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Meeting of the Parties to the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes

Compliance Committee

Sixth meeting

Geneva, 1 and 2 March 2011

Report of the sixth meeting of the Compliance Committee

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1	2
II. Election of officers	2-3	2
III. Adoption of the agenda	4	2
IV. Relevant developments since the previous meeting of the Compliance Committee	5-8	2
V. Consultations with Parties to facilitate implementation and compliance	9-20	3
VI. Cooperation with the Office of the High Commissioner for Human Rights	21-23	5
VII. Awareness-raising on the compliance procedure	24-26	5
VIII. Programme of work and calendar of future meetings	27	6
Annex		
Consultation Process of the Compliance Committee under the Protocol on Water and Health		7

I. Introduction

1. The sixth meeting of the Compliance Committee was held on 1 and 2 March 2011 in Geneva. The following members of the Committee attended: Ms. Diana Iskrevva-Idigo (Bulgaria), Mr. Veit Koester (Denmark), Mr. Pierre Chantrel (France), Ms. Zsuzanna Koscis-Kupper (Hungary), Ms. Iлона Drulyte (Lithuania), Mr. Truls Krogh (Norway), Ms. Magdalena Bar (Poland) and Mr. Serhiy Vykhryst (Ukraine). The meeting was serviced by the United Nations Economic Commission for Europe (UNECE) secretariat.

II. Election of officers

2. The Compliance Committee elected Mr. Koester as Chair and re-elected Ms. Drulyte as Vice-Chair.

3. The newly elected members of the Committee, Mr. Koester and Ms. Koscis-Kupper, made a solemn declaration that they would perform their functions impartially and conscientiously.

III. Adoption of the agenda

4. The Compliance Committee adopted the agenda as set out in document: ECE/MP.WH/C.1/2011/1-EUR/DHP1003944/4.2/2011/1.

IV. Relevant developments since the previous meeting of the Compliance Committee

5. The secretariat informed the Committee of the main outcomes of the second session of the Meeting of the Parties to the Protocol on Water and Health, held in Bucharest, Romania, from 23 to 25 November 2010. The Meeting of the Parties had noted with appreciation the report of the Compliance Committee, including its findings and recommendations, presented by the former Chair of the Compliance Committee, Mr. Attila Tanzi. The Meeting of the Parties had adopted the decision on general issues of compliance contained in the annex to the Committee's report as prepared by the Committee. The Meeting of the Parties had also recognized the importance of further promoting and facilitating compliance with the Protocol and the need for progress to be achieved in that area, in particular for those Parties that have not yet set their national targets and targets dates.

6. The Meeting of the Parties had also responded positively to the Committee's intention of strengthening its facilitative functions (see chap. V below).

7. Committee members were also informed about the adoption of the programme of work of the Protocol for the period 2011–2013. In that connection, the secretariat underlined that, although an ambitious programme of work was adopted, the contributions provided were not sufficient to cover the costs of its implementation; such financial shortages and gaps might also affect the future work of the Committee and creative solutions might need to be found.

8. The secretariat also informed the Committee about the main outcomes of the eighth meeting of the Legal Board of the Water Convention (Geneva, 24–25 February 2011), which had negotiated the establishment of a mechanism to support and facilitate

implementation and compliance with the Convention. The mechanism, as it was being designed, appeared to have some dissimilarities with the one under the Protocol and included some very innovative and specific features. Among them, the “advisory procedure” and the “Committee’s initiative”, which were not foreseen in the Protocol’s compliance review procedure but which had similarities with the proposed consultation process and therefore the forthcoming work under the Committee would be of interest for future developments under the Water Convention.

V. Consultations with Parties to facilitate implementation and compliance

9. On the basis of the analysis of the summary reports submitted by Parties before the second session of the Meeting of the Parties, the Committee at its fifth meeting had concluded that a number of Parties were facing difficulties in implementing the Protocol. To respond to that situation, the Committee had decided to enhance its facilitation and assistance functions and had agreed to enter into consultations with a number of Parties which, on the basis of the national summary reports, appeared to have problems in implementing the Protocol (ECE/MP.WH/C.1/2010/4–EUR/10/56335/16, para. 26). Such decisions had been endorsed by the Meeting of the Parties at its second session. The Committee discussed the objectives of such consultations and the modalities to carry them out.

10. With regard to the scope of the consultations, it was generally agreed that the Committee should focus on the implementation of article 6 of the Protocol, “Targets and Target Dates”, and look at other articles on a case-by-case basis. As the starting point for the consultations would be the national summary reports, the scope should be linked to the areas covered by the reports. The Committee considered that the regional report on the status of implementation of the Protocol, prepared by the secretariat on the basis of the national summary reports, was also a useful background for the future consultations.

11. The Committee restated that the overall objective of the consultations would be to facilitate and support implementation and not to ascertain/declare whether a Party was in non-compliance. The Committee would therefore not raise individual cases of non-compliance.

12. The Committee agreed that the main results of the consultations would be advice and assistance provided to the Parties to help them in implementing the Protocol and improving their water and health situation, covering scientific, technical, legal and administrative aspects. Such advice and assistance would vary depending on the specific conditions (in particular depending on whether the Party had set its targets or not). It stressed that the whole exercise would be carried out together with the Parties involved and that the final results would be tailored to their needs. Possible results of the consultations could therefore be assistance to the Parties to develop an accurate analysis of their situation, enabling them to set targets; recommendations to the Parties on how to improve their situation; as well as assistance in seeking support from donors, specialized agencies and other competent bodies, including assistance to prepare project proposals supporting the implementation of the Protocol.

13. Regarding the ways and means to engage in consultations with Parties, the Committee established its way of proceeding. That would involve renewing its offer of assistance and inviting Parties to request the consultations. To that end, it intended to present the structure and objectives of the consultation process at the next meeting of the Working Group on Water and Health (Geneva, 1–2 November 2011), where it would also remain available for bilateral discussions with interested delegations. The Committee might

also directly engage with potentially interested Parties, making them aware of the opportunity and encouraging them to take advantage of it.

14. The Committee felt that the proposed process would offer great advantages to the Parties involved. It would provide a safe environment for discussing water and health problems with a high degree of informality, but at the same time a high level of expertise. It would offer to Parties the possibility to get complex and comprehensive advice covering simultaneously and in an integrated manner a broad variety of issues, from legal to technical and scientific aspects. Such advice would be based not only on the Committee's experience, but also on knowledge of how the Protocol was implemented in other Parties. Moreover, the process could help the Parties involved in raising awareness on water and health issues at the national level, and could facilitate fund-raising for future follow-up activities.

15. As for the confidentiality of the consultation procedure, the Committee agreed that its general confidentiality rules would be applicable, i.e., that in general the procedure should not be kept confidential but the Committee would ensure the confidentiality of any information that was provided to it in confidence by the Party concerned. Thus, if necessary to ensure the confidentiality of information the Committee would hold meetings in private. In general, the rules of procedure of the Compliance Committee would apply *mutatis mutandis*.

16. The Committee recognized that the level of ambition of the exercise would also greatly depend on the resources made available to it. It agreed that it would not be able to engage in consultations with a high number of Parties and it was reasonable to think that it would be able to assist two or three countries until 2013. The Committee considered it desirable to have a good geographic distribution of Parties, including both European Union (EU) and non-EU countries, also reflecting the diversity of problems in the region, so that the conclusions of the exercise could be of use to other Parties too. It considered that "old" Parties should be given priority compared to more recent ones that were not expected to have set their targets yet. It also considered that Parties which were already receiving assistance from the Project Facilitation Mechanism should not be targeted. Finally, the Committee considered that it would be highly desirable if a Party represented in the Bureau would request the consultation process, also to allow testing it and to lead the way for other Parties.

17. The Committee considered that its capacity to assist would very much depend on the information it would have at its disposal. It agreed that the commitment from the Party concerned to make available the needed information was crucial to ensure the success of the procedure. Information needs would vary case by case, and the Committee would seek the most effective and least costly way to gather it, including requesting the Party to complete the information provided in the summary report (such as providing existing legislation, information on measures implemented, etc) and gathering information during meetings with representatives of the Parties concerned, as well as during country missions, at the invitation of the Party. Moreover, the Committee's approach would need to be flexible, and, if applicable, to rely on additional sources of information such as from partner organizations working in the Party concerned, in particular the United Nations and the specialized agencies. The financial resources available to the Committee would also need to be taken into account.

18. The Committee agreed that it would closely cooperate with other bodies under the Protocol. Cooperation could take place during the consultative procedure itself by requesting direct assistance from members of the Protocol's task forces and other bodies. Moreover, one of the outcomes of the consultative procedure could be a recommendation to the other bodies under the Protocol: for instance, a request to a Protocol task force to develop training or guidance material on an issue that had proven to be an obstacle to

implementation; or a recommendation to the Project Facilitation Mechanism to support specific activities in the Party concerned. The Committee also considered very important the cooperation with the World Health Organization Regional Office for Europe (WHO-EURO) part of the joint secretariat for health related issues.

19. Committee members also deliberated on the relationship between the consultation process and the compliance procedures. The Committee considered that if during a consultation process the Party concerned was being targeted by a submission, referral or communication, the Committee might decide, pending the circumstances and in agreement with the parties concerned, to suspend either the consultation process or the deliberations on the submission, referral or communication. It did not consider that a completed consultation process per se would entail a conflict of interest of the Compliance Committee vis-à-vis submissions, referrals or communications targeting the Party concerned.

20. Based on the discussions summarized above, the Committee developed a text on the main features of the consultation process (see annex). The Committee considered the developed text as an evolving document that might be amended in the future, taking into account experience gained.

VI. Cooperation with the Office of the High Commissioner for Human Rights

21. The Committee noted the close relationship between the Protocol on Water and Health and the right to water and sanitation, emphasizing the role of the Protocol as a concrete and effective tool for its implementation. It also recalled United Nations General Assembly resolution 64/292, which recognized access to clean water and sanitation as human right, a decision that was affirmed by the Human Rights Council. The Committee also noted the declaration of the European Council on Environmental Law on the right to water as a basic human right.

22. The Committee stated that the recognition of human rights aspects of access to water and sanitation would be duly taken into consideration when discussing cases of non-compliance, or difficulties with compliance initiated by submissions, referrals and communications

23. The Committee reconfirmed its continuous interest in further cooperation with the Office of the United Nations High Commissioner for Human Rights and decided to keep itself abreast of developments in the field of human rights, exploring other initiatives in the area. To that end, Committee members suggested to invite an expert to deliver a speech during the seventh meeting of the Committee, which would allow for further discussions on this issue.

VII. Awareness-raising on the compliance procedure

24. The Committee discussed and made a number of suggestions for disseminating the leaflet on “Improving compliance with the Protocol on Water and Health”, which was available in English and Russian.

25. Committee members offered to disseminate the leaflet during important international events, e.g., the Istanbul Water Forum, the fourth session of the Meeting of the Parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), the European Green Week and the Seventh “Environment for Europe” Ministerial Conference in Astana, as well as among the relevant non-governmental organizations (European Environment

Bureau, Women in Europe for Common Future, Mama-86, ECO Forum). Furthermore, it was suggested that the publication on Equitable Access to Water and Sanitation for the World Water Forum should include a mention of the compliance procedure under the Protocol.

26. The Committee requested the secretariat to prepare a short information note on the consultation process to be communicated to the focal points of the Protocol on Water and Health, posted on the Water Convention website. That information should also be made available to stakeholders engaged in the National Policy Dialogues carried out under the Water Convention.

VIII. Programme of work and calendar of future meetings

27. The Committee agreed on the dates of its seventh and eighth meetings, which would be held, respectively, on 3 and 4 November 2011, back to back with the meeting of the Working Group on Water and Health, and on 24 and 25 April 2012.

Annex

Consultation Process of the Compliance Committee under the Protocol on Water and Health

I. Nature, scope and objectives

1. The objective of the Consultation Process is to assist Parties in implementing the provisions of the Protocol on Water and Health. It consists of advice and assistance, which vary depending on the specific conditions and needs of the Party involved. It can address scientific, technical, legal and administrative issues.
2. The Consultation Process focuses on — but is not limited to considering — core applications of the Protocol. The Process is mainly linked to the areas covered by the national summary reports.
3. Taking into account the capabilities and resources of the Committee, the Consultation Process aims to offer effective tailor-made advice to implement and apply the Protocol's provisions.
4. The Consultation Process is not a compliance review procedure. Hence, it is not of an inquisitive nature and its objective is not to establish whether a Party is non-compliant. The procedure is guided by the same principles guiding the work of the Compliance Committee, i.e., that it be simple, facilitative, non-adversarial and cooperative.

II. Procedures

5. The basis for the Consultation Process is a request by a Party to engage in the procedure.
6. However, pending the circumstances and taking into account the national summary reports, the Compliance Committee may decide on an ad hoc basis to invite a Party to consider requesting the procedure.
7. The Compliance Committee will endeavour to conduct two or three consultation processes, as appropriate, during the intersessional period.
8. The rules of procedure of the Compliance Committee apply *mutatis mutandis* to the Consultation Process, including in respect of the nature of meetings. However, a particular Consultation Process may be conducted wholly or partly in closed sessions if requested by the Party concerned.
9. The Consultation Process is guided by the principles of confidentiality of the Compliance Committee, i.e., in general the procedure is not confidential; however, information provided in confidence by the Party concerned is kept confidential.
10. The Consultation Process is conducted mainly by means of a dialogue with the Party concerned at an ordinary meeting of the Compliance Committee and/or, as appropriate, during a mission, upon invitation by the Party concerned.
11. The dialogue is based on a pre-examination of information available to the Committee, e.g., the national summary report, supplemented as need may be by other information gathered by the Committee, in particular information provided by the Party concerned in response to questions posed by the Committee.

12. In performing its functions under the Consultation Process, the Compliance Committee, as appropriate, cooperates with:

- The Task Force on Water-related Disease Surveillance
- The Task Force on Target Setting and Reporting
- The Project Facilitation Mechanism.

III. Relationship with compliance procedures

13. If during a Consultation Process the Party concerned is being targeted by a submission, referral or communication, the Committee may decide, pending the circumstances and in agreement with the parties concerned, to suspend either the Consultation Process or the deliberations on the submission, referral or communication.

14. The Committee does not consider that a completed Consultation Process per se would entail a conflict of interest of the Compliance Committee vis-à-vis submissions, referrals or communications targeting the Party concerned.

IV. Results of the Consultation Process

15. In accordance with the resources available, results of a Consultation Process may take the form of assistance to the Party concerned to develop an accurate analysis of its situation enabling it to set targets; recommendations to the Party on how to improve its situation; as well as assistance in seeking support from donors, specialized agencies and other competent bodies, including assistance to prepare project proposals supporting the implementation of the Protocol.

16. The results of a Consultation Process will be reported to the Meeting of the Parties only in general terms. It may also take the form of general recommendations to the Meeting of the Parties.
