

# PUBLIC PARTICIPATION IN THE DNIESTER RIVER BASIN MANAGEMENT

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## ABSTRACT

*The article is devoted to issues of public participation in transboundary water resources management and the role of non-governmental organizations (NGOs) in it following the experience of stakeholder cooperation on the Dniester river basin.*

## RÉSUMÉ

*Cet article est consacré aux questions de la participation du public dans la gestion des ressources en eau transfrontières et du rôle des organisations non gouvernementales (ONG). On y examine le cas d'étude de la coopération entre les parties prenantes dans le bassin du fleuve Dniester.*

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**Key words:** Non-governmental organizations, Dniester River

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**Mots clés :** organisations non gouvernementales, fleuve Dniester

Despite the fact that the 1992 UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes<sup>1</sup> (known as the 'Water Convention') was adopted more than five years before the 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters<sup>2</sup> (the 'Aarhus Convention'), its provisions, soft-law instruments and practice in the field of public information and participation constitute a solid foundation for the application of public rights in the field of water management. Public involvement in Dniester river basin management has a long history which in many instances drew inspiration from the principles of the Water Convention.

## I. PUBLIC PARTICIPATION UNDER THE EXISTING ARRANGEMENTS FOR BILATERAL COOPERATION ON THE DNIESTER RIVER

The Dniester river (length 1352 km, basin area 72,100 km<sup>2</sup>, populated with about 8 million people) starts in the Ukrainian Carpathian Mountains, crosses Moldova and returns to Ukraine near the Black Sea.<sup>3</sup> During the Soviet era the Dniester river basin was an internal river basin of the Soviet Union. After the collapse of the USSR, the Republic of Moldova and Ukraine signed the bilateral Agreement on Joint Management and Protection of Cross-Border Waters<sup>4</sup> (hereinafter 'the Agreement') of 1994, the geographical scope of which, *inter alia*, included respective parts of the Dniester river which mark or cross the boundary between the two countries. The Agreement provides for cooperation between the co-riparians via Plenipotentiaries for frontier waters of both countries. In 2007, the Plenipotentiaries adopted a Regulation<sup>5</sup> aimed at ensuring public participation in the activities of this joint body. The Regulation became the first example of formalized rules for dissemination of information and public participation in the activities of joint bodies in the Eastern European, Caucasus and Central Asian subregions of the UNECE.<sup>6</sup>

The Regulation on Stakeholder Participation in the Activities of the Plenipotentiaries<sup>7</sup> provides for the development of a Register of Stakeholders.<sup>8</sup> Stakeholders are defined as any public authority, non-governmental organisation (NGO) and their associations, or legal persons with an interest in transboundary water management.<sup>9</sup> The Register is composed of a Moldovan part and a Ukrainian part.<sup>10</sup> Each Plenipotentiary is responsible for maintaining their respective part of the Register.<sup>11</sup> The Register is accessible on the Internet.<sup>12</sup> Thirty days before their ordinary meeting, the Plenipotentiaries inform stakeholders about all decisions made since the last meeting and about workplans.<sup>13</sup> Twenty days before a meeting or other event, the Plenipotentiaries inform stakeholders about the date, agenda and documents of the upcoming meeting.<sup>14</sup> The Regulation provides for the rights of stakeholders to suggest issues to be discussed by the Plenipotentiaries and to submit written and/or oral comments concerning draft documents, together with suggestions and amendments to the draft

1 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, online: <http://www.unece.org/env/water/text/text.html>.

2 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998, online: <http://www.unece.org/env/pp/treatytext.html>.

3 Information available at: <http://www.eco-tiras.org/>.

4 Agreement Between the Government of the Republic of Moldova and the Government of Ukraine on the Joint Management and Protection of the Cross-Border Waters, online: <http://dniester.org/wp-content/uploads/2009/06/10agreement-moldova-ukraine-1994-engl.doc>.

5 Plenipotentiaries of the Republic of Moldova and Ukraine for Frontier Waters, 'Regulation on Stakeholder Participation in the Activities of the Institution of Plenipotentiaries', 2007, online: <http://dniester.org/wp-content/uploads/2009/06/11regulation-on-stakeholder-participation-in-the-activities.doc>.

6 UNECE, *Guide to Implementing the Water Convention*, United Nations, Geneva, 2013, p. 96.

7 'Regulation on Stakeholder Participation', *supra*, n. 5.

8 *Ibid.*, art. 4(1).

9 *Ibid.*, art. 2.

10 *Ibid.*, art. 4(1).

11 *Ibid.*

12 *Ibid.*, art. 4(4).

13 *Ibid.*, art. 5(1).

14 *Ibid.*, art. 5(2).

texts.<sup>15</sup> Draft documents and invitations to submit comments are to be published on the Internet.<sup>16</sup> Comments made by stakeholders are to be taken into account when making the final decision.<sup>17</sup> In December 2007, the Plenipotentiaries also agreed to maintain a joint website for the Dniester river basin ([www.dniester.org](http://www.dniester.org)).<sup>18</sup>

In December 2008 the Dniester River Basin Council was established in Ukraine.<sup>19</sup> The Council consists of 45 members<sup>20</sup> representing public authorities, local self-governments, water users, scientific institutions and NGOs.<sup>21</sup> Its role is primarily advisory, facilitative and coordinating. Members of the Council are elected for a term of three years and may be re-elected.<sup>22</sup> The mission of the Council is to establish an effective organisational mechanism for the development and implementation of the Dniester River Basin Management Plan.<sup>23</sup> The tasks and objectives of the Council also, *inter alia*, include: facilitation of integrated water resource management in the Dniester river basin,<sup>24</sup> review and assessment of quantitative and qualitative status of water resources,<sup>25</sup> development of the strategy and the Long-term Target River Basin Program for the Development of Water Resources and recommendations on mechanisms for their implementation, assisting local authorities in strengthening the role of the public<sup>26</sup> as well as ensuring accommodation of interests and coordination of action between stakeholders in the Dniester river basin.<sup>27</sup> Members of the Council have the right to request information on its activity and suggest issues to be discussed by the Council.<sup>28</sup> Aside from the voting members, the Council is authorised to invite competent qualified persons with an advisory vote.<sup>29</sup> The Council may, as appropriate, establish temporary working groups involving competent experts who are not members of the Council.<sup>30</sup> Sessions of the Council are open to the public unless decided otherwise.<sup>31</sup>

## II. PUBLIC PARTICIPATION IN THE DEVELOPMENT OF THE DNIESTER RIVER BASIN TREATY

The Agreement provides solid grounds for cooperation between the co-riparians—Moldova and Ukraine. However, for a number of reasons it is not sufficient to provide for sustainable management of the Dniester River basin: neither the geographical and sectoral scope of the Agreement nor its institutional arrangements are river basin specific, thus falling short in reaching a number of recognised principles of international water law, including the integrated water resource management principle and the ecosystem approach. For example, the Agreement covers only those Dniester river areas which cross national boundaries, amounting to about 225 km out of its total length of 1,352 km; the joint body to implement the Agreement—the Plenipotentiaries of Moldova and Ukraine for frontier waters—tends to *de facto* centralize management in one agency; the Agreement mostly regulates water use, while there is a clear need to take due account of other sectors like natural, biological and landscape resources, including the integrated management and protection of the Black Sea.<sup>32</sup>

15 *Ibid.*, art. 6 and 7.

16 *Ibid.*, art. 7(1).

17 *Ibid.*, art. 7(3).

18 *Guide to Implementing the Water Convention*, *supra*, n. 6, p. 96.

19 Information available at: <http://dniester.org/materials/bassejnovyj-sovet-dnestra-ukraina/>

20 *Rules of Procedure of the Dniester River Basin Council*, art. 1, online: <http://dniester.org/materials/bassejnovyj-sovet-dnestra-ukraina/>.

21 *Regulation on the Dniester River Basin Council*, art. 3(1), online: <http://dniester.org/materials/bassejnovyj-sovet-dnestra-ukraina/>.

22 *Ibid.*, art. 2.

23 *Ibid.*, art. 1(3).

24 *Ibid.*, art. 2(2).

25 *Ibid.*, art. 2(3).

26 *Ibid.*, art. 2(17).

27 *Ibid.*, art. 1(2).

28 *Ibid.*, art. 3(8).

29 *Rules of Procedure of the Dniester River Basin Council*, *supra*, n. 20, art. 1.

30 *Ibid.*, art. 10.

31 *Regulation on the Dniester River Basin Council*, *supra*, n. 21, art. 3(7).

32 UNECE/OSCE/UNEP Transboundary Cooperation and Sustainable Management in the Dniester River Basin: Phase III—Implementation of the Action Programme (Dniester-III) project, *Dniester Without Borders*, Executive Summary, Kyiv, 2013, p. 8, online: <http://dniester.org/wp-content/uploads/2009/06/Dniester-resume-Engl.pdf>.

The above concerns have brought about initiatives either to amend the Agreement so as to expand its scope to the entirety of specific river basins, including that of the Dniester River, or to develop a separate Dniester River Basin Treaty. This issue was raised for the first time by the Moldovan environmental NGO 'Biotica' and subsequently supported by a decision of the Moldovan Parliament.<sup>33</sup> In 1999 the International Conference on environmental problems of the Dniester river basin considered the first draft of such a treaty (in the form of a draft Dniester Convention).<sup>34</sup> The Conference had wide NGO participation. In 2002, during the 5th OSCE Forum in Prague, the Eco-TIRAS International Environmental Association of River Keepers<sup>35</sup> reiterated the need for a Dniester River Basin Treaty and in 2003, during the 5th Ministerial Conference 'Environment for Europe'<sup>36</sup> in Kyiv, it organised a round table discussion on the matter.<sup>37</sup>

The mentioned initiatives attracted the attention of a number of IGOs. In 2004-2006, the OSCE, working in conjunction with the UNECE, implemented the so-called 'Dniester-I' Project,<sup>38</sup> which delivered a number of important outputs, laying the foundation for the future 'Dniester Process'. Among those outputs was the 2005 Transboundary Diagnostic Study for the Dniester River Basin.<sup>39</sup> Chapter 7 of the Diagnostic Study is devoted to the issues of public participation. The Diagnostic Study is supplemented by the Legal Conclusion on 'Status and Options for Enhancing the International Legal Framework of Transboundary Cooperation on the Protection and Sustainable Management of the Dniester River Basin'.<sup>40</sup> The Legal Conclusion suggested two options for the way forward: (a) the development of a bilateral Dniester River Basin Treaty or (b) the development of Dniester river-specific supplementary Protocol(s) to the existing Agreement.

In 2005, the Ministers of Environment of Moldova and Ukraine and the Heads of the National Water Management Agencies of the two countries signed the Protocol of Intentions on Cooperation in the Field of Environmental Rehabilitation of the Dniester River Basin.<sup>41</sup> The signatories, *inter alia*, declared their intention to promote the implementation of recommendations of the Transboundary Diagnostic Study, their support for the development of National Action Plans for Environmental Rehabilitation of the Dniester River Basin and their intention to support close cooperation with the public, including NGOs, in addressing issues of environmental rehabilitation of the Dniester river basin.<sup>42</sup>

With the aim of implementing the 2005 Protocol of Intentions and on the basis of the 2005 Transboundary Diagnostic Study for the Dniester River Basin, the Republic of Moldova and Ukraine then signed the 2006 Action Programme to Improve Transboundary Water Management of the Dniester River Basin for the period of 2007-2010,<sup>43</sup> carving the pathway for the development of the Dniester River Basin Treaty (hereinafter 'the Treaty'). The first draft of the Treaty was elaborated in 2006 by a consultant. Consultations on its text, primarily on the expert level, were held during 2006-2010 under the auspices of the Plenipotentiaries of Moldova and Ukraine for frontier waters. NGOs took active part in all rounds of consultations. They were allowed to be present basically at all meetings. In addition, in 2006-2007 public hearings of the draft Treaty were organised both in Ukraine and in Moldova. Public commentaries were taken into account during numerous revisions of the draft text of the Treaty.

In 2011 the Government of Moldova initiated official negotiations with Ukraine on the draft Treaty. The Treaty was initialled in Chisinau, Moldova on 26 July 2012 and signed on 29 November 2012 in Rome, Italy at the Sixth session of the Meeting of the Parties to the UNECE Water Convention.<sup>44</sup>

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33 *Ibid.*

34 *Ibid.*

35 Eco-TIRAS International Environmental Association of River Keepers was created by environmental NGOs of the Dniester River basin in both Moldova and Ukraine to help and advise authorities and to help the local population manage the river in a sustainable way, using an Integrated River Basin Management Approach. At present it unites 38 NGO members. Information is available at: <http://www.eco-tiras.org/index.php/mission-mainmenu-27>.

36 Online: <http://www.unece.org/env/efe/Kiev/proceedings/html/proceedings.html>.

37 *Dniester Without Borders*, *supra*, n. 32, p. 8.

38 Online: <http://dniester.org/materials/dnestr1/>.

39 Online: [http://dniester.org/wp-content/uploads/2009/06/17final\\_report\\_eng.pdf](http://dniester.org/wp-content/uploads/2009/06/17final_report_eng.pdf).

40 Online: <http://dniester.org/wp-content/uploads/2009/06/16analysis-of-the-agreement-by-vinogradov-engl.doc>.

41 Online: <http://dniester.org/wp-content/uploads/2009/06/13protocol-on-intentions-to-cooperate-ukr-moldova-2005.doc>.

42 *Ibid.*

43 Online: <http://dniester.org/wp-content/uploads/2009/06/14action-programme.doc> (accessed April 2014).

44 See Sixth session of the Meeting of the Parties to the Water Convention, 28 - 30 November 2012, online: <http://www.unece.org/env/water/mop6/dniester.html> (accessed April 2014).

### III. PUBLIC PARTICIPATION UNDER THE DNIESTER RIVER BASIN TREATY

The objective of the Treaty is to establish legal and institutional foundations for cooperation towards achieving rational and environmentally sound use and protection of water and other natural resources and ecosystems of the Dniester river basin in the interests of the population and sustainable development of the Contracting Parties.<sup>45</sup> The principles of cooperation include: the equitable and reasonable utilisation principle, the precautionary principle, the polluter pays principle, the inter-generational sustainability principle, the integrated water resource management principle and the ecosystem approach. The Contracting Parties undertook to ensure the human right to a decent environment and access to clean drinking water. The Contracting Parties assumed that no use of water resources of the Dniester river basin enjoys inherent priority over other uses. In the event of a conflict between uses it shall be resolved with reference to all relevant geographic, hydrographic, hydrologic, climatic, environmental and demographic factors together, as well as the social and economic needs of the states of the Contracting Parties, with special regard being given to the requirements of vital human needs and the needs of ecosystems in ample water supply.<sup>46</sup>

In order to achieve the objectives of the Treaty, the Contracting Parties established the Commission on Sustainable Use and Protection of the Dniester River Basin (hereinafter 'the Commission')<sup>47</sup> and agreed, *inter alia*, to inform the public on the status of water and other natural resources and ecosystems of the Dniester river basin and on measures taken or planned to prevent, control or reduce any transboundary impact, as well as to involve the public in resolving matters to which the Treaty relates.<sup>48</sup> They also expressed commitment to encourage cooperation in the use and protection of water and other natural resources and ecosystems of the Dniester river basin between public authorities and local self-governance bodies, institutions, undertakings and non-governmental organizations.<sup>49</sup> The Contracting Parties agreed to carry out environmental impact assessment in a transboundary context on the grounds of and in accordance with the procedure established by provisions of the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 ('Espoo Convention')<sup>50</sup>, which, in its turn implies requirements of proper public participation.<sup>51</sup>

Additionally, issues of public participation are addressed in Article 21 of the Treaty. Paragraph 1 of this Article establishes that

each Contracting Party shall, in accordance with the national legislation of its state, ensure public access to information on the status of the Dniester river basin and public participation in decision-making related to protection and sustainable development of the Dniester river basin, as well as to projects likely to have significant impact on the status of water and other natural resources and ecosystems. Such access includes informing the public and providing information on its request.

The main elements of public participation in decision-making are enshrined in Article 21(2), which states that public participation in decision-making related to protection and sustainable development of the Dniester river basin shall imply informing the public concerned in an adequate, timely and effective manner of proposed activity at the earliest stage of the decision-making procedure, providing opportunities to submit comments, information, analysis or opinions on the proposed activity and ensuring due account of the outcome of public participation in the relevant decision-making process.<sup>52</sup>

45 Treaty between the Government of the Republic of Moldova and the Cabinet of Ministers of Ukraine on Cooperation in the Field of Protection and Sustainable Development of the Dniester River Basin, 2012, art. 1, online: [http://www.unece.org/fileadmin/DAM/env/water/activities/Dniester/Dniester-treaty-final-EN-29Nov2012\\_web.pdf](http://www.unece.org/fileadmin/DAM/env/water/activities/Dniester/Dniester-treaty-final-EN-29Nov2012_web.pdf).

46 *Ibid.*, art. 4.

47 *Ibid.*, art. 6(4).

48 *Ibid.*, art. 5(h).

49 *Ibid.*, art. 5(i).

50 Dniester Basin Treaty, *supra*, n. 45, art. 17.

51 Convention on Environmental Impact Assessment in a Transboundary Context, 1991, online: [http://www.unece.org/env/eia/about/eia\\_text.html](http://www.unece.org/env/eia/about/eia_text.html).

52 *Ibid.*, art. 21(2).

The Treaty emphasises that the Contracting Parties shall facilitate public participation in activities related to implementation of the Treaty, including activities of the Commission.<sup>53</sup> To that end, Article 26 establishes that the Commission shall consist of representatives of competent central executive authorities of the Contracting Parties, but specifies that representatives of regional authorities, scientific institutions and organizations, as well as relevant non-governmental organizations may be included; and Article 27(m) foresees that in order to achieve the objectives of the Treaty, the Commission shall inform the public on the status of water and other natural resources and ecosystems of the Dniester River basin, and on activities aimed at achieving the objective of the Treaty, including by posting on its web site reports on its activities and on the ecological status of the Dniester River basin.<sup>54</sup>

Article 26(7) of the Treaty provides that the Commission shall adopt rules of procedure regulating its operation and shall establish working bodies and enlist the services of experts.<sup>55</sup> Moreover, Article 27(r) foresees that the Commission shall determine modalities and conditions for participation of representatives of other interested states, international and non-governmental organizations in the work of the Commission as observers.<sup>56</sup> Bearing in mind that pursuant to Article 29(3) of the Treaty, the Regulations to the Agreement shall be applicable *mutatis mutandis* to the Treaty,<sup>57</sup> it could be established that the Commission is likely to follow the approach of the Plenipotentiaries and the pattern of their respective Regulation on Stakeholder Participation in the Activities of the Plenipotentiaries of 2007.



The public, in particular through NGOs, has played an important role in strengthening cooperation between the Republic of Moldova and Ukraine in the Dniester river basin. They have been actively involved in the activities of the Plenipotentiaries of Moldova and Ukraine for frontier waters, initiated the development of the Dniester River Basin Treaty and took active part in its evolution, and have expressed commitment to be involved in the activities of the Commission and facilitate the objectives of the Treaty. Existing modalities and those yet to be formed (namely, the Commission) joint bodies provide good opportunities for public participation.

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## FURTHER READING

Action Programme to Improve Transboundary Water Management of the Dniester River Basin for the period of 2007-2010, online: <http://dniester.org/wp-content/uploads/2009/06/14action-programme.doc>

Agreement between the Government of the Republic of Moldova and the Government of Ukraine on Joint Management and Protection of Frontier Waters, 1994, online: <http://dniester.org/wp-content/uploads/2009/06/10agreement-moldova-ukraine-1994-engl.doc>

Plenipotentiaries of the Republic of Moldova and Ukraine for Frontier Waters, 'Regulation on Stakeholder Participation in the Activities of the Institution of Plenipotentiaries', 2007, online: <http://dniester.org/wp-content/uploads/2009/06/10agreement-moldova-ukraine-1994-engl.doc>

Treaty between the Government of the Republic of Moldova and the Cabinet of Ministers of Ukraine on Cooperation in the Field of Protection and Sustainable Development of the Dniester River Basin, 2012, online: [http://www.unece.org/fileadmin/DAM/env/water/activities/Dniester/Dniester-treaty-final-EN-29Nov2012\\_web.pdf](http://www.unece.org/fileadmin/DAM/env/water/activities/Dniester/Dniester-treaty-final-EN-29Nov2012_web.pdf)

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53 *Ibid.*, art. 21(3).

54 *Ibid.*, art.27(m).

55 *Ibid.*, art.26(7).

56 *Ibid.*, art.27(r).

57 *Ibid.*, art.29(3).