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**ECONOMIC COMMISSION FOR EUROPE**

**MEETING OF THE PARTIES TO THE CONVENTION  
ON ENVIRONMENTAL IMPACT ASSESSMENT  
IN A TRANSBOUNDARY CONTEXT**

Working Group on Environmental Impact Assessment

Tenth meeting  
Geneva, 21–23 May 2007  
Item 2 of the provisional agenda

**INQUIRY PROCEDURE**

**Review of the first inquiry procedure**

Note by the secretariat

*Summary*

This document reviews the first inquiry procedure under the Convention, taking into account the outcome of the inquiry procedure and the discussions at the eighth meeting of the Working Group on Environmental Impact Assessment (EIA) on the assessment of the procedure (MP.EIA/WG.1/2005/2).

**I. INTRODUCTION**

1. The first inquiry procedure, according to Article 3.7 and Appendix IV of the Convention, started on 19 August 2004 when the secretariat received a request from the Government of Romania regarding the construction of a deep-water navigation canal in the Ukrainian part of the Danube Delta (Bystroe Canal). Further to paragraph 1 of Appendix IV, the secretariat

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immediately notified all Parties to the Convention about the inquiry procedure. In September 2004, the secretariat received the names of the scientific experts nominated by the two countries involved. According to paragraph 2 of Appendix IV, the experts should designate by common agreement the third expert, who shall be the president of the Inquiry Commission. Despite the support provided by the secretariat, the two countries were not able to agree on a person.

2. Further to paragraph 3 of Appendix IV, the Government of Romania requested on 14 December 2004 the Executive Secretary of the UNECE to nominate the President of the Inquiry Commission. As the secretariat had no list of scientific experts available, it undertook informal consultations with a number of countries where expertise related to this type of project could be available. With the support of these countries, the secretariat was able to prepare a list of three experts, from the Netherlands, Norway and the United Kingdom, respectively. On 12 January 2005, the UNECE Executive Secretary decided to nominate Prof. Terwindt from the Netherlands for this position on the basis of his expertise, his availability and his independence of the project and of the countries involved.

3. The first meeting of the Inquiry Commission took place on 26 January 2005 in Geneva. The members of the Inquiry Commission, Prof. Terwindt (President), Ms. Anishchenko (Ukraine) and Mr. Staras (Romania), participated and the meeting was serviced by the secretariat of the Convention. The Commission noted that the working language would be English. The Commission agreed that the secretary to the Convention would serve as secretary to the Inquiry Commission. The Commission decided to prepare an inventory of issues relating to the potential transboundary effects, and would also determine if external expertise was necessary. The President requested the two Parties to provide before 12 February 2005 a written statement on the subject to the Commission, including all available information regarding the transboundary effects of the project.

4. The Commission decided to request external experts to give advice on specific issues where it did not itself have the necessary expertise. The Commission considered that for the time being it would need external expertise in the areas of water pollution and migratory species. The President proposed that he prepare for the second meeting suggestions for relevant experts preferably of different nationalities. The Commission agreed that all information pertinent to the work of the Commission be transmitted to all members and the secretariat in English, which would require translation if a document is only available in another language. The members of the Commission interpreted paragraph 8 of Appendix IV to mean that they could consider all relevant information, including information that was confidential under applicable national laws. In addition to this paragraph, the Commission agreed that all documents and discussions be considered to be confidential with the exception of the final report. The Commission prepared a first estimate of the expenses of the Commission. It requested the Secretariat to transmit this estimate to the focal points of the Convention in Romania and Ukraine, inviting them to confirm that the expenses would be borne by the parties in equal shares, in accordance with paragraph 10 of Appendix IV. The Commission requested the secretariat to make the necessary arrangements for the setting up of a special fund to support the Commission by drafting a final statement of expenses, to be prepared according to paragraph 10 of Appendix IV. The focal points of the Convention in Romania and Ukraine were informed of the budget of the Inquiry Commission, estimated at 129.000,- Euros on 26 January 2005. A special fund was established to manage the expenses of the Commission.

5. At its second meeting, on 24 February 2005, the Commission noted that no financial contribution had been received and considered several scientific reports. It agreed that the following four main areas would require external expertise:

- (a) Changes in the discharge of water, sediments and attached and soluble contaminants or pollution, from the river mouth into coastal waters and transport southward along the coast;
- (b) Delivery of sediment and attached or dissolved contaminants or pollution from the dump site in the sea towards coastal waters and a net southward flow;
- (c) Effects of the dredging and shipping in the Bystroe Canal on (migratory) bird habitats in the Canal and adjacent areas (nesting, feeding and shelter);
- (d) Effects of the dredging in the Bystroe Canal on (migratory) fish.

6. The contribution by the Government of Romania was received on 21 March 2005. At the meeting of the Working Group on EIA held from 27-29 April 2005, the secretariat informed the meeting of the on-going inquiry procedure, involving Romania and Ukraine, and explained that it was not proceeding at that time because of insufficient funds (MP.EIA/WG.1/2005/2). The delegation of Ukraine regretted that it had not been able to contribute to the Inquiry Commission's budget so far, but reported that the Ukrainian cabinet of ministers had now approved the release of funds, which were expected to be transferred by the end of May 2005. The contribution by the Government of Ukraine was received on 5 September 2005.

7. It should be noted that paragraph 13 of Appendix IV stipulates that the Commission shall present its final opinion within two months of the date on which it was established unless it finds it necessary to extend this time limit for a period that should not exceed two months. However, there was a common understanding that because this was the first time an inquiry procedure was established under the Convention, and because of problems with the funding, the Commission should use the necessary time for preparing its final opinion.

8. The third meeting of the Commission was held on 28 October 2005. It was noted that the problems with the funding had been solved, allowing the Commission to continue its work. The Commission reviewed the scientific information provided and requested the experts to provide additional information when needed. The fourth meeting was held on 16 December 2005 in the presence of the external experts.

9. The Commission with the secretariat made a site visit in the two countries, 8-13 May 2006. The Commission started with a visit in Bucharest, where it met with representatives of the Ministries of Foreign Affairs, Environment and Transport and, thereafter, with representatives of non-governmental organizations (NGOs). The next day the Commission met with representatives of the Danube Delta Institute researchers, local authorities and local NGOs in the Romanian part of the Danube Delta. Thereafter, the Commission entered the Ukrainian part of the Danube Delta, visited dredging points along the river and met with representatives of the Biosphere Reserve researchers, monitoring programme, local authorities and local NGOs in Ukraine. On the final day, the Commission met with representatives of the Ministries of Environment, Transport and Foreign Affairs in Kiev and with NGOs.

10. The final meeting of the Inquiry Commission was held on 31 May 2006 with the external experts in order to make sure that all issues had been covered in the final report. On 10 July 2006 Prof. Terwindt formally handed over the opinion of the Inquiry Commission on the environmental impact of the Bystroe Canal to the Executive Secretary of the UNECE, Mr. Marek Belka. Copies of the report were also handed over to the Ambassadors of Romania and Ukraine. On the same day, the secretariat sent the report to the parties to the inquiry procedure and the Parties to the Convention.

11. The Commission unanimously concluded that the building of the canal was likely to have a number of significant adverse transboundary impacts. The Commission also found that there were likely other adverse transboundary impacts arising from the project, but that there was not enough information to judge the significance of these impacts. Based on its findings, the Commission concluded that the provisions of the Espoo Convention should therefore apply. The Commission stressed that more information sharing and cooperation between the two countries was needed regarding the construction of the canal and other projects with possible transboundary impact. It, therefore, recommended starting a bilateral research programme related to activities with transboundary impacts in the framework of bilateral cooperation under the Convention. It requested the Convention's secretariat to seek international funding and other support for bilateral cooperation, including the proposed research programme.

12. The opinion of the Inquiry Commission entailed that Ukraine was to send a notification about the canal project to Romania and that the procedure based on the Convention should start. There should be consultation between the Parties, Romania should be given an opportunity to comment on the project, and public participation in the two countries should be ensured. The final decision about the project should be sent to Romania.

13. According to the information available to the secretariat, no notification has been sent to date. On 23 January 2007, Romania made a submission to the Convention's Implementation Committee, having concerns about Ukraine's compliance with its obligations under the Convention, in the light of the opinion of the inquiry commission. The Implementation Committee is expected to consider this submission soon. The secretariat is well advanced in arranging international funding for the proposed bilateral cooperation. However, the parties to the inquiry procedure have not clearly indicated their position about the bilateral cooperation under the Convention.

## **II. RECOMMENDATIONS**

14. The secretariat is of the opinion that this first inquiry procedure went well, the cooperation between the members of the Commission was professional, and the outcome was based on scientific findings, as is the intention of the inquiry procedure. However, a number of aspects could be enhanced. The Working Group on EIA might therefore wish to consider the following suggestions:

### **A. Role of the secretariat**

15. Article 3, paragraph 7, and Appendix IV do not mention a specific role for the secretariat. However, experience with the first inquiry procedure showed that for the good functioning of the procedure it is necessary that the work by an inquiry commission be supported by the secretariat,

as was agreed in the first inquiry procedure. **The role of the secretariat might be formalized through a decision of the Meeting of the Parties confirming this approach.**

**B. Time frame**

16. It is clear that the time frames mentioned in paragraph 13 of Appendix IV are overly strict. The experience with the first procedure has shown the difficulty of complying with the time frames and that, in particular, it is unlikely that any procedure could be completed within the initial two-month period. **The Working Group may wish to indicate that these time frames should be considered as flexible.**

**C. Resources**

17. An inquiry procedure often comes at very short notice and, by the time a commission has been able to meet for the first time and to agree on the necessary financial resources, its parties may not have the resources available immediately. **A possible solution for this situation may be that the resources available in the trust fund under the Convention are used to start the practical work of the commission, in the understanding that this creates an obligation on the two parties to replenish the trust fund without delay, in accordance with agreed budget for the procedure.** The first Inquiry Commission noted the importance of external expertise, to ensure sufficient scientific and technical expertise. A site visit to include consultation with the Governments of the parties, other stakeholders and NGOs was found to be useful in assessing the full picture of the project.

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