delta, and steps to implement the Espoo Convention under the Danube – Black Sea DNR project. The Ukrainian party informed the representatives of the European Commission and the Espoo Convention Secretariat that the Romanian party refused to participate in the bilateral Ukrainian – Romanian negotiations dedicated to the Espoo Convention regulation implementation.

8. Welcome Ukraine's initiative to launch the monitoring program and invite experts from the Danube Basin countries to participate in this program and hold regular meetings and consultations.

Ukraine supports creation of a common international system of monitoring the entire Danube delta. In 2009, Ukrainian and Romanian consultations took place to organize the common monitoring of the Danube delta and delta front, but cooperation has not started yet because of the absence of response from the Romanian Party.

Ukraine has launched the system of comprehensive monitoring of the Danube delta environment, including research and engineering monitoring programs. Dozens of leading research and engineering institutions were engaged in implementation of the said programs. The 2009 monitoring results were generalized by the Ukrainian Research Centre for the Sea Ecology (URCSE).

The URCSE and information generalization made it possible to assess the condition of the Ukrainian section of the Danube delta in 2009:

- in summer, hypoxia and partial loss of bottom organisms were recorded in the bottom layer and the SAC area and the bottom layer of other sections of the Danube with the depth of more than 20 m;
- salty soil of the stations located in the traverse of the Vostochne and Starostambulske estuaries located near the Romanian section of the Danube delta are polluted by oil products, class 3 (very polluted soil); apart from oil products, mercury, lead, copper, zinc, arsenic, and phenol concentrations are maximum high for the seashore; the stable high concentrations both in the summer and winter seasons in 2009 attest to chronic pollution; this is a fact of a possible cross-border impact on the Ukrainian water area made by the Romanian navigation route through the Sulynsky arm;
- changes in the plants were recorded and adventitious plants continued to expand, in particular species new for the Kilia delta of the Danube: *Torulinium ferrax*, *Chaenopodium pumilio*, *Eclipta prostrata*, *Diplachne fascicularis*, *Solanum retroflexum* etc, in the eastern part of the Ptashyna spit, and in the depositing sites of the Yermakov island; the water areas, favorable for the rare *Aldrovanda vesiculosa* L., tended to reduce;

- research showed that the number of mammals increased both alongside the DNR and all over the DBR area.
- The preliminary results of monitoring in 2Q – 3Q 2010 permit us to make the following conclusions:
- concentrations of mineral and organic compounds of nitrogen, phosphor, and silicon were lowered in the Danube waters, which is typical of an affluent period;
- in 2Q 2010, the SAC soils were periodically carried out corresponded to class A: natural pure soils;
- the hydrochemical seashore regime was formed under the effect of the abnormally high flows of the Danube (almost twice as higher than in July 2005-2006); water salinity 8 km away from the cost line was often below 8‰; the seashore was characterized by a multi-layer water structure, formation of various hydrochemical conditions in some sections;
- in 3Q 2010, the SAC soils corresponded to class A: natural pure soils;
- there is a negative cross-border effect from the Romanian water area (in the Sulyn Channel area) in the form of chronic contamination of bottom deposits of the Ukrainian shelf with zinc, arsenic, and oil products.

9. Use the provisions of the aforesaid Agreement and the Berne Convention in order to maintain a dialogue about the environmental issues affecting the bio diversity of the Danube delta.

Pursuant to clause 2 of article 4 of the Agreement between the Ministry of Environment and Territorial Planning of the Republic of Moldova, the Ministry of Water, Forest, and Environmental Protection of Romania, and the Ministry of Environment and Natural resources of Ukraine for cooperation in the area of the protected natural territories of the Danube delta and the lower part of Prut River, the meeting of the trilateral coordination commission must be held by Romania. Ukraine has confirmed its proposal to participate in the work of this commission, but the Romanian party has not confirmed the date of the constituent meeting yet.

Recommend to Ukraine

10. Under the auspices of the Council of Europe, organize a meeting of the country signatories to the aforementioned Agreement in order to discuss the relevant issues of this Resolution and the Agreement provisions.

According to the said clause of the Resolution, Ukraine prepares an address to the Council of Europe to hold a meeting of the Agreement signatories under the auspices of the Council of Europe in the first half of 2011.