

Information for the attention of Implementation Committee under the Protocol on Strategic Environmental Assessment

Through the Secretary to the Espoo Convention and the Protocol on SEA:

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Introduction

1. This information concerns compliance by **Ukraine** with its obligations under the Protocol on Strategic Environmental Assessment.
2. We consider Moldova to be an affected party by Ukraine's Programme for Hydro Energy Development for the Period till 2026 (*the Programme*), implementation of which will have dramatic effects on a shared water resource – the Dniester river. We claim **significant transboundary environmental** (and health) **effects** of the implementation of *the Programme* on biodiversity, flora and fauna, water of the Dniester River and its basin. Therefore, this information raises allegations related to environmental effects of a national and transboundary nature.
3. We allege that (1) by failing to carry out strategic environmental assessment, including transboundary consultations and public participation, during the preparation of *the Programme*

Ukraine is not in compliance with Articles 5-11 of the Protocol on SEA and (2) by failing to take the necessary legislative and administrative measures, including enforcement measures, to ensure actual implementation of the Protocol, Ukraine is not in compliance with its obligations under Article 3 of the Protocol.

I. Dniester River

4. Dniester River is a watercourse shared by Ukraine and Moldova, as well as partially a border river for Ukraine and Moldova.

5. Dniester River rises in Ukraine, close to the border with Poland, and flows toward the Black Sea. Its course marks part of the border of Ukraine and Moldova, after which it flows through Moldova for 625 km. It later forms an additional part of the Moldova-Ukraine border, then flows through Ukraine to the Black Sea, where its estuary forms the Dniester Liman. 73,5% of the Dniester River basin is located in Ukraine, 26,2% - in Moldova and 0,3% - Poland. Most major cities of Moldova, including its capital Chisinau, are using water from Dniester basin. A total of 2,74 million people in Moldova are dependent on water supply from Dniester basin.

II. The Programme

6. On July 13, 2016 the Cabinet of the Minister of Ukraine by its decision No.552-p adopted the Programme for Hydro Energy Development for the Period till 2026. The Programme's aim is to "ensure energy security of Ukraine by effective development of hydro energy sector [...]" (Section "Goal"¹).

7. To our knowledge, the draft Programme was prepared within several weeks prior to adoption.

8. *The Programme* lists the following key directions for the development of hydro energy:

- Construction of Dniester Hydro Accumulating Power Plant – Phase I
- Construction of Dniester Hydro Accumulating Power Plant – Phase II
- Construction of Dniester Hydro Accumulating Power Plant – Phase III
- Construction of Kaniv Hydro Accumulating Power Plant
- Construction of Tashlyk Hydro Accumulating Power Plant – Second Complex
- Construction of Tashlyk Hydro Accumulating Power Plant – Second – Fifth Complex
- Construction of Kakhovka Hydro Power Station Number 2
- Reconstruction of Hydro Power Stations of JSC "Ukrhydroenergo"
- Construction of a Cascade of Upper Dniester Hydro Power Plants

9. *The Programme* also includes *Plan for Development of Generating Capacities till 2026* (Annex I to *the Programme*), which lists specific projects (including their generating capacities, cost) for each of the key directions listed in *the Programme*. *The Programme* also includes a Plan of Measures for Implementation of the Programme (Annex II to *the Programme*), which lists related measures, timelines and responsible public authorities for each of the projects listed in Annex I.

¹ Precise reference to the text are hard to made, since the Programme's text has no numeration of paragraphs or sections.

10. Full text of the Programme is available at the official web register of Ukrainian legislation at Parliament's portal: <http://zakon3.rada.gov.ua/laws/show/552-2016-%D1%80/print1489741861069552>

III. Applicability of the Protocol, including its article 10

11. Ukraine became a party to the Protocol on SEA on March 1, 2016.
12. The Programme falls under the requirements set by the Article 4 of the Protocol on SEA:
- (1) It was prepared for energy sector, which is clear from its title, goals and content (as explained in paragraphs 6-9 above);
 - (2) It sets the framework for future development consent for series of energy projects, falling under Annex I and/or Annex II to the Protocol on SEA. These include, in particular, 6 specific projects to form a Cascade of Upper Dniester Hydro Power Plants of a total generating capacity of 390 megawatts (5 projects of 60MW each and one project of 90MW)². Each of these projects is a hydro power plant, involving construction of a dam. We consider this to fall under paragraph 11 of the Annex I to the Protocol on SEA ("large dams and reservoirs"). In any case, these projects require environmental impact assessment under national legislation and, therefore, fall under paragraph 14 and 80 of the Annex II to the Protocol on SEA. This is confirmed by the Ministry of Environment of Ukraine, as explained below.
13. *The Programme* must have been subject to a strategic environmental assessment during its preparation as it meets the screening requirements of the Article 5 of the Protocol on SEA. This is confirmed both (a) by the content analysis of the Programme and (b) by the fact the Ministry of Environment of Ukraine deemed it necessary to be subject to a state environmental expertiza – a procedure which is currently fulfilling the role of (or close to) a strategic environmental assessment in Ukraine.
14. It is clear that *the Programme* envisages construction of a number of projects on Dniester River, including the Cascade of the Upper Dniester Hydro Power Plants. It is unquestionable that the construction of the dams will have a significant environmental effects on the river and its basin, including numerous protected areas, biodiversity, river self-purification capacities, etc. In particular, referring to the criteria listed in Annex III to the Protocol on SEA, the following considerations apply:
- *the Programme* is relevant for integrating environmental considerations, including sustainable development by setting its major goal as "implementation of the list of measures aimed at ensuring sustainable development of the hydro energy sector till 2026" (Section "Goal", first sentence) and by making numerous references to sustainable development, the need to increase share of renewables in the energy sector, etc (para.1 of Annex III);
 - *the Programme* is very precise in setting framework for specific projects, their capacity, timeframe for implementation, estimated costs and their sources (para.2 of Annex III);
 - environmental effects most likely will have irreversible, long-term nature as the projects are to be functioning for several decades and involve significant changes in the natural environment due to their location directly on the river (para.5 of the Annex III);

² Paragraph 6 of Annex I to the Programme.

- the risks to the environment are obvious due to a serious changes in water flow, sediments distribution and other associated effects of the operation and construction of dams (para.6 of the Annex III);
- evident transboundary nature of effects, since the projects concerned will be constructed on a shared and border river (para.7 of the Annex III);
- the river basin is home to several protected areas, including six Ramsar sites (para.8 of Annex III).

15. The Ministry of Environment of Ukraine screened the Programme as requiring environmental assessment under national legislation (environmental expertiza), transboundary EIAs for all projects envisaged on the river under the Espoo Convention (before adoption of the Programme) and consultations with Moldova, as explained in the next section.

16. *The Programme* sets a framework for numerous energy projects to be implemented on a shared and partly border river for Ukraine and Moldova. For this reason, as well as taking into account the considerations on likely environmental effects described above, we are strongly convinced that the draft Programme falls under Article 10 of the Protocol SEA and required transboundary consultations with Moldova and the public concerned in Moldova, including our association as the river basin group of environmental NGOs from both riparian countries.

IV. The position of the Ministry of Environment of Ukraine

17. In July 2016 the Ministry of Environment made public its position towards the adoption of *the Programme* by releasing its letter to the Ministry of Energy of Ukraine of July 6, 2016 (Annex I to this Information). The letter was sent as part of the internal procedure of the Government of Ukraine for coordination (approving) draft of *the Programme* preceding the meeting of the Cabinet of Ministers of Ukraine, at which it was adopted.

18. The letter of July 6, 2016, explains the following key elements of the Ministry of Environment of Ukraine position:

- The Ministry disagreed to approve the draft *Programme* due to lack of environmental assessment of the proposed hydro power projects, specifically referring to those envisaged on Dniester river;
- The letter explicitly states that the implementation of the Upper Dniester Cascade projects, envisaged by *the Programme*, will destroy all river-bed and near-river-bed natural complexes of Dniester Canyon National Nature Park, part of the natural complexes of the Khotynsky National Park and Galytsky National Nature Park and other protected areas;
- The letter explicitly refers to a likely concern by Moldova and the need to have transboundary consultations with Moldova due to the lack of access to water resources by Moldova;
- The letter concludes with several conditions put forward by the Ministry of Environment of Ukraine required before approval of *the Programme*:
 - (1) the draft Programme must be subject to state environmental expertiza;
 - (2) the environmental impact assessment must be carried out for all projects planned in the relevant locations;

(3) the transboundary EIA and consultations with Moldova must be carried out in line with the Espoo Convention and taking into account bilateral treaty on Dniester River between the Republic of Moldova and Ukraine (2012)³.

19. We consider the fact that the official position of the Ministry of Environment was ignored during preparation and adoption of such a programme reveals serious challenges in the enforcement of existing legislation in Ukraine in the area of environmental impact assessment and lack of administrative coordination and coherence of the relevant framework.

20. We also stress that the proposal by the Ministry of Environment to apply state environmental expertiza to the draft *Programme* reveals lack of any measures taken to implement the Protocol on SEA, in particular absence of any national legislation aimed to ensure implementation of the Protocol on SEA.

V. Public participation

21. To our knowledge no public participation or consultation took place in Ukraine prior to adoption of *the Programme*. No draft programme was ever released to the public. We, a non-governmental organizations established with the aim to promote protection of the Dniester river, had no opportunity to comment or express our opinion over the draft Programme.

VI. Conclusions

22. We therefore conclude that:

- by failing to carry out strategic environmental assessment, including transboundary consultations and public participation, during the preparation of *the Programme* Ukraine is not in compliance with Articles 5, 6, 7, 8, 9 and 11 of the Protocol on SEA;
- by failing to notify and carry out transboundary consultations with the Republic of Moldova prior to adoption of *the Programme* Ukraine is not in compliance with Article 10 of the Protocol on SEA;
- by failing to take the necessary legislative and administrative measures, including enforcement measures, to ensure actual implementation of the Protocol, Ukraine is not in compliance with its obligations under Article 3 of the Protocol.

23. Should the Implementation Committee need any further information or additional materials, we would do our best to provide it.

Respectfully submitted,

Ilya Trombitsky
Director, Eco- TIRAS

Annexes

Annex I. Letter by the Ministry of Environment of Ukraine of July 6, 2016.

³ The Agreement was signed in 2012 in Rome, ratified by Moldova but its ratification by Ukraine is pending. The text is available here: <http://eco-tiras.org/index.php/dniester-river-basin-treaty-rome-2012>