



Convention on the Protection and Use of Transboundary Watercourses
and International Lakes

BACKGROUND PAPER ON PUBLIC PARTICIPATION IN TRANSBOUNDARY WATER COOPERATION

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Chapter 1. Introduction

The present background document has been prepared to provide the participants of the *Workshop on information management and public participation in transboundary water cooperation* (St. Petersburg, 8-10 June 2005) with the general data on public participation as well as an overview of the current situation, progress and remaining problems in countries in Eastern Europe, the Caucasus and Central Asia (EECCA). This Report deals with main terms, principles and background for public participation in the process of water management, provides a brief description of advantages and shortcomings of such participation along with problems of arrangement of the participation and public information. The last chapter includes conclusions and recommendations. After the workshop, the document will be reviewed to include further details on public participation in EECCA region, materials and documents elaborated in the framework of other workshops and presentations, as well as the workshop's conclusions and recommendations.

The workshop is organized within the framework of the project Capacity for Water Cooperation (CWC) in Eastern Europe, the Caucasus and Central Asia, developed under the work programme of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention). The workshop is also a part of a series of regional workshops on information management and public participation that the Global Environment Facility (GEF) International Waters Learning Exchange and Resource Network (IW:LEARN) co-host around the world. Hence, experience and lessons from EECCA region will be transferred to other regions through subsequent workshops.

More detailed information about this workshop and the CWC project is presented in the background paper on information management prepared for the workshop under the guidance of UNECE Secretariat.

For long years we almost did not know anything about the burden we exert on the environment and the long-term sequences of our activities. It was supposed that the environment can be exploited almost any way one likes, potentially dangerous consequences being ignored for the sake of allegedly more important political or economic issues. In some cases consequences of such actions were obvious, but either the same were neglected, being considered inessential, or there was a hope for future improvement of the situation. When such consequences were becoming evident and gained the position of center of public attention, environmental information and environmental issues in decision-making were often treated as classified issues without informing the public. Obtaining the required information was difficult, whereas decisions on environmental protection actions, as a rule, were cast down to the executors, being determined with priorities of one or another government. People who had suffered due to environmental pollution were often kept ignorant of the situation, hence they had a very restricted ability to stand upon their rights.

Public perception of the environmental hazard often differs from opinion of the experts and executives. That is why the latter have to understand the public opinion and public reaction upon such hazard. Without such understanding, all the decisions and policy, though based on good intentions, can turn out to be of no use. Public participation should be promoted to increase chances of success of the pursued policy.

Public is one or several individual persons or legal entities – this definition is given in Convention on Evaluation of Environmental Effect in the Transboundary Context signed in Espoo in the year 1991. Thus, any person or group of persons, any organization or informal association represents the public.

Stakeholders – the public which is affected or can be affected by the process of making decisions on the environmental matters, or which holds a stake in this process. This definition was taken from the Convention on Access to Information and Public Participation in Decision-making and Access to Justice in the Environmental Matters. I.e. stake-holding public does not necessarily mean people directly affected by environmental consequences of the activities. It is sufficient just to proclaim your interest, and you at once are belonging to the category of stake-holding public.

Evidently, people who can be directly or indirectly affected by the planned activities will be in the center of attention in the course of public participation program elaboration. In many cases it is rather easy to define the directly affected parties. Those might be persons holding stake in project implementation, those who can be injuriously affected by project implementation, or other stakeholders. Identification of the indirectly affected parties is more complicated task and to a certain extent will be based on subjective opinion. Due to this reason wide determination of the involved parties is a good practice, along with inclusion in the process of any individuals, entities or groups which consider themselves to be holding a stake in it. In some cases it might be easier to interact with the certain stake-holding group via its representative (representatives). In such case election of the representative should be delegated to the group itself.

Stakeholders and interested parties

As a rule, the following subjects are ranked among the stake-holding parties involved in the decision-making process:

- local population – individuals or groups of individuals
- project initiator and other parties interested in the project implementation
- state organizations
- non-governmental organizations
- other, for instance, sponsoring organizations, private sector and research organizations

Local population. Individuals or groups of individuals from amongst the local population want to know about the executed or planned activities, what are their probable effects, whether values of the local population are known, understood and will be taken into consideration; whether their suggestions will be considered essentially and carefully. They would like the initiators to listen to them and take their stake into account. They also can provide the information about the local conditions, which can be used for project planning.

Initiators of the activity. Many initiators share some of the listed targets, but also have other ones. The initiator tends to formulate the project in such a way, which will provide the best chances of its successful implementation. This often requires achieving better understanding of the public along with improvement of acceptability of the planned activity, which can be achieved by rendering public access to the information. The project also can be often improved due to awareness of the local conditions and understanding the local values.

State bodies. For the administrators and decision-makers an effective public participation program can ensure lack of conflicts around the project at later process stages.

Non-governmental organizations. Observations of non-governmental organizations are often useful as a wider view on the planned activity from the direction of different social groups. Their point of view can also be of considerable importance in such cases, when difficulties with drawing the local dwellers in are faced (though participation of the NGOs can not fully substitute participation of the population).

Others. Other stake-holding groups, such as employees of outsider bodies and experts in certain spheres can also contribute considerably to the environmental evaluation process. Recommendations and knowledge of various state bodies, organizations supplying public utilities should also be taken into account.

When organizing public participation it is important to take into consideration that neither the public as a whole, nor the local population are a homogeneous matter. They comprise different groups, for which distinct views, values and interests can be inherent. Various ethnic, professional, social, religious groups can have a different view and evaluation of the same situation. Obviously, different population groups can be affected by the planned activity to an uneven extent and in an unequal way.

Public participation can be defined as a continuous process of interaction between the citizens and bodies (organizations) responsible for decision-making. At that:

1. Conditions are created for forming the clear and full concept among the public on the mechanisms and procedures for identification and solving environmental problems and consideration of environmental requirements by the respective bodies and organizations.

2. The public has access to full information about the course and current state of development and execution of the project, plan, program, about policy forming etc.

3. All the stakeholders have a chance to declare their points of view, requirements and preferences related to use of resources, alternative solutions, or other information relevant to the decision being taken.

Purposes of public participation:

- informing the stake-holding parties of the planned activity and ensuring possibilities for formation of the sense of involvement in the project;
- ensuring possibility of representing the point of view and stakes of those who would not have been represented otherwise, which should provide more accurate consideration of arrangement aimed at reduction of negative effect and looking for compromises;
- providing a possibility for the organizers of the planned activity to maximize the benefits from implementation of this activity and ensuring catering for serious effects during the environmental assessment;
- giving a possibility of physical influence on the project decisions to the public;
- obtaining information about local conditions and traditions (in order to incorporate amendments in the project or elaborate additional arrangements) prior to decision making;
- raising public credit to experts and persons responsible for the decision-making;
- ensuring higher transparency and responsibility of decision-making;
- reduction of possibility of conflicts due to early identification of burning issues.

Considerable intangible benefits from public participation are derived in those cases when the participants see that their ideas can be really used for project improvement. As the result of participation people gain confidence in it along with the sense of their own importance, while understanding of the situation is widening during meetings and opinion and information interchange between people who have different values and points of view.

In the framework of public participation arrangement, a special attention should be paid to ensuring fair and balanced representation of points of view; stakes of poor groups or minorities should not be suppressed with stakes of more powerful or rich groups.

Public participation levels:

Level of public participation required for a specific project depends on the social and political context. Public participation can vary from its simple awareness on the planned activity to

consultations and further full-scale public participation in decision-making. Both the processes of consultations with the public and public participation provide numerous possibilities and ways to inform the decision-makers of stakes and opinions of various parties. Both the former and the latter processes can exert considerable effect on informal decision-making. The uttermost case of full-scale public participation in decision-making takes place seldom, since most persons who make decisions do not tend to share their credentials with the affected population, assuming that they (decision-making persons) are responsible for making decisions on behalf of a wider group of population.

Levels of public participation:

- **Awareness**

unidirectional information flow from the initiator to the public

- **Consultation**

bidirectional information flows between the initiator and the public and possibility for the public to express their attitude towards the project

- **Participation**

the initiator and the public are drawn in joint analysis and definition of the required actions; they are involved in decision-making through achieving consensus on the principal issues.

Extent of public participation in planning of any activity can be absolutely different :

- the citizenry do not take any part in decision elaboration and making;
- public participation is of symbolic nature;
- participation of the citizenry in preparation of decisions is quite real;
- the entire planning process is managed by the citizenry.

The first option refers to situations when not actual public participation, but only simulation of participation is in the question. The aim here is not to involve the citizens in participation in the planning process, but to enable those who control the situation to “teach” or “convince” the citizens. The activity never results in real concordance of the interests and is often followed by conflicts. As a rule, substitution of aims with means, predetermination of all the decisions (lack of alternative options) and lack of feedback (ensued practical solutions) accompany the manipulation approaches.

The second option is “symbolic participation”. If the approaches corresponding to it are implemented to the full extent, the citizens have a real possibility to “listen” (to obtain information about the planned activity) and “be listened to” (to state their point of view). However, extent of impact which can be exerted by the public at these levels, is insufficient and the citizens cannot be sure that their points of view will be taken into consideration. The public has a right to suggest recommendations, but still has no chance to take actual part in decision-making.

The third option corresponds to the real participation of the citizenry in the planning process. Public participation can take forms of partnership that allows the citizens to conduct negotiations and achieve a compromise with those who are traditionally at the helm of the situation.

The last option – the citizens which do not occupy official positions have the majority of voices required for a decision to be made, or the entire scope of required credentials.

Most public participation programs do not cater for more than “symbolic participation”. Situation characterized as “civil administration” practically takes place only in case of referenda. For the cases of inconsiderable social value or not implying potentially considerable environmental hazard, simple awareness can be of suffice. If the project poses a threat of certain social uneasiness, it is

feasible to switch to higher public participation levels. This is the issue of planning and management.

It is needed to note that the techniques implying high level of public participation are always preferable – as a rule a combination of techniques is desirable. For instance, informal meetings of small groups can be the best way to discuss acute problems with these groups, while mass media campaigns with application of advertisement can be the best technique for initial launching the public participation program and its announcement.

Principles of public involvement

Principles, which enable to minimize a conflict, especially in case of their consecutive application starting from the earliest stages of planning of the prospective activity, include:

- to involve everyone who might be affected or has a stake;
- to inform about the aims of the planned activity and presumptive ways of their achievement;
- to pay attention actively to problems of the affected parties and stakes lying behind these problems;
- to treat people honestly and fairly and establish trust by means of consistent behavior;
- to be sympathetic, taking position of the other party and considering the point at issue from their point of view;
- to be flexible in considering alternative options and to modify the project wherever it is possible to meet the stakes of other parties better;
- to alleviate maximally the affects where the project can not be adapted to the stakes of other holders and to search for the ways to compensate for the losses;
- to establish and maintain open two-way communication channels during the entire planning stage and further during implementation of the planned activity;
- to admit anxiety and suggestions of other stake-holders and ensure feedback as the same are considered, assessed and catered for.

On the whole, a number of **advantages** of public participation can be listed:

1. Understanding the project and abatement of public resistance

Being a system user, the public constitutes the only party which can determine and evaluate effect of (possible) activities on functions of the coastal/shore environment and water systems.

2. Environmental protection

The environmental problems can be solved as soon as they have been assessed by the public. It is important that in the framework of public debates one of the parties represents the interests of environment. If there was no such party, the environmental issues would not have been considered during the discussion.

3. Sustainable development

Sustainable development can be achieved only by means of involving all the stakeholders in the decision-making process

4. Conflict management

Though conflicts can not be avoided, in the course of debates with public participation issues are raised sincerely. This helps to settle such conflicts more efficiently.

5. Economic advantages

When the public is engaged during the entire decision-making process, their apprehensions can be catered for at an early stage of planning when amendments can be made more easily. This is more

advantageous than involving the public at a later stage when even a minor alternation can result in time spending and financial expenses.

6. Efficient use of the available data – for instance, on state of water sources, etc.

Public participation and public consultations are the possibility to obtain “hidden” knowledge of a wider community and get aware of their key apprehensions.

7. Other advantages

Admittance of public as a valuable partner can inspire the citizens, government and enterprises for cooperation, which represents a highest-priority importance for successful implementation of regulative system.

The applied ways of public participation should conform with the social environment. There is a number of **potential constraints to efficient public participation**. They include:

POVERTY	participation means losing time and temporary break in the income-bringing activity, which give an advantage to wealthy citizens.
RURAL AREA	considerable distances make interaction more difficult and expensive.
ILLITERACY	in combination with insufficient skills in non-local languages can aggravate representative participation if published media are used.
LOCAL VALUES/CULTURE	prevalent norms of behaviour or cultural norms can impede involvement of some groups, which might consider themselves obligated not to express openly disagreement with the dominating groups.
LANGUAGES	in some countries several different languages or dialects are in use, which impedes communication.
LEGAL SYSTEMS	can be in contradiction to the traditional management systems and form ambiguity in relation to rights and responsibilities related with natural resources.
STAKEHOLDERS	there might be contradicting or differing points of view, as well as mercenary stakes.
CONFIDENTIALITY	can be important for the initiator and impede early public involvement and consideration of alternative options.

Conflict-free planning and implementation of the planned activity can turn out to be possible on the condition that the arrangements have been made to involve all the stake-holding parties at the earliest planning stages, and the stakes of those are understood and catered for. Identification of various stake-holding parties and attention to their interests contributes to achieving consensus. In most cases, however, stakes and values of the participants differ to such an extent that probability of consensus achievement is low. There are some general principles, fulfillment of which can narrow the range of vexed issues and focus the attention on those key issues which cannot be settled.

Moreover, public participation **can bring** certain **risks into the decision-making process** or reveal disadvantages of the social organization, such as:

- polarization of stakes
- predominance of narrow sector stakes
- incorrect approach to conflict settlement
- underdeveloped participation culture.

Causes of risks:

Traditional public participation (public involvement) is often arranged on the internal/external basis, on the “we against them” basis, bringing about the attitude “winning one battle – losing the other

one” of conflict settlement. Under such conditions organizations and the public would rather start **competing** than cooperating, when distribution of an unambiguously defined set of resources is at hand.

Moreover, public participation is **to a considerable extent restricted**. Since public participation in operation of institutions for the most part represents a result of external credentials, there is a considerable number of enabling acts, by-laws and cases of decisional law, which all together define adequacy of such public efforts.

Requirements made to public participation as a rule are determined specially, the period within which the public should submit their observations is limited with a minimal number of days, and minimal number of local newspapers in which the legally binding notifications should be published is prescribed, etc. This is absolutely clear; generally the institutions try to cope with this minimum, but not to arrange additional or alternative kinds of public participation related with risk of additional delays or unforeseen procedural errors.

Violation of the letter of law is not banned, but few dare to do so. This way, practice of public drawing-in does not meet the requirements of the considered situation to such an extent as it is recommended and called useful in many written sources.

In order **to reduce the risk** arising due to public participation, all the public including the major stakeholders should be drawn in **from the very beginning and at all the stages of the projects**. Moreover, the public should be well informed about project particulars, and the important technical issues related with the project should be clarified sufficiently. The public stake should be catered for, which should be clearly shown, and the functionaries should be frank to ensure credence of the public.

Certain difficulties in implementation of public participation principle take place in the European countries:

- consensus is not always reached, often decisions become less clear and distinct since various points of view should be taken into account;
- the authorities can have certain cynicism in their attitude towards value of public participation (aversion of public initiatives);
- most often people have an active social position when something poses a threat to them, but, as a rule, they are passive;
- often the public expects too much from their participation in decision-making and hence gets disappointed when the opinion is not taken into consideration to the full;
- public participation slows down the pace of decision-making process and necessitates for funds, which, as a rule, are unavailable;
- diffusion of responsibility takes place: when too many people are involved in the decision-making process, nobody bears responsibility for these decisions;
- public representatives are not experts; it is required to be sufficiently informed to execute qualitative environmental impact assessment.

Part 2. Principles of integrated water resources management and public participation

System of integrated water resource management (IWRM) is a process contributing to coordinated management of water resources, land resources and other natural resources for the purpose of ensuring maximal economic and social welfare on the basis of equal rights without posing a threat to stability of important ecosystems. Such management results in maximal economic efficiency, at that the environment is not affected negatively. Complex approach is considered as integration of the natural and the human systems, as well as interrelation between each of these systems, for

instance, between surface and subterranean water, land tenure and water use, between sectors of the economy.

Up-to-date water quality and water resource management should be based on integrated approach and participation of administrative structures of various levels and from various sectors. Support of the users is required for establishment of realistic prices of water source use and execution of water protection arrangements to the maximal output and efficiency. Wide public groups should be informed on the qualitative and quantitative state of the water source as both water users and partners in the sphere of water source protection.

Thus, integrated water quality and water resources management comprises a considerable organizational component: prevention or settlement of contradictions by means of participation of the stake-holders in decision-making process.

Basin approach and prevention of contradictions between different water users require complete participation and cooperation between all the stakeholders. To reach overall agreement on the decisions being made, involvement of not only federal, regional and municipal authorities is required, but of private sector and the public also, along with aspiration for consensus. Implementation of the strategy and legal, administrative and technical arrangements will be much easier provided the consultation procedure is well-organized.

Principal aims of public participation in integrated water resources management:

- to ensure application of knowledge and experience of the public and other stakeholders in the planning and management process;
- to guarantee identification of the decision quality and its adaptation for the specific conditions;
- to ensure adequate planning and problem identification in the course of actual decision implementation;
- to ensure consideration of the public requirements and priorities in management decisions formulation.

Key principles of public participation in integrated water resources management:

- the programs should ensure adequate possibility of **active involvement of all the stakeholders**, both directly and indirectly, and more wide public groups;
- the process should be **open and transparent**; it should be executed honestly and impartially on the basis of information, data and knowledge interchange with application of all the appropriate media; it is also necessary to foresee certain conflicts and find solutions to the same;
- the appropriate mechanisms should **be adapted for the local circumstances**, problems and requirements of all the participants; major attention should be paid to finding the consensus;
- the participants should accept a **long-term vision of acceptable state** of the considered water body, water course or coast/shore, admitting difference between their stakes, working in cooperation and acquiring knowledge from each other;
- participation should not lie only in problem solving, therefore it is required to ensure the opportunities of **economic welfare and protection of the environment** compatible with wider acceptable aims of development.

When it is required to make a decision on the plans, such as construction of a port or a factory, or tourism development, all the options should be openly discussed by the authorities and the public for all the advantages to be considered and synergy to be determined.

The following three tasks should be solved in order **to create a standing public participation system**:

- to incorporate public participation into the official decision-making system to guarantee the legal effect of declaration of citizenry intent;
- to train the organizers and executors in the public participation sphere and assist them in elaboration of practical public awareness techniques for the purpose of creation of organizational infrastructure;
- to ensure positive participation experience of the public in order to overcome psychological barriers and increase motivation.

Solution of these tasks should be executed concurrently and step-by-step.

Specifics of integrated transboundary waters management and public participation

Transboundary water basins, often representing a sphere of national political interests at the highest level, are related with certain difficulties from the point of view of practical application of all the IWRM requirements. National frontiers represent barriers, both in the literal and figurative senses, for implementation of basin approach and integration of various water management aspects.

From the point of view of public participation, problems arise in relation to the following factors:

- transboundary territories often have special (more stringent) water use regime due to the presence of the borders and respective restrictions on freedom of movement
- information on the state of transboundary water bodies and basins is often rated as classified, i.e. access to it is often impeded
- decisions on water sector in these territories are often made reasoning from foreign policy interests of the countries, but not from requirements of rational nature management or local requirements, and it is rather difficult to exert influence on making such decisions
- frontier represents a “delimiter” of both language and social-cultural and economic nature, therefore organization and coordination of public participation can objectively be aggravated, especially if there are no organizations operating over the territory of the entire catchment basin
- different legislation in the neighboring countries, different management systems and public participation systems, different priorities make organization of public participation a rather complicated task for the authorities, that is why the administrative bodies content themselves with minimal permissible level of public involvement in order to avoid additional time and financial expenses.

Apart from these factors, naturally, the following factors exert direct influence on public participation level: state of bilateral /multilateral relations in the basin, presence of explicit conflict, will of the neighboring countries to cooperate and admit the non-governmental circles into such cooperation, availability/lack of legislative basis for cooperation in the basin, etc.

Part 3. Legislation framework for public participation in the transboundary waters management context

The fact that recently the public has been playing an increasing role in solving environmental problems was reflected in the most important national and international documents. In particular, in the Rio Declaration passed in 1992 at the historic UN Conference on Environment and Development, it is mentioned that environmental issues are solved most efficiently due to participation of all the stake-holding citizens. This principle proclaims: “Environmental issues are solved the best way on condition of participation of all the stake-holding citizens at the appropriate level. At the national level every citizen should have a definite access to the environmental information available with the authorities, including information about dangerous materials and activities executed in his dwelling area, and also have a possibility to take part in decision-making

processes. The states should encourage and promote public interest and participation by means of granting wide access to the information. Efficient access to the court and administrative procedures should be ensured, including legal protection and reparation of damages”. This principle of the Rio Declaration was implemented to the highest extent in the **UNECE Convention on Access to Information Ensuring Public Participation in Decision-making and Access to Justice in the Environmental Matters** (the so-called Aarhus Convention), which constitutes an important contribution to establishment of basis for model of steady society development.

The Aarhus Convention represents a new kind of conventions in the field of environment, which acknowledges obligations of the people living now to the future generations. It establishes that sustainable development of the world community can be ensured only if all the stake-holding parties are involved in the activities. At that environmental protection is executed most fully only when the authorities are subordinated to the public, at interaction of the public and the state authorities in the conditions of democracy.

Uniqueness of this document lies in the fact that for the first time in the history of humanity there was an attempt to regulate local procedural issues of access of the citizenry to information, public participation and justice at a high international level, and the fact that for the first time an international convention was elaborated with wide and active involvement of non-governmental environmental organizations.

Generally provisions of the Aarhus convention regulate, “who and what should do when handling environmental information” and “how this should be done”. The Convention is aimed to fix the system of principles and regulations covering rights of the citizens in the fields listed in the document name. The Convention reflects the consensus achieved in this field by several dozens of European countries. The subject of convention is constituted by three interlinked public rights: of access to the environmental information, of participation in environmentally important decision-making and of access to justice on the environmental issues.

The basic principles in this field, reflected in the document, are as follows:

- Notification of the public about the forthcoming decision making and supposed public participation procedures. This notification should be adequate (i.e. contain valid and sufficient information), opportune (provide sufficient time for real public participation) and efficient (i.e. be disseminated in such a way to actually ensure interest with the public).
- Provision of public participation at the earliest stages when there are possibilities of consideration of various options.
- Reasonable duration of various decision-making process stages, sufficient for public informing and participation.
- Availability of information about the planned activity as an important condition of public participation.
- Ability of the public to furnish any comments, inputs, information or analysis that are, from its point of view, relevant to the planned activity.
- Reflection of public participation results in the final decision.
- Text of final decision, information about reasons and considerations which have formed its basis should be furnished to the public.

In accordance with this Convention, the citizens also have a right of contestation in court or any other independent and impartial body of denial in information provision along with decisions being made in relation with the planned activity. Also a “quick, free of charge or requiring minimal payment” extrajudicial procedure should also be provided for consideration of controversies on information supply.

Convention on Environmental Impact Assessment in a Transboundary Context also deserves attention. This document was the first international convention that assigned the right of access to the information about suggested kinds of activities and making the related decisions to the public. The partner countries of the Convention developed a procedure for environmental effect evaluation which enables the public to take part in this process. The Convention determines:

- Public ability to take part in procedures of environmental impact assessment;
- Necessity for providing public access to the information (documentation) about the suggested kinds of activity;
- Public ability to comment on the suggested kinds of activity.

The Convention covers kinds of activity which can exert considerable transboundary effect. Such kinds of activity are listed in the Annexure to the Convention. The rights belong both to public of the “countries from where the effects take place” and the affected country.

UN ECE Convention on Protection and Use of Transboundary Water Courses and International Lakes also comprises several regulations covering public information in the sphere of transboundary water management.

In view of the fact that many EECCA countries position enhancement of cooperation with the EU and harmonization of the national legislation as per the EU requirements as one of their priorities, it is required to consider the European approach to IWRM and public participation.

European Water Frame Directive¹ (WFD) is the most important water directive of the recent years. It demands integrated approach to water sources management, meaning the member countries should manage their basins as a whole (i.e. it establishes basin approach to water sources management) and reach good water status for their water bodies by 2015. Basis of WFD is the planning system for river basin management. The member countries should promote active involvement of all the stake-holding parties into this process. Amongst major objectives of the EU WFD is also public involvement in the IWRM process.

In Europe expansion of public participation in elaboration of water sources management plans has become one of the key aspects of WFD. Public participation in this case is defined as direct participation in decision-making process of both organized stake-holders and non-organized groups (wide public groups).

New EC Directive on Access to Environmental Information:

On February 14, 2005 a new European Union Directive on Access to Environmental Information, binding for all the EU member countries, inured.

The new documents strengthens the regulations in this sphere, existing in the EU, bringing them into conformance with the Aarhus Convention on Access to Information and Public Participation in Decision-making and Access to Justice in the Environmental Matters.

¹ Directive of the European Parliament and the European Union Council No. 2000/60/?? establishing the framework for activity of Association in the Sphere of Water Policy was passed on 23 October 2000 on a common meeting of the European Parliament and the European Council in Luxembourg. Was published in the EU Official Journal (Official Journal L 327) dated 22/12/2000. The document inured in December 2000 .

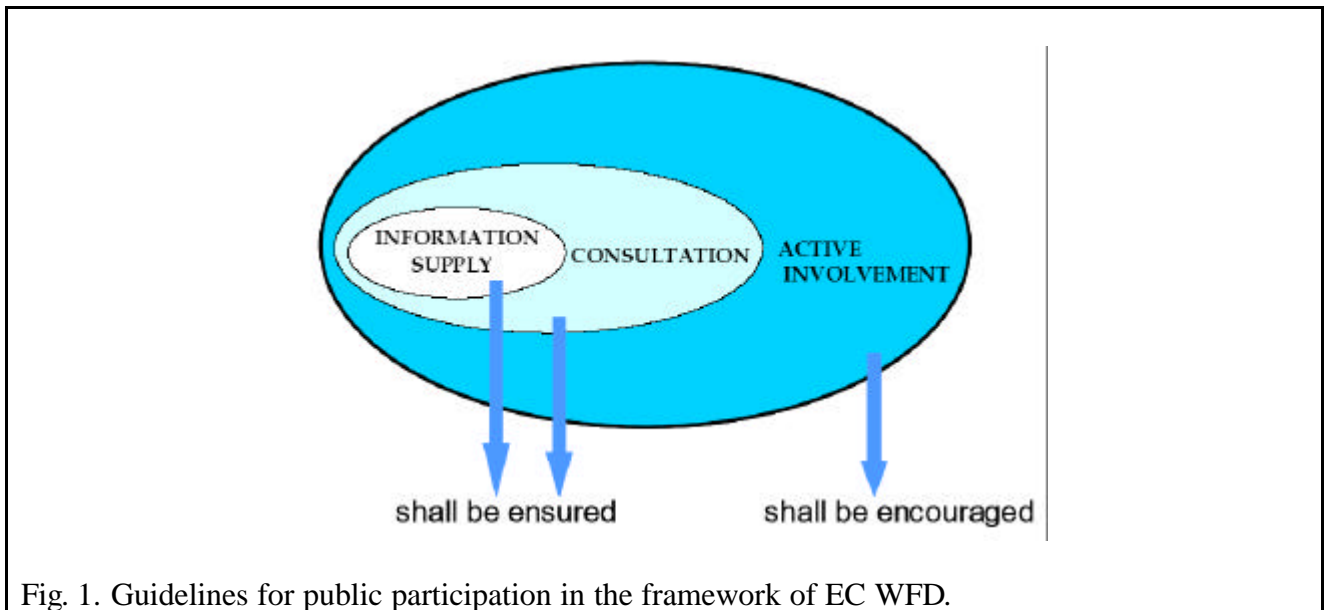


Fig. 1. Guidelines for public participation in the framework of EC WFD.

According to EU Commissioner on Environmental Issues, citizens of Europe now have not only freedom of access to the environmental information, but also the right to obtain such information from the authoritative bodies.

In accordance with the new directive, any citizen, irrespectively of the citizenship or nationality, has the right of access to the environmental information available with the state bodies. An example of such information is data on emission of pollutants into the environment, information about their impact on health and results of environmental impact evaluation carried out.

The following cases can be considered as key regulations of the new directive:

- ✓ guaranteed rights of access to the environmental information and its active dissemination amongst the public;
- ✓ wider definition of environmental information;
- ✓ determination of the period of 1 month, within which the authorities are obliged to reply to the environmental information inquiry;
- ✓ clarification of reasons, due to which the authorities can deny access to the information.

National legislation of many EECCA region countries

In many EECCA countries there are acts of legislation, which directly or indirectly cover the issues of public awareness and access to information, but as a rule higher public participation levels are not concerned. The countries that ratified the Aarhus Convention at the present are incorporating the respective requirements in their national legislation; but since not all the EECCA countries constitute parties who had signed this Convention, this process is not a common one.

Water legislation sometimes includes certain regulations, which indirectly mention participation of the water users and public in the water source management process (for instance, existence of basin councils, etc.), but in practice such regulations are implemented very seldom, predominantly as pilot projects under international financing.

Generally the following **issues** can be listed as the **major ones** in this sphere:

- public participation in water resources management is not regulated by the national water legislation
- methodical/organizational regulations of implementation of public participation in water sources management are lacking
- the legislation neither bans, nor promotes active public involvement in water sources management and protection issues

- sphere of normative regulation of public participation is wide and inhomogeneous
- even should some public participation regulations exist, many of them are not observed due to either lack of financing and respective personnel, or due to general weakness of supervision over execution of statutory requirements.

It seems that it is important to draw up such an act of legislation which would regulate the procedure for environmentally-significant decisions making with public participation, particularly in water sources management inclusively, along with procedure for such participation and procedure for access to the environmental information in order to optimize and formalize relationships between the public, water users and authorities.

Part 4. Instruments and mechanisms

Public participation forms

What is required to organize public participation is initial information. It can be obtained by means of informal techniques (for instance, by means of expert appraisal or documentation analysis); formal social psychology techniques may also be resorted to. If an organization, institution or company needs public support, it is important to choose the appropriate forms and conform with certain formal procedures. At first it is required to give information, at give such an amount of this information, which will enable the opponents to carry on a reasoned dialogue. Then it is necessary to give some time for comprehension of this information.

One of the common tasks arising in the course of environmental assessment and making decisions on environmental protection issues is **public information**. This task is usually solved by means of information materials publishing in the media, preparation of TV and radio programs, distribution of information sheets, booklets and analytical leaflets. When preparing the publications, it is necessary to take into consideration local peculiarities, level of public preparation to apprehension of information of one or another complexity level, features of social and ethnic groups. However, for the case of large-scale project arousing public anxiety, these forms can be insufficient even for simple information. Among useful forms of relationships can be information workshops, organization of visits to similar objects, etc.

A number of forms can be used as means of obtaining information from the public. These are various forms of **consultations** (walk-in or by telephone), written comments collection, “hot lines”, etc. Public opinion polls and sociological surveys can also be mentioned. But all these informing techniques are oriented at passive perception of information and can ensure only lowest public participation level, meaning level of awareness. Different forms of discussion are required to provide deeper public involvement and transition to social partnership level. Such forms are:

1. **Public hearings** are the most formalized and structured form of public relations. Public hearings are aimed at awareness of wide public groups, free discussion of various points of view on the issue and elaboration of compromise mutually acceptable decisions. Public hearings assume firm determination of the discussed issue, mandatory distribution of preliminary information, accessibility of documented information on the issue concerned and issuing the final document both to reflect agreement of the participating parties and define the controversy.

2. **Round-table discussion** is a less formalized procedure purposed in the first place to organize an open discussion. Tasks of public hearings and round-table meetings are similar, and the difference lies in scopes and execution.

3. **Informal meetings** in small groups – this form of relations features higher confidence. Informal contacts often allow to reduce general level of conflicts and, on conditional of mutual inclination towards a compromise, considerably facilitate the cooperation field forming.

4. **Training workshops** are especially efficient when a new complex project is in prospect. In the course of such workshops it is possible not only to transfer the required information about the future project, but also elaborate the “rules of play”. One interesting technique of business game is an interesting option – in its framework the participants can try playing the roles which are unusual for them (techniques of business games are quite well elaborated now).

5. **Demonstration projects** – principally this form does not represent a specific public relations form, but its educational role can turn out to be priceless. Successful demonstration is an important step towards future success.

6. **Referendum** is a form of public participation assuming direct influence of the public on decision-making, meaning participation at public administration level. Conducting of referendum is regulated by the respective legal act. Referendum is a rather expensive and quite stringent arrangement. It does not assume convergence of positions of the parties and possibilities of partnership, but direct submission of the minority to the majority. This form of relations can be recommended only in the worst case when insoluble contradictions have arisen – for example, if simple refusal from project implementation demanded by public representatives is impossible.

7. **Consultative or coordination councils** are an important form of direct public participation in making environmentally important decisions. Practice of inviting public representatives to a council has become a tradition that creates real possibilities of interaction in replacement of last years confrontation.

8. In a number of countries there also are **specific forms** of public participation specified in the national legislation. For example, such is the public environmental assessment in Russia.

9. others.

Quite a standard technique can be mentioned as an **example of logical sequence** of application of various public involvement methods and stages both in the framework of Global Environmental Fund and in other cases:

- Target group surveying/analysis/chart-making in order to identify major stake-holding individuals/organizations. Here often various kinds of sociological surveys are used: polls, questionnaires, direct field surveys.
- Compilation of stakeholders data base for network interaction strengthening and promotion of cooperation. Such databases are often published as hard copies (for Western Dvina/Daugava) or as electronic documents (available at web-sites – for instance, <http://talaschu.org/db> for Chu and Talas rivers) for their continuous updating.
- Analysis of their needs and possible forms of involvement/information of one or another group. In such case rather innovative methods can also be applied – for instance, focus-groups, for more comprehensive understanding of position of the selected target group.
- Elaboration of Plan of public involvement (for example, for Lake Peipsi/Chudskoe) in discussion and fulfillment of water protection arrangements, improvement of its awareness, potential, etc. Plans often bear different names, but per se have the same objective – determination of strategy for public and authorities interaction in one or another sphere and determination of specific actions aimed at implementation of such strategy. Efficiency of such Plan grows if it is included in general water protection arrangement program as its component part to ensure implementation of IWRM principles.
- Plan implementation and monitoring of its efficiency. At this stage what is important is inclination to Plan efficiency evaluation and, if required, its revision or renovation on the basis of monitoring of its implementation.

Peculiarity of transboundary water basins is elevated unevenness of stake-holding groups and water users due to objective differences in life standards, way of life etc. in different countries and impeded access to information/communication obstacles. Therefore some of the above listed forms of public participation/its awareness do not perform to the full capacity and pose certain hurdles of implementation.

Chapter 5. Public participation in transboundary water source management in EECCA region

In September, 2002 on World Summit on Sustainable Development in Johannesburg the European Union (EU) officially declared beginning of implementation of Global Water Initiative: "Water for life – health, welfare, economic development and safety". The EU has already signed conventions with African countries and countries of Eastern Europe, Caucasus and Central Asia (EECCA) – the latter has been reflected in Johannesburg Declaration on Strategic Partnership on Water for Steady Development. EECCA component will be based on: 1) preparation of implementation of solutions of World Summit on Steady Development in Johannesburg, 2) current process *Environment for Europe*. Specific directions of activity within the framework of this component include also support for extension of public access to the information, improvement of water issues awareness level and involvement of stake-holding parties and users in decision-making processes,

UN European Committee for Economics and Global Water Partnership accentuate attention on the fact that seven major conditions should be formed for solving the problems related with integrated water source management in EECCA countries. One of those is provision of free access to information and public participation. Amongst the suggested arrangements are:

- Ratification and implementation of the Aarhus Convention on Access to Information and Public Participation in Decision-making and Access to Justice in the Environmental Matters.
- Raising the extent of awareness of wide public groups of water source management issues by means of active information distribution (for example, via Internet), including provision of information about legislation, plans and programs in the sphere of water source management, conventions, water quality, measures taken and politic tasks.
- Strengthening of local potential and potential of NGOs.
- Promotion of active participation of the public, including non-governmental organizations, in preparation and elaboration of conventions.
- Involvement of the stake-holding groups, including non-governmental organizations, for participation in inter-governmental negotiations and discussion of draft conventions.

In accordance with the results of World Wide Fund (WWF) surveys carried out in 2003, the following **problems of provision of public participation** in water resource management **in the European countries** were identified:

1. Public participation in water source management issues remains bad or very bad in almost half of the countries covered by the survey, in particular in the South and Eastern Europe. The weakest issue of public participation is **insufficient awareness** (bad or very bad in 35% countries) and **quality of methods for public involvement in decision-making processes** (bad or very bad in 45% countries).

2. Level of awareness of water management projects (for example, new water infrastructure creation) is sufficient only in 40% countries, whereas level of awareness of legislation and strategies or programs on freshwater source management issues is sufficient in 69% and 60% countries respectively.

3. **In 60% countries response for public comments or results of consultations are published only in certain cases** or not published at all prior to making any amendments in the legislation, strategies or projects.

4. Very often the **documents** for public consultations **become accessible only by the end of decision-making process**, therefore it is really hard for the public to actually participate and

influence decision-making. Moreover, in some countries conduction of consultations concerning final versions of documents and projects is clearly and explicitly regulated, while consultations on working versions of these documents are not binding and are often carried out irregularly.

5. Access of environmental NGOs to the information is restricted.

Access of representatives of business sectors (industry, water supply and agriculture) to the information is sufficient in 70% countries, whereas access of environmental NGOs and scientific groups to the information is sufficient in 50% countries.

6. The public does not have sufficient ability to take part in decision-making. NGOs often do not possess special knowledge and / or manpower to be properly involved in the decision-making processes concerning water source management issues. Any financial support (predominantly compensation for transport charges) is rendered to the stake-holding parties in less than 60% of the countries, and only in two countries (Belgium and England /Wales) working time is remunerated in certain cases.

7. The officials have many **reasons**, sometimes outdated, **to deny access to the information**. In many countries this is in the first place the Constitution, which defines when the right of access to the information can be restricted. In most countries there is no clearly defined legislation covering the issue concerned. Instead of that there are many separate acts representing various determined secrets without much correlation between them.

8. Citizens of many countries face hurdles in access to justice due to administrative barriers, due to high court costs and low-pace judicial procedures. With the exception of several countries, in most countries of the Central and Eastern Europe there is absolutely no positive public practice of access to justice on issues of participation in natural resources management.

9. There are certain legislation imperfections.

There are only several countries where the legislation explicitly mentions the right of taking part in administration of public issues, right of participation in public administration or right of participation in public issues via a direct or elected representation body. This right is usually interpreted as right of referendum and initiation of laws. Even though situation in one country differs from the same in another, general trend shows that the most powerful tools for citizen participation are EIA and local referenda.

For transboundary water basins such problems often become more complicated due to politicalization of the process and additional impediments in the form of national frontiers and a definite dash of secrecy both in information interchange and in the sphere of transboundary cooperation.

Part 6. Conclusions and recommendations

6.1 Conclusions

- Public awareness and public involvement in the process of environmentally important decisions in most EECCA transboundary basins is weak and insufficient. Financial constraints represent one of the problems, though do not stipulate completely for all the arising problems. More likely and often there is unwillingness to interact with the public due to unavailability of clear requirements in the field concerned based on the national legislation.
- Information requirements of the public and NGOs are not met due to a number of reasons, the major one being lack of commitment from the authorities in interaction with the public and, in consequence, lack of mechanisms for provision of information and respective resources.
- Transboundary nature of water bodies often impedes public participation and calls forth communication problems, insufficient interaction of various stake-holder groups and disinclination of national authorities to pay attention to local requirements and requests. Moreover, access to the information and fulfillment of arrangements in cooperation with the

public are aggravated due to boundary regime and certain information restrictions implied with presence of national frontier in the water basin and the related procedures.

- Public participation often is carried out at the expense of outside financing, and as soon as the same ceases, the process often goes out due to lack of support from the authorities.

6.2 Recommendations

It is expedient to implement the following recommendations in order to optimize the process of public participation in transboundary water resource management:

Legal framework

- National water legislation should cater for regulations on public awareness and public involvement in decision-making process, similarly to international conventions on transboundary waters;
- Legislative formalization of procedures and mechanisms for public involvement, for identification and use of accessible ways for public awareness and participation is required;
- Regulations on a public consultative body (for instance, Basin Council) should be included in transboundary waters agreements for the system of public participation arrangement to be formalized.

Management issues

- For the purpose of transboundary cooperation development the states, should the legislative base be lacking, can use less formalized ways of public involvement, for example, round-table discussions, informal discussions, etc. to ensure public participation. For the purpose of convention signing, special structures can be formed to ensure consideration for public opinion and public awareness.
- It is recommended for state structures to involve the public and water users more actively into the cooperation development process, since these stake-holder groups often represent driving forces of transboundary cooperation and contribute to institutionalization and stimulation of bilateral/multilateral relationships.
- NGOs can be a supportive power due to their activity, availability of operating contacts within the basin, readiness to attract investment to the region and will to contribute to improvement of environmental situation in the basin.

Financial issues

- Public involvement in decision-making process often implies certain expenditure, therefore, should the resources be limited, reasonable communication channels and forms of public involvement, which are not related with considerable expenses, should be used. For example, informing via Internet, arrangement of round-table discussions, public hearings etc.