

Natallia ALIAKSEYEVA,  
Saint Petersburg State University, Russia \*

## EU EXPANSION AS A CHALLENGE FOR JOINT TRANSBOUNDARY WATERS MANAGEMENT

### Introduction

EU enlargement, as a process, has a lot of problems caused by the great differences between the present EU-members and accession countries in all spheres of life. Moreover, this process becomes much more complicated taking into account the NIS and CIS-countries bordering with candidate members of the European Union and the fact that the EU has stressed the importance of not importing border conflicts into an enlarged Union. The EU has also recognized that the environmental problems faced in the applicant states and beyond are far more severe than in the present Member States. One of the environmental problems that will be affected by EU expansion is the joint environmental management of transboundary waters.

“Sound management of international watercourses is one of the most complex and worrying issues, as water is vital to sustain life, economic development and the conservation of ecosystems” [Abbas, 2000]. Joint management of transboundary waters is complicated, since there is not one government to manage international waters and bordering states may have different languages, cultures, as well as different water management legislation and institutional structures. Different quality standards and norms, as well as different approaches and methodologies in bordering countries create additional hindrances in the management

---

\* Natallia Aliakseyeva is PhD student at the Department of Environmental Safety and Sustainable Development of Saint Petersburg State University (V.O. 10<sup>th</sup> line, 33, St. Petersburg 199178, Russia). E-mail: Natasha@lake-peipus.net

process. There are approximately 160 agreements on transboundary waters in Europe and this number shows an increasing trend. Some of the transboundary watersheds shared by EU-members and EU-accession countries are the river Oder (Germany – Poland) and the Neusiedler See (Austria – Hungary). The complex character of transboundary waters management is getting more problematic in the case of EU candidate countries bordering with CIS and NIS-countries. For example, Lake Peipus/Chudskoe and the river Narva (Estonia – Latvia – Russia), the river Daugava (Latvia – Belarus – Russia), the river Nemunas (Lithuania – Russia – Belarus), the river Bug (Poland – Belarus – Ukraine) etc. Thus, there is a real need for a truly integrated and functioning basin-wide cooperative scheme for the management of international waters, especially at the future fringe of the EU.

This paper will discuss problems associated with EU enlargement and joint transboundary waters management and the new EU Water Framework Directive as a future tool for regulating these problems. A brief description of the theoretical background is complemented by a short presentation of the legal bases for joint water management. The issue of international water basins as challenges for joint management is also developed. The EC Water Framework Directive (WFD) and its main points regarding transboundary water management are then studied. An investigation of the process of EU enlargement as a cause of problems is followed by a section on possible solutions and concluded by a short summary at the end of the paper.

## Theoretical background

The term “joint management” is often defined as “co-management” (also called: participatory management, collaborative management, joint management, mixed, multi-party or round-table management) – a situation, in which two or more social actors negotiate, define and guarantee amongst themselves a fair share of the management functions, entitlements and responsibilities over a given territory, area or set of natural resources [Borrini-Feyerabend, 2000].

There are several concepts and approaches contributing to understanding and practicing the co-management of natural resources: adaptive management, pluralism, governance, patrimony, management of conflicts and social communication [Borrini-Feyerabend, 2000]. In the case of transboundary water management, the most important ways of studying the process seem to be pluralism, governance, management of conflicts and social communication; all of them could play a dominant role depending on the current situation on the transboundary watershed.

According to the Helsinki Convention, "transboundary waters" mean any surface or ground waters which mark, cross or are located on the boundaries between two or more states (where transboundary waters flow directly into the sea, they end at a straight line across their respective mouths between points on the low-water line of their banks).

Another important concept, that is worth using in this case, is Integrated River Basin Management (IRBM). According to Jean Burton [2000], IRBM should take into consideration the following questions: the river basin system itself, river basin management, information management, institutional arrangements and partnerships, legal framework, user participation, conflict resolution and plans of action. All these issues will be important in the case of transboundary waters, especially those dealing with political and legal points of view.

The last concept, that is important for studying the process of transboundary water management, is the concept of multi-level governance [Gooch, 2001]. This approach could be used in the case of defining the levels of competence and responsibilities among all stakeholders on the territory of a transboundary watershed (i.e. the European Commission, states, local governments and municipalities).

## Legal base

In general, transboundary effects addressed by the ECE and legal environmental framework consist of five treaties addressing licensing procedures for polluting activities (Convention on Environmental Impact Assessment in a Transboundary Context-the EIA Convention), transboundary air pollution (Convention on Long-range Transboundary Air Pollution-the LRTAP Convention), pollution of transboundary watercourses and international lakes (The Convention on the Protection and Use of Transboundary Watercourses and International Lakes-the Water Convention), transboundary effects of industrial accidents (Convention on Transboundary Effects of Industrial Accidents-the Accident Convention) and access to information and justice and public participation in decision-making (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters-also called the Public Policy Convention) [Jagusiewicz, 1999].

The management of transboundary waters is receiving ever-increasing attention. On 21 May 1997, in New York, the General Assembly of the United Nations adopted a convention on the Law of the Non-navigational Uses of International Watercourses. The New York convention sets a general framework for watercourse agreements, but in relation to such agreements, it is of a subsidiary nature. This applies to its relation

to the UN-ECE Convention on Transboundary Watercourses and International Lakes (Helsinki convention). Essentially, the Helsinki and New York Watercourses Conventions are compatible. Both contain provisions going beyond those contained the other; in most cases, the Helsinki Convention is the more ambitious of the two [Carel de Villeneuve, 1999].

Some other conventions regarding public participation [Aarhus Convention, 1998], and water and health [Protocol on Water and Health, 1999] supplement the principles in the 1997 UN Watercourses Convention.

Early European water legislation began, in a "first wave", with standards for those of our rivers and lakes used for drinking water abstraction in 1975, and culminated in 1980 in setting binding quality targets for our drinking water. It also included legislation regarding objectives on the quality of fish waters, shellfish waters, bathing waters and groundwater. Its main emission control element was the Dangerous Substances Directive. At present, a restructuring of the European Water Policy is in progress, and a new Water Framework Directive will be the main operational tool, setting the objectives for water protection and water management.

In addition to international legislative acts, national legislation also plays a crucial role, especially at the local and regional levels of water management. Thus, it should complement all conventions and international legal acts adopted by the countries, sharing an international river or lake basin.

## **International water basins as challenges for joint management**

At the International Workshop on River Basin Management [Recommendations and Guidelines..., 2000] it was stated that "...mutual understanding and trust and shared information are the basis for international co-operation." Further, this statement is developed into "technical co-operation involving the collection and dissemination of information promotes the acceptance of this information by all basin states and stimulates mutual understanding and trust". However, this precondition of fruitful cooperation is often still missing. Recognizing this issue, "Recommendations and Guidelines on Sustainable River Basin Management" underlines that in times of international conflicts at least technical co-operation should be maintained.

Several mechanisms could be used to overcome conflicting (upstream-downstream) interests. Contentious international issues could be linked with other issues ("issue linkage"). Moreover, countries may accept less favourable agreements in the expectation that other countries will do

the same in the future (“diffuse reciprocity”). In some cases financial compensation from the benefiting country to the country having to incur costs could be justified, provided the polluter-pays principle is respected.

River and lake basin treaties and other forms of international co-operation should reflect the relevant principles of international law, primarily the principles of equitable and reasonable use, the obligation not to cause significant harm, and the duty to notify and exchange information.

As well as treaties, international water basin commissions are often established to implement these treaties. International river and lake basin commissions can perform many useful functions in the management of international basins, such as co-ordination of research and monitoring, co-ordination of water basin management between the participating basin states, planning, compliance monitoring and conflict resolution. International river basin commissions are almost indispensable to international basins located in more than two states, and advisable for many basins located in two states.

## **The EC Water Framework Directive (WFD) and its main points regarding transboundary water management**

All of Europe’s waters will be subject to protection under the Water Framework Directive, surface waters and ground water (at present only a limited proportion of water subject to specific human use, such as fish waters, shellfish waters, bathing waters are protected under European legislation).

Unlike previous water legislation, the framework directive covers surface water and groundwater together, as well as estuaries and marine waters. Its purpose is threefold: to prevent further deterioration in, and to protect and enhance, the status of aquatic ecosystems; to promote sustainable water consumption based on the long-term protection of available water resources; and to contribute to the provision of a supply of water of the quality and in the quantity needed for its sustainable use. Under this directive [EU WFD, 2000] member states will have to ensure that a status of “good” is achieved or kept by all waters by a certain deadline

- the Commission Proposal suggests 13 years plus certain limited exemptions;
- the Council Common Position aims for 16 years plus less limited exemptions;

This legislation will have the following main objectives:

- expanding the scope of water protection to all waters, surface waters and groundwater;

- achieving the status of "good" by all waters by a certain deadline
- water management based on river basins;
- a "combined approach" of emission limit values and quality standards
- getting the prices right;
- getting the citizen involved more closely;
- streamlining legislation [Bloch, 1999].

There are several points outlined in WFD that will be crucial to joint transboundary waters management.

## **River basin management**

Water management is to be based on river and lake basin with no interference from administrative structures. The best model for a single system of water management is management according to river basin – the natural geographical and hydrological unit – instead of according to administrative or political boundaries. Initiatives taken by the states concerned with the Maas, Schelde and Rhine river basins have served as positive examples of this approach, with their cooperation and joint objective-setting across member state borders, or in the case of the Rhine even beyond EU territory [INBO, 1998]. While several member states have already taken a river basin approach, this is not at present the case everywhere. For each river basin district – some of which will traverse national frontiers – a "river basin management plan" will need to be established and updated every six years, and this will provide the context for the co-ordination requirements identified above. According to WFD, the following are necessary for harmonized water management: coordination within a river basin across boundaries should be obligatory between EU Member States, and recommended with third party countries.

Moreover, where a river basin district extends beyond the territory of the Union, the member state or member states concerned shall endeavour to establish appropriate coordination with the relevant non-member states, with the aim of achieving the objectives of this directive throughout the river basin district. Member states shall ensure the application of the rules of this directive within their territory.

## **The river basin management plan**

All the elements of deep analysis must be set out in a plan for a river basin. This plan is a detailed account of how the objectives set for the river basin (ecological status, quantitative status, chemical status and protected area objectives) are to be reached within the timescale

required. The plan will include all the results of the analysis: the river basin's characteristics, a review of the impact of human activity on the status of waters in the basin, estimation of the effect of existing legislation and the remaining "gap" to meeting these objectives; and a set of measures designed to fill the gap. One additional component is that an economic analysis of water use within the river basin must be carried out. This is to enable a rational discussion on the cost-effectiveness of the various possible measures. It is essential that all interested parties are fully involved in this discussion, and indeed in the preparation of the river basin management plan as a whole. WFD required one river basin management plan for each basin, to be updated every 6 years.

## Public participation

It is important that the public has access, at an early stage, to all relevant information, and that the public is involved in decision-making on water management as early as possible, while all options are still open, in order to provide for effective public participation. [*Guidance on Public Participation...*, 2000].

Generally speaking, there are two main reasons for an extension of public participation [INBO, 1998]. The first is that the decisions on the most appropriate measures for achieving the objectives in the river basin management plan will involve balancing the interests of various groups. The requirement of economic requirement is intended to provide a rational basis for this, but it is essential that the process is open to the scrutiny of those who will be affected.

The second reason concerns enforceability. The greater the transparency in the establishment of objectives, the imposition of measures, and the reporting of standards, the greater the care member states will take to implement the legislation in good faith. In this way the scope for citizens to influence the direction of environmental protection is increased, whether that influence is through consultation or, if disagreement persists, through complaints procedures and the courts. Caring for Europe's waters will require more involvement of citizens, interested parties and non-governmental organisations (NGOs). To that end, the Water Framework Directive will require information and consultation when river basin management plans are established: the river basin management plan must be issued in draft, and the background documentation on which the decisions are based must be made accessible. Furthermore, the commission will organise a biannual conference in order to provide for a regular exchange of views and experiences of the implementation of such plans. Too often in the past implementation has been left unexamined until it is

too late – when member states are already woefully behind schedule and do not comply with the plan. The commission wishes to make sure that this does not happen with the Framework Directive, by establishing a network for the exchange of information and experiences between water professionals throughout the Union very early on.

WFD member states shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the River Basin Management Plans.

## **EU enlargement as a cause of potential problems**

EU enlargement will mean first of all the adoption of the EC Water Framework Directive (WFD) as a central tool for the future environmental management of transboundary river basins all over Europe and on the future EU border. However, the main points of WFD will cause some additional consequences regarding joint water management.

The first is the problem of joint river (lake) watershed management. A river basin approach, as such, is not something new for some NIS-countries, which adopted this approach when in the former Soviet Union, but one problem is in the obtaining of comparable data and a joint methodology for impact assessment and the assessment of the state of environment. The framework character of this directive implies a free choice of policy instruments and actions to be taken for the concrete outcome – rational environmental management of watershed. This lack of rigid rules and standards makes it rather complicated for joint management i.e. the problem of choosing the right or appropriate norms and standards could be an issue in this case. For example, countries cannot refer to some agreed norms coming from WFD and thus they have to elaborate their own measures and standards, which could be problematic. Also, these vague rules are not so easy to understand and include into the whole system of environmental management in the NIS that still have old command and control system features.

As a part of this problem, the differences in rules and standards are still increasing because accession countries are intensively working to accept European standards and approaches to water management. The NIS and CIS authorities do not even have sufficient information on what are the new European standards. There is a potential danger of an increase in the differences in standards and approaches used by each side. In this situation, joint work in the field of environmental monitoring and management of transboundary watershed is becoming more and more difficult. This may even result in potential environmental conflicts in this region. [Liiv et. al, 2000].



Another issue that should be considered is the mandatory character of WFD for all EU-countries that, however, does not imply the same position for their non-EU neighbours. In this situation joint river basin management plans and all other documents and actions that should be fulfilled under WFD become an issue of the good will of non-EU countries. In this unclear situation the river basin management approach outlined in WFD could be transformed into a sub-basin approach working only in a part of the watershed, which, in turn, would not be a very effective way of management.

Also WFD at present cannot play a dominant role in transboundary waters management, due to an absence of complete information about this directive, especially in the native languages of non-accession countries like Russia, Belarus, the Ukraine etc. Some training on WFD issues is going on in Baltic countries and some accession countries, and each Baltic state has plans for WFD implementation [BEF, 1998], but that does not guarantee any information inflow for their NIS and CIS neighboring countries.

Talking about public participation and information exchange processes, we should keep security issues in mind. One of the factors influencing external environmental policy could be the present or possible future NATO membership of EU-accession countries. For example, Russian-Estonian relationships (in the environmental sphere as well) will heavily depend on Estonia's membership in NATO. Thus, information regarded as having a security character will be forbidden for public circulation and as far as we bear in mind border issues and possible conflicts, in the case of NATO membership almost any environmental information could be referred as secret.

The Communication from the European Commission "A Northern Dimension for the Policies of the Union" and a report by the Swedish government "International Conflict and Crisis Management – a Common Task for Many Partners" outline strategies to addressing "old" and "new" threats to common security in Europe as equally important. Thus, this rather new concept of environmental security should be discussed in the case of EU enlargement as well.

## Possible solutions

EU enlargement will have as a consequence some additional problems in transboundary water management in Europe, however all of these problems could be solved by additional effort. Some of the possible solutions are presented below.

**Enhanced Cooperation.** Cooperation as a process should go in different directions – inside the EU and on its borders as well. The Amsterdam Treaty introduced a new mechanism of closer co-operation in 1999. It allows member states to take joint actions and to use the institutions and procedures of the European Union. From an environmental point of view, as well as from the perspective of promoting the process of European integration, the amendments of the treaty provisions on enhanced cooperation may, on the whole, be seen as a positive development [Bar et.al, 2001].

Cooperation will also mean good relations with neighbouring countries on the fringe of Europ, that is crucial for external EU policy as it guarantees stability in Europe [EC, 1997]. These relations could be established through bilateral agreements, joint commissions etc. that should take into account WFD as a possible tool for joint management.

**Dissemination of information.** As mentioned above, there is not enough information about WFD for EU-neighbouring countries. Thus, it will be necessary to spread this information in the native languages of non-accession countries. Workshops and seminars aimed at the distribution of information on WFD and European environmental policies for high and middle officials from the NIS and CIS could be very helpful. Full information on WFD will lead to better understanding of possible management approaches that, in turn, could lead to the unification of the legislation of neighbouring countries in the field of transboundary waters management.

**Facilitation of changes in water legislation of non-EU countries on the future fringe of the EU according to WFD.** Changes or additions to legal acts of non-accession NIS and CIS countries will lead to joint management based on two types of legislation – European (for EU-countries) and national (for bordering non-EU countries), acting in the same directions and having similar approaches. For example, the new Russian Federation Concept for a National Water Policy [Mikheev, 1998] has several common points with WFD – a river basin approach, decentralization and self-financing according to water costs and broad public awareness-raising. Thus, future cooperation on European borders in the sphere of water management could be based on different legal acts depending on a country's status, but having similar approaches and attitudes towards transboundary waters management.

**Integrated River Basin Management.** Using this very fashionable and well-known concept as a scientific base, adopted in many countries, it would be possible to unify water management approaches, at least on a practical level that could bring consequent changes in policy and legislation.

## Conclusion

Europe's waters are in need of more protection, in need of increased efforts to clean them or to keep them clean, as emphasised by reports recently published by the European Environment Agency [EEA, 1999]. Thus, the question of transboundary water management as the most complicated part of general water management needs to attract more attention and, hence, additional efforts directed at solving problems associated with this very serious issue.

EU enlargement as a very complex process will bring possible consequences in the transboundary waters management of the future fringe of the EU. Implementation of the EU Water Framework Directive will have a rather serious impact on the management of transboundary basins on EU borders. The effects of WFD realization could have different characters and cause potential problems for bordering countries.

Nevertheless, all the possible challenges related to WFD implementation could be overcome by careful consideration and study of the possible adverse effects and consequences. The main factors that could help in WFD implementation are enhanced cooperation, dissemination of information, facilitation of changes in the water legislation of non-EU countries on the future fringe of the EU in line with WFD and use the integrated river basin management concept as a proven scientific base for transboundary cooperation.

## Literature

- Abbas G., "Relations Between Equitable Participation and Integrated management of International Watercourses", In: *The Network Newsletter*, INBO, no 9, 2000.
- Baltic Environmental Forum (BEF), *Plans of Each Baltic State for Implementation of Water Framework Directive*. URL: <http://www.bef.lv/reports/eu-envir/wlannex2.html>, Last updated 11 Aug 1998.
- Bâr S., von Homeyer I., Klasing A., Kraemer A., R., *A Nice Environment for Enlargement? An Analysis of the Treaty of Nice and its Effects on the Environmental Policy of the European Union with a Special View to Enlargement*, Institute for International and European Environmental Policy, Berlin, January 2001.
- Blöch, H., "Taking European Water Policy into the Next Millennium", In: *Proceedings of International Workshop Management and Sustainable Development in International Lake Basins*. The EU Water Framework Directive, Tartu, Estonia, December 1999.
- Borrini-Feyerabend, G., *Co-management of Natural Resources: Organizing, Negotiating and Learning by Doing*. IUCN, Yaoundé, Cameroon, 2000.
- Burton J., "Integrated River Basin Management; a Reminder of Some Basic Concepts", In: *River Basin Management, Proceedings of the International Workshop* (the Hague, 27-29 October 1999), UNESCO, 2000.
- de Villeneuve C., "The Convention on the Law of the Non-navigational Uses of International Watercourses", In: *Proceedings of International Workshop Management and Sustainable Development in International Lake Basins*. Tartu, Estonia, December 1999.

- European Commission (EC). *The effects on the Union's Policies of Enlargement to the Applicant Countries of Central and Eastern Europe*. 1997. URL: <http://europe.eu.int/comm/enlargement/agenda2000/impact/21.htm>, Cited 24 July 2001.
- Environment in the European Union at the turn of the century*. European Environment Agency (EEA). Luxemburg 1999.
- European Union Water Framework Directive, 2000
- Gooch, G.,D., *Theoretical Perspectives on the Analysis of European Water Management Structures*. Deliverable D1a, project "Integrated Strategies for the Management of Transboundary Waters on the Eastern European fringe – The pilot study of Lake Peipsi and its drainage basin", February 2001.
- Guidance on Public Participation in water management and Framework for Compliance with Agreement on Transboundary Waters*, United nations, New York and Geneva, 2000.
- Jagusiewicz A. Regional Legal framework for Combating Transboundary Pollution, In *Proceedings of International Workshop Management and Sustainable Development in International Lake Basins*. Tartu, Estonia, December 1999.
- Kapanen, G., Liiv, H., Roll, G., *Lake Peipsi Basin: Specific institutional aspects of Lake Peipsi management taking into account reform processes in the Baltic States and the NIS – Lessons Learned*, Second World Water Forum 2000, CEE-session.
- Mikheev, N., Tchernyaev, A., Belyaev, S., "Russian Federation Concept for a National Water Policy", In: *The Network Newsletter*, INBO, no 7, 1998.
- Recommendations and Guidelines Sustainable Water Management, ed. by E. Motsert. *River Basin Management, Proceedings of the International Workshop* (the Hague, 27–29 October 1999), UNESCO, 2000.
- The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*, Aarhus, Denmark, 1998.
- The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)*, Espoo, Finland, 1991.
- The Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area*. Helsinki, Finland, 1974.
- The UN ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 1992
- The Water Framework Directive and its combined emission/immission approach to water pollution control*, International Network of Basin Organizations (INBO), The Network Newsletter, 1998. URL: <http://ruisseau.oiEAU.fr/riob/ag98disc/cee.htm>, Cited 25 July, 2001.