



MINISTRY OF ENVIRONMENT,
WATERS AND FORESTS

Ref.no. DGEICPSC/21143/01.02.2023

To: Ms. Olena KRAMARENKO, Deputy Minister
Ministry of Environmental Protection and Natural Resources of Ukraine

Ref: Transboundary environmental impact assessment procedure for the new construction of transport infrastructure facility - river port (terminal) in Izmail, Izmail district, Odessa region with a railway access track - adjacent to the Izmail station of the regional branch "Odessa Railway", Ukraine

Dear Ms. Deputy Minister,

Ministry of Environment, Waters and Forests presents its compliments to Ministry of Environmental Protection and Natural Resources of Ukraine and has the honor to thank for the previous cooperation between our countries, and looks forward to strengthening joint efforts in the field of environmental protection.

With regard to your letter sent via e-mail on 13 December 2022 and registered at the Ministry of Environment, Waters and Forests of Romania with the ref. no. 2/R/21143/14.12.2022, on the **environmental impact assessment report**, as required by Article 4 of the Espoo Convention, for the project **"New construction of transport infrastructure facility - river port (terminal) in Izmail, Izmail district, Odessa region with a railway access track - adjacent to the Izmail station of the regional branch "Odessa Railway", owner Nibulon LLC"**, we would like to inform you as follows.

In order to ensure compliance with the provision of Article 4 paragraph (2) of the Espoo Convention, **the EIA documentation was made available to the public** for making comments, by disseminating it on the official web site of the Romanian Ministry of Environment, Waters and Forests for 30 days. During the consultation period, no comments were received from the interested public.

Moreover, **the EIA documentation was also sent to the competent Romanian authorities**. Considering the assessment made by the Romanian institutions and experts, **we would like to forward the comments and proposals prepared on the EIA documentation**.

I. First of all, we would like to stress out that there are some differences between the notification and the EIA documentation regarding information on planned activities.

The Notification mentions dredging works for obtaining the depths of 8,23 m in the future port/terminal in Izmail at the operating front, as well as a length of 460 m (between 91,09 to 91,55 river km) on a width of 115 m (page 3) which implies a volume of 112.000 m³ of dredging material.

On the other hand, the EIA documentation includes the following information:

- At point 1.1 (page 9, penultimate paragraph) it is mentioned the fact that "the specified section of the Danube River water area stretches along the shipping

channel “Vylkove - Izmail Ceatal” from 91,09 km to 91,55 km with a width from the boundary of the shipping channel to the left bank”;

- At point 1.3 / Construction works / Stage V (page 13, last paragraph) it is mentioned that “dredging to a depth of 8,23 m from “0” of the Izmail port - if necessary, related to carrying out of dredging works by Ukraine on the shipping channel “Vylkove - Izmail Ceatal” on reaching its project depth of 8,23 m from “0” of the Izmail port, which was approved by the resolution of the Cabinet of Ministers of Ukraine of February 9, 2022 N 136 [28].”
- At point 1.3.2. /Dredging works (...) (page 16 first and second paragraphs) it is mentioned that channel “Vylkove - Izmail Ceatal”, in accordance with the resolution of the Cabinet of Ministers of Ukraine of February 9, 2022 N 136 [28] is an inland waterway of Ukraine with the approved design dimensions: length 95,445 km, width 120 m and depth 8,23 m.

II. As a general context, we would also like to point out that **the navigation on Danube is regulated by the Convention regarding the regime of navigation on the Danube (Belgrade Convention, 1948)** to which both Romania and Ukraine are Parties.

According to articles 20 and 22 of the Belgrade Convention, in 1953, an agreement was signed between the Governments of People`s Republic of Romania and U.R.S.S. for the foundation of the Danube River Special Administration for performing hydrotechnical works for maintaining the navigable channel and regulating the navigation on the maritime sector of Danube (Brăila-Sulina), composed of representatives of both states.

In 1957, Moscow made a Bilateral Agreement between governments of R.P.R and U.R.S.S., based on which a protocol was signed to give the functions and commodities of the Danube River Special Administration to the Romanian Party, starting with 1 July 1957.

Based on the above-mentioned agreements and in order to achieve the provisions of articles 3, 20, 23 and 31 of the Belgrade Convention, Romania founded a juridical person having the statute of autonomous regia, with headquarters in Galati, named **Lower Danube River Administration Galați**, organized and regulated according to Government Decision no. 492/2003.

According to article 2 of GD no. 492/2003, the Lower Danube River Administration is the authority for waterways on the Romanian sector of Danube from the entrance in the country to km 1075 at the exit to Black Sea, on Sulina Arm, in road Sulina (*rada Sulina*), on Danube`s navigable arms, Borcea, Bala, Măcin, Vâlciu, Caleia, on Chilia Arm with secondary arms, on Sfântul Gheorghe Arm with rectification channels and secondary arms of Sulina Channel, called Old Danube.

Also, according to article 5 of GD no. 492/2003, **the Lower Danube River Administration has responsibilities, in accordance with Belgrade Convention, both for the execution of hydrotechnical work and for the regulation of navigation.**

1) According to article 2 of the Belgrade Convention, **“the regime established by this Convention shall apply to the navigable part of the Danube River between Ulm and the Black Sea through the Sulina arm, with outlet to the sea through the Sulina channel.”**

2) Also, according to article 3.05 **“The gauge of vessels” from the Regulation on navigation on Danube on the Romanian sector - edition 2013 (RND), part II Special rules**

for navigation on the Danube sector from road Sulina (*rada Sulina*) and Brăila port (km 175):

“1. On the maritime sector of Low Danube from Brăila to road Sulina (*rada Sulina*), under normal conditions, all maritime vessels and river-maritime vessels will navigate with a draught in freshwater of 23 feet, which is 7.01 meters. The situation of depths will be communicated daily on a radio channel with national coverage which will be communicated to navigators through a notice to navigators.

2. On this sector the navigation is allowed, under normal conditions, for vessels with a maximum length of 180 m and floating construction with a maximum width of 40 m.

3. In some situations, considering the Danube water level, the Administration can:

- a) order the reduction or can approve to exceed the draughts provided by point 1;
- b) approve the navigation of vessels with a length greater than 180 m, but no more than 225 m;
- c) approve the navigation of floating construction with a width greater than 40 m, when the hydrometeorological condition allow for that.”

We point out that RND is based on the Fundamental Dispositions for Navigation on Danube River (DFND) adopted by the Danube Commission in 2010 and was approved by Order of ministry no. 859/2013.

Keeping in mind the above information, the mouth and Sulina Channel, the main access way from Danube to Black Sea, with a navigable depth of 24 feet (7,32 m) assures, at present, on its entire route, with a length of 62,6 km, the navigation of maritime vessels with a capacity of no more than 25000 tdw.

III. From the point of view of safety of navigation, for the normal development of the naval traffic, the carrying out of transports on the water, the physical integrity of the navigation personnel, passengers and cargoes, we inform you that the depths of 8.23 meters, planned to be carried out by dredging operations according to the project, are much higher than the draught of 23 feet (7.01 meters) allowed at the Sulina bar (*Bara Sulina*) according to art. 3.05 Cap. 3 second Part of the Regulation of navigation on the Danube in the Romanian sector. In conclusion, **the ships which will be loaded at Izmail port will not be able to benefit from the depth obtained from the dredging of 8.23 meters, due to restrictions at Sulina bar (*Bara Sulina*).**

IV. Moreover, regarding the proposed project, since the Ukrainian Party intends to create depths of 8.23 m at the operating berths in the port of Izmail, **we consider that it is not opportune to create this port with different depths than Sulina Channel and/or Chilia Arm and Bâstroe**, because the ships that will operate in Izmail port, if they will enter Sulina Arm and will navigate on the route Sulina Channel, Tulcea Arm, Izmail Ceatal, then Chilia Arm up to Izmail or directly through/to Bâstroe, will need this depth of 8.23 m throughout the entire crossed sector.

This situation is in contradiction with what is currently going on in this segment between Bara Sulina - Sulina Channel - Tulcea Arm - Ceatal Izmail, since, in compliance with the Danube Commission Recommendations, the Lower Danube River Administration Galați provides depths of 7.32 m for the navigation of maritime vessels with draughts of 7.01 m.

Currently the navigation depths provided by the Lower Danube River Administration Galați are in accordance with the navigation gauges for which the Sulina Channel was designed, the present situation being directly proportional to the existing geomorphological conditions, the infrastructure of the banks and the port on this segment, between Bara Sulina and Ceatal Izmail.

In the situation desired to be obtained with this project, which is to ensure depths of 8.23 m in the berths of the port of Izmail, we consider that this cannot be achieved on the above-mentioned segment, namely from Bara Sulina to Ceatal Izmail, both from the geomorphological point of view, the criteria of current design, financial resources, existing equipment, as well as the fact that it is not necessary from the point of view of the Administration, which must ensure a depth of 7.32 m, according to the Recommendations of the Danube Commission, especially since this is the depth for which the Romanian upstream ports were projected.

At the same time, the dredging of the whole length of Chilia Arm between the Black Sea and Izmail Port, following Bâstroe Channel, for the depth of 8,23 m, would mandatory require the development of studies aiming to assess the direct and indirect effects on the shores, since we would like to point out the fact that there are sectors where the dredging will be performed on the frontier line, which mean that the Romanian shores might be affected.

We would like to add that the depth in Sulina Arm and Sulina mouth depend directly on the Danube sediments supply. The bigger the Danube waters are, the more intense the alluvial depositing process is, and they influence the diminishing of the water depth. The more intense the dredging works are, the bigger the depths in channel are and vice-versa, which imply that the dredging is done during the year with a temporal delay from the regime of the Danube alluvial deposits.

Therefore, it is necessary that the following aspects of the project are analyzed:

- **Hydromorphological aspects:** the speed variation of the water draft in more sections of the sector Sulina mouth, Sulina Channel, Tulcea Arm, Ceatal Izmail, followed by Chilia Arm up to Izmail and the influence on the hydrotechnical works existing on this sector, in the situation the dredging works from 7,32 m to 8,23 m are done;
- **Correlation with the new hydromorphological process appeared in relation to the problem of the development towards south of the Chilia secondary delta,** which refers to the formation due to the casting of coarse-grained alluvial deposits of a littoral strap that closes Musala golf at the Black Sea, and which represents a risk to the navigation at Sulina mouth. There must be done an analysis of the degree in which the sedimentation rhythm will intensify at the mouth of the Sulina channel;
- The dredging works from 7,32 m to 8,23 m and after that, the exploitation of this waterways will have important effects on **the repartition of water and alluvial debits of Danube between Chilia Arm and Tulcea Arm;**
- The major dredging works will also negatively influence the water flow on the secondary arms of Chilia which supply with water the territory of **Danube Delta** and can majorly affect the Danube Delta Biosphere Reserve.

V. In the situation pursued by the Ukrainian Party, which is having depths of 8,23 m, the area to be additionally dredged for obtaining the 8.23 m depth is situated between Bara

Sulina and Ceatal Izmail (Mm43), at the critical points Bara Sulina, Mm31, Mm36, Mm40 and other intermediate areas, and the **dredged material** must be dumped at sea, which is the only dumping area accepted by the Romanian Water National Administration and in strict accordance with Danube Delta Biosphere Reserve Authority. From the measurements carried out, for a covering depth of -9.00 m, it results the necessity of dredging a volume of about 1,500,000 m³, with annual periodical maintenance. This activity will result in adverse effects on the Sulina Channel, both on the bank defenses and on the bed, with enormous costs, unjustified, that will need to be covered by Romania both for the dredging, and for the problems regarding disequilibrium caused to the infrastructure of Sulina Channel and to the Danube Delta Biosphere Reserve. Also, we mention that Lower Danube River Administration Galați does not have additional equipment to carry out the above-mentioned works. At the present moment, the dredging activity is carried out using an absorbent upsetting dredging machinery bought in 2000.

At the same time, in the case of dredging for the construction of the depths at the berths of the future Izmail seaport, we recommend the dumping areas to be established as close as possible to the Ukrainian shore, to be periodically checked in order to monitor the quantity of alluvium dumped, and the dumping area to be respected in order to prevent their migration into the navigable channel, towards the Romanian side, avoiding the clogging of the navigable channel having a river character, maintained by the Romanian Party.

Please note that at the present moment, the Romanian Party, through Lower Danube River Administration Galati, ensures for the Chilia Arm, on the segment from Ceatal Izmail to Periprava navigation conditions for river vessels for the transport of goods and passengers for the Romanian ports, for the area having a river character situated between the border line and the Romanian shore.

Considering the critical current situation, due to war, the Ministry of Foreign Affairs of Romania, on 13.07.2022, allowed sea vessels with third flags to navigate on Chilia Arm, Stambulul Vechi and Bâstroe, but in the future, it is possible that this will be prohibited, this being stipulated in the international legislation, in accordance with the Romanian-Ukrainian Border Treaty, article 9, point 1.

In case the Ukrainian Party will develop the Izmail Port with depths of 8,23 m, we propose that all vessels that will enter in operation through Bâstroe Channel will also go to sea through this channel and not through Sulina Channel, which was projected for depths of 7,32 m according to the Recommendations of Danube Commission, as already shown.

Considering the above information, the Lower Danube River Administration Galati expresses its concerns regarding Ukrainian's intention to develop Izmail port for depths of 8,23 m, since this activity will activate an additional alluvial input on Chilia Arm and will dramatically change the debit repartition in favor of this one and to the detriment of Sulina Channel and recommends to be taken into account that the future sea berths for the new port should provide depths for vessels with draughts in close correlation with the existing situation on Sulina Channel, respectively depths for navigation of sea vessels with draughts of 7,01 m.

VI. Also, considering the pressures listed in European Commission Directive EU 2017/845 of 17 May 2017, that the proposed activities exert on the aquatic environment, there is a possibility that the marine environment might be affected in different ways. Thus, the works carried out in the project implementation area, could lead to the **resuspension of some priority substances from the sediments in the water column**. Moreover, the

equipment and transport activities may represent additional pollution sources generating atmospheric emissions of priority hazardous substances (heavy metals, hydrocarbons, etc.), which may then be released into the aquatic environment, introducing contaminants into the marine area. Together with other pressures from the same activities, the cumulative impact might be a threat for the marine ecosystem.

Therefore, we consider that a **monitoring programme** of the Black Sea ecosystem in front of the Danube mouths is mandatory, both during the project implementation period and after the completion of the works regarding the concentration of pollutants in all matrices: water, sediments and biota.

VII. In our response to the notification, we expressed some concerns regarding lack of data and information, and **we asked for studies and assessments in order to assure that all possible effects are anticipated and measures can be taken.** However, in Chapter 9 of the EIA documentation, at pages 135, 139 and 140, it is mentioned that the comments were not accepted, followed by the subsequent explanations:

“Implementation of the planned activity is foreseen at the expense of private investments, has a very local character and does not belong to the General Plan of LOGMOS.”

“(…) the claims of the Romanian side that the planned activity creates risks, affecting the ecological balance of the Danube Delta biosphere reserve, are greatly exaggerated, and the demand for large-scale research and the creation of three-dimensional hydrodynamic and morphodynamic models is not justified”;

“the planned activity does not involve conducting dredging works that may cause hydrological changes of the Danube River (from the point of view of morphological conditions: depth and width of the channel, fairway, structure of the bottom and substrate, hydrological regime: amount of flow, disruption of the continuity of sediment transportation, speed of water movement, etc.”

The approach to possible impact on water/water bodies, especially on the hydrodynamics and hydromorphology, with consequences on habitats and species (in particular on the migration of sturgeons), does not take into account the **cumulative aspects with other projects which are mandatory for the viability of the present project**, for example assuring depths of 8,23 m only for the port without any connection with the waterways on Chilia Arm and Bâstroe which would need the same depths. Our affirmation is based on the following paragraphs from Chapter 9 of the EIA documentation, pages 128, 134, 136 and 139.

“However, the Report provides clarifications regarding the design depth of 8.23 m from “0” of the Izmail seaport - the last stage of dredging works - reaching depths from 7.32 m to 8.23 m will be realized in case if Ukraine initiates dredging works on the shipping channel “Vylkove - Izmail Ceatal” and downstream sections of the shipping route and water areas.”

“Development of the Bystre Channel and Kiliya Arm do not concern a planned activity.”

“The implementation of the planned activity is foreseen at the expense of private investments and has a very local character - a new construction of a river port (terminal) (...)”

“The design depth of hydrotechnical structures is 8.23 m from “0” of the Izmail Sea Port, which corresponds to the design depth of the shipping channel “Vylkove - Izmail Ceatal” (approved by the Resolution of the Cabinet of Ministers of Ukraine dated February 9, 2022 N 136 with the clarification “the depth has not been reached in “due to non-completion of construction works under the project”).”

The hydrodynamic aspects regarding the change in water debits and speeds in comparison to the state of reference that might affect the upstream **migration on sturgeons** on Chilia Arm which is essential to the migration of these fish are not properly assessed.

The aspects on sturgeon migration were ignored, the word ‘sturgeon’ only appears a few times in the EIA documentation, which includes inadequate information about the location of sturgeon habitats, since it is mentioned that the first reproduction habitat is located at 600 km from Danube`s mouths and that sturgeons prefer warm and shallow waters. Our affirmation is based on the following paragraphs from the EIA documentation, pages 275, 282.

“Spawning of migratory fish (herrings and sturgeon types of fish) occurs not less than 600 km from the Danube mouth area”

“The aboriginal ichthyofauna of the Danube in its majority, according to the type of reproduction, consists of (...) lithophilous (sturgeon, starry sturgeon, sterlet, vimba, aspilus, etc.) species. These groups of fish use the warmed shallow waters of backwaters and creeks for spawning, and lay their eggs on aquatic vegetation, roots and stones.”

“According to the hydrological conditions that are formed in the areas of hydrotechnical works, they are not favorable for the reproduction of the ichthyofauna of the Danube River and are not considered as spawning grounds.”

VIII. Given that Ukraine asked for the **adaptation of the indicative TEN-T network** - waterways in order to include Chilia Arm (from Ceatal Izmail) and Bâstroe Channel, we express our concerns regarding the development of project “Channel Vylkove - Izmail Ceatal” and we reiterate the fact that:

- performing the dredging works from 7,32 m to 8,23 m between Ceatal Izmail and Vylkove and afterwards, exploitation of these waterways will have important effects on the repartition of water debits and alluvial deposits of Danube between the arms Chilia and Tulcea, respectively on Sulina Channel which, in time, will become inadequate for navigation in safety conditions;

- navigation on Chilia Arm and on Stambulul Vechi with sea vessels of heavy duty and higher speeds will lead to strong erosion of the right side together with the loss of territory, which will determine the need to perform consolidation works and defence of the shores;

- the project is outside of the field of application of the Convention regarding the regime of navigation on the Danube (Belgrade Convention, 1948) which, at article 2 provides that: „The regime established by this Convention shall apply to the navigable part of the Danube River between Ulm and the Black Sea through the Sulina arm, with outlet to the sea through the Sulina channel.” Therefore, the project “Channel Vylkove - Izmail Ceatal” is not part of the conventional route of Danube;

- we stand for maintaining Sulina Channel as the only channel for international navigation, which is a shorter and more viable route, carriageable, and which can be used also by the Ukrainian Party;

- also, according to article 9, para. (1) of the Treaty between Romania and Ukraine on the Romanian-Ukrainian State border regime, collaboration and mutual assistance on border matters, signed at Cernăuți on June 17, 2003, ratified by Law no. 93/2004: "On navigable border rivers, the vessels of both contracting-parties have the right to navigate on the main fairway, regardless of the route of the state border line on there rivers. Other means of navigation are allowed to navigate the border waters only to the state border line."

IX. In conclusion, as there are reasonable grounds for believing that a significant adverse transboundary impact is likely to be caused by the planned activities to be carried out in the future, we request that all our concerns mentioned-above will be thoroughly analysed by the Ukrainian Party. In this context, we expect your answers to our comments, according to Article 5 of the Espoo Convention regarding consultations on the basis of the environmental impact assessment documentation.

In the light of the foregoing, we consider that the Romanian Party has shown that it respects its responsibilities and obligations arising from international agreements and conventions to which Romania is a Party and looks forward to strengthening joint efforts in the field of Danube Delta protection.

On this occasion, I express my willingness to continue the fruitful cooperation and please accept, Ms. Deputy Minister, the assurance of my highest consideration.

Sincerely yours,

Barna TÁNCZOS

Minister

