

Interactive comment on “The “WFD-effect” on upstream-downstream relations in international river basins – insights from the Rhine and the Elbe basins” by S. Moellenkamp

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The article "The 'WFD-effect' on upstream-downstream relations in international river basins - insights from the Rhine and the Elbe basins, written by Sabine Moellenkamp, in: Hydrology and Earth System Sciences Discussions, 4, 1407-1428, 2007, is useful in many respects: it discusses the effect of a European environmental legislation (Water Framework Directive, WFD) on two international river basins (Rhine and Elbe) and it poses a striking question: can institutions such as the WFD shape or even alter the interests of affected parties such as upstream and downstream countries? Following Sabine Möllenkamp, there are new interdependencies among those parties resulting

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from new tasks (such as ecosystem management) as well as new mechanisms that lead to better cooperation. The article concludes that the WFD has a balancing effect on upstream-downstream problems and it enhances river basin solidarity in international basins. According to the analysis, however, it is less clear how the polluter pays principle shall be applied, and whether and how new financial compensations will be introduced. The author - carefully - pleads in favour of those financial compensations if the PPP will be applied. This is the entry point for our comment. The general impression is that this is a very useful, informative (with pretty good graphs) and well-written paper. The article also draws upon an impressive number of interviews and literature on common pool resources. However the reviewer misses basic insights from economics, in particular a reference to Ronald Coase. Referring to the well-known 'Coase Theorem' would help to argue why cooperation and compensation between parties is useful and in line with the polluter pays principle (see pp. 1413, 1421), and it would help to explain how an efficiency criterion could be applied. Referring to abatement costs for upstream countries, for instance (see p. 1415), the Coase theorem would open up negotiations taking into account both abatement costs (AC) and damage costs (DC), thus facilitating cooperation on a cost-effective basis. The rationale would be that downstream countries would have an incentive to invest if $DC > AC$ (or up to the point where DC curve intersects with AC curve). In that context it could also be helpful to add a few remarks on the interests of affected industries (see p. 1414f.): French chemical and extractive industries have strong stakes in the internal market - comparable to Dutch agriculture industry. Economic relations thus seem to underpin existing political relations. On p. 1418: it is not quite clear how the WFD strengthens the position of downstream countries. Is it just because of more transparent data and measures? Or because of a general solidarity? The reader of law and economics literature may ask whether and to what extent any principle of liability or accountability is formulated in the WFD - a clarification by the author would improve the understanding. On p. 1420 a similar issue arises: the author refers to the 'public good' dimension and changing interests. Who, then, is the actor who preserves or provides for those public goods? And

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what exactly is the institutional mechanism? Convincingly, the paper argues in favour of more responsibility for downstream countries (e.g. for fishes and ecosystems). It is less clear, however, how this translates into negotiations, cost-benefit calculations, and policy outcomes. If only the ecosystems benefit (i.e. a public good), any negotiation with upstream countries would not be easier than before. Does the WFD entail any enforcement procedure or arrangements for the settlement of disputes that would help to solve those conflicts? On p. 1423: The role of the European Commission seems to be ambiguous, acting both as advocate and as a referee. This is in line with European Policy and Law, but in slight contradiction with much of the cooperation literature. It would be good to conclude on that point, e.g. on the experience with such a role. On the conclusions in general: some parts are fairly strong, others seem a bit overstretched. Is it really fair to conclude that upstream and downstream countries now have the same position and the same responsibility? This would imply comparable damage costs resulting from the different activities - which are perhaps not unrealistic given that the EU environmental policy has other tools to tackle chemical industry, water use by energy utilities etc. But I may suggest to make a reference to those other policies, and to lower expectations towards smooth conflict settlements for other transboundary water basins. Again, this is a very useful article which deserves attention by academics. Raimund Bleischwitz, Wuppertal Institute and College of Europe Reference: Coase, Ronald H. (1960): The Problem of Social Cost. The Journal of Law and Economics, Vol. III, October, pp. 1 - 30. See also: Raimund Bleischwitz (2007): Corporate Governance Of Sustainability - A Co-Evolutionary View on Resource Management, Edward Elgar Publisher.

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