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**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

Legal Board

First meeting

Verona, Italy, 28-29 June 2004

**ESTABLISHING A COMPLIANCE REVIEW MECHANISM
UNDER THE 1999 PROTOCOL ON WATER AND HEALTH**

Prepared by a consultant and finalized by the secretariat

This draft compliance review mechanism (annex) is based on a document drawn up under a consultancy agreement with the Regional Office for Europe of the World Health Organization by Mr. Attila Tanzi and discussed at the second meeting of the Signatories to the Protocol on Water and Health (Geneva, 2-4 July 2003). After that meeting, the document was revised (MP.WAT/WG.4/2004/2) to take into account both the outcome of the meeting's discussion and subsequent comments, and submitted to the Working Group on Water and Health at its third meeting (11-12 March 2004). The Working Group entrusted the Legal Board with the further preparation of the compliance review mechanism.

The background to the draft compliance review mechanism is set out in document MP.WAT/WG.4/2004/2.

Annex

DRAFT COMPLIANCE REVIEW MECHANISM

I. OBJECTIVE, NATURE AND PRINCIPLES

1. The objective of these procedures and mechanisms is to facilitate and promote [and aim to secure] the implementation of and compliance with the obligations under the Protocol [, with a view to preventing disputes,] by:
 - (a) Addressing cases of non-compliance by Parties; and
 - (b) Providing advice or assistance to Parties, where appropriate.
2. The mechanism shall be simple, facilitative, non-adversarial and cooperative in nature and its operation shall be guided by the principles of transparency, fairness, expedition and predictability.
3. The mechanism shall be conducted bearing in mind the interests of the Party facing difficulties, of the Parties as a whole and of populations potentially or actually adversely affected by non-compliance.

II. STRUCTURE

[Option 1: independent members]

4. (a) The Committee shall consist of eight members who shall serve in their personal capacity;
 - (b) The Committee shall be composed of nationals of the Parties to the Protocol, no two members having the same nationality;
 - (c) The members shall be persons of high moral character and have recognized expertise in the fields to which the Protocol relates, including scientific, technical, socio-economic and/or legal experience;

[Option 2: Parties]

4. (a) The Committee shall consist of eight Parties;
 - (b) Parties members of the Committee shall be elected by the Meeting of the Parties to the Protocol;
 - (c) Member Parties shall ensure continuity and adequate qualification and skills in the workings of the Committee;
 - (d) In the election of the Committee, consideration should be given to the

(d) The members of the Committee shall be elected by the Meeting of the Parties to the Protocol, from among candidates proposed by the Parties [, the Signatories] [and NGOs enjoying observer status before the Meeting of the Parties to the Protocol];

(e) In the election of the Committee, consideration should be given to the geographical distribution of membership and the diversity of experience;

(f) At their first meeting, the Parties will elect four members for a full term of office and four members for a half term of office. Subsequently, the Meeting of the Parties shall elect for a full term new members to replace those whose term has expired. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve for the remainder of the term, subject to the approval of the Committee. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms;

geographical distribution of membership, the principle of rotation and ability to fulfil requirements under subparagraph (c);

(e) At their first meeting, the Parties will elect four members for a full term of office and four members for a half term of office. Subsequently, the Meeting of the Parties to the Protocol shall elect for a full term new members to replace those whose term has expired. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve for the remainder of the term, subject to the approval of the Committee. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms.

5. (This may be either alternative or cumulative to the provision in paragraph 4 (d) of option 1 and is applicable to both options 1 and 2). [Two non-governmental organizations promoting the objectives of the Protocol and enjoying observer status before the Meeting of the Parties shall be entitled to participate in the meetings of the Committee as observers, with full rights except the right to vote. The Meeting of the Parties shall designate these two organizations at each ordinary meeting following the indications of NGOs enjoying observer status before it.]

6. The Committee shall elect its own Chairperson and Vice-Chairperson and approve its rules of procedure.

7. The Committee shall, unless it decides otherwise, meet at least once a year. The joint secretariat shall arrange for and service the meetings of the Committee.

III. FUNCTIONS OF THE COMMITTEE

8. The Committee shall:

(a) Consider any submission, referral [or communication] relating to specific issues of compliance made in accordance with paragraphs 10 to [19] below;

(b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of specific provisions of the Protocol; and

(c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 7, paragraph 5, of the Protocol;

[and act pursuant to paragraphs 32 and 33.]

9. The Committee may examine compliance issues and make recommendations if and as appropriate.

IV. SUBMISSIONS BY PARTIES

10. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The joint secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable

11. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and supported by corroborating information. The joint secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the joint secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require but in no case later than six months. The joint secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

V. REFERRALS BY THE JOINT SECRETARIAT

12. Where the joint secretariat, in particular upon considering the reports submitted in accordance with the Protocol's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the joint secretariat shall bring the

matter to the attention of the Committee, which shall consider the matter as soon as practicable.

VI. COMMUNICATIONS FROM THE PUBLIC

13. On the expiry of twelve months from either the date of adoption of this [decision] or from the date of the entry into force of the Protocol with respect to a Party, whichever is the later, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol,

[Option A: opt-out for an indefinite period – communications from the public]

unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received and make it available to the public.

[Option B: opt-out for a two- or four-year period - communications from the public]

unless that Party has notified the Depositary in writing by the end of the applicable period that it is unable to accept, for a period of not more than two [four] years, the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received and make it available to the public. During the two-year [four-year] period mentioned above, the Party may revoke its notification thereby accepting that, from that date, communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Protocol.

[Option C: opt-in irrevocable – communications from the public]

provided that the Party concerned, when ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, has declared in writing to the Depositary that it accepts the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received and make it available to the public. A Party that has declared its acceptance of the consideration of communications from the public by the Committee [, and has not withdrawn its acceptance within two [four] years thereafter,] may not subsequently withdraw its acceptance without withdrawing from the Protocol.

[Option D: opt-in revocable – communications from the public]

provided that the Party concerned, when ratifying, accepting, approving or acceding to the Protocol, or at any time thereafter, has declared in writing to the Depositary that it accepts the consideration of such communications by the Committee. The Depositary shall without delay notify all Parties of any such notification received and make it available to the public. A Party that has declared its acceptance of the consideration of communications from the public by the Committee may modify or withdraw its declaration at anytime thereafter.

14. The communications referred to in paragraph 13 shall be addressed to the Committee through the joint secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

15. The Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of this [decision] or with the Protocol.

16. The Committee should, at all relevant stages, take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

17. Subject to the provisions of paragraph 15, the Committee shall as soon as possible bring any communications submitted to it under paragraph 13 to the attention of the Party alleged to be in non-compliance.

18. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.

19. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this chapter and take into account all relevant written information made available to it, and may hold hearings.

VII. INFORMATION GATHERING

20. In order to perform its functions, the Committee may:

(a) Request further information on matters under its consideration [including from the Parties involved, the joint secretariat, intergovernmental bodies, non-governmental organizations, the private sector and other civil society organizations];

(b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;

(c) Consider any relevant information submitted to it [, including from the Parties involved, the joint secretariat, intergovernmental bodies, non-governmental organizations, the private sector and other civil society organizations]; and

(d) Seek the services of experts and advisers as appropriate.

21. [Information referred to in paragraph 20 (a), (b) and (c) may come from any relevant source, including the Parties involved, the joint secretariat, intergovernmental bodies, non-governmental organizations, the private sector and other civil society organizations.]

VIII. CONFIDENTIALITY

22. Save as otherwise provided for in this chapter, no information held by the Committee shall be kept confidential.

23. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 10, paragraphs 4 (c) and 5, of the Protocol and that has been provided in confidence.

24. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 10 above.

25. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks that it be kept confidential because of a concern that he or she may be penalized, persecuted or harassed.

26. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold closed meetings.

27. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 23 to 25 above. Information that the Committee must keep confidential under paragraph 23 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

IX. ENTITLEMENT TO PARTICIPATE

28. A Party in respect of which a submission, referral or communication is made or which makes a submission [and which is not a member of the Committee], [as well as the member of the public making a communication], shall be entitled to participate in the discussions of the Committee with respect to that submission, referral or communication.

29. The Party concerned [, the submitting Party][and the member of the public] shall not take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee.

30. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Party concerned, the submitting Party and the member of the public who submitted the communication if applicable, and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

XI. COMMITTEE REPORTS TO THE MEETING OF THE PARTIES TO THE PROTOCOL

31. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall be taken by a two-thirds majority of the members present and voting or by five members, whichever is the greater. [Committee reports shall be available to the public.]

Alternative one

XI. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS CASES OF NON-COMPLIANCE

32. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance:

- (a) Provide advice and facilitate assistance to individual Parties regarding their compliance with and implementation of the Protocol, as appropriate;
- (b) Make recommendations to the Meeting of the Parties to the Protocol regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures;
- (c) Request or assist, as appropriate, the Party concerned to develop a compliance action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned [, taking into account its existing capacity to comply];

Alternative two

XI. CONSIDERATION BY THE COMPLIANCE COMMITTEE

Option one

32. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may:

- (a) In consultation with the Party concerned, take the measures listed in paragraph 33 (a);
- (b) Subject to agreement with the Party concerned, take the measures listed in paragraph 33 (b), (c) and (d).

Option two

32. Pending consideration by the Meeting of the Parties, with a view to addressing compliance issues without delay, the Compliance Committee may, in consultation with the Party concerned take the measures listed in paragraph 33 (a), (b), (c) and (d).

(d) Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol; and

(e) [In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.]

33. The Meeting of the Parties to the Protocol may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Protocol. The Meeting of the Parties to the Protocol may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

(a) Recommend financial and technical assistance, technology transfer, training and other capacity-building measures;

(b) [Issue cautions;]

(c) [Issue declarations of non-compliance;]

(d) [Give special publicity to cases of non-compliance;]

(e) [Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; or]

(f) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

XII. CONSIDERATION BY THE MEETING OF THE PARTIES TO THE PROTOCOL

33. The Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Protocol. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

(a) Provide advice and facilitate assistance to individual Parties regarding the compliance with and implementation of the Protocol, as appropriate [and particularly through financial and technical assistance, technology transfer, training and other capacity-building measures];

(b) Request or assist, as appropriate, the Party concerned to develop a compliance action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned [, taking into account its existing capacity to comply];

(c) Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol;

(d) [In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;]

(e) [Issue cautions;]

(f) [Issue declarations of non-compliance;]

(g) [Give special publicity to cases of non-compliance;]

(h) [Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; or]

(i) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

XIV. RELATIONSHIP BETWEEN SETTLEMENT OF DISPUTES AND THE COMPLIANCE PROCEDURE

34. The present compliance procedure shall be without prejudice to article 20 of the Protocol on the settlement of disputes.

XV. ENHANCEMENT OF SYNERGIES

35. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, the Meeting of the Parties to the Protocol may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties to the Protocol on relevant developments between the sessions of the Meeting of the Parties to the Protocol.

[36. If, during its activity, the Committee becomes aware of possible compliance issues under another international environmental agreement [concluded in the framework of the United Nations Economic Commission for Europe (UNECE)] applicable to the Party concerned and falling within the competence of an international mechanism of compliance review, it may transmit the relevant information to the joint secretariat of the Protocol.]