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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**Tenth meeting**

Geneva, 25 November 2014

Report of the tenth meeting of the Compliance Committee**Contents**

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I. Organizational matters

1. The tenth meeting of the Compliance Committee under the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) was held on 25 November 2014 in Geneva, Switzerland. The following members of the Committee attended: Ms. Iona Drulyte (Lithuania); Ms. Diana Iskrevva-Idigo (Bulgaria); Ms. Zsuzsanna Kocsis-Kupper (Hungary); Mr. Veit Koester (Denmark); Mr. Oddvar Georg Lindholm (Norway); Mr. Vadim Ni (Kazakhstan); Mr. Ilya Trombitsky (Republic of Moldova); and Mr. Serhiy Vykhryst (Ukraine). Mr. Pierre Chantrel (France) participated in some parts of the meeting via videoconference. The following observers attended: Mr. Ilia Demidov (Russian Federation); Mr. Yves Lador (EarthJustice); and Ms. Anke Stock (Women in Europe for a Common Future). The meeting was serviced by the United Nations Economic Commission for Europe (ECE) secretariat.

II. Election of officers and solemn declaration of new members

2. The meeting was chaired by Mr. Koester, who was re-elected as the Chair for 2014–2016 through an electronic decision-making procedure in the interim period between the third session of the Meeting of the Parties to the Protocol on Water and Health (Oslo, 25–27 November 2013) and the tenth meeting of the Compliance Committee.

3. The Committee re-elected Ms. Iskrevva-Idigo as Vice-Chair for 2014–2016.

4. The member of the Committee elected for his first term at the third session of the Meeting of the Parties, Mr. Ni, made a solemn declaration that he would perform his functions impartially and conscientiously.

III. Adoption of the agenda

5. The Chair proposed that an additional item be included on the provisional agenda: the consideration of submissions, referrals or communications. The Compliance Committee agreed to the addition of the new item and adopted its agenda as set out in document ECE/MP.WH/C.1/2014/1–EUDCE/1408105/1.10/2014/CC/03, as amended.

IV. Consideration of submissions, referrals and communications

6. The Compliance Committee took note of the communication received from a member of public, but as it was received less than four weeks before the meeting, the Committee did not make a preliminary determination on its admissibility, in accordance with paragraph 46 of the Committee's rules of procedure. The Committee expected to take a decision by electronic means in January 2015.

V. Relevant developments since the ninth meeting of the Compliance Committee

7. The secretariat informed the Committee about the relevant outcomes of the seventh meeting of the Task Force on Target Setting and Reporting (Geneva, 4 July 2014), in particular with regard to the establishment of an informal review group under the Task Force that would work on certain procedural aspects of target setting and examples of

targets set under the different areas. That work was expected to result in an addendum to the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*.¹ The group was also tasked with revising the guidelines and template for summary reports in the course of 2015, taking into consideration the comments provided earlier by the Compliance Committee. The Committee supported the idea of developing good examples for certain targets, such as those related to water infrastructure.

8. The Chair briefly reported on the outcomes of the second informal meeting between the Chairs of the compliance and implementation bodies under the ECE multilateral environmental agreements (MEAs) (Geneva, 24 March 2014), and encouraged the members of the Committee to review the Chair's Summary in order to get acquainted with the work and procedures under other ECE compliance review bodies.

9. The Chair also reported on the informal meeting with the chairs of the human rights treaty bodies (Geneva, 26 March 2014), held during the annual meeting of chairpersons of the human rights treaty bodies (Geneva, 23–27 June 2014), and encouraged Committee members to review the minutes of that meeting. At the meeting, he had requested exploring the possibility of establishing links between the compliance mechanisms of the ECE MEAs and those of the human rights treaties. However, no response had been received from the chairpersons of the human rights treaty bodies.

10. The secretariat noted that so far no country mission had been undertaken by the Special Rapporteur on the human right to safe drinking water and sanitation to the countries of the ECE region. Nonetheless, the secretariat had expressed interest in participating in country missions organized by UN-Water as a follow-up to the future missions of the Special Rapporteur, which could serve as an entry point to cooperation with the relevant human rights treaty body. It was concluded that, at present, cooperation should be maintained between the secretariats.

VI. Follow-up to the decisions of the Meeting of the Parties at its third session

A. Consultation with Parties to facilitate implementation of the Protocol

11. Based on decision III/1 on general issues of compliance (ECE/MP.WH/11/Add.2–EUDCE/1206123/3.1/2013/MOP-3/06/Add.2), and building on the review of the outcomes of the second reporting exercise, the Committee discussed its modus operandi in proposing the Consultation Process to a Party or a small group of Parties having identical or almost identical implementation problems.

12. In particular, the Committee established the following criteria for consideration in selecting Parties that could be approached with a view to engaging them in a Consultation Process:

- (a) The Party has difficulties in implementing the main obligations of the Protocol (e.g., setting targets and reporting under the Protocol);
- (b) No targeted assistance has been received so far by the Party under consideration;
- (c) The Party is eligible for funding with regard to the Consultation Process;

¹ United Nations publication, Sales No. E. 10.II.E.12; available from <http://www.unece.org/index.php?id=11644>.

- (d) The country has been a Party for a considerable period of time vis-à-vis new Parties;
- (e) The Party or Parties represent different subregions;
- (f) The implementation problems at issue are faced by a group of Parties.

13. Having discussed various possible candidates for the Consultation Process, the Committee decided, based on the criteria just outlined and subject to the availability of funds, to invite a small group of Parties to engage in the Consultation Process, namely Albania, Azerbaijan and Croatia. Taking into account the request for assistance recently submitted to the secretariat by Bosnia and Herzegovina, the Committee also decided to invite that country to join the Process as an observer.

14. Accordingly, it was decided that Albania, Azerbaijan, Bosnia and Herzegovina and Croatia would be invited, with a deadline to respond to the invitation of 1 February 2015, to engage in the Consultation Process to be held at the twelfth meeting of the Compliance Committee (tentatively scheduled for October 2015). The Committee decided to discuss the preparations and the expected outcomes of the Consultation Process at its eleventh meeting (tentatively scheduled for March 2015), pending the response to the invitation by the Parties concerned.

15. The Committee also revised the terms of reference of the Consultation Process (see annex) to reflect its decision at its ninth meeting (Geneva, 1–2 July 2013) — which had been subsequently supported by the Meeting of the Parties — that, based on its assessment of the results of the second reporting exercise or other information available to it, the Committee could invite a Party or a small group of Parties to engage in the Consultation Process.

B. Review of compliance with reporting requirements under the Protocol

16. The Committee took note of the national summary reports submitted by Albania and Luxembourg and concluded, based on the preliminary analysis undertaken by Mr. Lindholm, that in terms of the type of information provided the reports were close to the average for their respective subregions.

17. The Committee discussed the different possibilities to address the failure of some Parties to comply with the reporting requirements under the Protocol. It was agreed that, according to paragraph 15 of the Compliance Procedure (ECE/MP.WH/2/Add.3–EUR/06/5069385/1/Add.3, decision I/2, annex), as well as paragraph 34 of the rules of procedure, if a Party did not submit a national summary report the secretariat had no mandate to make referrals to the Committee.

18. However, the Committee considered that, based on paragraph 11 (c), read in conjunction with paragraph 12, of the Compliance Procedure, the Committee itself had the competence not only to examine general issues of compliance but also to take appropriate action in case of possible non-compliance by a specific Party with the obligation to report under the Protocol.

19. The Committee also considered that, based on paragraph 12 of the Compliance Procedure, it had the competence to examine, if it considered it appropriate, clear and important compliance issues. However, that mechanism should not be seen as competing with the ordinary mechanisms established in paragraph 11 (a) of the Procedure, and should only be used in cases related to individual Parties that involved important compliance issues where there was a clear indication of non-compliance and when there was no expectation that an ordinary mechanism would be used.

20. In order to define on a provisional basis a procedure for the Committee to address the failure of Parties to report, further to the positions and considerations just mentioned, the Committee decided to apply, *mutatis mutandis*, the relevant rules of the Compliance Procedure, specifically the deadline for a reply of three months indicated in paragraph 14 and the principles set out in paragraphs 20–22 and 30–32 of the Compliance Procedure, taking into account that any procedure should be governed by the spirit of the compliance mechanism under the Protocol. The Committee would at a later stage consider the possible need to amend its rules of procedure.

21. Regarding Portugal, the only Party that had failed to submit its national summary report within the second reporting exercise, the Committee decided, within its competence as mentioned above in paragraph 17, to initiate a case regarding possible non-compliance with that Party's obligation to report under the Protocol. The Committee asked the secretariat, in consultation with the Chair, to proceed in accordance with its decision informing the Party that the Committee expected to deliberate the case and proceed with drafting findings, measures and recommendations, as appropriate, at its eleventh meeting.

22. In that regard, the Chair also suggested that an item on "implementation of and compliance with the reporting requirements" be included on the agenda of the Committee's next meeting.

C. Review of compliance with the obligation to set targets and target dates under the Protocol

23. The Committee discussed its *modus operandi* with regard to addressing the failure of some Parties to set targets and target dates, based on a discussion paper provided by the secretariat summarizing the progress made by Parties in setting targets in accordance with the article 6 of the Protocol.

24. The Committee noted that there might be a general issue of compliance with regard to the Parties to the Protocol that were also members of the European Union (EU). It therefore requested the Working Group on Water and Health to consider whether it would be useful to examine the target areas under the Protocol *vis-à-vis* the relevant EU directives in order to clarify under which target areas and in what way it would be acceptable to refer to the EU legislation in the national summary reports.

25. The Committee also pointed out that the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting* should clearly state the obligation to set targets and target dates for all Parties to the Protocol, irrespective of whether they were EU member States and whether they complied with relevant EU legislation.

26. With regard to the Parties to the Protocol that were not EU member States, the Committee noted that non-compliance with the obligation to set targets and target dates was probably due to a lack of capacity. The Committee considered providing assistance to some of those Parties through the Consultation Process.

27. The Committee considered that its competence to examine compliance issues under paragraph 12 of the Compliance Procedure did not extend, *inter alia*, to the examination of the target areas selected and the nature of targets set by Parties.

28. Finally, the Committee noted that the text of the paragraphs 5, 6 and 7 (b) and (c) of decision III/1, addressing the issue of setting targets in accordance with article 6 of the Protocol, which was recommended by the Committee, was somewhat misleading and it decided to address that issue again in its recommendation to the Meeting of the Parties at its fourth session in 2016.

VII. Promotion of the compliance procedure

29. Committee members reported on their efforts to present the compliance mechanism at various forums and events. Ms. Iskreva-Idigo informed the Committee about a special panel addressing the Protocol on Water and Health in the countries of Eastern Europe, the Caucasus and Central Asia, which had been held in the context of the Gender and Water Forum at the High-level International Conference on Water Cooperation (Dushanbe, 20–21 August 2013). The panel, organized by the Women for Water Partnership and the Government of Tajikistan in collaboration with Oxfam Tajikistan, had built the foundation of a national target-setting exercise in the country supported by Oxfam. A similar panel would be organized during the Gender and Water pre-conference (Republic of Korea, 10–11 April 2015), prior to the seventh World Water Forum (Daegu and Gyeongbuk, Republic of Korea, 12–17 April 2015).

30. The secretariat reported on the relevant discussions at the twentieth session of the ECE Committee on Environmental Policy (Geneva, 28–31 October 2014).

VIII. Programme of work and calendar of future meetings

31. The Committee agreed that the implementation of and compliance with the reporting requirements and the provision of assistance to Parties under the Consultation Process should constitute priority issues for the Committee at its next meetings.

32. The Committee agreed to hold its eleventh meeting on 24 and 25 March 2015, with the understanding that the meeting might be reduced to one day depending on the expected workload. The secretariat noted that the holding of the Committee meeting in March 2015 was subject to the availability of additional funds. The Committee took note of the dates preliminarily reserved for its twelfth meeting (19–20 October 2015).

Annex

Consultation Process of the Compliance Committee under the Protocol on Water and Health, as amended by the Committee at its tenth meeting*

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 Process or, as applicable, a positive response by a Party to an invitation of the Compliance Committee to engage in the Process.
6. The Compliance Committee will endeavour to conduct two or three consultation processes, as appropriate, during the intersessional period.
7. 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.
8. 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.

* In addition to amendments agreed by the Committee, minor changes have been introduced in the course of official editing.

9. 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 the invitation of the Party concerned.

10. The dialogue is based on a pre-examination of information available to the Committee, e.g., the national summary report, supplemented as need be by other information gathered by the Committee, in particular information provided by the Party concerned in response to questions posed by the Committee.

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

- (a) The Task Force on Water-related Disease Surveillance;
- (b) The Task Force on Target Setting and Reporting;
- (c) The Project Facilitation Mechanism.

III. Relationship with compliance procedures

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

13. 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

14. 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; and assistance to the Party in seeking support from donors, specialized agencies and other competent bodies, including assistance to prepare project proposals supporting the implementation of the Protocol.

15. 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.
