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Public participation in joint bodies for transboundary water cooperation: A new development by the Plenipotentiaries of Moldova and Ukraine

Iulia Trombitcaia

In 2007, the Plenipotentiaries on boundary waters of Moldova and Ukraine adopted a Regulation¹ aimed at streamlining public participation in the activities of this joint body established under the bilateral boundary waters agreement of 1994.² This is the first example of formalised rules and procedures for the dissemination of information and public participation in the activities of joint bodies in the countries of Eastern Europe, the Caucasus and Central Asia (EECCA).³ This article aims to review the current practice on and opportunities for public participation in the activities of joint bodies on transboundary water cooperation in the UNECE region, and to evaluate the mechanisms established by the Plenipotentiaries of Moldova and Ukraine. This article also examines the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums.⁴

1 Joint bodies for transboundary water cooperation

The first joint bodies – international river commissions – were developed in the 19th century to primarily regulate navigation and trade. With time, the competence of joint bodies expanded to include fisheries, water allocation, irrigation, power generation, construction of water facilities and bridges, protection against floods, water quality and other issues.

In recent decades, the importance of the institutional aspects of transboundary water cooperation received growing recognition in international conventions and soft law. The UN Convention on the Law of Non-navigational Uses of International Watercourses (1997) encourages states to enter into watercourse agreements and recommends them to consider the establishment of joint mechanisms or commissions to facilitate cooperation.⁵ The International Law Association's Berlin Rules on Water Resources (2004)

address institutional arrangements by basin States such as “*basin wide or joint agency or commission with authority to undertake the integrated management of waters of an international drainage basin*” or “*other joint mechanisms*”.⁶ The strongest instrument in this area is the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992) (hereafter: the UNECE Water Convention) which makes the revision and conclusion of bilateral or multilateral agreements and establishment of joint bodies mandatory for the Parties. The UNECE Water Convention includes a definition of a joint body, which means “*any bilateral or multilateral commission or other appropriate institutional arrangements for cooperation between the Riparian Parties*”.⁷

The two major types of joint bodies are: (1) Plenipotentiaries (governmental representatives) appointed to facilitate the implementation of the agreement; (2) a Joint Commission established to coordinate interstate cooperation during implementation of the agreement. The later type, a “*joint commission*”, may also include joint bodies named “*committee*”, “*organization*”, “*authority*”, “*group*”, etc. The main characteristic of the later type is that it is a collective body, whereas the “*joint commission*” is the most common name for such bodies.

In international practice, the institution of joint commissions clearly prevails over the institution of Plenipotentiaries. The Plenipotentiaries are common mainly for the agreements in Central and Eastern Europe (CEE) and EECCA. The appointment of Plenipotentiaries was typical for agreements of the USSR with neighbouring countries, and for agreements between socialist States of CEE, although the USSR also entered into agreements providing for the establishment of joint commissions. The institution of Plenipotentiaries is common for agreements concluded starting from the beginning of the 1990s with the participation of EECCA countries. However, the institution of Plenipotentiaries in the EECCA region no longer prevails. There are a number of agreements with participation of EECCA States that provide for the establishment of joint commissions.⁸

¹ The Regulation on Stakeholder Participation in Activities of the Plenipotentiaries was adopted by the XI session of the Plenipotentiaries on 19 December 2007. See <http://www.dniester.org> (go to “*materials*”).

² Agreement between the Government of the Republic of Moldova and the Government of Ukraine on Joint Use and Protection of Boundary Waters, Mold.-Ukr., 1994. See <http://www.dniester.org> (go to “*legal basis*”).

³ The EECCA region includes Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

⁴ Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, in Report of the Second Meeting of Parties, Decision II/4, 2005. See: <http://www.unece.org/env/pp/ppif.htm>.

⁵ Convention on the Law of Non-Navigational Uses of International Watercourses, 21 May 1997, (1997) 36 I.L.M. 700, Art. 3, 8(2).

⁶ Berlin Rules on Water Resources, in Report of the Seventy-First Conference (Berlin). I.L.A., London, UK, 2004, Art. 64, 65.

⁷ Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 Mar. 1992, (1992) 31 I.L.M. 1312, Art. 9.

⁸ For more information see the background paper: River basin commissions and other institutions for transboundary water cooperation prepared by Iulia

2 Guiding rules for public participation in joint bodies⁹

In 2000, a network of experts under the joint UNECE-UNEP project produced a guidance document: *Water Management: Guidance on Public Participation and Compliance with Agreements*.¹⁰ The Guidance is a set of recommendations to apply the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 1998) to water management, including transboundary waters. In particular, the Guidance includes the following recommendations with regards to joint bodies:¹¹

- Riparian States and joint bodies should provide for the participation of NGOs as non-voting participants in the meetings of joint bodies and in the meetings of subsidiary organs of joint bodies. Conditions for inviting NGOs to participate as observers must be based on reasonable criteria, which should be clear to the public.
- Riparian States and joint bodies should establish procedures so that the public can have an oversight role in the conduct of transboundary cooperation.
- Riparian States shall ensure public participation in the development of international documents, plans and programmes for specific catchment areas.
- Riparian States are encouraged to provide for public participation, including NGOs, in the preparation of the international water agreements. NGOs could be invited to participate in intergovernmental negotiations.
- Joint bodies should have the opportunity to receive and consider information from the public. The public should be given the opportunity to submit inquiries in writing to the joint body.
- Joint bodies should develop a public communication strategy and establish a focal point for liaison with NGOs.
- Riparian States and joint bodies should consider the role which the public should have in the process of monitoring compliance with obligations under international water agreements.

Trombitcaia for the CWC workshop:

http://www.unece.org/env/water/cwc/joint_bodies. The final publication will appear in 2008.

⁹ This article addresses tools and mechanisms for public participation. It does not address the obligation to ensure public participation in transboundary water cooperation as such. For such an obligation see: the UNECE Water Convention, *supra* note 7, Art. 16; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), 25 February 1991, (1991) 30 I.L.M. 800; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998, (1999) 38 I.L.M. 255; Directive 2000/60/EC (EU Water Framework Directive), 23 October 2000, published in OJ L327 on 22 December 2000, Art. 14.

¹⁰ *Water Management: Guidance on Public Participation and Compliance with Agreements*. ECE/UNEP Network of Expert on Public Participation and Compliance, Geneva 2000. See: <http://www.unece.org/env/water/publications/documents/guidance.pdf>.

¹¹ Id., 27-32.

More guidance with regards to public participation in joint bodies can be drawn from the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums, adopted by the Second Meeting of Parties to the Convention in 2005.¹² The Almaty Guidelines shall facilitate implementation of Art. 3(7) of the Aarhus Convention. This Article requires the Parties to promote the application of the principles of the Convention in international environmental decision-making processes and within the framework of international organisations in matters relating to the environment. The Almaty Guidelines are not specifically targeted at joint bodies for transboundary water cooperation as such.¹³ They refer to “*international forums*” meaning “*any multilateral international environmental decision-making process, or any multilateral international organization when dealing with matters relating to the environment*”.¹⁴ However, they represent the most comprehensive and up-to-date guidance on forms and mechanisms for public participation that could be applied by joint bodies for transboundary water cooperation. This is supported by the fact that all four joint bodies invited to participate in the consultation process regarding Almaty Guidelines accepted the invitation and took part in the consultation process.¹⁵

The Almaty Guidelines acknowledge that effective participation of the “*public concerned*” may be ensured through a variety of forms including: observer status, advisory committees open to relevant stakeholders, forums and dialogues open to members of the public and webcasting of events, as well as general calls for comments. The Almaty Guidelines also list the rights to be ensured for the “*public concerned*” at meetings in international forums such as to have access to all documents relevant to the decision-making process produced for the meetings, to circulate written statements and to present oral comments during the meetings.

3 How it works

Whereas earlier agreements, which established joint bodies, had at best stipulated their responsibilities on the dissemination of information, many joint bodies in the UNECE region have now accumulated considerable expertise and created a number of mechanisms to

¹² Almaty Guidelines, *supra* note 4.

¹³ In addition, the Almaty Guidelines are in the first place addressed to the Parties to the Aarhus Convention, although they do invite international forums to take their provisions into account.

¹⁴ Almaty Guidelines, *supra* note 4, par. 4, 9.

¹⁵ These four are Interstate Commission for Water Coordination of Central Asia, International Commission for the Protection of the Danube River, International Sava River Basin Commission, and International Commission for the Protection of the Rhine. For more information on the consultation process, see http://www.unece.org/env/pp/ppif.htm#consultation_2.

ensure active participation of NGOs and other stakeholders in their activities.

Several international river commissions have developed detailed rules on observer status. This is the case for the International Commission for the Protection of the Oder against Pollution, the International Commission on the Scheldt, the International Commission for the Meuse/Maas, the International Commission for the Protection of the Danube River (ICPDR), and the International Commission for the Protection of the Rhine (ICPR).¹⁶ The power to grant observer status is vested with the International Sava River Basin Commission and with the International Commission for the Protection of the Elbe.¹⁷ These rules bear a lot of similarities, although they differ with respect to the range of organisations which could be granted observer status (intergovernmental organisations, international and national NGOs, governmental bodies, trade unions, private sector). At the same time, all these joint bodies consider the observer status as a key mechanism for NGO participation in their activities.

The Guidelines for Participants with Consultative Status and for Observers to the ICPDR (2005) list the following criteria for international or national organisations or other bodies to be considered for observer status: the goals and basic principles of the Danube River Protection Convention acknowledged; the existence of specialised technical or scientific competence or of other competences relating to the goals of the Convention; the existence of a structured permanent administration; the mandate to speak as accredited representatives; regional or basin-wide perspective. Other joint bodies have set up similar criteria for granting the observer status.

As a rule, joint bodies clearly define the list of documents which should be submitted as an application for observer status. For example, according to the Rules for Granting the Observer Status (2002), the International Commission for the Protection of the Oder against Pollution requires the submission of: a) a description of the organisation, its competence and experience which it could offer to the Commission's work, and the last name of a representative who will

participate in the meetings; b) an explanation on how the organisation believes that it will be beneficial to the Commission's activities; c) a written confirmation that the organisation accepts obligations arising out of the Convention and the Rules of Procedure.

The rights and duties of observers to the ICPDR include free access to the documents of the Commission and its bodies, the right to participate in the meetings with the possibility of expressing their position and views, the right to submit documents and proposals to the Commission, and finally the right to take part in the programs and contribute to the projects initiated under the auspices of the Convention. Observers cannot take part in the process of adopting decisions. Representatives of observer organisations take part in the activities of expert groups. In the ICPR, working groups and project groups may decide on inviting competent NGO representatives.

The conditions of observers' participation in activities of the ICPR, according to the Rules of Procedure and Financial Regulations (2004), include constructive cooperation with a view to achieving targets of the Commission and respect of the President's instructions aimed at proper conduct of the meetings. According to the Rules for Granting the Observer Status (2002), the International Commission for the Protection of the Oder against Pollution may remove observer status from organisations which have repeatedly violated the obligations arising out of observer status.

Under the revised Internal and Financial Rules (1995), the International Commission for the Scheldt grants observer status to NGOs for a maximum of four years. Half a year before the end of this term, an NGO may submit an application to extend.

Some joint bodies establish working groups for cooperation with NGOs and other stakeholders. For example, an Ad Hoc Public Participation Expert Group focuses on the outreach program of the ICPDR.¹⁸ In 1999-2004, the Joint Russian-Estonian Commission on the Protection and Rational Use of Transboundary Waters had a working group on cooperation with NGOs, local authorities and international organisations.¹⁹ NGOs and local authorities were represented in this group. However, the Commission reformed its working groups, and the functions of this working group were transferred to the new working group on integrated water resources management.

River forums and stakeholder conferences may become important mechanisms for public participation in joint bodies' activities. The Permanent Okavango River Basin Water Commission contributed to the

¹⁶ Zasady udzielania statusu obserwatora (Rules for Granting the Observer Status) adopted by the International Commission for the Protection of the Oder against Pollution (2002) see <http://www.mkoo.pl/index.php?mid=1&aid=53>; Commission Internationale de l'Escaut: Règlement intérieur et financier (1995, modified in 2003), see <http://www.isc-cie.com/members/docs/documents/13077.pdf>, Annex 1; Commission Internationale de la Meuse: Règlement intérieur et financier (2003), on file with the author, Art. 10 and Annex 1; Guidelines for Participants with Consultative Status and for Observers to the International Commission for the Protection of the Danube River (2005), see <http://www.icpdr.org>; Rules of Procedure and Financial Regulations of the International Commission for the Protection of the Rhine (2004), see <http://www.iksr.org/index.php?id=325>, Art. 8.

¹⁷ Rules of Procedure of the International Sava River Basin Commission (2005), Art. 16, see http://www.savacommission.org/doc_basic.php. Geschäftsordnung der Internationalen Kommission zum Schutz der Elbe (2003), on file with the author, Art. 10.

¹⁸ ICPDR Annual Report 2006. See: http://www.icpdr.org/icpdr-pages/annual_reports.htm, 36.

¹⁹ The Estonian-Russian Joint Commission on Transboundary Waters. CTC, 2001, see http://www.ctc.ee/pub/water_commission.pdf.

establishment of the Basin Wide Forum, which includes 10 community representatives (fishermen, craft makers, farmers, women and youth associations) from each participating country - Angola, Botswana and Namibia. The forum members meet at least biannually at the national level and at least once a year at the basin level.²⁰ The Stakeholder Conference of 2005 under the auspices of the ICPDR allowed discussion of the Danube River Basin Strategy for Public Participation in River Basin Management Planning and the Operational Plan for Public Participation Activities on the basin-wide level. It provided a basis for future public participation initiatives.²¹ The United States Section of the US-Mexico International Boundary and Water Commission established several citizens' forums to facilitate the exchange of information between this Section and members of the public about Commission activities in a respective county.²² The United States-Canada International Joint Commission holds public meetings every two years to discuss progress in cleaning up the Great Lakes. Whenever the Commission is asked to approve a dam or other structure in a river or a lake, it asks for views from the public. Commission Boards that monitor the operation of these structures hold regular public meetings.²³

Individual joint bodies have developed many interesting mechanisms for dissemination of information, aimed to promote stakeholder involvement. Many joint bodies have developed websites furnished with information about their activities. The Scientific and Information Center of the Interstate Commission for Water Coordination of Central Asia in cooperation with other organisations manages a portal²⁴ which unites several websites on water resources in Central Asia, as well as proposes a rich electronic library. The International Commissions for the Protection of Mosel and Saar Against Pollution annually invite mass media for the presentation of their activity reports in order to make the outcomes and challenges of cooperation known to the public. In Romania, all protocols of the meetings of joint bodies with the participation of Romanian representatives are published in the Official Journal, the periodic publication for all laws and regulations.²⁵

4 Problem areas

The issue of representation is among the problem areas when ensuring public participation in joint bodies. Ensuring effective participation of the "real public" which lives along a transboundary watercourse,

uses its water for drinking and as a source of daily income is a difficult task. Such persons often lack adequate capacity and formal organisation. Providing the opportunities and means for participation of such persons in decision-making in the case of planned measures with potential significant transboundary impact is another challenge.

A number of existing joint bodies work with large scale NGOs and use the observer status as a key tool for ensuring public participation. However, the observer status, being a convenient and easy-to-manage mechanism, should not be regarded as sufficient. It should not substitute efforts to involve the public at the grass root level. The existence of observership shall not prevent non-organised groups to raise their voices against a planned measure.

The Almaty Guidelines stress the need to interpret the "public concerned" as broadly as possible. The Guidelines emphasise that accreditation or selection procedures should be based on clear and objective criteria, and avoid excessive formalisation. They allow selection criteria such as field of expertise, representation in geographic, sectoral, professional and other relevant contexts, and knowledge of the working language.²⁶ However, in the context of joint bodies, the requirement of basin-wide/transboundary activities of organisation as a criterion for observer status²⁷ seems to be inappropriate. In case such criterion is applied, national or local organisations should be provided with other accessible ways to participate. While the other requirement – having structured administration – seems to be a justifiable criterion for observer status, non-formalised groups and individuals should be given other opportunities to participate, including ways to be present and make oral comments during the meetings.

Lack of finances of a joint body is another problem area which is often referred to as one of the barriers to implementation of wider access to information and public participation in joint bodies.²⁸ This is a common argument for joint bodies between or with participation of the EECCA countries. The vast majority of agreements, providing for the establishment of joint bodies between or with participation of the EECCA States, do not envisage the existence of the budgets of

²⁰ For more information see <http://www.okacom.org/>.

²¹ See <http://www.ecologic-events.de/danube/en/index.htm>.

²² See <http://www.ibwc.state.gov/home.html>.

²³ See http://www.ijc.org/en/background/ijc_cmi_nature.htm#you.

²⁴ See <http://www.cawater-info.net>.

²⁵ Trombitcaia, *supra* note 8.

²⁶ Almaty Guidelines, *supra* note 4, para.31.

²⁷ Guidelines for Participants with Consultative Status and for Observers to the International Commission for the Protection of the Danube River (2005), *supra* note 16, use "regional or basin-wide perspective" as a criterion for granting the observer status. The Rules for Granting the Observer Status adopted by the International Commission for the Protection of the Oder against Pollution (2002), *supra* note 16, use "activities of transboundary or at least inter-regional character" as a condition for granting the observer status.

²⁸ See the remarks by the Scientific Information Centre of the Interstate Commission for Water Coordination of Central Asia and by the International Sava River Basin Commission, delivered in 2006 during the consultation process on Almaty Guidelines: <http://www.unece.org/env/pp/ppif-response.htm>.

such bodies.²⁹ In these joint bodies, each participating State unilaterally finances the activities to implement decisions of a joint body in the territory of this State. Such financing usually comes from the budgetary funds of ministries or agencies whose representatives work in a joint body, and this funding is often very limited.³⁰ Not surprisingly, there is no funding for stakeholder involvement and public participation at the level of a joint body.

In other regions, the funding for activities to ensure access to information and public participation, if there are any, usually comes from the budgets of joint bodies that are funded by contributions of Riparian Parties. In such cases, it is possible to introduce activities on public participation and dissemination of information in the draft budget to be approved each year. One of the leading joint bodies in the area of public participation, the ICPDR, uses partnership with the private sector as a source of funding for individual projects.³¹ Since 2005, the ICPDR has developed a partnership with the Coca-Cola Company.³² The partnership aims to promote public awareness and involvement in projects to conserve and protect freshwater ecosystems relating to the Danube River Basin.

Another problem area which is particularly true for joint bodies between or with participation of the EECCA countries is the weakness of their organisational structures, which leads to the situation in which there is no body and nobody to deal with the organisation of public participation and involving stakeholders.

In general, the organisational structure is the most obvious characteristic that distinguishes the two major types of joint bodies, the Plenipotentiaries and the joint commissions. Whereas the Plenipotentiaries have a relatively simple organisational structure,³³ the joint

commissions worldwide usually have a more developed structure which most commonly includes decision-making body/ies, executive bodies and working or subsidiary bodies.³⁴ However, joint commissions between or with the participation of EECCA countries (with the exception of the Interstate Commission for Water Coordination of Central Asia³⁵ and the Commission of the Republic of Kazakhstan and the Kyrgyz Republic on the Use of Water Management Facilities of Intergovernmental Status on the Rivers Chu and Talas³⁶) do not have secretariats or other executive bodies and working bodies that could be responsible for organising and ensuring public participation. Therefore, the problem of weak organisational structure is relevant for both the Plenipotentiaries and joint commissions between or with the participation of the EECCA countries.

Another issue that is sometimes identified as a problem is a lack of competence among stakeholders on technical issues addressed by joint bodies, as well as the diversity of stakeholders making it difficult to apply a single non-differentiated approach.

5 The Plenipotentiaries of Moldova and Ukraine

In August 1991, Moldova and Ukraine became independent states. In 1994, the governments entered into an Agreement on Joint Use and Protection of Boundary Waters.³⁷ The agreement covers those sections of rivers and other surface watercourses, which mark or are located on the border between the Contracting Parties, as well as any surface and ground waters which cross the border. The agreement established the institution of the Plenipotentiaries to meet at least annually in order to facilitate its practical implementation. Several Plenipotentiaries have changed since then. All of them were chairpersons or deputy chairpersons of the national water management agencies. Until very recently, the activities of the Plenipotentiaries

²⁹ The exception is the Interstate Commission for Water Coordination of Central Asia and its bodies. The recently established Commission of the Republic of Kazakhstan and the Kyrgyz Republic on the Use of Water Management Facilities of Intergovernmental Status on the Rivers Chu and Talas may also become an exception when the status and funding mechanism for the its Secretariat will be clarified.

³⁰ Trombitcaia, *supra* note 8.

³¹ In 2005, the ICPDR adopted: ICPDR Principles for Cooperation and Relations with Business and Industry. The document states that cooperation with a particular business or industry should not diminish the right for self-determination or action of the ICPDR or any of its structures. See <http://www.icpdr.org>.

³² See: Memorandum of Understanding for a Partnership to Conserve and Protect the Danube River and the Danube River Basin (2005) between ICPDR and Coca-Cola European Union Group and Coca-Cola Hellenic Bottling Company S.A. at <http://www.icpdr.org>.

³³ For example, according to the Agreement between the Government of the Russian Federation and the Government of Mongolia on the Protection and Use of Transboundary Waters (1995), the Parties notify each other about the appointment of the Plenipotentiary and two deputies. The meetings of the Plenipotentiaries are organised annually; however, they may also meet more often. Between the meetings, the Plenipotentiaries should keep in contact. The Plenipotentiaries may call for experts and establish working groups.

³⁴ Trombitcaia, *supra* note 8.

³⁵ The Interstate Commission for Water Coordination of Central Asia (ICWC) was established in 1992 by Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan for implementation of their Agreement on Cooperation in Joint Management of Use and Protection of Water Resources of Interstate Sources (1992). The ICWC is composed of the heads of national water management authorities. The organisational structure of the ICWC includes the Basin Water Organisations "Amudarya" and "Syrdarya", the Scientific-Information Centre, the Coordination-Metrological Centre, a Training Centre for Water Resources Management and a Secretariat.

³⁶ The Commission of the Republic of Kazakhstan and Kyrgyz Republic on the Use of Water Management Facilities of Intergovernmental Status on the Rivers Chu and Talas was established in 2006 for the implementation of the Agreement between the Government of the Republic of Kazakhstan and the Government of Kyrgyz Republic on the Use of Water Management Facilities of Intergovernmental Status on the Rivers Chu and Talas (2000). The Commission has a permanent executive body - the Secretariat. The Secretariat includes the secretariat of the Kazakh part of the Commission and the secretariat of the Kyrgyz part of the Commission. The Secretariat coordinates the activities of working subgroups set up by the Commission.

³⁷ Agreement between the Government of the Republic of Moldova and the Government of Ukraine, *supra* note 2.

ies remained closed for environmental NGOs and other public, and even for other public authorities.

In the end of the 1990s, environmental NGOs managed to attract the attention of the international community to the degradation of the Dniester River. In 2004, an international project under the auspices of the OSCE and UNECE was launched to develop an action program to improve the cooperative management of water and related resources in the Dniester River basin.³⁸ The project resulted in the development of a draft agreement to protect the Dniester.³⁹ In addition, the project largely revitalised the activities of the Plenipotentiaries under the 1994 Agreement. In 2006, the Plenipotentiaries agreed upon three Regulations: Flood Protection at the Transboundary Watercourses and Inner Waters; Water-Ecological Monitoring and Water Quality Control; Actions in Case of Emergency Pollution. In 2007, the Plenipotentiaries adopted another two Regulations: the above-mentioned Regulation on Stakeholder Participation in Activities of the Plenipotentiaries and the Regulation on Cooperation in the Joint Management of Dniester River Basin Website.⁴⁰ NGOs were included as members in the working groups established by the Plenipotentiaries.

The Regulation on Stakeholder Participation in Activities of the Plenipotentiaries was initially drafted by NGOs under the auspices of the Eco-TIRAS International Environmental Association of River Keepers and discussed at several public consultations. The final text signed by the Plenipotentiaries was significantly weakened and shortened compared to the drafts.

The Regulation provides for the development of a Register of Stakeholders. It defines stakeholders as any public authority, non-governmental organisation and their associations, as well as legal persons with an interest in transboundary water management. The Register is composed of a Moldovan part and a Ukrainian part. Each Plenipotentiary is responsible for maintaining respective part of the Register. The Plenipotentiaries shall widely distribute the information on the opportunity to be included into the Register (a public announcement in this respect was issued in the beginning of 2008). Each stakeholder should provide a short explanation of interest in being included in the

Register. The Register shall be publicly accessible on the website.

30 days before their ordinary meeting, the Plenipotentiaries inform stakeholders about all decisions made since the last meeting and about work plans. 20 days before their ordinary meeting, the Plenipotentiaries inform stakeholders about the date, agenda and documents of the meeting. The only mandatory channel for provision of information is the website. In the case of extraordinary events, the information shall be disseminated immediately through all possible channels.

With regards to public participation, the Regulation provides for the right of stakeholders to submit issues to be discussed by the Plenipotentiaries and to submit written and/or oral comments concerning drafts of the documents together with suggestions and amendments to the draft texts. The drafts of documents and invitations to submit comments shall be published on the website. Comments made by stakeholders shall be taken into account when making the final decision. At the same time, the Regulation is silent about participation of stakeholders in the meetings of Plenipotentiaries. Attendance at the meetings was provided for in the drafts of the Regulation but was excluded from the final version. Such failure to provide for this logical and effective way of public participation became a cornerstone of criticism. Despite disappointment with the final text, NGOs still view the Regulation positively. For the past decade, the whole institution was unknown and absolutely not accessible in terms of any kind of public involvement, so some steps in the right direction are a positive sign. If the Regulation is followed at least in its current shape, this will be an incentive for both the Plenipotentiaries and stakeholders to seek closer cooperation.

6 Conclusions

The Plenipotentiaries of Moldova and Ukraine have departed from the principles of the Aarhus Convention and have almost not used the experience accumulated by joint bodies of other regions in promoting public participation. However, their Regulation on Stakeholder Participation presents the first example of formalised rules on public participation in joint bodies in the EECCA region and can be considered as a first step in a step-by-step approach to implementing Art. 3(7) of the Aarhus Convention.

The Almaty Guidelines of 2005 include the most progressive set of recommendations that could be applied by joint bodies for transboundary cooperation in addition to the UNECE/UNEP Guidance document of 2000. The limitation of the Almaty Guidelines to “*multilateral*” international processes and organisations⁴¹ shall not preclude the Riparian States and bi-

³⁸ In addition to the OSCE and UNECE, the project participants included the Moldovan and Ukrainian Ministries of Environmental Protection, the Moldovan Water Concern 'Apele Moldovei', the State Committee of Ukraine for Water Management, Ministries of Foreign Affairs, sanitary-epidemiological services, and NGOs. The website of the project is: <http://www.dniester.org>.

³⁹ The draft of the new basin-wide Agreement on Cooperation in the Protection and Sustainable Development of the Dniester River Basin is under consideration by the governments of Moldova and Ukraine. In case this new agreement is signed, the 1994 Agreement will in any case remain in force for transboundary pieces of the Dniester and for other transboundary watercourses shared by Moldova and Ukraine.

⁴⁰ The Plenipotentiaries will continue to use the website of the OSCE/UNECE project, *supra* note 37.

⁴¹ Almaty Guidelines, *supra* note 4, par.9.

lateral joint bodies for transboundary water cooperation from applying their provisions.

While the issues of representation and funding are most commonly regarded as challenges for public participation in joint bodies, strengthening public participation in joint bodies between or with participation of EECCA countries is part of a more serious

problem of weak institutional structure of such bodies in the region. Last but not least, there still is a lack of understanding about public participation benefiting the quality and implementation of decisions. However the last point could only be addressed through “*learning by doing*”, i.e. through cooperative efforts of Riparian States, joint bodies and stakeholders.

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

Contact

Freiburg Head Office:

P.O. Box 50 02 40
D-79028 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:

Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:

Novalisstrasse 10
D-10115 Berlin
Phone +49(0)30-280 486 80
Fax +49(0)30-280 486 88
www.oeko.de

The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

Contact

Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de

www.fh-bingen.de

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

Contact

Darmstadt Office

Prof. Dr. Martin Führ – sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de
www.h-da.de

Göttingen Office

Prof. Dr. Kilian Bizer – sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de

www.sofia-research.com

elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brus-

sels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.