



The Best Model of Public Participation in Making Plans for River Basin Management

Moving Towards Successful
Public Participation in the Sava
River Basin Water Management



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The best model of public participation in making plans for river basin management

This manual is developed within the project *Moving towards successful public participation in the Sava River Basin water management*, carried by the Centar za podršku i razvoj from Tuzla and Zelena akcija from Zagreb in cooperation with partner organizations – Ekološka koalicija unskog sliva (EKUS), Prijedor and Zeleni san, Vinkovci. Funding for the implementation of the project is provided through the IPA CBC Programme Croatia - Bosnia and Herzegovina.

The project objective is to achieve good water status in the Sava River Basin, in accordance with the EU Water Framework Directive, with public participation in decision-making in matters of protection and water management in the border area of Croatia and Bosnia and Herzegovina.

The Water Framework Directive (hereinafter the Directive or WFD) is the key document in water management in the European Union, which establishes the legal framework for the protection and improvement of the status of aquatic ecosystems and ensures long-term sustainable management of water resources. Directive is implemented through the river basin management plans that are, in Croatia, in the final stage of preparation, while BiH is yet to make them. For the Sava River Basin, an international management draft plan that covers the entire basin stream across all five countries has been recently created.

As article 14 of the Directive, grants the active participation of all stakeholders, including the public, in management of water resources, with this project we want to encourage and reach a satisfactory level of public participation in the adoption and implementation of the River Sava Basin Management Plan. The same level of participation can be applied to any other plan, program or project that requires participation of the general public.

Given that only informed and educated public can participate as an equal partner in the creation and implementation of international management plan for the Sava River Basin, specific project activities were related to carrying out workshops, seminars, media campaigns and creation of educational materials on various aspects of the implementation of the Water Framework Directive for the stakeholders in project area.

The implementation of the Directive and River Sava Basin Management Plan will directly impact the future work of many stakeholders in both governmental and non-governmental sector, such as local fishermen and fishing alliance, non-governmental organizations working in the field of environmental protection, environmental groups in primary and secondary schools, employees of local spatial planning offices, employees in the industry or in utility services.

Project includes the following activities; identification and analysis of stakeholders interested in water management in the project area, a five-day seminar on the Water Framework Directive and public participation (in Bihać); eight cross-border educational workshops and the panel workshop for selected stakeholders on various aspects of the implementation of the Water Framework Directive, a three-day international seminar on cross-border and domestic environmental legislation (Vinkovci); a media campaign to raise public awareness in the entire project area (TV documentary, TV and radio jingles); create and distribute the best model of transboundary character for public participation in water management; consultation meetings with target groups to gather their opinions about the River Sava Basin Management draft Plan; monitoring and commenting national legislation in Croatia and Bosnia and Herzegovina, with an emphasis on cross-border issues and opportunities; making 5 manuals related to this subject; creation and distribution of the Opinion on the quality of public

participation in Croatia and Bosnia and Herzegovina in making the first joint management plan for the Sava River Basin, to domestic and international decision-makers.



Figure 1: The consultative meeting in Brčko, debate on the River Sava Basin Management Plan draft

INTRODUCTION

There are many manuals written on rules of how to involve public most efficiently in decision-making in environmental matters. The purpose of this manual, and a recommendation to the reader (whether they are members of the public or the public authorities), is not to copy the suggestions from such handbooks, but to bring out the best in them.

What is public participation?

Public participation (of citizens) is any process in which citizens can influence public decisions affecting their lives and the lives of other citizens. Participation can be active-interaction with elected officials or employees, or passive - going to the public meetings for the purpose of obtaining information.

Water management is quite a complex process that requires a large amount of expert planning, but also a component of an extensive public participation during the planning. Planning can be interpreted in several ways.

Narrow interpretation, which is luckily used less and less, limits the planning process on the technical components, and it is perceived as a task for engineers and professionals. Opposite interpretation is a broad interpretation that considers public participation as part of the

planning process. There are many reasons why public participation is necessary and reasonable in such processes, although below we touch upon only two.

First of all, there are more players in this game and they don't play an equal role in the whole process. There are formal decision-makers, who are not identical to the experts and analysts of the underlying situation, and both are different from people who are or will be affected by the plan decisions. Decision makers have an institutional power and responsibility for the selection and implementation of solutions for the problem. The analyst is the person / group that assists and guides decision-makers in the analysis, presenting them his own views and the views of other interested groups. "Affected" people are all those who will be influenced by the consequences of the adopted and implemented decisions. There are apparently large differences between knowledge, goals and ways of thinking of those who prepare the decisions and those who implement them. Decision-makers have little experience in the integrated water management resources. Therefore, "... the public preferences must be included in a more direct way, by sharing part of responsibility and trying to find compromising solutions that make it easier to accept." Second, the laws require public participation in decision making plans, because it is their explicit request.

Active public participation is of great importance in the process of preparing water management plans. The public participation is considered reasonable, if and when it helps to achieve better decisions. Positive public involvement can be a factor that contributes to efficient communication and develops trust between the involved public, decision makers and all other relevant stakeholders. The content must be clear and unambiguous, set deadlines must be realistic, and they must allow for an efficient preparation of the proceedings for all parties. The provisions of the Aarhus Convention are the first legally binding document intended to promote participatory democracy, and on the basis of which everyone recognizes the right to live in a healthy living environment. For effective implementation of the Aarhus Convention, a good legal basis in the sector laws is needed, which ultimately allows for the creation of best practices in public involvement not only by the preparation of water management plans but in all environmental processes. Today's environmental practice includes an increasing number of forms of public involvement, as the competent authorities are increasingly aware of the importance and broader effects of responsible public participation. International practice shows that the benefits of public participation in the preparation of plans, including water management plans, are multiple and always greater than any possible negative consequences. With a view to pursue sustainable development, especially the international community actively supports the development of integration techniques and tools for developing skills for participation of all stakeholders.



Figure 2: Sava Commission Meeting¹

Aims and means of public participation in decision-making processes

¹ International Sava River Basin Commission (Sava Commission) is a joint body with the international legal capacity necessary to perform its functions and the implementation of the Framework Agreement. It consists of two representatives of each Party, signatories to the Framework Agreement, one member and one deputy member from each signatory party. Each party of the Sava Commission has one vote. The headquarters of the Sava Commission is in Zagreb, Croatia.

Public participation has three main goals:

1. Participation of relevant stakeholders allows them to identify with the envisaged act. This strengthens the legitimacy of the decision made by the authority and consequently reduces the public opposition against the plan or decision. Public participation thus leads to easier and more effective implementation of the plan and better compliance with it
2. Relevant stakeholders and concerned persons may provide the authority with valuable information, including alternative solutions. Public participation enables the authority to picture the needs and interests of the public more clearly. Thus, it leads to a better – since more informed – decision.
3. By discussing the concerns of the public and taking them into account before enacting the envisaged act, the number of legal procedures concerning the final plan or decision can be reduced, since relevant concerns against the envisaged act were already discussed with the concerned public and possibly even invalidated before the plan is enacted.



Figure 3: Public discussion – Sanski most

Possible means of public participation

Possible means of public participation include information and consultation of the public as well as negotiation with the public, each of which may take different forms.

- Information should be provided at all times, even if there currently is no open environmental planning procedure. Thus, authorities must possess up to date information at all times. Information can be provided to the public via printed media, such as booklets, brochures or flyers, as well as via the internet, which can provide for a very useful, open and easily accessible platform. Other means to provide information to the public are (regular or one-time) workshops and conferences, which may be organised at national or regional level and can address either a specific problem (such as a certain river basin) or specific groups of stakeholders (such as the industry or households) or follow a more holistic approach. Workshops and conferences, of course, take up more resources, not only those of the authority but also of the participants. Apart from this general information duty of authorities, they should strive to answer special information requests by the public quickly and effectively, providing

them with all the information asked for in the desired manner (paper copies, digital media etc).

- Consultation is a necessary step to gain useful information from the public. In this phase of public participation, all concerns that certain stakeholders have should be put on the table. In order to do so, before conducting a consultation, the authority must inform the public about the aim of the envisaged plan or decision and other relevant facts. Forms of consultation can be public hearings, round tables etc.
- Negotiation is usually the final step of public participation. In this phase, the diverging interests and needs of the public should already be clear to the authority. The aim of this stage is to find a solution that satisfies all stakeholders and still achieves the objective the authority has to achieve when establishing the plan or taking the decision.
- In addition, prior to the selection of possible ways of public participation, it is necessary to educate and motivate the public to participate in decision-making. Therefore, the pre-stage of the public participation should be the education of the public about the right to information, the right to participate and possible ways of participation. In fact, only animated and educated public might be willing to take an active role in the planning of a project (plan, program) in order to exercise their right to participate and put forward their ideas and expectations, and to get involved in the implementation of consistent and effective implementation. Also, except for public education, especially in projects / plans of cross-border character, it is essential to organize joint educational events for various stakeholders, in order to share experiences and knowledge.

For example, during the implementation of the project „Moving towards successful public participation in the Sava River Basin water management " 10 consultative meetings, eight workshops and two multi-day educational seminars in different cities of Bosnia and Herzegovina and Croatia, to discuss the problems of the Sava River Basin were organized. These workshops and meetings have greatly contributed to the inclusion of a large number of stakeholders in the adoption of the Sava River Basin Management plan and the partnerships obtained in these events will certainly contribute to the quality of implementation of the Plan itself. Also, it is extremely important that the public is encouraged to participate in decision-making, particularly in cases concerning water management. During the implementation of the project „Moving towards successful public participation in the Sava River Basin water management", it was seen how the media campaign about the possibility of public participation in decision-Basin Management Plan River Basin has contributed to the quality, by encouraging citizens to actively participate in adoption of the same.



Figure 4: Slavonski brod, workshop „Implementation of the Water Framework Directive in the Sava River Basin“

Appropriate legal and procedural support for public participation

According to current practice of public participation in Slovenia and also in some other EU countries it would be advisable to revise current water legislation in a manner that would engage timely public participation with appropriate methods. This means inclusion of requirements for timely and careful identification of the key public stakeholders in the process, suitable informing, full-term involvement, which runs through the entire process till completion, effective consultation and appropriate treatment of opinions and suggestions of participants in the process, and defining the position in the legal provisions. In addition, the legal provisions should also be complemented by informal practices.

The following actions would be advisable

1. First information and early involvement: public engagement and participation in the decision-making process in the environmental matters needs to be encouraged at an earliest stage. Then, participation must be continuous through the whole decision making process. Public should also be provided with adequate information.. Meaningful comments and suggestions from the public have to be taken into consideration by competent authority and included in the documentation in the greatest extent possible. The competent authority has to provide a clear justification to what extent and why individual comments and suggestions were or were not taken into account.

2. Establish participation methods and give information about them: simultaneously with the invitation to the public to participate, it is necessary to define measures, forms, and time line of public participation, in order to set in advance the cooperation process. Together with the draft regulation also expert groundwork should be posted for information, e.g. on the internet,

together with a summary for the general public. The experiences from practice show that in such proceedings the regulations are easier to understand for the public and increase the public involvement.

Since appropriate informing is a prerequisite for public participation, greater public participation can be achieved, if competent authorities actively inform the public, i.e. informs all interested parties about the beginning of the proceedings. It is also important that public is familiar with the way in which results of their participation will affect the final decision.

3. Possible means of public participation: public usually makes suggestions and gives comments in writing, communicated by post or email. There is also the option of organizing public consultations, in which the authority presents the intended solutions. During these consultations, the suggestions and comments from interested public are collected, examined, and in case of acceptability taken into account in the further process. It has to be emphasised that methods of public participation should be defined in a way that enables quality assurance in the public participation.

The competent authority is obliged to ensure free access to information to interested public. Special attention to the selection of methods should be given to public participation in projects (plans / programs) of transboundary character because in these cases there are multiple stakeholders who should be involved as there are more specific issues that may arise.

4. Deadlines for public response: sufficiently long deadlines should be set for public participation in the environmental legislation, i.e. setting deadlines of at least two months, where these limits should be extended in case of coincidence with summer months or major holidays (New Year's Day, Labour Day). Article 14 of the Water Framework Directive specifies that for the active participation and consultation with the public in the process of decision making of implementation of the River Basin Management Plan, must provide a minimum period of 6 months.



Figure 5: Nin – public discussion on zoning and planning of residential areas

5. Consideration of comments and suggestions made by the public: legislation should regulate the means to account for suggestions and comments from the public. Also, decision makers should show commitment to take these comments and suggestions into account. This part is legally and actually hardest to achieve; however, it would be generally beneficial to clearly define the criteria and means in which opinions and comments can be addressed.

6. Preparation of procedural plan: in order to exceed legal standards and increase the success rate in the plan preparation processes it would be useful for the competent authorities and decision makers, that the procedural plan is prepared for each decision-making process or preparation of acts with public involvement. The plan is adapted to each case of public participation, where the procedure, handling, deadlines, and other necessary tasks for quality process are set in accordance with the foregoing. In order to achieve the objective of the procedural plan itself formal and in-content quality process of public participation - and minimum formalities, is required.

In addition to the above, it is also centrally important that prior to any intervention the level of risk and problem rate for acceptance in the local environment is foreseen. Also the process of supplement –informal- public participation has to be anticipated in the process of finding solutions and the adoption of the act. It would be also very advisable that the legislator foresees the possibility of additional, informal work with the public at the very beginning of the process.

1. Case Examples – Good and Bad Practice

To find a good or bad example of public participation in general, and particularly in participation in the integrated management of water resources, is not easy. Not because they are not there, but because the examples are almost never black and white. Each case of public participation in decision making has both good and bad characteristics, so they are actually examples of mediocre practices. However, having this in mind, we hope to succeed in illustrating the positive and negative approaches to the issue of public participation in decision-making.

Good practice examples

Transboundary Biosphere Reserve Mura-Drava-Danube (Croatia)

In July 2012 UNESCO declared the transboundary biosphere reserve Mura-Drava-Danube between Croatia and Hungary. Nomination for transboundary biosphere reserve is coordinated within the Croatian Ministry of Environmental Protection and Nature and the State Institute for Nature Protection, and supported with the work of local and international NGOs. Activities associated with the establishment of transboundary UNESCO Biosphere Reserve Mura-Drava-Danube are organized in joint cooperation, of ministries, national and international organizations in cooperation with national and international experts, along with representatives of public institutions and other concerned citizens.

Area of Mura and Drava is under preventive protection since 2008, based on the professional background created by the State Institute for Nature Protection. Prerequisite for UNESCO nomination was declaring Regional Park Mura-Drava by the Republic of Croatia in February 2011, with the Regulation on proclamation of the Regional Park Mura-Drava. The Ministry of Culture has implemented the procedure declaring areas of Mura - Drava a Regional Park, and the public was involved in the procedure of designation of protected areas. Public inspection was organized by the counties with the park territory, during which the proposed act of protected area was exposed with a professional background and cartographic documentation. These documents were displayed in the county, as well as on the website of the counties. They also organized a public hearing. Public assessment lasted exactly within the statutory minimum period of 30 days, and the public was able to express in writing, their objections which were then reviewed by the Ministry of Culture. During the procedure for designation of

the Regional Park in 2010 there has been a delay in the proceedings, but under pressure from the public and NGOs, procedure was completed.



Figure 6: Regional Park Mura-Drava

The entire area of the Regional Park Mura-Drava, because of its value for the conservation of biological diversity, is included in the Croatian ecological network and will in the future become part of the European ecological network Natura 2000 and future biosphere reserve Mura-Drava-Danube, which would include three more countries (Austria, Serbia and Slovenia) and represent the first joint protected area of five European states..

The current work is on the integration in the EU Natura 2000 network. This process is carried out by the competent ministries, government bodies and NGOs implementing the project of public participation "Drava - Natura 2000" in which are involved representatives of public institutions, local and regional authorities, representatives of higher education institutions, development agencies, NGOs and the local population and media .

Expert public participation in the Preparation of the Sava River Basin Management Plan (RBMP) (Slovenia)

In Slovenia, The Institute for Water of the Republic of Slovenia² (IzVRS) was assigned to prepare the expert technical basis for the Sava River Basin water management plan. Enforcement of the Water Framework Directive in Europe brought significant shifts in modern water management, as it represents a broad framework for sustainable water resources. Between 2007 and 2009, IzVRS conducted several consultations with the expert public which were followed after first giving information via presentations, newspapers, web pages, and informational pamphlets. This active involvement was performed by organising participatory conferences, workshops, interviews, and field visits. Main purpose of the consultation process with the expert public was to obtain feedback, comments, data, and suggestions on the working areas of the Sava river basin district.

The consultations started in 2007 by first determining key stakeholders, i.e. the expert public³. Representatives of the expert public were informed about the course and the state of water

² IzVRS was established by Slovenian Government as public institute in accordance with Article 159 of Water Act.

management processes in Slovenia. Also, they were informed about the preparation of expert technical basis on national and basin level, where they could contribute with their expert knowledge. After first information and knowledge were exchanged, the consultation process carried on by determining the level of willingness of expert public to participate in the further process of the preparation of technical basis.

Further on in 2007, the first expert workshop was organized and some fieldwork was performed. Expert workshop was divided into three parts. First, there was an introduction part, which was mostly intended to acquaint expert public with the state and the preparation of expert technical bases in the river basin management plan (RBMP) and the preparation of interim report about water management. There was also the announcement of the cost-allocation in the program's cost effective measures and RBMP. The introduction into interactive part was concluded with first conclusions and results of methodological contents for the whole territory of Slovenia, i.e. all eight river basins.

In the interactive (second) part of the workshop, the participants were divided into working groups to list priority problems and their potential causers in a certain river basin. IzVRS then analyzed working results and later used some of the gained contents for the preparation of expert proposal for the interim report of water management. Consultations with expert public were concluded by an evaluation questionnaire, which included questions regarding contents, form, and organisation of the expert workshop.

In 2008, the program of cost-effective measures was prepared as part of preparation of the expert technical basis. The involved expert public took part in more specific consultation meetings, which were aimed to improve the quality of expert technical basis for the preparation of RBMP. In total, 161 experts participated in three consultation meetings. They were divided into different working groups, addressing water usage, protection aspect of water management, and water management. The goal of these consultation meetings was to form updated proposal of measures, giving corrections and additions to the generic lists of proposed measures, in order to establish higher-quality definition of the selected water bodies.

Further consultation meetings, related to heavily modified water bodies⁴ (HMWB) followed in 2009. Several goals were set, which were addressed through a questionnaire on specific water use and mitigation measures on HMWB which was sent to the expert public. One of the main goals was to acquaint the expert public with water planning process and environmental objectives that need to be achieved by HMWB. Furthermore, presentation of water planning process and water management objectives was organized. In the interactive part of consultation activities, an exchange of information regarding problems on HMWB and mitigation measures to ensure objectives of water management took place. Final part of 2009 consultation meetings was a review of the questionnaire results, followed by the agreement on further cooperation.

It can be concluded, that informing and consultations with the identified stakeholders are very important in the preparation of water management plans, even though they can be time consuming and professionally very demanding. In this important case in Slovenia, the consultations with the expert public proved to be crucial for further elaboration of RBMP, since important findings, results of all carried out workshops, and conclusion were

³ Expert public were representatives from professional organisations (agriculture, forestry, fishery, health, economy, traffic) companies, science institutions, regional development agencies and NGOs.

⁴ Surface water body is defined as heavily modified by a Member State, whose main characteristics are changed because of physical changes made by human activities.

considered. Through active collaboration between IzVRS and expert public the level of knowledge was raised, which helped also Ministry of the environment and spatial planning in their further formal procedures in accordance with WFD and Water Act.

„Flussdialog“ (Austria)

„Flussdialog“ provides a platform for public participation in river management. Concerned individuals can inform themselves about the rivers in their proximity. Prior to establishing river management plans, the participating provinces provide online questionnaires, which citizens can fill out. These questionnaires concern, i.e., the priorities individuals see for a certain river (for example whether a river should be utilised for hydro power production or rather used as recreational area). By these questionnaires, authorities are enabled to get a picture of the public opinion and thus act upon it.

LIFE-Project Upper Drava (Austria)

This project aimed at the re-naturalisation of the area of the upper Drau. Between 1999 and 2011, multiple measures to restore near natural conditions have been taken. Parts of the area were declared as nature conservation areas. The realisation of the project included twelve municipalities and was led by the competent provincial and federal authorities.

The public was informed about and invited to participate in the realisation of the naturalisation through various means: A homepage was established, providing general information about the nature restoration campaign and single projects of the campaign. A final report on the success of the campaign is available at this homepage. Key stakeholders (land owners, fishermen, hunters, farmers) were identified and could participate in certain planning steps. The campaign was accompanied by close collaboration with the media and various excursions, in which schools were invited to participate.

Public participation in preparation the draft of new Spatial Planning Act (Estonia)

This process is still ongoing, but the good features so far include a purpose to create a law that is thoroughly discussed with all the relevant stakeholders and represents best options for legal norms, chosen through this process. Also, there is a group of stakeholders that are consulted with more intensively (ministries and other state agencies, bigger NGOs etc) through a series of meetings that last during whole year of 2012 (time plan of meetings has been made public well in advance and notified to the stakeholders as well), consultation round for general public will follow. An easy access to information: a separate website has been created for the whole process, in a blog format that is easy to follow and transparency where the process is thoroughly transparent: the website makes available the draft law, time plan of discussions, minutes of the held discussions, presented opinions from ministries and NGOs and other stakeholders etc.

The River Basin Management Plan (Hungary)

The preparation of the River Basin Management Plan (RBMP) of Hungary was mandated by the Water Framework Directive and by a Government Decree enacted in 2004, obliging the Government and competent water management authorities to produce the RBMP until 22 December 2009. The RBMP – which is applicable for the first planning cycle lasting until 2015 – was published by that deadline and eventually adopted by a government decision on 5 May 2010, and later proclaimed in the Official Journal of Hungary on 21 May 2010. The

preparatory process of the RBMP in Hungary followed a bottom-up approach, starting from the identification of 1026 surface water and 108 underground water bodies, grouping them into 42 planning sub-units, further grouping these into 4 sub-basins (according to the largest rivers/lakes, such as Danube, Tisza, Drava and Balaton), the latter 4 constituting that part of the Danube River Basin which is under the jurisdiction of Hungary. During the planning process, alongside with preparing the single national RBMP, a public consultation process was managed, an SEA was completed and international or EU information and coordination obligations were complied with. In Hungary, a public participation strategy was developed in 2006, based on the European Commission's Guidance Document No. 8 on Public Participation, the Danube River Basin Public Participation Strategy, the findings of the Harmonizing Collaborative Planning Handbook and the country's own specific characteristics.



Figure 7. River Danube in Hungary

12 Regional Water Management Councils, 4 Sub-catchment Water Management Councils and a National Water Management Council were established, ensuring the so-called “open planning” process. These committees provided public control of the planning process in accordance with the WFD, especially during the preparation of river basin management plans. Later, based on the national public participation strategy, consultations began on the significant water management issues. A consultation document was made available to the public on the internet in December 2007 and comments were received during the first half of 2008. Stakeholders having sent comments were invited for a verbal consultation forum. Further consultations were held with stakeholder conferences organized, the outline of the national river basin management plan was presented online in December 2008 and was available for comments until the end of January 2009. Based on the remarks, the draft version of the national Program of Measures was made ready and published in April 2009 and remained open for comments until the end of July 2009. The consultation documents were debated in 42 local stakeholder conferences during July to complete the written consultation.

Next, 25 thematic and regional conferences were held in September 2009, when all the 47 drafts of river basin management plans were available (42 sub-units, 4 sub-basins and a national plan). Some 30-40 stakeholders attended each meeting and more than 1,500 comments and remarks were expressed altogether. Upon the request of NGOs the written

consultation period supposed to finish in mid-September 2009, was extended until November 2009. The comments were documented in the river basin management plans, together with the responses given by the planners when completing the plans. The diverse level water management councils convened in December 2009–January 2010 to approve the river basin management plans and based on the recommendations of these bodies the National Water Management Council approved Hungary’s river basin management plan on 18 January 2010. Our evaluation that this process showed positive features that may be worth following is reinforced by the evaluation of the International Commission for the Protection of the Danube River (ICPDR).

Bad practice of public participation

Plans for hydro power plant Kaunertal

Austrian water legislations provides for the possibility of individuals to propose a plan aiming at enhancing the overall water quality in a certain area (§ 53 Water Act). If the proposed plan promotes the public interests, the Federal Ministry of Environment can put the proposed plan into force; it then becomes legally binding.

This possibility was recently misused by the TIWAG (Tyrolean Hydro Power Enterprise): The TIWAG proposed a plan that did not aim at enhancing the quality of the concerned river stretches, but at providing a foundation for the construction of hydro power plants (in very sensitive natural areas with high conservation value). The federal ministry of Environment has not yet decided on the issue. There is, however, broad public opposition against the projects: Several NGOs have launched an initiative, asking the ministry not to permit the proposed plan, citizens initiatives have been formed, and there is a formal parliamentary request by the Green Party concerning the proposed plan.

The Federal Minister of Environment currently is under high political and public pressure, and whatever the outcome of his decision on the proposed plan: the lack of public participation *before* establishing a draft plan cannot be compensated for. Actions like these lead to a disastrous negotiation climate; the climate between the opposing parties (those wanting to use the potential of the water power and those wanting to conserve the natural value of the area) is worse than before. It can be doubted whether any decision the Minister of Environment takes will now satisfy both. This shows the value of early and transparent public participation.

Protection of the river Sana (BiH)

This example relates to the protection of the river Sana and the local communities that live in the upper stream of the river Sana, and have spoke against the construction of a new hydro power plant (Coalition for river Sana⁵).

Spatial plan of Republic of Srpska (RS) that was adopted by the National Assembly has the subject area predicted as the future protected area, but as this is not yet implemented, Sana management plan is not yet adopted. Despite this decision made by the National Assembly, the Government of Republic of Srpska (RS) has decided to grant concessions in the area, not taking into consideration the interest to protect the environment in the process of site selection (Concession Act RS, art.7), and contrary to the spatial plan of RS in 2006, a concession contract was made between the Ministry of agriculture, energy and development of RS and “Energz MBA” for the construction of a small HPP “Medna”. In the meantime, the municipality of Ribnik and Mrkonjić Grad adopted the conclusion to opposition of building

⁵ Sana and Una belong to Sava river basin

the mini HPP on the river Sana. Institute for Cultural and historical heritage of RS has also stand against the construction of the MHPP. On the other hand, Ministry of Physical planning, construction and ecology of RS, issued a planning consent to the construction of MHPP “Medna” despite the fact that the respective location is envisaged as a protected zone.

In 2009 lawsuits are filed by municipality Ribnik and Eco movement Zelenkovac. Coalition representatives have sent a letter to RS Inspectorate, environmental, construction, forestry and water management inspection, as well as to Mrkonjić Grad and Ribnik municipalities, with the request to stop illegal work, to punish offenders and to restore the field in its original condition. Coalition for the river Sana has managed to “invalidate” the decision that has ratified the environmental impact study in the administrative proceeding. After that, another decision was made and new administrative proceeding started on this new decision. Currently, Banja Luka municipality court decision is still awaited, on the subject matter that started with Ecological movement Zelenkovac lawsuit, against the Ministry Act to approve Environmental assessment study (this lawsuit was handed 27 months ago). The question is whether it was possible to delay the execution of the Act on the basis provided by the article 14 of the Law on legal disputes of RS (official gazette 105/106)⁶. Cutting trees in respective area is ongoing, while demand for the postponement of work (which was not filed) could prevent this harmful effect.



Figure 8: Protest on the river Sana

Bosnia and Herzegovina has adopted the Aarhus Convention and it is required to implement it. The question is whether the state authorities, when granting the concessions and publishing the solutions on urban consent, have complied with the Aarhus Convention and the Law on Environmental Protection. Especially in cases of public access to relevant information and whether the public was informed in an appropriate, timely and efficient manner in the early stages of decision-making on environmental issues and in the manner in which it was required?⁷

The Law on Environmental Protection of RS⁸ contains chapter IX entitled "Assessment of the environmental impact of “governing the procedures of the bodies, originator of the procedure and the possibility of public participation in the proceedings. It is necessary to take advantage of these opportunities provided by the law, such as the right to information and the right to

⁶ « The complaint, as a rule, does not prevent the execution of an administrative act against whom is filed. Upon request of the prosecution, the agency responsible for enforcement, will postpone the enforcement of the act, until the final court decision, if the enforcement would cause prosecutor the damage that would be difficult to recover, and if postponement is not contrary to the public interest, or would cause a greater irreparable harm to the opposing party...»

⁷ Art.6 Par. 2 of the Convention, reads: "interested public will be informed, either by public announcements or individually as appropriate, early in the decision-making process on issues of the environment, in an adequate, timely and effective manner, inter alia on: (a) The proposed activities and the application of which will be decided; (b) The nature of possible decisions or the draft decision; (c) the public authority responsible for the decision;

⁸ Official gazette RS 28/07, 41/08 i 29/10

participation, which can be used for initiating proceedings before the authorities in order to undo harmful consequences for the public interest and the environment⁹.

In the current BiH practice, there is no such case that due to reasons for initiating the public participation procedures in awarding concessions or urban permit approval, the subject act was overturned, but the fact is that such actions were not even initiated. So far in BiH, river basin management plans are not adopted and regulations do not contain provisions on Strategic Environmental Impact Assessment. The question is whether the feasibility study on the possible exploitation of hydropower natural aspects is taken seriously enough.

Studies on the hydroelectric potential of river in BiH are currently preparing studies, with the final idea to attract investors who would invest in hydropower. Given that there is not enough experience of NGOs from Bosnia and Herzegovina, and there is a very small number of experts who deal with environmental law, it is necessary that NGOs are better acquainted with the legal possibilities. Therefore, it is necessary to prepare a strategy to participate in the proceedings as well as the strategy of managing the legal procedure. One of possibilities is to create a better cooperation with the recently opened Aarhus Centre in Sarajevo, which has employed lawyers, in order to achieve better cooperation on the additional training of NGOs in the field of rights protection.

Information about how the public participation changed the water management plan (Estonia)

According to WFD (Annex VII p A sub point 9), the water management plan must include a summary of the public information and consultation measures taken, their results and the changes to the plan made as a consequence. This requirement has not been met in any of water management plans for river basins in Estonia.

The West-Estonian River Basin Management plan includes only a chapter no 22 „Publication of the water management plan“, in which only the means of public participation have been described, but there is no information about whether or how the results of public participation had any impact on the outcome, whether the plan was changed in result of public participation. There is only one statement, saying „The reasoned suggestions and opinions were taken into account, while composing the draft of water management plan“. This is not sufficient for fulfilment of requirements of the Aarhus Convention and WFD, as it does not explain who the public participation affected the final result.

The reason for such bad practice was probably the fact that Estonian Water Act did not at the time set such requirement for the water management plans. Until 17th July 2010, the Water Act only set requirements for the procedure, but not requirement that the effect of outcomes of public participation have to be described. This deficiency in law was eliminated with amendment of Water Act, stepping into force only on 17th July 2010, i.e. after the river basin management plan was already approved.

The plans for improving the navigability of the Danube (Hungary)

⁹ Article 10 of the Law states that *"Every citizen and organization must have adequate access to information concerning the environment that is held by the government, including information on hazardous materials and activities in their communities, as well as the opportunity to participate in the process of law-making decisions. The authorities that deal with environmental issues are bound to encourage the development of public awareness and encourage public participation in decision-making rules and decisions, ensuring the availability of information to the general public. It must allow for public participation in the administrative proceeding.."*

Inland navigation has always been part of the Danube landscape, but its full functioning – due to the natural characteristics of the River Danube – was always problematic. The improvement of the Danube as an inland navigation waterway, also as the transport corridor VII within the TEN-T program is a priority for the EU as well as for Hungary. Within determining priorities in terms of the development of TEN-T the EU ranked the Danube-Main-Rhine inland waterway system as 18th. Hungary has received EU funding for the preparation of the studies underpinning the project for the improvement of the navigation. The Ministry of Economy and Transport of Hungary has prepared a study called “*Studies underpinning the project for the improvement of the navigability of the Danube*” in 2005-2007. The preparation of these studies was not accompanied by sufficient public participation steps; however, this initial study and its findings seem to predetermine for a long time the conceptual approach towards navigation on the Danube. Later, SEA process of the study was undertaken in 2009 that resulted in an Environmental Report published in April 2010 which mentions 4 alternatives, as follows:

- zero option: accepting the current morphological statuses, navigation is possible with only considerable limitations in space and time (hereinafter “pessimistic” option)
- option 1: traffic of ships with 2,5 m draft is possible at a navigation width of 180 m
- option 2: traffic of ships with 2,5 m draft is possible at a navigation width of 120 to 180 m, at places with one way crossing only
- option 3: traffic of ships with 2,5 m draft is possible at places at a navigation width of less than 180 m (the specific width that in case of 150 m navigation width makes possible a two-way crossing is defined during planning, based on detailed environmental, nature conservation and drinking water assessment).

While there were some opportunities for the public to participate during the preparation of the SEA, as can be seen from this list, these are not real alternatives. These are rather minor variations with insignificantly different environmental consequences of a concept that wants to make the Danube more apt for navigation largely by dredging and sediment removal. The alternatives were predefined by the planners of the navigation plan, and those who prepared the background study. The SEA developers had little intention to define other alternatives, or they had little will due to the fact that the studies and the Danube SEA were both done by the very same company.

The environmental and water management licensing procedures for the fairway improvement works have been conducted by the relevant authorities in 2010 and 2011. The authorities issued both the environmental permits – according to the project schedule – for six points of intervention and water management permits for two points.

According to the project website¹⁰, licensing was suspended in March 2011 by the Ministry of Rural Development. In its justification the said Ministry has identified several reasons for halting the licensing procedure such as the alleged absence of cost-benefit assessment, the alleged absence of real alternatives to the development of inland navigation and last but not least the alleged absence of fairway improvement alternatives.

The said Ministry identified as condition for resuming of the licensing procedure, the delivery of a totally new SEA which in their opinion shall be adopted by the Government instead of the relevant authority. In June 2011, a new SEA was produced, now with more public participation than before. After the presentation of the Environmental Report of this 2011 SEA, the National Environmental Council, a tripartite advisory body to the Government of Hungary, consisting of 7 members from each constituent group (business, academia, and civil society) has rejected formulating a standpoint on the SEA, not being able to reach a consensus

¹⁰ <http://dunahajozhatosag.hu/index.php?menu=project&lang=en>

on the matter. However, this matter is again submitted to the Council, now with a view presented by some stakeholders that this time a standpoint must be prepared by the Council, and in case there are diverging opinions, they can be phrased as minority reports. This last development in the history of the case, represents a bad approach and deprives the Council of its major characteristic, i.e. otherwise it only expresses itself if there is consensus among the representatives of the three pillars of society. If the Council is under pressure to act while lacking consensus on the issue, it will be a precedent for the future and can tear apart the functioning decision-making system within this important institution of public participation.

The same state – completely different approaches to public participation (Germany)

The implementation of the WFD public participation requirements in Germany is much diversified due to the federal structure of the country and as a result different levels of jurisdiction. Therefore, a general evaluation of public participation for Germany as a whole cannot be given as procedures differ by federal states. In Germany, both good practice and bad practice examples can be identified.

The Ministry of the Environment (BMU) is responsible for WFD issues on national level, thus the national level sets the water policy frame for river basin management. The main responsibility for implementing the WFD lies within the federal states. Decisions with direct effect on measures taken in the basin (e.g. support programs for changes in land use, investment programs, identification of priorities in water management, maintenance of waters of 1st order) are taken here. As most of the river basin districts extend to more than one federal state, in these cases the federal states are organised in „River Basin Communities“ („Flussgebietsgemeinschaften/FGG“) where the WFD implementation activities for the whole river basin district are coordinated.

Regarding Public Participation, the information of the public takes place on all administrative levels, mainly by using the internet. The German national level together with the 16 federal states provides a joint website that is used to inform the public on WFD activities in the whole country (www.wasserblick.de). On German national level no further public participation activities take place as there is no decision-making authority on river basin management actions on this administrative level. The minimum requirements for public participation, the formal participation, is equal in every federal state as it is regulated in the federal water act (Wasser-haushaltsgesetz - WHG), however the implementation of the *active* involvement of all interested parties according to Article 14 of the Directive is left to the federal states and takes place mainly on federal state level or inferior administrative levels (regional level, sub-basin level, municipal level). That means that even in the same river basin district public participation activities can differ a lot, if different federal states that are responsible.

In the Elbe River Basin District, for example, significant differences in public participation procedures can be identified when comparing the federal states Brandenburg and Thuringia. In the area of information provision, for example, in Thuringia a broad variety of tools are applied, such as regularly published information letters with information on the current status of WFD implementation for the whole federal state, internet-based information for the general public and for stakeholders, and GIS-based maps. However, in Brandenburg mainly leaflets and brochures were produced (even if the information policy in Brandenburg has been enhanced in subsequent years). According to Borowski (2004), in the beginning of the implementation process, in the administration in Brandenburg there was certain reluctance towards public participation due to limited financial and human resources. In Thuringia, however, authorities have seen the WFD as a chance for their work in water management to

be enhanced and have seen public participation as a good possibility to avoid later conflicts with relevant stakeholders.

Thuringia can be seen as a good practise example in implementing the WFD public participation requirements. Written comments by the public and their impact on changes in the produced documents (programme of measures/ river basin management plans) were published online. If a written comment was not considered in the document, the reasons for this decision were also published. On federal state level one WFD council was established for the early involvement of stakeholders with state-wide interest in water management issues (economic water users, agricultural and fishery organisations, environmental groups, representatives of the counties and municipalities etc.). It is set up as a consultative body to the highest water authority. The main tasks include providing information about the implementation process to the members of the council, discussing key implementation steps and solving conflicts. Furthermore, regional water boards in the river basins “Saale”, “Unstrut/Leine” and “Werra/Main” were organised with the task of interconnecting regional activities and discussing specific problems and their solutions in the regions (Borowski 2004). Similar boards and councils were also established in other federal states. These boards are not suited for involving the general public, but on higher administrative levels they seem to be an appropriate solution as it is hard to reach individual citizens to participate actively in such a large area. The boards have to guarantee that all public interests (economic, social, environmental interests etc.) are represented equally and that there is no domination by a certain interest.

The active Public Participation in Thuringia is distinguished from PP activities in other federal states by two interesting points: the "pilot projects for the Water Framework Directive" and the “river conferences”. The state initiated an ideas competition for pilot projects in river basin management. The objectives of these pilot projects were to test the common implementation of interdisciplinary and complex measures, to optimise the cooperation between all relevant stakeholders and to assess the involvement of all interested parties. Over 90 proposals were submitted from which nine were selected for implementation (Gunkel 2004). The high number of submitted proposals can be seen as a success as it indicates high interest in water management issues among the public. The public could not only participate in predetermined decision making processes, but had the opportunity to really take an active part in the implementation of the WFD by formulating and implementing its own ideas.

The concept of “river conferences” is based on the assumption that the active and living participation requires the individual citizen to identify with the region in question. However, most of the German river basin districts extend over several thousand square kilometres. The “river conferences” take place on a local scale in individual cities or municipalities, so that they refer only to a certain stretch of a river. This aims to involve people who are really affected by the implementation of measures and to include local knowledge in decision making processes. In a commonly structured process problems are identified and weighted to find solutions with a broad acceptance among all participants. This means that *affected* persons become *involved* persons in the process of implementing the WFD requirements. The agenda of a typical “river conference” includes: introduction of all participants to guarantee a trustful atmosphere, short Input-presentations on important topics (e.g. status of the local part of the water body) by experts, work in small groups to identify important topics, common selection of most important topics, discussion of problems and finding proposals for solutions, clarify responsibilities for the implementation of chosen solutions. In the optimal case, “river conferences” are repeated several times, so that the implementation of decided measures or solutions can be revised and their success can be evaluated transparently as well as new upcoming topics can be discussed



Figures 9 and 10: Breitung, Discussion on the so called „River Conference“

Adoption of the river Basin management Plans (Romania)

In 2012, one Romanian NGO conducted an investigation regarding the adoption of the river management plans in Romania. They submitted a request for information to all 11 river basin administration, to The Ministry of Environment and to the National Water Administration. The answers from all the administration was the same, personalized only with the dates and locations of the meetings, names of the newspapers, of the normative acts that approved the management plans, etc. There was a template completed with specific information by each authority. Reproduced below is the template of that response, i.e. the description of the procedure for the river management plan adoption in Romania.

The procedure of public participation to the adoption of the river basin management plans was organized by the Basin Committee that is organized for each river basin. In total there are 11 River Basin, each one having its own administration (Basin Committee). Three years before the River Basins Management Plans adoption, in December 2006, the schedule and the work plan for the adoption of the management plans was published for all 11 river basins on the website of the River Basin’s Administration.

During 2008 each river basin administration organized meetings with the interested public and target groups in 4 major areas, identified as the most important problems in water management: mitigation measures in agricultural pressures, mitigation measures in regions with intensive housing pressures, action on mitigation pressures from industry, action on mitigation pressures caused by hydro morphological pressures. There were 44 such meetings in total – 4 in each river basin. The debates were announces in several newspapers, in several Radio frequencies, several TV posts. Questionnaires booklets and leaflets were realized for these meetings.

For the Danube River there was a special meeting, organized at national level. The Management Plan of Dunărea River was publicized in December 2008 on Dobrogea – Seaside Administration website.

In December 2008 the 11 river basin management plans were posted on websites of the river basin’s administrations. The public could comment and express opinions until November 2009.

In 2009 each River Basin Administration organized public debates regarding the management plans where the interested public could express opinions and suggestions. The public was

informed by emails, phones, letters, announcements on websites, national and local press, etc. Questionnaires regarding the content of the management plans were distributed via email to all important users. The Management Plans were approved by the Basins Committees in 2009 and adopted through Governmental Decision in 2011.

Regarding the report received from the water authorities, cited above, from the documents received, we realized that almost no general public participated in the procedures. Only NGOs working closely with the authorities, like WWF, participated in some of the 11 river basins like Prut – Bârlad and Dunărea River. All other invitations and emails were addressed to other public institutions and not to the real public. Romania is a very good example of how to do realize public participation procedure, without involving the public, with the omnipresent excuse that the public is not interested to participate.

Regarding the public participation procedure in Romania the legislation in water area mentioned above is in compliance with Aarhus Convention. However in practice the use of emails and individual invitations to public debates or to submit comments to various projects or plans is restricted. Even if the authorities would properly invite the public, still, the public wouldn't participate because into the decision making process because there is no tradition or culture in that regard and the authorities didn't initiate any educational campaigns to encourage the public to participate.

The common attitude of the authorities towards public participation in all areas is to discourage the public to participate by limiting the means of participation (for example the mayor of Bucharest decided to allow the public to the Bucharest County meetings in a different room and follow them by video chat, measure seen as restrictive by all civil society), or the public debates are organized in small villages very difficult to go to (as was the case for a project regarding the Danube River that aimed to improve the navigation conditions), the public announcements are made only in very local newspapers so that the general public or NGOs wouldn't be able to find out in time about the procedure (there is a case regarding extending a lignite exploitation where all announcements were made in newspapers circulating in a few villages), by refusing to translate documentation in other languages (as was the case of the National Energy Strategy – Greenpeace requested the documentation in English and the authorities refused to do so), etc.

Instead of conclusion – What are the prerequisites for successful public participation in decision making processes?

Public participation in decision-making is comprehensively regulated by law. Norms on how to include public participation in the preparation of water management plans exist in the legislation of the European Union (Water Framework Directive), as well as in the EU member states legislations. Legal rules are not only formal but should serve the purpose of effective public participation in decision-making. However, to achieve this effect, it takes more than to just follow the formal legal requirements.

According to experience that we have gained though this project, when planning a public participation procedure, the following factors and steps should be taken into account:

- **Be ready** to involve public in the decision-making. Without readiness for public participation and a purpose to really collect opinions from the stakeholders and use them for the better decision, the process cannot be successful.

- Define clearly what are the **possibilities and rights of the participants**. To what extent do they have a say in the outcome of decision? This should be clear not only to the decision-makers, but also to the participants themselves.
- It is very important, before starting the process where public participation is envisaged, to **educate and inspire** public to participation in decision-making. Public that has previously been educated and animated, can be ready to take an active role in some project planning (plan, program).
- **Define potential participants i.e.** find out **who would be interested** in participation, who are the stakeholders
- define the **contact persons** of the stakeholders (local leaders, leading persons in local communities) – these persons are a good way to communicate information further to other potential participants, therefore maximising the amount of people who are involved in the decision-making
- for enhancement of further communication, it is useful to have a **database** of all potential participants (or their contact persons) – especially good is to have a mailing list
- it is useful to have a **separate website** for the process, where potential stakeholders can either **register** as interested persons, or already give their input in form of comments, opinions etc.
- **Plan the participation process already before beginning with consultations.** Define: **who** is involved? **Why** exactly these people? **What is expected** from the participants? How the participation process is structured – **what means of communications** (web, newspapers, letters, and phone) is used, as well as methods (meetings, hearings, teamwork)? What is the **time-schedule** of participation process – what are the different stages of process, in which stages can the public participate, what are the deadlines of presenting comments to the proposed plan etc.
- This “participation map” or plan should be **published** early in the process (in case there is a separate website for the process, then on this webpage) and followed – it makes the process transparent and therefore creates trust in the process and its outcome. It also allows the participants to prepare themselves and therefore supports the good quality of outcome.
- **It is important to have a variety of communication means and a clear message.** It is important to know **what means of communication are appropriate** for different groups of participants, and to use different kind of tools, in order to involve as many as possible (eg internet, e-mail and Facebook for younger generation, newspapers and other media for older generation).
For the web-users, **separate webpage** could be created for the whole process of specific issue (in case it involves long process, big amount of materials and many participants). This webpage should be structured so that information can be found easily. Also when choosing the **wording of information** to be communicated, one has to consider who are in the „other end“ of the communication – if there are professional NGOs, it is probably appropriate to give all the information, including technical

details, without much simplification. On the other hand, if the range of potential participants involves local people, the language should be clear and simple (or a non-technical summary should be added to the materials). It is always useful to use illustrative materials (maps, photos of places etc), in order to help to understand the information. In addition to web and media, **real discussions** are helpful for getting the most out of participation. These should preferably be held in **places that are near to the affected persons** and used by them for daily activities (school, library, local culture centre etc). In case of bigger process, it is useful to consult with **communication experts** about what are the most effective ways to reach people and how to plan the process.

Design the time-schedule of participation process according to needs of participants. There should be **sufficient time** for making comments! According to WFD (Art 14(2)), water management plans should be on public display at least for 6 months.

Timing of hearings – in case the hearings do not involve only local officials, but also ordinary people, it should be organised in time of day when the latter are able to participate (usually after the working hours). It is also **not useful** to have hearings or short public displays in periods of summer holidays, Christmas or other important holidays.



Figure 11: Public hearing on the urban planning of City of Samobor

- It is necessary to **communicate the outcomes of the participation process**. The feedback about how the opinions from public have been **taken into account** is essential, in order to create transparent process. The information about how public participation affected the outcome should be **published, sent to stakeholders!**

There are many documents¹¹ that contain good recommendations on how to acquire public participation in integrated management of the water potential, which are too broad to be analysed here, but here are some advices:

- Participatory processes should be built on the classic idea of democratic theory: "... the public should have a say in decisions about actions that affect their lives, as this would make them better citizens."¹²

-Too often there is a lack in knowledge and experience of the decision makers on public participation. The number of participants involved in the process of public participation increases, which further complicates the implementation of the process. It requires a methodical and institutionalized mechanism for capacity building in order to enable the representatives of the public administration and public representatives, including directly affected citizens, to work together in the planning process. Working together through the planning, is in itself capacity and experience building of learning by doing.¹³

-A good way to avoid later misunderstandings is to establish a network for exchange of information and experiences between professionals and the public, which may even lead to avoiding the same mistakes that others have already made and corrected.¹⁴

-The dispute between the government and other stakeholders involved in water management can reveal a clear picture of the relative costs and benefits in water management. This may have implications on the choice of priorities among alternative measures that may ultimately confirm goals or lead to consideration of possible exceptions.¹⁵

All the above-mentioned recommendations for successful public participation are applicable to all procedures for public participation in decision-making, not just in matters of water management. We hope that this manual will serve to improve the procedures for public participation in Croatia and BiH, and perhaps beyond. We wish to note that in particularly sensitive cases, especially those of transboundary character, it is really necessary to go beyond just meeting the minimum legal requirements for public participation. Although this can sometimes mean the delay of the realization of a project (plan, program), public participation should be carefully planned and predict the same period of time that allows inclusion of all stakeholders in making joint decisions.

¹¹ *Water management: Guidance on public participation and compliance with agreements, 2000; Guidance on Public Participation in Relation to the Water Framework Directive, 2002; Public Participation and the European Water Framework Directive, 2003*

¹² Delli Priscolli, 2004.

¹³ *Féas i sur., 2004.*

¹⁴ <http://www.eea.europa.eu/themes/water/water-management/public-participation>

¹⁵ <http://www.eea.europa.eu/themes/water/water-management/public-participation>



Figure12. River Sava

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