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***CONFERENCIA INTERNACIONAL SOBRE GESTIÓN DEL AGUA EN
PAÍSES FEDERALES Y SEMEJANTES A LOS FEDERALES.***

**The Management of the Watershed of the Danube
in the Context of
the EU Water Framework Directive**

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CONTENTS

- I. Introduction. The Danube – European river of international importance.
- II. From water course to river basin district regulations.
 1. The judicial recognition of this evolution.
 2. The 2000/60/EC Directive and the integrated water managementThe District – the key management unit
Administrative authority pertaining to the district
The river basin district management plan
Content of the management plan
Elaboration deadline for the first management plan
- III. The regime specific to the Danube
 1. The evolution of the international judicial regime of the Danube
 2. Bilateral cooperation
 3. The relevance of the E.U. law
 4. The judicial regime of the management of the river Danube
 5. Management of the river Danube waters within the DCA context
- IV. Conclusions

I. Introduction. 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 km² 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 Sulina¹. 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

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).

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 Danubian-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.

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.

II. From water course to river basin district regulation.

Out of a geographical and spatial perspective, a first phase of the regulation and management process of the aquatic environment problems has been constituted the one regarding the water course. Beginning from the second half of the 19th century, a series of water courses of international

importance enjoyed the concluding of interstate agreements regulating aspects of their common usage. On the European continent, the object of such regulations were, initially, aspects such as navigation, fishing or protection against floods. Aspects related to the prevention of, or to the protection against pollution were missing, or, at the best, were on a secondary, incidental plan.

In the same context and approach, the treaties concluded between neighbour states in order to regulate general border issues, sometimes comprised instructions related to the protection of the aquatic environment against pollution.

A significant progress was represented in the field by the enactment of some international instruments having as exclusive, or at least main object the protection of the water courses against pollution, such as the 29th of April 1963 **Berne Convention** concerning the protection of Rhine against pollution. The principles regarding the cross-boundary pollution and shared natural resources or the improvement of technical and scientific knowledge allowing the establishment of water quality or emission regulations have contributed also to evolving into a new stage, that of river basin district regulations.

At the same time, under the simultaneous pressure of factors such as “ecologization” and the globalization of the environmental issues, the assertion of the concept of sustainable development, the offensive of neoliberal globalization, the idea of a common management of all resources of a river basin was born and imposed. Finally, the last expression of those evolutions is represented by the global and integrated approach of these problems, more obvious at the E.U. level.

1. Judicial recognition of this evolution. The idea of a basin district approach of the general issues regarding the protection, the preservation and the management of an international water course was on purpose expressed and developed for the first time by the **Helsinki Rules**, approved in 1966, by a text adopted by the International Law Association².

According to the 4th article of the document, each state of an international drainage basin has the right to a reasonable and fair part of the favourable usage of the basin waters; according to the fair usage principle, any state must refrain from causing any form of pollution or any increase of the existing water pollution degree in an international drainage basin and must take all reasonable measures to reduce the existing pollution so that no serious damage should be caused to the territory of another state of the basin. (article 10).

On the 13th of February 1987 the Water Committee of the UN Economic Commission for Europe (EEC/UN) published a reflection document over some principles regarding the management of cross-boundary waters. The first and the most important one referred to the necessity of constructing an international specific regulation for this matter: the states sharing a watercourse must conclude treaties or agreements meant to establish particularly quality objectives, water quality control and information exchange means.

An important progress in that matter was determined by **Agenda 21**, adopted by the Rio de Janeiro Conference in 1992, which, in the 18th chapter dedicated to the freshwater resources protection and to the ensurance of their

² International Law Association, Report of the Committee on the Uses of the Waters of International Rivers, Helsinki Conference, ILA, 1966.

quality, also stated as a principle of action the application of an integrated approach of the capitalization, management and usage of water resources.

Even if, in a certain way and in an indirect manner, **the 21st of May 1997 New York Convention regarding the right to use the international watercourses for other purposes than navigation** also adopts the same approach, aiming at entire river basins, underground waters and marine environments. The convention also contemplates an international management, as far as possible.

Referring to the stipulations of article 5, paragraph 2 of the Convention, in the decision pronounced on the 25th of September 1997 in the cause of the Gabcikovo-Nagymaros project, the International Court of Justice (ICJ) estimated that “the watercourse States participate in the usage and the protection of an international watercourse in an equitable and reasonable way. This participation also entails the right to use the watercourse and the obligation to cooperate for its protection and good usage, as stipulated in the present articles” (paragraph 147).³

On a regional basis, the basin vision is promoted especially by the **17th of March 1992 Helsinki Convention regarding the protection and the usage of cross-boundary watercourses and international lakes**.

In the same way as the New York Convention, the Helsinki Convention insists upon the need to conclude agreements between riparian states concerned by the same international watercourse; these agreements must “elaborate policies, programmes and harmonized strategies applicable to the whole or to part of the respective river basin, having as its object the prevention, control and reduction of the cross-boundary impact and the

³ Through this reference to the New York Convention of 1997, ICJ admitted implicitly that it is a matter of a real encoding instrument, transforming already existing international custom rules into a treaty.

protection of the cross-boundary water environment” (art. 2, paragraph 6). In article 9 precise indications are formulated over the possible content of those agreements. The 1999 London Protocol, regarding water and health, to the Convention registers a series of improvements such as taking into consideration the ecosystems, integrated management, information of the public, continuous evaluation of the application and usage of simple methods for the surveillance and observance of the obligations assumed by the party-States.

2. The 2000/60/EC Framework Directive and the integrated water management

The basin approach of integrated character has found its most adequate expression in the EU plan, through the adoption of the 23rd of October 2000 Directive establishing a framework for a Community policy regarding water. (no. 2000/60/EC)⁴.

After a period of time covering a few decades during which a sectorial concept has dominated, expressed in directives fixing quality or emissions standards and having in view the destination of the protected waters, starting from the '90s a new approach aiming at wider directives was manifested, culminating with the enactment of the 2000 directive. It defines a general framework for the protection and the improvement of all continental aquatic environments, having as its major objective, to achieve, within a 15 years deadline, a “good status” level of the continental waters.

The Framework Directive establishes the terms of a coherent undertaking:

⁴ L327, JO of 22nd of December 2000

- regarding the environment with an ecosystemic approach, aiming for all types of waters, the inland waters (the surface waters and the groundwater) as well as the coastal waters. The ecosystemic reference is **water body**, defined depending on its being artificial, strongly modified, of surface or groundwater (articles 2-8, 9, 10, 12 ECD);
- regarding the territorial approach through the construction of a management framework based on the hydrographic district, materialized by means of basins and sub-basins and permitting also the ecoregion identification;
- regarding the management ways; ECD imposes a coherence for the management instruments, through the management plans and programmes of measures, for the institutions, since the states need to identify the competent authority assuming the responsibilities for this management, but also for the police measures by the need to control the activities, the system being based on a general regime and on an accentuated control in certain areas;
- concerning the objectives to be reached, ECD aiming, before all, at quantitative objectives through promoting a more economic approach, allowing to affect the usage costs in three designated sectors, (domestic consumption, industry and agriculture) , then qualitative objectives, aiming to reach, by 2015, a “good ecological status of waters”, through preventive measures and the application especially of the polluter pays principle. Moreover, the states have

the obligation to prevent the damage of “all water bodies”, an objective with a marked general character⁵.

In a global approach, it is desired to guarantee a coherence of all the existing regulations through an undertaking combining the obligation to inform, the obligation to determine the management areas and the obligation to organize multifunctional rules. The Directive underlines the importance of the international hydrographic basins and prescribes that they need to be endowed with a unique plan of management, with a result obligation and with precise deadlines for accomplishment. But the water management would not be global if it were not placed within the context defined by the environmental law principles, including the polluter pays principle; therefore, the tariffs policy of the States must, on the one hand, sanction pollutions and on the other hand, stimulate a sustainable and responsible water consumption.

2.1. The district – the key management unit

The great innovation brought about in the field by the ECD consists in a new administrative carving, through the introduction of the “river basin district” concept, around which the entire action in this field is concentrated.

The district represents a management unit, an administrative area, terrestrial and marine, composed of one or more hydrographic basins, as well as of the associated ground water and coastal waters (article 3).

⁵ For a presentation of the Directive see: Bernard Drobenko, *Droit de l'eau*, Gualino editem, Paris, 2007, p. 30-32; Sylviane Leprince, *Le nouvelle directive 2000/60/CE du Parlement et du Conseil instituant un cadre pour l'action communautaire dans le domaine de l'eau: coordination et efficacite?* In « *Revue de la Faculte de droit de l'Universite de Liege* », 2001/4, p.833 and next.

The establishment of these districts is made by the Member States starting from the census of the hydrographic basins existing on their national territory. A district could be: a) constituted of one large hydrographic basin; b) made up of several small basins or by connecting a small basin to a larger one; c) an international, entirely community district represented by a portion of a basin shared among several EU Member States; d) an international, partially community district (which “expands outside the Community territory”).

Each river basin district has to be endowed with an adequate⁶ administrative structure, which the Directive does not render explicitly, for the purpose of guaranteeing that the application of the scheduled rules are coordinated and supervised within each district.

2.2. The administrative authority pertaining to the district.

Each river basin district should thus have an “adequate” administrative authority. In case of an international district shared by several Member States, the States will appoint together a competent administrative authority; for the international, partially community districts, a sui generis solution can be opted for. Therefore, if, in the case of all EU Member States a unique competent authority can be designated, in the case of non-EU Member States, a cooperation is initiated, on the one hand with the different national authorities responsible in the field, or, on the other hand, with the international cooperation structures, if they exist. These structures must not

⁶ The term “adequate” leaves to be understood the fact that the member states have the choice regarding the structure that seems to them the most fitted. Also, these also determine the type of management of the competent authorities, as well as their nature, and they decide especially whether they are chosen or designated.

necessarily be created for this purpose, they could be designated from the existing national or international bodies, provided that they have the competences and the necessary power to fulfill the objectives set out by the Directive.

Over the nature of these competences, the ECD does not declare its opinion, and it leaves the matter up to the involved Member States; these are free to determine their characteristics, regarding the judicial status as well as the judicial and administrative responsibilities, or the role to be played within the river basin district.

Regarding the river basin districts extending beyond the Community territory, as it is the case with the Danube, the Directive considers that it is desirable that a river basin district and a competent authority should be created together with the non-Members States involved.

In any case, the Member States have at least (ad minimum) the obligation to ensure the application of the Directive rules upon the part of the river basin district situated on their territory.

2.3 The management plan of the river basin district

According to the Directive, each river basin district must elaborate a management plan. Of course, each Member State is the only one responsible for the districts situated entirely on its territory (article 13). For the international river basin districts situated entirely on the European Union's territory, the Member States have to "ensure coordination with a view to producing a single management plan of the international river basin district" (article 13.2 of the Directive). Therefore, such a management plan of the international district necessarily involves the creation of an international authority.

In the case of an international river basin district extending beyond the boundaries of the Community, such as the case of the Danube is, too, the Member States are bound to collaborate with the non-Member States involved, in view of elaborating a management plan, but in case of lacking such a plan, they obviously must at least ensure the elaboration of a management plan covering the portion of the district situated on their territory.

The Directive does not specify if this management plan must be elaborated by the competent authority placed at the head of each river basin district, but this seems to be the logical solution.

2.3.1 The content of the management plan. The management plan contains specific prescriptions related to the surface waters, groundwater and the protected areas. It appears, on the one hand, as an ascertaining document, descriptive of the status of the river basin district and its characteristics, a survey regarding the application of the previous decisions and of the obtained results, and on the other hand as a plan of action stating the new measures meant to achieve, progressively, the objectives of the Directive. It is a reference document that must allow, finally, the understanding and the solutioning of the entire range of problems of the river basin district.

Concretely, the content of the management plan is established in Annex VII of the Directive, namely:

a) A presentation (explanatory and descriptive) of the situation

It is a general description of the geophysical and hydrogeological characteristics of the district: the identification, mapping and the typology of the bodies of water, the map of the surveillance networks, the identification and cartographic representation of the protected areas, estimation of the pressures and significant incidents resulting from human activities on the state of waters, the exposure of the quantitative and qualitative status of respective water bodies.

b) The expounding of the already implemented measures and steps accomplished

In this section the plan includes:

- summaries of the programmes of measures and of the performed controls (abstraction, impoundment, direct or indirect discharges, priority substances etc.);
- a synthesis of the results of the economic analysis of water use;
- a presentation of the results already obtained within the district through the implementation of the previously adopted measures, especially in the application of the existing directives.

c) The presentation of the adopted measures and steps taken or stipulated regarding the achievement of the Directive's objectives, in reports or summaries:

- a list of the environmental objectives to reach under article 4;

- a summary of the adopted measures for the application of the demands stated by the Directive (especially regarding articles 7, 9 and 11 in the documents).

d) Updating the plan of action

Each management plan has to be updated on a regular basis, for the first time after 15 years as of the coming into force of the Directive, and then every 6 years. This periodical updating will not only allow an evaluation of the status of the proposed objectives, but also the adjustment of the pace, so as to maintain or modify the measures when need be.

The plan updating, beside such elements, includes specific information, such as:

- a succinct presentation of any change or updating after publishing the previous version of the plan;
- an evaluation of the progress made in accomplishing the environment-related objectives;
- a succinct and motivated presentation of any measure included in a previous version of the plan, that was not finally applied;
- a succinct presentation of any transitory measure adopted in the application of article 11 (programme of measures).

e) Documents attached to the management plan

In each river basin district, the management plan has to be accompanied by:

1. an analysis of the characteristics of the river basin district;

2. a study regarding the incidence of human activity on the environment;
3. an economic analysis of water use within the district; this has to allow the application of cost recovering principle for the services related to water use;
4. a surveillance programme regarding the status of surface waters and groundwater; its purpose is to make up a complete picture of the ecological and chemical status of the surface waters, chemical and quantitative status of the groundwater within the river basin districts, with a view to obtaining an aggregate view at European level;
5. a record of the protected areas and a related surveillance programme; the document constitutes an inventory of the areas that have been designated as requiring a special protection by virtue of other specific community regulations, concerning the protection of surface waters and groundwater or of water-dependant habitats and species, that need preservation;
6. a programme of measures, in the sense of means of action (protection measures, legislative, administrative, financial, practical actions, negotiated procedures and others) aiming at the accomplishment of environment-related objectives of the Directive. The measures can be of several types:
 - a) **basic measures**: each programme of measures must include the fundamental norms constituting the minimum exigencies that need to be observed, aimed at by article 11.3 and especially by reference to the Annex VI A, all measures already imposed by a series of important directives adopted for other environmental

issues, such as wild birds protection, evaluation of incidents on the environment, major accident risks, sewage mud etc. Such an approach emphasizes the integrated character of the Framework Directive, not only regarding the water but also in so far as the place of the actions related to water is concerned, for a better management of environment and ecosystems-related problems, in a more general manner.

The basic measures can be grouped, in turn, as follows:

- a series of control measures, such as a requirement of a prior authorization for certain activities (abstraction and impoundment of fresh water) (article 11.3 e);
- measures aiming at the prevention and control of discharges from diffuse sources; the control can be established through regulatory exigencies: interdiction and/or records that have to define emissions controls reviewed and updated on a regular basis (article 11.3 h);
- measures to prohibit the direct discharges (except for some very strict cases) accompanied by adequate controls (article 11.3 j);
- measures to prevent spillage of pollutants and to reduce the impact in case of accidental pollution incidents (article 11.3 l);
- measures “deemed appropriate for the purpose of Article 9”, that is, meant to participate in taking into account the principle of the recovery of costs for the services related to water use (article 11.3 b);

- measures meant to promote an effective and sustainable water use, in order not to compromise the accomplishment of the Directive's objectives (article 11.3 c).

b) complementary measures, representing a special category, also stipulated in Annex VI of the WFD and enumerated, on an illustrative basis, that can be included in the programmes of the Member States.

These can consist in adopting financial, legislative instruments, good behaviour codes, restoration projects, educational measures, desalination plant equipment etc.

Since the programme of measures is adequate for each river basin district, it will allow taking into consideration of the characteristics of each area in selecting the measures that appear to be most appropriate, in each particular situation.

2.4 The deadline for elaborating the first management plan

The EU Member States have at their disposal a relatively wide term for the establishment of the first version of the management plan for the river basin district, as this has to be published, at the latest, nine years after the coming into force of the Directive, on the 22nd of December 2009 respectively.

III. The special regime of the Danube

1. 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-Germaine (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 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 Danubian states in the field of management and protection of the river waters against pollution**⁷. 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 Danubian 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

⁷ The states signatory to the document were Austria, Czechoslovakia, Federal Republic of Germany, Yugoslavia, Romania, Hungary, USSR.

significant, such as those regarding the work groups for water quality, floods and their forecast and water balance⁸

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

As concrete steps of cooperation and accomplishment of the proposed objectives, the following were stipulated: the Danube waters quality systematic control, according to some programmes 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

⁸ 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 favour of a document with a general character (recommutation), and the states that were communist at the time (Bulgaria, Yugoslavia, Romania, Hungary, USSR), in favour of a compulsory juridical-technical instrument. The West-European representatives imposed, as a condition of their accepting a pledging agreement, its 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.

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.

2. 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.⁹

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,

⁹ 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 pollutin or the enhancement cooperation (Bucharest, 23 February, 2007).

aspects referring to: use of water resources, protection of waters against pollution, defense against floods and so on.¹⁰

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 Danube¹¹ river basin, the fact 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 programme within the Danube’s basin” and to the accomplishment of the Management Plan for the Danube’s basin, according to the WFD.¹²

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).

¹⁰As 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).

¹¹ 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 .

¹²The 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 .

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).

3. 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 the 2000/60/EC Directive¹³. 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 EU 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 EU Court of Justice has stated that the international conventions signed by the EC are part of the Community law and the

¹³ 97/825/CE, Council Directive of 24-th November 1997 concerning the conclusion of the Convention on the cooperation for protection and sustainable development of the Danube.

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 EU Treaty (EUT), the Union develops privileged relations with the neighbouring 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 EU 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 EU 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.

4. 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 communitary (shared with the non-EU 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.¹⁴

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 “Danubian states”, representing its addressees, that are sovereign states sharing a significant part of the Danube’s river basin, respectively an amount that surpasses 2000 km² of the hydrographic basin (article 1, paragraph a). This perspective does not hold good 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 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.

The concepts affirmed are those of “prevention and control of transboundary pollution”, “sustainable water management”, “rational use and conservation of water resources”, as well as an integrated approach, “taking duly into account the interests of the Danubian States in the field of water use in the field of water use and at the same time contributing to the protection of the marine environment of the Black Sea”.

¹⁴ Al.Kiss, J.-P. Beurier, **Droit international de l’environnement**, 3^e édition, Editions A.Pedone, Paris, 2004, p.229.

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.

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

In its capacity as international district to which non-EU 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 (art. 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 Danubian 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 programme;
- 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 programme of measures (articles 13 and 11);
- 2010 – introduction of taxation measures (article 9);
- 2012 – operationalization of the programmes 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).

IV. Conclusions

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 Danubian district.

This will be concretized in the Management (unique) Plan of the basin of the river Danube, with a 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.

At the same time, the problems of Danube determine an increased interest and find their solutions at a Community level.¹⁵

Summary

Given its length and water volume, the Danube is the second large river in Europe (after the Volga) and one of the most important rivers at an international level. It crosses the territory of 10 states (of which 6 are EU members), it links 4 European capitals, and its basin, with a surface of 801,463 km², is related to the territories of 19 countries (namely 10% of the surface of the continent), with a population of about 250 million inhabitants. Of its total length of 2,780 km, the river is navigable on about 2,500 km, between Ulm and Sulina. Together with its basin, it represents a highly important factor from the geographical, ecological, economic and strategic points of view, forming, together with Main and Rhine, a natural navigation corridor that links the western and central part of the continent with the Black Sea.

Its quality of an eminently European river has permanently left a mark on its waters, imposing an adequate cooperation among the involved states. At the same time, the fact that the majority of the riparian and basin-related countries are members of the European Union (11 of 19) makes it possible for the community law to entail major implications on the sustainable management and protection of the river's waters. More than that, by the accession of Romania and Bulgaria to the EU (the 1st of January 2007),

¹⁵ For example, the floods brought by the river waters in the spring of 2006, determined the adoption of The European Directive on the Assessment and Management of Flood Risks (**2007/60/EC of 23 October 2007**) (the Floods Directive), published in the O.J. of 6 November 2006.

the Black Sea has become a “communitary sea”, in so far as the Danube river mouths are concerned, which means, among others, according to the integrated approach promoted by the EEC/60/2006 Water Framework Directive (WFD), taking into consideration the aspects concerning the coast area. Finally, the creation of the Black Sea Euroregion from the Council of Europe initiative (2006) stimulates the promotion of the sustainable development and environmental protection objectives in the Danubian area.

By virtue of its special geographical-political statute, the Danube river represents, from the perspective of the applicable juridical regulations, an international basin (according to the Convention regarding the Danube) and a partially communitary international district respectively (with the EU-related third-party states), subject to a complex juridical regime, including internal, international and communitary law regulations, that are superposed, intersected and that supplement one another from an integrated perspective (ground and underground waters, coast area) imposed by the Water Framework Directive and that presupposes measures of a diverse nature (economic, administrative, ecological etc.) to be managed.

Therefore, from the perspective of the international law and from an integrated approach, the Sofia Convention related to the Danube (1994) and the Bucharest Convention related to the Black Sea (1992) are applicable in this case, and the cooperation supposes the participation of the two commissions set up for this purpose by the two conventions. The pertinent stipulations of the bilateral conventions are added to these regulations.

For the national parts, the provisions related to the internal law are obviously applied, transposing or not, depending on the case, the communitary law, mainly the WFD. From among the riparian countries, Romania enjoys the longest presence of the river on its territory – 1,076 km – and consequently it has an important role in providing a sustainable management of its waters, by means of the national law. The Romanian law

of waters (no. 107/1996) was modified in 2004 (by law no. 310) and in 2006 (by law no. 112) in order to transpose internally the 2004 Water Framework Directive.

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

The competent authority for the elaboration of this plan is the Ministry of the Environment and Sustainable Development.

Being an international district (partially communitary) that includes the participation of third-party states (relating to the EU), the Danube district is subject to a special regime, defined through the obligation of the communitary states “to make the necessary efforts in order to establish an adequate coordination together with the third-party countries involved for the purpose of achieving the objectives of the Framework Directive within the entire hydrographic district” (art. 3.5 in the Directive); anyway, they have to guarantee that the applicable communitarian norms are enforced on their territory (art. 3.5) and to cooperate with the third-party states involved for the elaboration of a management plan. At the same time, they have the possibility to use for coordination an existing structure that derives from international agreements (art. 3.4). In such a general juridical context, in November 2000 the states part to the Sofia Convention manifested their will to accept the objectives of the Framework Directive and to cooperate, under the coordination of the ICPDR, for the achievement of a unique management Plan of the Danube River, at the level of the entire Danubian basin.

