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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

33rd meeting
Strasbourg, 3-6 December 2013

Specific Site - File open

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

REPORTS BY OTHER CONCERNED STAKEHOLDERS

Document compiled by the Directorate of Democratic Governance

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**SECRETARY TO THE CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT
IN A TRANSBOUNDARY CONTEXT
(ESPOO CONVENTION)**

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

- OCTOBER 2013 -

The Government of Ukraine provided information to the Committee on 26 August 2013. At its twenty-eighth meeting (10-12 September 2013), the Committee considered the Government's report of 31 December 2012 and the additional information of 26 August 2013. According to the Committee's operating rules, we are not able to disclose the letters/information received from the Government or details on the Committee's discussions. In general, following the Committee's report on its meeting (excerpt from the unedited advance copy of the Committee's report on its twenty-eighth meeting):

"The Committee welcomed the report [of the Government of Ukraine] and noted that it presented the situation in a systematic and comprehensive way. It was pleased to learn about the steps taken by Ukraine to initiate negotiations with the aim of concluding a bilateral agreement with Romania and to monitor the situation in the Danube Delta. The Committee, however, expressed concern at the lack of progress in relation to the implementation of the strategy of the Government to implement the Convention (as requested in decision IV/2, paragraph 12, see also decision V/4, paragraph 21), in particular in relation to the adoption of concrete legislative measures to this effect. It also observed that although Ukraine had agreed on the adequate steps to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, through the conclusions of the established intergovernmental coordinating council, it provided no information to the Committee on whether the implementation of these steps had started." (The report will be shortly edited, processed as a UN official document and posted on the Convention's website).

At its twenty-ninth meeting, 10-12 December 2013, the Committee will evaluate the steps taken by the Government to reach compliance with the Convention (as requested by decision V/4 of the Meeting of the Parties). Ukraine has been invited to submit its report on the activities to implement decision V/4 no later than 25 November 2013. On the basis of its deliberations, the Committee will then prepare its report, including recommendations concerning Ukraine, to the MOP (June 2014).

We hope the above is useful and that we will be able to shed more light to the case for consideration by Bureau of the Standing Committee at the end of the year.

**SECRETARY TO THE CONVENTION ON ENVIRONMENTAL IMPACT
ASSESSMENT
IN A TRANSBOUNDARY CONTEXT
(ESPOO CONVENTION)**

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

- AUGUST 2013 -

As you are aware, further to Romania's initial submission to the Espoo Implementation Committee, back in 2004, regarding its concerns about Ukraine's compliance with its obligations under the Convention with respect to the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian Sector of the Danube Delta (the 'Bystroe Canal Project'), the matter has been subject to findings and recommendations by the Implementation Committee and two decisions by the Meeting of the Parties to the Espoo Convention (decision IV/2 adopted at the fourth session of the MOP in 2008 and decision V/4 adopted by MOP-5 in 2011, paras. 17-26, ECE/MP.EIA/15). See: <http://www.unece.org/env/eia/decisions.html> and http://www.unece.org/env/eia/implementation/eia_ic_s_1.html

The progress by Ukraine in complying with its obligations under the Convention will again be evaluated at the sixth session of the Meeting of the Parties, which is scheduled to be held in Kiev, on 2-5 June 2014.

At its fifth session in June 2011, the Meeting of the Parties endorsed the finding of the Implementation Committee that, while Ukraine had fulfilled some of its obligations 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. It therefore *declared* that the caution to the Government of Ukraine issued in its fourth session is effective. It *requested* the Government of Ukraine to report by the end of each year to the Implementation Committee: (a) on steps taken to bring into full compliance the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta, implementing the measures in accordance with paragraph 19, and on the post-project analysis of the project; (b) on the implementation of the strategy of the Government of Ukraine to implement the Convention (as had been requested in the decision IV/2 para.12), in particular on concrete legislative measures adopted to this effect. It *also requested* the Implementation Committee to report to the sixth session of the Meeting of the Parties on its evaluation of the steps taken by the Government of Ukraine to bring about compliance and to implement the strategy, and to develop, if appropriate, further recommendations to assist Ukraine in complying with its obligations under the Convention;

At its 26th session, 26-28 November 2012, the Implementation Committee decided that it would start drafting recommendations to assist Ukraine in complying with its obligations under the Convention at its twenty-eighth session (10-12 September 2013), on the basis of the next progress report to be provided by Ukraine on the measures it has taken to implement the decision V/4. This progress report, provided by Ukraine on 31 December 2013, is available at http://www.unece.org/env/eia/implementation/eia_ic_s_1.html. In addition to that report, with a view to formulating its recommendations, the Committee wished to receive updated information from Ukraine in advance of its twenty-eighth session, by 27 August 2013.

The Implementation Committee will prepare its report and recommendations on Ukraine for consideration by the next Meeting of the Parties at its three forthcoming sessions (28th, 29th in 11-13 December 2013 and 30th in 25-27 February 2014). The reports of the Implementation Committee's deliberations will be made publicly available at: <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/meetings-and-events/environmental-impact-assessment/implementation-committee-espoo-convention.html>

Should you need this same information to be provided also in another format (in a letter), please let me know (In this case, could you please resend me electronically the letter that you sent to request

for the information, including the deadline by which this information is to be submitted at the latest). Please also let me know whether you need additional information and whether the Espoo secretariat can be of further assistance to the Bern Convention bodies.

RAMSAR OPINION



CONVENTION ON WETLANDS
CONVENTION SUR LES ZONES HUMIDES
CONVENCIÓN SOBRE LOS HUMEDALES
(Ramsar, Iran, 1971)

Ms Ivana d'Alessandro
Secretary of the Berne Convention
Council of Europe

Gland, 27 February 2013

Dear Ivana

Request of information under the Bern Convention: case-file open on “Ukraine: Proposed navigable waterway in the Bystroe Estuary (Danube delta)”

Thanks for your request for information concerning the waterway works in the Bystre river mouth in the Ukrainian part of the Danube Delta, dated 17 January 2013.

I am not going to provide you with an opinion of the Ramsar Convention on the Ukrainian document you are referring to. A meaningful and thorough analysis of this document, and its context, would need a specifically committed study. May be one of the international institutions that are following the case, would like to undertake or finance such an analysis?

I am happy to provide you with an update on the situation concerning the Ramsar Convention. Based on a report (attached) by the Ukrainian Ministry of Ecology and Natural Resources, providing answers to the questions the Ramsar Convention asked earlier, we have closed our “Article 3.2 file” (cf. our letter attached).

This is not to say that we are convinced that no significant human-induced negative ecological change may still occur at the transboundary Ramsar Site. We remain alert about any new and substantial information on negative change occurring, and would appreciate, if you could share any such information whenever it comes your way.

It is our understanding that the head of the national Ramsar Administrative Authority in Kyiv has taken the responsibility to declare publicly that no negative change will occur through the planned works. Ramsar stated at several occasions that water and wetland management problems of transboundary ecosystems, such as this one, can only be successfully addressed in cooperation among the countries concerned. This is why we reiterated the need for the further development of trilateral cooperation and coordination in the Danube Delta.

We remain available for any further common activity re this case, between the international institutions that are directly following the issue since several years already.

Kind regards

Tobias Salathé
Senior Adviser, Europe

**МІНІСТЕРСТВО ЕКОЛОГІЇ
ТА ПРИРОДНИХ РЕСУРСІВ
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**MINISTRY OF ECOLOGY
AND NATURAL
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Kyiv, 03035, Ukraine

**To: Mr. Anada Tiega
Secretary General of the Ramsar Convention**

**Re: Resolution IX.15 "The status of sites in the Ramsar List
of the Wetlands of International Importance"**

Dear Mr. Tiega,

The Ministry of Ecology and Natural Resources of Ukraine presents its compliments to the Ramsar Convention Secretariat and has the honour to refer to the following.

During the ninth Conference of the Contracting Parties to the Ramsar Convention, held from 8 to 15 November, 2005 at Kampala (Uganda), the Resolution IX.15 "The status of sites in the Ramsar List of the Wetlands of International Importance".

According to Article 8.2 of the Convention, paragraph 27 of this Resolution was dedicated to the development of the deepwater navigable channel Bystryi in the Danube Delta. In accordance with Clause IV, paragraph 27 of the Resolution, the Government of Ukraine, as a Party to the Ramsar Convention, should provide information on this issue. In 2008, Ukraine has submitted to the Ramsar Convention Secretariat report on measures taken to implement this decision in the period of 2004 – 2008 years.

With this letter the Ministry is honoured to submit actualized report on the work carried out by the Ukrainian side for the period of 2008 - 2012 years implementing the Resolution provisions.

Ministry of Ecology and Natural Resources of Ukraine takes this opportunity to renew assurances of its highest consideration to the Secretariat of the Ramsar Convention.

Deputy Minister



I. Vildman

Annex to the letter of
Ministry of Ecology and
Natural Resources of
Ukraine

Of N_____

General aspects of the deepwater Danube - Black Sea navigable channel:

The Cabinet of Ministers of Ukraine issued the Prescription from 30.05.2007 № 351-p "On approval of the working draft and the structure of the title" Creation the deepwater navigable channel Danube-Black Sea on Ukrainian part of the delta. Full development".

On 25 December 2009 at the meeting of the Interagency Coordinating Council for implementation in Ukraine of the Convention on Environmental Assessment in a Transboundary Context (Espoo Convention) Vice Prime Minister of Ukraine has approved the document "The Final decision on implementation of the Ukrainian project "Creation the Danube - Black Sea deepwater navigation channel on Ukrainian section of the Delta. Full development "(Phase II of the Project) in accordance with Article 6 of the Espoo Convention." The text of the Final decision was published on the web-site of the Ministry of Ecology and Natural Resources of Ukraine (<http://www.menr.gov.ua>).

The Final Decision, taken by the Government of Ukraine, is based on the Environmental Impact Assessment, which is revised by the results of the procedural steps in accordance with Articles 3, 4 and 5 of the Espoo Convention, as well as on the findings of public hearings and expert consultations on this issue. Ministry of Foreign Affairs of Ukraine sent the above mentioned text with the Note to the Romanian Party on 26 of January, 2010.

Hereby the Ministry inform on the implementation of the following provisions of the Resolution IX.15:

a) Suspend further work to complete environmental review, which should be conducted and its conclusions.

Ukrainian Party takes all appropriate legislative, administrative and other measures necessary for the implementation of the Espoo Convention. To meet international requirements the thorough national regulatory framework for Environmental Impact Assessment designed in Ukraine. According to the Law of Ukraine "On Ecological Expertise", all the government investment programmes shall be subject to the state ecological expertise.

Guided by the international organizations recommendations, Ukraine has developed Environmental Impact Assessment (EIA) for phases 1 and 2 of the

project "Creation the deepwater navigable channel Danube-Black Sea on Ukrainian section of the delta. Full development" in 2004. The above mentioned report on the EIA of the project twice was returned for the revision taking into account the recommendations of the Final Report of the Inquiry Commission of the Espoo Convention; the last time in 2006.

State ecological expertise of project documentation for construction of the deepwater navigable channel (GSH) Danube - Black Sea was accomplished by the state enterprise "Ukrahroinvestekspertyza" involving the previous expert review of the specialized agencies in accordance with the Law of Ukraine "On Ecological Expertise".

Ukraine provided the international expertise of the EIA, which was attended by experts and scientists of different national and international institutions – total of 17 experts.

In the final Conclusion of the state ecological expertise for the EIA Report to the full development of the project (April 19, 2006 , N 345), developed in 2004 and revised in 2004-2006, determined that this working project from an environmental point of view is assessed positively and allowed its implementation taking into account national and international standards.

Additionally, specialized research institutes developed environmental impact assessment in transboundary context and forwarded to the Government of Romania and the executive body of the Espoo Convention.

On October 8, 2008 the Ukrainian Party was sent to the Secretariat of the Espoo Convention agreed at government level report on the implementation of Decision of 4-th meeting of the Contracting Parties to the Espoo Convention (Bucharest, 19-21 May 2008).

On 28 - 30 October, 2008 in Geneva 15-th session of the Committee on the implementation of the Convention on Environmental Impact Assessment in Transboundary Context (Espoo Convention) held on. There was considered a conditional caution rendered to the Government of Ukraine on the environmental aspects of the project for navigation restoration by deepwater navigable channel "Danube - Black Sea". After considering the Report of Ukraine on implementation of the Convention, the Committee decided to remove warning the Government of Ukraine and welcomed steps taken by our state under the Convention on the establishment of the competent authority responsible for implementing its provisions in Ukraine.

Committee members also considered the verbal complaint of Ukraine on the negative impact of Romania's activity in the Danube Delta and the Romanian Party was obliged to provide comprehensive information on its projects in the Danube Delta, which may be covered by the Convention and could have negative impact to the environment of Ukraine. Still, Ukraine has no information regarding the relevant materials submitted by the Romanian side.

In January of 2009, the Ministry of Foreign Affairs of Ukraine passed to Romania the Environmental Impact Assessment of Ukrainian section of the deep water navigable way "Danube - Black Sea" and the Annex to the Environment Impact Assessment as part of the working project "Creation of deep water navigable channel "Danube - Black Sea" on Ukrainian section of the delta. Full development". This work was performed by the Ukrainian Scientific-Research Institute of Ecological Problems of the contract with state enterprise "Delta - Lotsman" of the Ministry of Transport of Ukraine. The Ministry of Ecology and Natural Resources of Ukraine considered those materials and positively assessed as such, as implementation of which is environmentally acceptable.

b) make available full documentation including the findings of the environmental impact assessment for Phase II of the project to all stakeholders, including the government of Romania as a potentially affected state;

On 28 of April, 2009 the Ukrainian delegation arrived in Romania to participate in public hearings on the Environmental Impact Assessment of phase II of the project for deep water navigable channel. Unfortunately, the unwillingness of the Romanian party, the hearings was not held. On the situation, Ukraine has informed the Secretary of the Espoo Convention, Mr. V. Shargey, via official channels.

On June 9, 2009 the public hearings held in Tulcha (Romania), during which the draft of restoration of deep water navigable channel "Danube-Black Sea" have been considered.

On 15 - 16 July, 2009 the public consultations on this project took place in Kyiv (Ukraine).

On 8 October, 2010 in Kyiv (Ukraine) the consultations with representatives of the European Commission regarding the deep-water way "Danube-Black Sea" project took place. During the consultations the parties discussed the narrative restore deep water navigable channel "Danube - Black Sea", carrying out works under Phase I and Phase II of the project, information on the monitoring of the Ukrainian section of Danube Delta, the measures taken within the framework of the deep water channel for the implementation of the Espoo Convention. Ukrainian side informed the representatives of the European Commission and the Secretariat of the Espoo Convention on the Romanian side refused to take part in the Ukrainian-Romanian negotiations on the implementation of the Espoo Convention.

15 - 16 October, 2009 in Kyiv the joint consultations of experts from Ukraine and Romania held on, during which the Roadmap for determining stages of appropriate consultation was conducted.

c) ensure that compensatory provision is made for any damage to the ecological character of designated Ramsar sites and other wetlands caused by the works which have already been carried out;

According to the results of a comprehensive monitoring the measures on the ecological compensations are developed, size of payments for water resources pollution and for damages to fish resources, caused by dredging, are determined. These measures are the part of the project materials "Creation of the deep water navigable channel "Danube - Black Sea" on Ukrainian section of the Delta. Full development." Compensation payments for damage caused to the environment carried out in full compliance to the civil and environmental legislation of Ukraine considering international standards.

Ukraine has taken appropriate measures to enhance the conservation status of the Danube Delta Biosphere Reserve and expand its territory. By the Decree of President of Ukraine of 02.02.2004 N 117/2004 "On the extension of the Danube Delta Biosphere Reserve" its area was increased to 3850 hectares and 1295 hectares were granted for permanent use to the Reserve, which allowed increasing the area of strict conservation in the Danube Delta.

By the Order of the Ministry of Environmental Protection of Ukraine of 22 October 2008, N 538 the Regulations of the Danube Biosphere Reserve and set of differential regime of protection, rehabilitation and use of natural systems in accordance with the functional zoning were approved.

By the Order of the Ministry of 04.10.2010 № 435 the Project of the territory organisation (Management Plan) and protection of natural systems of the Danube Delta Biosphere Reserve was approved. In this document the functional zoning of the Reserve was finalized.

According to the impact assessment of water way activity to the biosphere reserve nature complexes, it was concluded that project developing will not prejudice protection, conservation and sustainable use of natural systems of Danube Delta Biosphere Reserve.

In addition, the document "The final decision on implementation of the Ukrainian project "Creation the deep water navigable channel "Danube - Black Sea" on Ukrainian section of the delta. Full development" (Phase II of the Project), part VI "Mitigating measures" includes Unit "Technological measures", one of which is "Implementation of programme for environmental comprehensive monitoring aimed to early detection of possible negative consequences of proposed activity".

According to the Final Decision, the comprehensive environmental monitoring and post-project analysis have to be done during the project implementation and operation of the waterway of the Danube - Black Sea for the purpose of long-term

forecasting and preventing the negative consequences of water way activity to the environment by improving the set of mitigation measures.

Under the auspices of the World Wide Fund for Nature (WWF) in 2009 the works on wetlands renaturalization within the delta island Ermak were carried out. There was registered the rapid restoration of all components of the ecosystem of the island: in 2010 the number of populations and habitats of flora, ichthyofauna, avifauna, most of which are listed in the Red List, increased.

d) establish, in cooperation with relevant international organizations and the government of Romania, a programme of international monitoring of the ecological character of the Ramsar sites and Danube Delta Biosphere Reserve, in line with the Convention's guidance on wetland monitoring (Annex to Resolution VI.1; Ramsar Wise Use Handbook 8);

Ukraine has launched in 2004 a comprehensive environmental monitoring system of the Danube Delta, which includes programmes of engineering and environmental monitoring. Dozens of leading scientific and engineering institutions were involved to carry out these programs. The Ukrainian Scientific-Research Institute of Ecological Problems carries the coordination of these activities. In 2011 the measures were implemented in accordance with the Terms of Reference for works under the contract between the Institute and "Delta-Lotsman" and respectively to the Program for comprehensive environmental monitoring at renewing and operating of waterway Danube - Black Sea.

Summarized monitoring outputs conducted in the period of 2004 - 2011's, allow making the following main conclusions on the status of the ecosystem of the Ukrainian part of the Danube Delta during the works on renewing of waterway Danube - Black Sea for Phase 1.

Hydraulic engineering and dredging works in the mouth of Bystryi the sleeve on the project of renewing and operating of waterway Danube - Black Sea did not change the natural tendencies of developing of watercourses of Kiliya Delta and had no negative impact on natural hydrological regime of the Danube Delta, including transboundary aspect.

The tendency of the flow redistribution correlation between Kiliyskiy the sleeve and Tulchynsky the sleeve is a permanent increase of part of runoff of Tulchynsky the sleeve (from 33% to 51% over the past 50 years of monitoring) and a corresponding decrease of part of runoff of Kiliysky the sleeve.

The main reason for this process are the consequences of large-scale hydraulic works in Romania, which pioneered in the century before last and continues up to this days.

Analysis of observations of the dynamics of the marine edge of the delta (MED) for the period 1972 - 2010 points to maintain the general trend nomination MED in the area from the mouth of Potapivsky sleeve to the mouth of Tsygansky the

sleeve. On the southern edge of the Ptashyna spit observed its shift towards the shore. Abrupt changes in morphology and in evolution of the natural status of the spit are not recorded.

The results of a comprehensive environmental assessment of Danube water quality showed a satisfactory and stable enough condition of hydro chemical indicators for ecosystem. Deterioration in water quality after commissioning waterway Danube - Black Sea was not recorded.

The results of determinations of concentrations of suspended matters and pollutants at the background stations confirmed the absence of transboundary impact on the waters of Romania dredging and dumping ground for marine underwater dump, located of 8 km distance from the MED.

Sediment analysis of dredging sections and areas of marine piles showed that the concentration of contaminants in these sediments do not exceed values acceptable for dumping into the Black Sea.

Many years of hydro biological research allow affirming that there is no direct impact from the restoration and maintenance waterway Danube - Black Sea to the biotic communities of phytoplankton, zooplankton, zoo benthos, and ichthyofauna studied water bodies, except for certain violations of the local structure groups in areas of direct hydraulic works.

Within the monitoring of the Danube Delta Biosphere Reserve, special attention was paid to species protected by the relevant international conventions and the Red Data Book of Ukraine. In connection with the preparation of a new edition of Red Data Book of Ukraine (issued in 2009) was carried out inventory of the flora and fauna of the Danube Delta Biosphere Reserve, included in this release.

Peculiarity of 2011 was the low water level in the Danube River during the whole period of observations. This year the less water sleeves were overgrowing, as well as internal waters, the northern and southern parts of the river delta. But in 2011 there was the impact of last year's floods, which brought in the Danube Delta, is not only the greatest amount of water and silt, but much diverse seed plant material that was revealed in discoveries of 8 plant species those are new flora for the Danube Delta Biosphere Reserve.

As a result of lower water flow through Bystryi the sleeve, the Bird Spit, that is located near the mouth of the sleeve, became accessible to terrestrial predators and wild boars. In this connection, colonial settlement of the land-nest birds moved to Taranova spit and Nova Zemlia spit. Analysis of retrospective data showed that in the past three decades in the Ukrainian Danube Delta the main places of long-term colonial settlements birds were changed several times. This indicates the processes of avifauna adaptation to the impacts and variable environmental factors.

As a result of observations during the restoration and maintenance of waterway Danube - Black Sea also not revealed a significant direct impact on the rare

representatives of ichthyofauna on the state of amphibians and reptiles populations, and mammals in the surrounding area of the Danube Delta Biosphere Reserve (studies have shown growth in their number as along the waterway and throughout the Reserve). In 2011 it was recorded a very rare for the Danube, and ichthyofauna of Ukraine in general, species - Shemay (*Chalcalburnus chalcoides* Guld.). In the same area of the sea side the new species of fish family Sparoviyh - salp (*Sarpa salpa* L.) was revealed during industrial fishing on 1 September of 2011 as a new species for the Reserve and adjacent part of the Black Sea.

According to ornithological observations during nesting period occurred some changes in the structure of nesting bird's settlements of *Charadriiformes* of the front edge of the delta in comparison with previous years. Number of Yellow-legged Gull (*Larus cachinas*) is increased almost in three times in the nesting places, as well as numbers of Great Black-headed Gull (*Larus ichthyaetus*) is increased by 40 pairs, which is included in the Red Data Book of Ukraine. In Taranov Spit, which is a buffer zone of the reserve, the number of Sanwich Tern (*Thalasseus sandvicensis*) increased more than two times, and four nesting bird species have noted at the nesting places, those are listed in the Red Data Book of Ukraine: Little Tern (*Sterna albifrons*), Great Black-headed Gull (*Larus ichthyaetus*), Oystercatcher (*Haematopus ostralegus*), Avocet (*Recurvirostra avosetta*).

In general, the impact of GSH on the state of nesting birds in this period can be considered minimal. Somewhat higher rates of quantitative bird wetland complex, recorded in August 2011, with respect to the data records of past years, not related to the waterway of the Danube - Black Sea

Overall, the results of monitoring conducted during the restoration and maintenance of waterway Danube - Black Sea, not the facts recorded lower species diversity of flora and fauna of the reserve. Progress in implementation since 2004 a comprehensive environmental monitoring showed that the impacts of the activities to restore the waterway can be characterized as local and limited. That is, recorded effects do not result in significant changes in key parameters of the environment and biodiversity of the Danube Delta, and actual changes in controlled parameters do not exceed the forecast, and often less substantial. Impact on development of plant and animal communities of the delta during the reporting period was mainly related to climatic and seasonal hydrological changes.

In 2009, the Ukrainian-Romanian consultations regarding the organization of joint monitoring of Danube Avandelta and Delta held on, but common activities have yet not begun.

In early 2011 under the auspices of the International Commission for the Protection of the Danube River (ICPDR) and ECE UN, Ukraine, Romania and Moldova launched the project "Cooperative environmental monitoring, assessment and exchange of information for integrated management of the Danube Delta region."

This is the first step towards integrated management of the Danube Delta, which will make it possible to prepare a comprehensive analysis of the situation and develop measures to support sustainable development. The project was designed to improve cross-border cooperation in the Danube Delta. This project will develop and implement joint programs in the Danube Delta, which will facilitate the harmonization of monitoring systems in the region.

e) under Article 5 of the Convention, to apply international standards in providing information, consultation and involvement in decision-making process of all interested parties on the Phase II project.

Following the provisions of the Ramsar Convention, particularly Article 5, Ukraine signed the Agreement between the Ministry of Environment and Territorial Spatial Planning of the Republic of Moldova, Ministry of Water, Forests and Environmental Protection of Romania and the Ministry of Environment and Natural Resources of Ukraine on the cooperation in the zone of the Danube Delta and lower River Prut nature protected areas (05.06.2000, Bucharest, Romania). According to paragraph 2 of Article 4 of this Agreement, upon completion of internal procedures in each country, on 22 March of 2011 in Bucharest, the first meeting of the Trilateral Coordination Committee took place. At that meeting the parties have identified the priority areas of joint activities, agreed to develop joint environmental projects and the establishment of a bilateral Romanian-Ukrainian Biosphere Reserve "Danube Delta" trilateral Ukrainian-Romanian-Moldovan Biosphere Reserve in Lower Danube and Prut rivers.

Interaction of environmental authorities of three Parties to conserve the environment of the Danube Delta will be an important tool for information, consultation and involvement of all stakeholders in this process.



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WWF International, Danube-Carpathian Programme

Vienna, 6 November 2012

To: Council of Europe, Biological Diversity Unit

Attn: Mrs. Ivana d'Alessandro, Secretary of the Bern Convention

Dear Mrs. d'Alessandro,

We are writing in response to your letter of 3 October 2012 regarding case-file open on "Ukraine: Proposed navigable waterway in the Bystroye Estuary (Danube delta)".

We would like to provide you with WWF's analysis of the document: **"Final Decision on the Implementation of the Full-Scale Phase of the Danube-Black Sea Navigation Route Project in the Ukrainian Part of the Danube Delta"** as follows:

I. General comments on impact assessment

- The above noted document complies with principles of the Convention on Environmental Impact Assessment in a Transboundary Context with the following exceptions:
- there are serious **doubts concerning the statements that the design minimizes transboundary environmental impact** and that completion of phase 2 would be of benefit for the environment
- **emergency situations** are not assessed (oil spills, vessel collision, shipwreck);
- for **biological parameters: method, underlying assumptions and input data are not specified**, therefore conclusions are not compelling;
- the **knowledge gaps and the level of uncertainties** are not indicated;
- **the post-project analysis** of results of the monitoring and management programs are not outlined;
- there is a lack of **social and economic forecasts**;
- section 5 **does not take into consideration the latest hydro-morphological changes** in the Delta, in particular, the fact that the island of Novaya Zemlya has increased significantly in the direction of the Sulina Branch;
- **long-term projections** for siltation of the channel are not provided, although it is known that the Chilia delta advances 0.22 km² / year. During the last 10 years the coastal stretches of Bystroye and Vostochny changed rapidly¹.
- the list of measures to reduce the negative **impact does not contain institutional arrangements**, namely the possibility of creating an insurance funding scheme or other legal or institutional

¹ Cheroy A., *Processes of delta formation in the Danube estuary*, 2007; available at:
<http://repository.ibss.org.ua/dspace/handle/99011/618>

mechanisms to guarantee rapid recovery of environmental damage from construction and operation of the channel;

- **there is no data on socio-economic impact** of the construction and operation of the channel (e.g. fisheries, tourism, hunting), nor compensation measures for the national and transboundary context.
- the document provides a superficial analysis of 8 **options for the Danube-Black Sea Navigation Route**, (in fact a repetition of the information provided in the 2004 documentation), not taking the DHV study commissioned by WWF into account². According to independent evaluation, Ust-Dunaysk Channel has positive economic indicators, and Solomonov Channel looks more economically viable than the project of Bystroye Branch. The decision on the dam opening of Sasyk estuary has been approved by local self-governance bodies appreciating the benefits for the water ecosystem. Also the construction of a port in the estuary is considered feasible;
- the document mentions **public consultations** but there is no clear reference of how criticisms and suggestions were incorporated;
- **the cumulative environmental impact** in the transboundary context is not analysed;
- while the report states that “**compensation payments** for unmitigable damage caused during the construction phase have already been transferred by the Project Client to the State Budget according to the procedure defined by the Ukrainian legislation”, there is no calculation of costs incurred, or about the amount that has already been transferred and consequently this statement cannot be verified;
- **sediment management** issues have not been properly investigated.

II. Comments related to principles of sustainable navigation and economics

- there is no integrated transport concept, no reference to the, Joint Statement or Platina Manual;
- there is no integration of costs related to loss of ecosystem services within the cost-benefit analysis;
- training of staff and River Information Services should be focus for investments but are not mentioned;
- there is no economic investigation of overall maintenance costs.

III. Comments on Summary of Findings

Summary of Findings (T-PVS/Files (2012) 7 add. Page 239 etc)	WWF comment
1) Assuming that all proposed design provisions are fully and properly implemented, the transboundary impact of the Project on water levels and flow discharges in the Chilia, Starostambulske and Bystre Branches is likely to be insignificant. Estimated minor changes in the hydrological regime of these river branches are not expected to cause any loss of spawning and nursery habitats for fish and/or nesting and feeding habitats for birds.	<p>WWF has doubts that this conclusion can be drawn based on data and information presented in the document, (see our arguments in the following points). WWF misses in particular the exercise of modeling <u>optional</u> structural interventions (e.g. chevrons), and of the refilling rate of dredged material. Before this is done, the presented conclusion is premature.</p> <p>Suspended solids/sediments is being transported through the seaward channel into the deep sea, which in effect means that it is not available any more for building the delta. The effects on hydromorphology and ecology have not been investigated and discussed.</p> <p>The division of flow between Bystroye and Starambulski channels is of great importance for the ecologically valuable sites at the mouth to the sea and might change</p>

² WWF (DHV Consultants) *Sustainable Navigation in Ukraine: Alternatives in and around the Ukrainian Danube Delta*, 2009; available at: <http://wwf.panda.org/?uNewsID=184821> (Related Links)

	significantly. A lot also depends on location and design of the planned guidance wall or deflector. However, there is no information on it so that a judgment of negative impacts is not possible.
2) The results of analysis of impact on fish and birdlife due to the loss of habitats caused by dumping operations, dredging activities and bank protection measures indicate that those riparian dump sites that are located along the left bank of the Chilia Branch and planned to be further used for emplacement and storage of dredging material lie outside the boundaries of valuable and protected areas and are not considered to be likely to cause any significant adverse transboundary impact to fish and bird communities. Planned dredging and bank protecting activities will occur within the limited sections of the riverbed that have low ecological value, and therefore are not considered likely to cause any significant adverse transboundary impact on fish and bird life.	<p>There are two issues related to dumping sites, the one in the sea region and those along the Ukrainian bank of Chilia arm.</p> <p>The one on the left (Ukrainian) bank of Chilia arm might increase the hydro-morphological pressure (bank erosion) to the Romanian right bank where the flood defense system is put at risk.</p> <p>The dumping site on the sea side: As long as they are not secured/consolidated (for which there is no indication in the documentation), storm events can lead to negative remobilization of suspended solids down to the south (Romania).</p>
3) The results of modeling studies indicate that estimated concentrations of suspended solids on the Romanian border appear to be significantly lower than their background levels even under the maximum-intensity dredging scenario that assumes the intensive dumping of dredging material to the marine dump site. Proposed mitigation measures and dumping intensity restrictions are considered to be adequate to ensure that the transboundary impact of the Project on the turbidity of marine waters is minor.	<p>Not only the overall change in amount of suspended sediment counts but also the rate of change. Rapid changes are usually detrimental to the ecological system as biota have difficulties to adapt,</p> <p>Proposed dredging works on the 10 or 15 shallow parts upstream from Vilkovo to Reni have critical cross-border impacts, in WWF's assessment . They have likely negative effects on flows between the two river channels Chilia (RO-UA) to Tulcea, possibly also negative effects on water levels and cause further incision upstream (negative cumulative impacts). Impacts might even be felt on the Moldavian side on the river Prut.</p> <p>The impact of the second stage (dike and subsequent work) on the transboundary Danube section from Reni down to Vilkovo and the complete Delta needs to be fully assessed, both with respect to socio-economic and environmental factors.</p> <p>Dumping of dredged material on the Ukrainian side might prevent negative impacts on the Romanian banks but increase the risk of bank erosion on the Romanian side where flood defense dykes are usually very close to the banks.</p>
4) The impact of planned repeated maintenance dredging operations on fish habitats in the area of seaward access channel in the mouth section of the Bystroye Branch is expected to be local in scale and thus not considered to constitute a likely significant impact in the transboundary context.	The impact might indeed be local in scale but remobilization of sediment and change turbidity are likely (see above), so consequently, an assessment of impacts is needed.
5) Mitigation measures incorporated in the project design are considered to be adequate to prevent and avoid any significant cumulative impact on fish and bird life during the operation of the Danube-Black Sea Navigation Route, especially considering that all potential factors that may contribute to this impact will continue to be monitored as part of the post-project analysis to ensure that planned mitigation measures are adjusted appropriately.	The seaward dyke close to the shore line in WWF's assessment is likely to impede fish migration along shore (maybe also flow of sediments and suspended solids). This has not been investigated. If WWF's judgment is confirmed, mitigation measures (such as an opening of the dyke at critical points) should be investigated and proposed.

<p>6) The post-project analysis is planned to involve systemic environmental monitoring and additional modelling studies, in order to receive additional knowledge and information required to a more accurate assessment of likely significant environmental impacts that have been identified by the Inquiry Commission. These include, inter alia:</p> <ul style="list-style-type: none"> • Impact of dredging on the turbidity of river and marine waters; • Long-term impact of changes in the morphometric characteristics of the Chilia Branch and Bystre Branch in its sandbar section, combined with the development of protective hydroengineering structures, on the redistribution of flow among the Danube Delta branches; • Long-term impact on the coastal morphology of the Romanian coastal section between the Chilia and the Sulina Branches from the construction of the retaining dam and the maintenance dredging of the Bystre sandbar section; • Long-term impact on migratory fish, passing the dredging area and/or shifting between different habitats across the border during dredging operations; • Effect of the dump site in the Black Sea on the benthic fauna at and around the dump site in relation to the increased suspended sediment concentrations and deposition, loss of habitat and burial of fish food organisms; • Impact of the navigation on fish life. <p>The additional analysis of transboundary environmental impacts that are likely to be associated with the full-scale implementation of the Danube-Black Sea Navigation Route Project (impact on hydrological regime; impact on the Delta's morphodynamics; impact on river and marine water quality; impact on food base for fish; impact on spawning/feeding habitats and migration of sturgeons and Danube herring; and impact on bird habitats, population numbers and species diversity, including valuable and vulnerable species) indicates that all these impacts can be considered as local-scale and limited, and thus not likely to cause any significant change in the key characteristics of natural environment and loss of biodiversity in the Danube Delta.</p>	<p>We are content with this monitoring plan but don't understand why this monitoring programme has not started earlier so that the impact of construction work of the past years can be assessed. It is regarded good practice to have three phases of monitoring: before construction starts to establish the baseline, during and after construction to assess the impact and if necessary adjust the works.</p> <p>Implementation of monitoring measures so far has been weak, we therefore believe it needs to be underpinned by a strengthened institutional setting and sufficient budget of which we see little indication.</p>
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Proposals for the Standing Committee:

- An expert workshop (or possibly a series thereof) should be organized to facilitate the dialogue on the EIA.
- The Ukrainian side has currently a great opportunity to fully estimate the outcome of the operation of the navigation canal Danube - Black Sea from 2004 till now. This assessment must include all environmental protection aspects, trends, and changes in the level of biodiversity, as well as the transformation of landscapes and ecosystems in the Danube Delta. This should be done immediately.
- The exercise of modeling different structural interventions, and of the refilling rate of dredged material has to be done in order to prove that the changes in the hydrological regime of Chilia, Starostambulske and Bystroye Branches will not cause any loss of spawning and nursery habitats for fish and/or nesting and feeding habitats for birds. Cost-benefit analyses (including costs and benefits in terms of ecosystem services) are also needed.
- Any further implementation actions should be based on latest data on the state of ecosystems and their dynamics.
- As doubts about the impact on flow dynamics on the Romanian side of the Delta have not been eliminated, further work is to be done in full cooperation with relevant Romanian authorities of the Danube Delta and on the basis of complete data as well as recognition of the outstanding value of the Delta as a World Heritage site.

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