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THE MANAGEMENT OF THE WATERSHED OF THE DANUBE IN THE CONTEXT OF THE EU WATER FRAMEWORK DIRECTIVE

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Rezumat. *Fluviu European de mare importanţă, Dunărea se bucură de un regim juridic complex privind utilizarea durabilă şi protecţia apelor sale împotriva poluării. Acest regim este constituit din reguli şi reglementări internaţionale ale unor legi multilaterale (inclusiv Convenţia de la Sofia) şi bilaterale (exprimate prin acordurile încheiate între statele riverane). Legi comunitare (începând cu WFD = Water Framework Directive) coordonează acest regim ca urmare a aprobării de către CE a Convenţiei din 1994, şi a legilor naţionale ale celor 19 state aflate în bazinul fluviului (dintre care 10 au bazine comune). În aplicarea WDF în spiritul acesteia, statele au dezvoltat o ramură de cooperare specifică sub coordonarea ICPDR, cu scopul de a crea o administrare globală integrată şi adecvată a problemelor precum uzul raţional şi poluarea mediilor acvatice din zona Dunării. Aceasta se va concretiza în Planul de Administrare al bazinului Dunării, al cărui conţinut şi obiective vor corespunde exigenţelor WFD, şi cu termene de soluţionare din 2004 până în 2027. Administrarea râurilor în acest mod poate constitui un model de cooperare şi coordonare în administrarea problemelor asociate cu un râu continental, lucru care are un rol decisiv în dreptul comunitar.*

Abstract. *European river of international importance, the Danube enjoys a complex judicial regime regarding the sustainable use and protection of its waters against pollution. This is made up of rules and regulations of international, multilateral law (comprised especially in the Convention of Sofia) and bilateral law (expressed in the agreements in the field concluded by the riparian states); Community law (ahead with the WFD), coordinated through the approval, by the EC, of the Convention of 1994, and the pertaining national law of the 19 basin states (of which 10 are basin-related states). When applying the WFD and its spirit, they have developed a special cooperation, under the coordination of the ICPDR in view of accomplishing an integrated and adequate global management of the issues such as the rational use and fighting against the pollution of the aquatic media of the Danube district. This will be concretized in the Management (unique) Plan of the basin of the river Danube, with content and objectives according to the exigencies of the WFD and with accomplishment deadlines going from 2004 to 2027. The management of the river this way accomplished can represent a model of cooperation and coordination in the management of the issues of a continental river, within which the Community law has a decisive role.*

Key words: Danube, water management, river basin management plan, Water Framework Directive

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1. The Danube – European river of international importance

By its length and water volume the Danube represents the second large river in Europe (after Volga) and one of the most important at an international scale. It crosses the territory of 10 states (6 of which are E.U. Member States), it connects 4 European capitals, and its 801,463 km^2 basin surface concerns the territory of 19 countries (10% of the continent surface), with a population of approximately 250 million inhabitants. Of the total length of 2,780 km., the river is navigable on approximately 2,500 km., between Ulm and Sulina[1]. The river and its basin district represents a highly important factor from an ecological – geographical, economic and strategic point of view, forming together with Main and Rhine a natural navigation corridor connecting the west and center of the continent to the Black Sea and through it to the rest of the world. Its European and international importance has generated an early interstate cooperation, aiming at the beginning for the freedom of navigation, and then for aspects referring to fishing, protection against floods a.o. and over the last period, developing as a priority the problems of the protection and preservation of the aquatic media. This has generated a series of judicial regulations and collaboration forms in a continuous evolution.

At the same time, the fact that the majority of riparian and basin district states are E.U. Member States (11 of the 19) brings about the fact that the Community law entails major implications concerning the protection and sustainable management of the river waters. More than that, by the adhesion of Romania and Bulgaria to the E.U. (first of January 2007), the Black Sea has become a "Community sea", also regarding the outfalls of the Danube, which supposes, amongst others, according to the integrated approach promoted by the Water Framework Directive (WFA), the taking into account of the aspects regarding the coast area. Finally, the creation of the Black Sea Euro-region by the initiative of the European Council (2006) stimulates the promotion of the objectives of the sustainable development and environmental protection of the Danube-Pontic region.

Finally, the pertinent bilateral cooperation between riparian states, especially between E.U. Member States and non-E.U. Member States regarding punctual issues should not be ignored, either. In connection and under mutual influence, the national legislations of the riparian and basin district states have been developed with a more obvious tendency towards homogenization and integration.

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[1]97% of the surface of Romania is situated within the river Danube's basin, which represents 29% of its total surface; on the Romanian territory the river measures 1,076 km. (namely 37.7% of its length).

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Thus, a relatively massive and major judicial corpus has been created, dominated by general principles and governed by specific rules, with an accentuated integrating character, putting together international, communitarian and national law and that could be defined as “Danube’s basin district law”. From this perspective, the river waters management acquires a global, integrated and more unitary character.

2. The evolution of the international judicial regime of the Danube

Because of its economic-strategic importance, the river and its use have been the object of permanent disputes between the great powers of the continent, often solved on a temporary basis and through compromise by means of international agreements.

Thus, the 1856 Paris Treaty eliminated the Russian monopole over the Danube outfalls and instituted the principle of freedom of navigation on the river, assumed and developed afterwards through a series of international documents.

The internationalization of the Danube issues and the direct involvement of the great powers of the time imposed as a permanence; the peace treaties of Saint-Germain (10th of September 1919) and Trianon (4th of June 1920) stipulated some regulations regarding the use of the water course and created the Technical Permanent Commission of Water Regime, whose Statute, approved by a Convention signed in Paris in 1923, conferred it the right to initiate the concluding of conventions between/among riparian states regarding major common interest issues, attributions in disputes regulation, accomplishment of information exchanges and so on.

Between the two world wars, the Member States of the Commission (Austria, Hungary, Czechoslovakia, Yugoslavia and Romania) concluded seven bilateral conventions stipulating important principles regarding the use of limitrophe waters and protection against floods and instituted a mixed commission.

After the Second World War, in the new context of the political forces relations and areas of political-strategic influence, the international regime of the river was established by the **Convention regarding the navigation regime on the Danube** (Belgrade, 1948), which created for this purpose the Danube Commission. Even if the judicial-institutional framework established this way had as a general objective the management of navigation issues, it allowed, though, the initiation, through a resolution of the Commission in 1961, of some preoccupations, even though collateral, regarding water protection against pollution, referring to the storage of petrol waste resulting from ships; more precisely, it was prohibited for the ships (either on route, or stationary within ports) to discharge, in any form, the oil waste or other products and demanded

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that those should be deposited in fixed or floating containers, provided by the riparian states.

At the same time, a set of bilateral conventions regulated the cooperation in the fields of hydraulic energy exploitation and use, of fighting against floods, and of other aspects of limitrophe hydrographic areas.

An important step ahead in quantification and judicial expression of the requirements regarding the protection and management of the Danube basin against pollution was constituted by the signing, on the 13th of December 1985, within a Conference in Bucharest, of the **Declaration regarding the cooperation of the Danube states in the field of management and protection of the river waters against pollution**[1].

Although the document has no full judicial power (taking over, confirming or reaffirming already existing principles and rules or contributing to the pre-conceiving of others), it contributed in a notable manner to the stimulation of the preoccupations of the Danube states regarding the cooperation for preventing and fighting against Danube pollution.

Moreover, even if the diverging opinions of the ideological and military alliances have prevented the document from becoming a convention and it remained at the stage of declaration, its real effects have been significant, such as those regarding the work groups for water quality, floods and their forecast and water balance[2].

The declaration proclaimed as objectives of the Danube states policy in this field the reasonable use and preservation of Danube water resources, prevention of the pollution of its waters and surveillance of their quality.

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[1]The states signatories to the document were Austria, Czechoslovakia, Federal Republic of Germany, Yugoslavia, Romania, Hungary, and USSR.

[2]The Declaration remains the most expressive document from this point of view, owing to the fact that, with regard to its content, it accomplishes some functions similar to those instituted through the special conventions in the field, and in so far as its judicial value is concerned, it has remained at a declarative agreement level. In this sense the process prior to adopting the declaration was decisive. During the preparing reunions of the experts the main discussions were about the judicial nature, the form and content of the document. Concerning the first aspect, the occidental countries (The Federal Republic of Germany, Austria) have pronounced in favor of a document with a general character (recommendation), and the states that were communist at the time (Bulgaria, Yugoslavia, Romania, Hungary, USSR), in favor of a compulsory juridical-technical instrument. The West-European representatives imposed, as a condition of their accepting a pledging agreement, it's being signed by the E.E.C., too, a fact considered unacceptable by certain communist countries that hadn't acknowledged the E.E.C. as a judicial entity as such. Under the circumstances, an intermediary formula was opted for, namely that of a declaration adequate in point of content and insufficient in so far as the judicial force was concerned.

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As concrete steps of cooperation and accomplishment of the proposed objectives, the following were stipulated: the Danube waters quality systematic control, according to some programs and methods allowing to obtain comparable data, the exchange of information regarding the competent authorities and the information held regarding the results obtained as a consequence of the control performed within the measurement stations and of measures taken in view of protecting the river against pollution, the joint organization, at least once every two years, of meetings of the representatives of the competent authorities and so on.

The most important real result constituted the set-up, in cooperation, of a control system of the quality of the Danube waters by means of the measurement stations located at the passing of the Danube from one state's territory to another state's territory, and in those sectors where the river forms a common frontier between two states, at the beginning and at the end of the common frontier sectors, in the points established on a bilateral agreement basis. A systematic control was instituted regarding the discharge of waste waters into the Danube, according to a comparative methodology.

But more important than anything else proved to be the effects of the Declaration of Bucharest. They instituted de facto a surveillance mechanism of the quality of the river waters in case of pollution (accidental or permanent), even if, *de iure*, the assumed arrangements remained at a declarative level.

After 1990, along with the fall of the "Iron Curtain" and the process of reunification and European integration of the Eastern part of the continent, the preoccupations regarding the cooperation between the riparian states in view of protecting the river against pollution and of sustainable management of its basin were intensified and developed at bilateral level (through signing of some conventions regarding riparian states collaboration in the wider domain of environment protection, but having important chapters referring to the Danube, or of some agreements referring to frontier waters management) and at a multilateral level, through the **Convention regarding the cooperation for the sustainable protection and use of the river Danube** (signed in Sofia, on the 29th of June 1994, to which the EC is also party).

If before 1989 only two of the riparian states of the Danube – Germany and Austria – were part of the E.C., today, 6 of the 10 such countries belong to the EU and practically there is no part of the river remaining outside the application, even partial, of the Community law of the water. Finally, the integrated approach pronounced by the Water Framework Directive finds its fulfillment in the fact that the Black Sea, having become a Community sea, after the 1st of January 2007, the pertaining coastal area is also included into the river management.

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3. Bilateral cooperation

The bilateral cooperation between states riparian to an international watercourse has always had a major impact on the development of the management of the related issues and of the judicial applicable rules. If, in a first phase, the rules established in this manner have had a precursory role in stating the regulations at a watercourse level, subsequently the situation reversed in the sense that, at present, the bilateral cooperation forms specify the details and adapt to real conditions and situations the regulations adopted at an international basin level.

Expressing especially ideas of a political-strategic orientation, the bilateral or multilateral declarations between riparian or basin-related states contribute to the intensification of coordinating the actions aiming for the integrated management of the river waters and to the stipulation of the significations of the operational agreements[1].

The bilateral agreements signed between non-EU member states pursue especially the establishment of a cooperation framework, by adapting to the characteristic features of the bilateral context, the stipulations of the international conventions in the field, such as the Helsinki Convention (1991) and the Convention for the protection of the Danube River (1994) and approach, based on principles such as the polluter pays or precaution, aspects referring to: use of water resources, protection of waters against pollution, defense against floods and so on[2].

The agreements concluded by Danube riparian EU Member States and after the year 2000 promote a complex vision of the bilateral cooperation framework, taking into account their being situated within the Danube River[3] basin, the fact

[1]As, for instance, The Declaration between The Ministry of the Environment and Waters of Bulgaria, The Ministry of the Environment and Territory Planning of Moldavia, The Ministry of Waters, Forests and Environment Protection of Romania and The Ministry of the Environment and Natural Resources of Ukraine concerning cooperation related to the set-up of The Green Corridor of the Lower Danube, signed in Bucharest on the 5th of June 2000, or The Declaration of the ministers in charge of water management of the contracting parties to the Danube River protection Convention and the Convention for protection of the Black Sea against pollution or the enhancement cooperation (Bucharest, 23 February, 2007).

[2]As for instance, The Agreement of the 30th of September 1997 between The Govern of Romania and The Govern of Ukraine concerning cooperation in the domain of frontier waters management (ratified by Romania by Law 16/1999).

[3]The Agreement of the 12th of November 2004 between The Ministry of the Environment and Water Management of Romania and The Ministry of the Environment and Waters of Bulgaria concerning cooperation in the domain of water management has also in view the fact that the two countries are situated in the Black Sea basin and are also parties to the Convention concerning the protection of this sea against pollution (1992); further the Romania-Bulgaria Agreement.

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that they are parties to the Convention of Sofia and to the Convention of Helsinki, having in view the stipulations of the 2000/60/EC Directive and invoking the objective of a "good status" of the waters established by the European document.

Sometimes even punctual international cooperation projects are indicated, taken into consideration by the bilateral agreement, such as, for instance, the participation to the fulfillment of the strategic Plan of action within the "Environment protection program within the Danube's basin" and to the accomplishment of the Management Plan for the Danube's basin, according to the WFD[1].

The transposing and implementation of the WFD become "cooperation areas" (article **2**, paragraph **c**, from the Agreement between Romania and Bulgaria), and "the coordination and implementation of the common activities following the WFD stipulations" become a form of bilateral cooperation in the field (article **3** letter **a** in the same document).

Moreover, the signatory parties agree to apply, especially, within the bilateral cooperation framework, the principles of equitable and rational use of the frontier waters, of precaution, reciprocity, good faith and the polluter pays principle, "just as these are developed on a long term, within the WFD" (article **4**, Agreement between Romania and Hungary).

The mixed commissions created through such agreements have an important role in coordinating and developing cooperation, with significant basin-related implications, especially because they can invite to the meetings "EU representatives of the Permanent Secretariat of the ICPDR, the authorities for water management from the states that are parties to the Convention in Sofia" (article **10** of the same agreement).

4. The relevance of the E.U. law

The E.U. action regarding the cooperation of the states within the Danube area is developed alike from a EC perspective as a party to the Convention in Sofia (1994) and so, from the perspective of the international law engagements assumed this way and of the 11 riparian and basin-related EU Member States that are bound to transpose and apply the pertinent community law, including

[1]The Agreement of the 15th of September 2003 between The Govern of Romania and The Govern of Hungary concerning collaboration for the protection and sustainable use of frontier waters (approved by Romania through H.G. (Government Decision) no. 577/2004; further the Romania-Hungary Agreement.

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the 2000/60/EC Directive[1].

According to the article **300** of the EC Treaty, the agreements signed by the Community with the third-party states bind the Community institutions and the E.U. Member States. In other words, the respective agreements are part of the community judicial order and constitute sources of Community law.

The jurisprudence of the E.U. Court of Justice has stated that the international conventions signed by the EC are part of the Community law and the derived Community law has to observe and be in agreement with the stipulations of the respective international treaties.

The relevance of the Community law in the approached issues must be regarded in the context from several points of views. Generally, the new stipulations of the Lisbon Treaty (2007) include some references and notable incidences.

Thus, according to article **7**, letter **a** of the E.U. Treaty (EUT), the Union develops privileged relations with the neighboring states, in view of establishing a prosperity and good neighborhood space, based on the Union values and characterized by tight and peaceful relations, relying on cooperation, an important orientation for the Danube area, too, concerning the sustainable management of the river issues, especially from the perspective of the relations with states such Ukraine and Serbia.

At the same time, the external action principle of participating in the elaboration of some international measures for the preservation and improvement of the environment quality and sustainable management of the global natural resources, in view of ensuring a sustainable development (article **10(2)** letter **f** of the EUT) adds a significant environmental dimension also to the cooperation at the river basin level.

Obviously, the main E.U. objective of sustainable development based on a “high level of protection and improvement of the quality of the environment” (article **2(3)** EUT) regarding the inner market action, and, in a complementary way, the one of the “planet’s sustainable development” (article **5**) within the E.U. relations with the rest of the international community are also leaving their mark.

Along with these guidelines of political action the Community law regarding water operates straight and effectively, headed by the WFD stipulations. Finally, but with an important coordinating role and an obvious integrating character, the stipulations of the International Convention regarding the Danube River are applicable, as obligations resulting from the Union’s external commitments.

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[1]97/825/CE, Council Directive of 24th November 1997 concerning the conclusion of the Convention on the cooperation for protection and sustainable development of the Danube.

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5. The judicial regime of the management of the river Danube

By virtue of its particular geographical and political statute, the river Danube represents, from the perspective of the judicial regulations in force, an international basin (according to the Convention regarding the Danube) and respectively, an international district, partially communitarian (shared with the non-E.U. states), under a complex judicial regime, made up of internal, international and Community law regulations, that are superposing, intersecting, complementing each other, or even, to a certain degree, counteract, from an increasingly more integrated, ecological perspective (surface waters, groundwater, coastal area) imposed especially by the WFD and that presumes, for management, measures of a diverse nature (economic, administrative, ecological, etc.).

Therefore, related to the international law, and in a complementary manner, the Convention of Sofia regarding the Danube (1994) and the Convention of Bucharest regarding the Black Sea (1992) are mainly applicable in this case, and the cooperation presupposes the participation of the two commissions instituted for this purpose by the respective conventions.

The first international treaty that has materialized, at the level of a river, the new rules emerging at an international level and especially the ones stipulated by the Helsinki Convention, is the **Convention of Sofia of the 29th of June 1994 for the protection and sustainable use of the Danube**[1].

From the perspective we are interested in, mentioned should be made, first, of the definition of the applicable field of the Convention.

Those are considered "Danube states", representing its addressees, that are sovereign states sharing a significant part of the Danube's river basin, a territory of at least 2000 km^2 respectively (article **1**, paragraph **a**).

This perspective does not hold well from the Community law's point of view, which becomes applicable for any state of the district, namely whose territory depends on the Danube.

The objective of the document is that of achieving the sustainable and equitable management of the basin's waters, including the groundwater (article **2**, paragraph 1), therefore, their preservation, improvement and rational use.

Also, urgent measures against pollution, as well as the preservation and restoration of the ecosystems through a cooperation aiming for a sustainable management of waters in the service of maintaining the general quality of life

[1]Kiss, Al., Beurier, J.-P., *Droit international de l'environnement*, 3e édition, Editions A. Pedone, Paris, 2004, p. 229.

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and of the access to natural resources are especially considered as necessary.

The stipulations regarding the integrated management remain ones of principle, of a general character.

An important aspect of the integrated approach is the institutional one which, within the Convention of Sofia materialized by the creation of the International Commission for the protection of the river Danube (ICPDR), with the headquarters in Vienna; the Commission can adopt decisions that are obligatory for the Member States that have emitted an affirmative vote.

The control of the execution of the decisions is performed through a system of reports.

The Commission can also propose emission quotes, the updating of the Annex lists enumerating the activities and the polluting substances and can elaborate assistance procedures in case of critical situations.

The pertinent dispositions of the bilateral conventions are added to these regulations.

For the national parts, the stipulations of the pertaining internal law are obviously applied, these transposing or not, depending on the case, the Community law, mainly the WFD.

From the riparian states, Romania enjoys the longest presence of the river on its territory – 1076 km – and consequently it has an important role in promoting a sustainable management of its waters, through the national law.

The Romanian law of waters (no. 107/1996) was successively modified, for the last time in 2004, by Law no. 310, for transposing, internally, the stipulations of the Water Framework Directive of 2000.

Thus, for the part of the international river basin of the Danube comprised in the territory of Romania, including the coastal waters of the Black Sea, the national part of the management plan of this international river basin is elaborated on the basis of the planning and management directive schemes.

The competent authority for the elaboration of this plan is The Ministry of the Environment and Sustainable Development. In the spirit of the Community law, the river basin is defined by the Romanian legislation as an indivisible geographic entity of quantitative and qualitative management of water resources (surface waters and groundwater), for the purpose of human solidarity and common interest, through tight collaboration and cooperation, at all public administration levels, of water users, of local collectivity representatives and of the population, for the achievement of a maximum social benefit.

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6. The management of the river Danube's waters in the context of WFD

In its capacity as international district to which non-E.U. Member States also participate, the one of the river Danube is subject to a special regime, defined through the obligation of the Community states to "make the necessary efforts to establish an adequate coordination together with the third-party states involved, for the purpose of achieving the objectives of the Framework Directive throughout the entire river basin district" (article **3.5** of the Directive); by all means they have to guarantee that on their territory the pertinent Community regulations are applied (article **35**) and to cooperate with the third-party involved states for the elaboration of an adequate management plan.

For this purpose, they have the possibility to use for coordination an existing structure, derived from international agreements (article **3.4**).

In such a general judicial context, in November 2000, the states that are parties to the Convention of Sofia manifested their will to accept the objectives of the Framework Directive and to cooperate, under the coordination of ICPDR, for the accomplishment of a single Management Plan for the Danube River, at the level of the entire Danube basin.

Taking over the principles of the Directive, the following general content of the Plan was established:

- a general description of the characteristics of the river basin;
- a summary of the main pressures and of the impact of human activities upon the surface waters and groundwater;
- a map of the monitoring networks;
- a list of the environment-related objectives;
- a summary of the economic analysis of water use;
- a summary of the measures program;
- a summary of the public information measures.

The calendar of the accomplishment of the assumed objectives is the following:

- 2004 – characterization of the river basin: pressures, impact and economic analysis (article 5 WFD);
- 2006 – establishment of the monitoring network (article 8);
- 2008 – presentation of the Management Plan project (article 13);
- 2009 – finalization of the Management Plan, including the program of measures (articles 13 and 11);

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- 2010 – introduction of taxation measures (article 9);
- 2012 – operationalisation of the programs of measures (article 11);
- 2015 – accomplishment of the environment-related objectives (article 4);
- 2021 – finalization of the first management cycle (articles 4 and 13);
- 2027 – finalization of the 2nd management cycle (articles 4 and 13).

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