Annex II

**Explanation to the draft resolution IX/4k on Ukraine's compliance with its obligations under the Convention in connection with the project for the construction of the Danube-Black Sea deep-water shipping channel in the Ukrainian sector of the Danube Delta**

In view of paragraph 1 of draft Resolution IX/4k, we inform that the procedure for transboundary consultations on the new project Reconstruction of construction facilities "Construction of a deep-water navigation route from the Danube River to the Black Sea in the Ukrainian part of the delta" was launched in 2020. Also in 2020, Romania's proposals for the scope of studies to be included in the Environmental Impact Assessment Report were received, and the project owner conducted the necessary studies to take into account Romania's proposals. In addition, in 2021, negotiations with Romania began on the conclusion of a bilateral agreement between the Government of Ukraine and the Government of Romania on the implementation of the Espoo Convention. In this regard, during this period, Ukraine took measures to bring the new project in line with the requirements of the Convention and to implement the decisions of the Convention Implementation Committee.

Regarding paragraph 2 of the draft Resolution, we consider it necessary to emphasize that the Governments of Ukraine and Romania have not only concluded a bilateral agreement, but also started its practical application, as evidenced by the wording of paragraph 5 of the resultant part of the Protocol of Expert Consultations held between the parties on September 1, 2023 (Annex 1.7.). In addition, we note that the Governments of Ukraine and Romania are currently conducting national procedures for the formation of the Environmental Impact Assessment Commission in accordance with the requirements of Article 16 of the Agreement and plan to continue fulfilling their obligations under the Agreement. The Agreement also regulates monitoring issues (Article 14 and Article 15 of the Agreement), and these provisions will apply to the new project "Reconstruction of the construction facilities for the creation of the Danube-Black Sea Deep Water Navigation Route in the Ukrainian part of the Delta".

Paragraphs 3-7 of the draft Resolution are not relevant in view of the information provided in Annex 1 to the letter.

The project for the construction of the Danube-Black Sea deep-water shipping channel in the Ukrainian sector of the Danube Delta, in respect of which a case of non-compliance with the requirements of the Convention was opened, was not implemented, the final decision was canceled and no new final decision was made, as confirmed by the wording of paragraph 1 of the Protocol of Expert Consultations held between the parties on September 1, 2023 (Annex 1.7.)

In this regard, Ukraine, in order to implement the recommendations of the Implementation Committee, has started a transboundary environmental impact assessment and consultations with Romania on the new project "Reconstruction of the construction facilities " Construction of the Danube - Black Sea deep-water shipping route in the Ukrainian part of the delta".

In particular, Ukraine held cross-border consultations on the new project, which includes Phase I and Phase II of the previous project. During the consultations, the Environmental Impact Assessment Report was presented to the Romanian side, which contained a relevant section on post-project monitoring and measures to be implemented. In addition, during the expert consultations, an agreement was reached to conduct joint monitoring before and after the project, in particular, regarding the likely impacts on sturgeon species.

The Committee's recommendations in paragraphs 8 and 9 of the draft decision are also those that have been implemented by Ukraine. As Ukraine has taken comprehensive measures to fulfill the requirements of the Roadmap, namely:

1) Dredging operations have been suspended in accordance with the Order of the State Enterprise "Ukrainian Sea Ports Authority" - "On Temporary Suspension of Dredging Operations on the Deep Water Navigation Route "Danube - Black Sea" No. 37/10 dated 14.06.2019

2) The Agreement with Romania on the implementation of the Espoo Convention (2022) was signed

3) The procedure for transboundary environmental impact assessment for the new project, which covers Phase I and Phase II of the previous project, is completed (2023)

4) Compensatory measures and monitoring activities were proposed by Ukraine in the Environmental Impact Assessment Report and considered by the Romanian side during the transboundary consultations on the new project "Reconstruction of the construction facilities "Construction of the Danube - Black Sea deep-water shipping route in the Ukrainian part of the delta".

5) The parties reached an agreement on the results of expert consultations on monitoring before and after the project.

The recommendations set out in paragraphs 10-14 can also be considered as implemented, as the new project "Reconstruction of the construction facilities for the "Construction of a deep-water navigation route from the Danube River to the Black Sea in the Ukrainian part of the delta" takes into account all the issues that were not addressed by Ukraine during the planning of the previous project.

The cross-border consultations held with the Romanian side were open and transparent, and agreements were reached on monitoring and further communication on this project.

Taking into account the above, as well as all the information provided by Ukraine, we ask to cancel the said draft decision IX/4k and close the case on Ukraine's non-compliance with its obligations under the project for the construction of the Danube-Black Sea deep-water shipping channel in the Ukrainian sector of the Danube Delta.