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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

Fifteenth meeting

Geneva, 13 and 14 November 2017

Report of the Compliance Committee on its fifteenth meeting

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I. Organizational matters

1. The fifteenth 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 13 and 14 November 2017 in Geneva, Switzerland. The following members of the Committee attended: Pierre Chantrel; Ingrid Chorus; Zsuzsanna Kocsis-Kupper (Vice-Chair); Oddvar Georg Lindholm; Vadim Ni; Natalja Sliachtic; Ilya Trombitsky; Jorge Viñuales (Chair); and Serhiy Vykhryst. The meeting was serviced by the United Nations Economic Commission for Europe (ECE) secretariat.

II. Adoption of the agenda

2. The Compliance Committee adopted its agenda as set out in document ECE/MP.WH/C.1/2017/3-EUPCR/1611921/2.1/2017/CC2/03.

III. Consideration of submissions, referrals and communications

3. The Committee noted that no submissions, referrals or communications had been received prior to the meeting.

IV. Relevant developments since the fourteenth meeting

4. The Chair introduced the executive summary of the Committee's informal note "Interpretation of the provisions of the Protocol on Water and Health related to transboundary waters", which he had been tasked with developing after reviewing the text of the note from an editorial point of view and introducing clarifications. The Committee discussed the content of the executive summary, made some minor revisions and requested that the revised text be incorporated in the report of its fifteenth meeting (see annex I).

5. In that connection, the Committee emphasized the importance of its function to interpret provisions of the Protocol as part of its overall mandate to facilitate, promote and aim to secure compliance by Parties with their obligations under the Protocol.

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

6. The Chair recalled that, at its fourth session (Geneva, 14–16 November 2016), the Meeting of the Parties to the Protocol had adopted decision IV/2 on general issues of compliance (ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2, forthcoming), which requested Parties to communicate their targets to the joint secretariat for wider dissemination. Further to that decision, at its fourteenth meeting (Geneva, 13-14 March 2017), the Committee had requested the secretariat to contact Parties that had not communicated their targets, namely Belgium, Croatia, France, Latvia, Lithuania, Luxembourg, Portugal, the Russian Federation, Spain and Switzerland, to ask them to either provide information about their progress in the target-setting processes or to communicate the targets that had been formally established.

7. The Committee welcomed the fact that all the countries that had been contacted by the secretariat had provided answers, and thanked the secretariat for preparing a useful summary overview of the situation with regard to target setting by all Parties to the Protocol.

8. The Committee discussed the specific situation of all the countries that had been contacted. It focused its discussions on whether the information provided by each Party was sufficient to allow for an overall understanding of the targets set by each country. The Committee did not enter into a substantive review of the targets set.
9. The Committee welcomed information on specific targets communicated by France, Latvia, Lithuania, Luxembourg, Spain and Switzerland.
10. With regard to the information provided by Portugal, which stated that the target-setting process was still in progress, the Committee decided to request an update on the situation in December 2017.
11. With respect to the reply from Belgium, which stated that the Brussels Region had not performed the target-setting exercise due to a lack of capacity, the Committee decided to write to Belgium to enquire whether some assistance from the Committee would be useful.
12. The Committee further discussed the letter received from Croatia. Although a clearer statement of the current situation with target setting would have been useful, the Committee agreed not to request any additional information at the present stage.
13. Regarding the reply from the Russian Federation, the Committee considered that the information provided did not allow for a clear understanding of which targets had been set under which target areas mentioned in article 6 of the Protocol. The Committee therefore did not have sufficient information to perform its functions and it decided to request further clarification on the specific targets that had been set under the Protocol.
14. As for the replies of Latvia and Lithuania, the Committee decided to address that issue in the context of the discussion on the Consultation Process.

VI. Consultation with Parties to facilitate implementation of the Protocol

15. The Chair recalled that, at its fourteenth meeting, the Committee had discussed the experience under the Consultation Process so far and had considered that it would be useful to receive feedback from Albania, Azerbaijan and Bosnia and Herzegovina on the suitability of the process and its usefulness. The Committee had decided to write a letter to each of the three countries to that effect. All three countries had responded to the Committee's letter, providing detailed information on the status of implementation of the Committee's advice. While progress with target setting following the consultations had been reported by the three countries, final targets had not been set in any of them. Having considered the information presented by the Chair, the Committee decided to request from the three countries an update on progress with target setting at least 45 days before its sixteenth meeting (Geneva, 6–7 March 2018).
16. The Chair further noted that, based on decision IV/2 and the outcome of the third reporting cycle, at its fourteenth meeting the Committee had identified intersectoral coordination, public participation and the interaction between the requirements under the Protocol and European Union legislation in the field of water, sanitation and health as the most relevant issues to be taken up in potential consultations. Having considered the information contained in the national summary reports (see paras. 9–14 above), and taking into account the main implementation challenges just outlined, prior to its fifteenth meeting the Committee had decided by an electronic decision-making procedure to invite Estonia, Latvia and Lithuania to engage in a consultation under the Consultation Process. Prior to the fifteenth meeting, the three countries had replied positively to that invitation.

17. The Committee then discussed the scope and possible outputs of the next consultation under the Consultation Process and agreed that it would have the following components:

(a) A stock-taking exercise to understand the situation regarding water and health in each country, based, among others, on the summary reports submitted by the Parties, other information accessible to the Committee and information directly provided by the Parties, including face-to-face discussions during Committee's meetings;

(b) An interpretive note clarifying the relevant legal provisions of the Protocol based on the information and lessons gathered during the process;

(c) Provision of specific advice in writing and during the seventeenth meeting of the Committee, scheduled to take place in Geneva on 5 and 6 November 2018;

(d) Follow-up on the implementation of the advice.

18. Regarding the organizational aspects, the Committee decided that the consultation would take place between November 2017 and November 2018. It requested the secretariat to send in December 2017 a letter extending an invitation to representatives of the three Parties involved to attend the Committee's sixteenth and seventeenth meetings and to express their specific needs and expectations from the Consultation Process.

19. The Committee considered that the participation of some of its members in the sixth meeting of the Nordic and Baltic drinking water and health network (Vilnius, 23-24 November 2017) would be useful for an initial exchange with the three Parties concerned and would facilitate the start of the consultation.

20. The Committee also agreed on a distribution of tasks between its members and discussed the kind of information it needed to gather on the situation in the three countries as a basis for the consultation (among others, the overall state of water resources, the regulatory system and the targets set in the area of water and health and the challenges in implementing them).

21. Finally, the Committee noted that there was a clear distinction between the Consultation Process and the compliance procedure. It therefore concluded that the rules with regard to a possible conflict of interest would not apply to Committee members in relation to consultations under the Process.

VII. Awareness-raising on the compliance procedure

22. The Committee discussed concrete steps to raise awareness about the compliance procedure in order to ensure that information about the mechanism and its functions was easily available to the public.

23. Following up on the decisions at its fourteenth meeting, the Committee took note of the materials prepared to facilitate awareness-raising, including a summary guide for the submission of communications from the public and related visual aids, a list of relevant non-governmental organizations and a list of relevant events taking place in 2018.

24. The Committee discussed the content of the summary guide, adopted it with minor amendments and requested that the amended text be annexed to the meeting report (see annex II).

25. The Committee welcomed awareness-raising activities undertaken by the Chair and the secretariat, such as the side event "Role of the Public in Supporting Compliance with International Water Agreements" (Budva, Montenegro, 14 September 2017), held on the margins of the sixth session of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental

Matters (Aarhus Convention), and a number of events organized together with the Graduate Institute of International and Development Studies. The Committee encouraged all its members to further raise awareness of the Protocol and its compliance mechanism. Several Committee members shared their ideas and suggestions in that regard.

26. The Committee agreed that it would be useful to strengthen collaboration with other relevant treaty bodies, including the Implementation Committee of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), the Aarhus Convention Compliance Committee, the United Nations human rights treaty bodies and the special procedures of the Human Rights Council. An initial exchange with the human rights treaty bodies and the special procedures had revealed significant room for synergies to be explored.

VIII. Programme of work and calendar of future meetings

27. The Committee provisionally agreed to hold its sixteenth meeting on 6 and 7 March 2018 and its seventeenth meeting on 5 and 6 November 2018. The meetings would be held in Geneva.

28. The Committee agreed that the issues for consideration at its next meeting would be related to the Consultation Process, awareness-raising on the compliance procedure and matters relating to compliance, as appropriate.

29. It also agreed to hold a joint session with the Water Convention Implementation Committee, back to back with the Compliance Committee's sixteenth meeting. The joint session would consist of two segments: a closed session between the two committees to allow for the exchange of experience on issues of common interest, such as the process, content and value of reporting by Parties and other States, the promotion of both mechanisms (in particular among non-governmental organizations), opportunities for joint promotion, experience with the Consultation Process and the interpretive function of the two committees; and a public event open to participation by representatives of civil society organizations and other relevant bodies.

IX. Adoption of the report

30. The Committee adopted its report by electronic means after the meeting.

Annex I

Interpretation of the provisions of the Protocol on Water and Health relating to transboundary waters

Executive summary*

1. This interpretive note on the provisions of the United Nations Economic Commission for Europe (ECE)-World Health Organization (WHO) Regional Office for Europe Protocol on Water and Health relating to transboundary waters has been prepared by the Protocol's Compliance Committee as part of its general mandate to provide advice and assistance to Parties to facilitate, promote and aim to secure compliance with the obligations of the Protocol.

2. In recent years, the Protocol secretariat has become aware of possible difficulties in the interpretation of the Protocol's provisions relating to international and transboundary cooperation by some Parties as well as by other States in Eastern Europe, the Caucasus and Central Asia that were considering acceding to the Protocol. The secretariat communicated this concern to the Compliance Committee, which, in response, prepared this interpretive note focusing on the scope and content of the most relevant provisions of the Protocol (articles 1, 2, 4, 5 and 11–14).

3. As a general matter, articles 1 (objective) and 2 (definitions) of the Protocol do not set obligations but rather serve to interpret the scope and content of obligations established under the Protocol. The provisions of articles 4 (general provisions) on the relations with the ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) and other agreements and 5 (principles and approaches), setting out several principles, including the polluter-pays principle, the prevention principle and the dimensions of the value of water, that have implications for international and transboundary cooperation, do not entail additional obligations for potential Parties to the Protocol as compared with the obligations they already have under customary international law or under the Water Convention for those countries that are Parties to the latter.

4. Most of the obligations arising from articles 11 to 14 of the Protocol, concerning dimensions of cooperation, are, in principle, met if Parties cooperate in good faith, in particular within the institutional framework provided by the Protocol. This institutional framework has the advantage of clarifying how cooperation is to take place in pursuance of the goals of the Protocol. For aspects of these provisions that go beyond the Protocol's institutional mechanism, the transboundary and international cooperation requirements do not exceed what is required by the Water Convention from States Parties to it.

5. For those States that are not Parties to the Water Convention, the obligations arising from the Protocol in relation to transboundary cooperation largely correspond to the obligations of all States under customary international law, although the two sets of obligations do not overlap entirely. In particular, article 13, paragraph 1 (c), of the Protocol imposes on States Parties an additional obligation in relation to transboundary waters, namely to adapt or define the relevant agreements or arrangements in a manner which is consistent with the Protocol. The operation of this provision is, however, subject to certain requirements set out in the text of the provision. Specifically, Protocol Parties are required to adapt "on the basis of equality and reciprocity" the "agreements and other arrangements regarding their

* The full text of the interpretive note is available on the web page for the Compliance Committee's fourteenth meeting (<http://www.unece.org/index.php?id=43594>).

transboundary waters” that present “contradictions” with the “basic principles” of the Protocol so as to “eliminate any” such contradictions and “define their mutual relations and conduct regarding the aims of [the] Protocol”.

6. Overall, the relevant provisions of the Protocol are therefore consistent with the broader system of the Water Convention for Protocol Parties that are also Parties to the Convention. Moreover, these provisions restate, in essence, the obligations of all States under customary international law. Article 13, paragraph 1 (c), of the Protocol imposes, however, an additional obligation, even if, as explained above, this obligation has a specifically defined scope.

Annex II

Communications from the public to the Compliance Committee of the Protocol on Water and Health

A. Overview of the system

1. *The Protocol on Water and Health* – The Protocol on Water and Health¹ is a treaty currently binding upon 26 countries of the pan-European region.² It requires Parties, in essence, to exercise due diligence in ensuring access to water and sanitation and protecting water bodies within their jurisdiction³ and within this general duty: (a) to set targets relating to water, sanitation and health, and to monitor them;⁴ (b) to develop systems to respond to emergencies;⁵ (c) to gather, develop and provide relevant information to the public;⁶ and (d) to cooperate with each other in these matters.⁷

2. *The Protocol's Compliance Review Mechanism* – To ensure that Parties diligently meet their obligations, the Meeting of the Parties to the Protocol⁸ has established, on the basis of an explicit mandate in the Protocol,⁹ a Compliance Committee consisting of nine independent members serving in their personal capacity.¹⁰ One important feature of the Protocol's compliance mechanism is that it allows members of the public to file individual or collective complaints (communications) to the Compliance Committee in case a State does not comply with its obligations under the Protocol.¹¹

3. *Who can submit a communication?* – Communications may be submitted to the Committee by any member of the public, a term broadly understood as including any natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.¹² The member of the public filing the communication does not need to be a citizen of the State Party concerned or to be based in its territory.¹³ Moreover, the

¹ United Nations, Treaty Series, vol. 2331, No. 33207. Available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5-a&chapter=27&clang=_en and http://www.unece.org/env/water/pwh_text/text_protocol.html.

² For the list of Parties, see the web page for the Protocol on the United Nations Treaty Collection website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-5-a&chapter=27&clang=_en.

³ Protocol, article 4, paras. 1 and 2, guided by the principles in article 5.

⁴ Ibid., articles 6 and 7.

⁵ Ibid., article 8.

⁶ Ibid., article 5, subpara. (i), and articles 9 and 10.

⁷ Ibid., articles 11–14.

⁸ The Meeting of the Parties is the governing body of the Protocol. Representatives of States Parties participate in sessions of the governing body at regular intervals (normally every three years) to make decisions on matters concerning the Protocol, including on implementation and compliance.

⁹ Article 15.

¹⁰ Decision I/2 of the Meeting of the Parties to the Protocol (ECE/MP.WH/2/Add.3-EUR/06/5069385/1/Add.3), annex, para. 4. Available from http://www.unece.org/env/water/meetings/documents_moppwh.html.

¹¹ Ibid., para. 11 (a) and paras. 16–22.

¹² See Protocol, article 2, para. 11.

¹³ Decision I/2, annex, para. 16, refers to communications “by one or more members of the public concerning [a] Party’s compliance with the Protocol” without introducing any additional requirements in terms of citizenship or location. See further the online document, “Guidelines on Communications from the Public”, para. 8, available from http://www.unece.org/env/water/pwh_bodies/cc.html.

member of the public does not need to demonstrate injury or to be specifically affected in order to submit a communication.¹⁴ Furthermore, the communicant does not need to be represented by or seek advice from a lawyer, although legal assistance may be useful.¹⁵

4. *State object of the communication* – The communication must concern a State Party.¹⁶ A State becomes a Party to the Protocol only when the Protocol enters into force for that State, namely on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession.¹⁷

5. *Admissibility of communications* – For a communication to be admissible, it must not be: (a) anonymous; (b) an abuse of the right to make such communications; (c) manifestly unreasonable; or (d) incompatible with the provisions of the compliance procedure or with the Protocol.¹⁸ The Committee takes into account available domestic remedies, but their exhaustion is not a formal requirement for the admissibility of communications.¹⁹

B. Matters of non-compliance that could be raised in communications

6. Communications may address any or a combination of the following situations (the list is not exhaustive) that occur or are still ongoing after the entry into force of the Protocol for the relevant Party (see para. 1 above):²⁰

(a) A general failure by a Party to take the necessary legislative, regulatory, institutional, administrative, operational, budgetary/financial, technical, infrastructural, management, enforcement or other measures necessary to implement the Protocol in a manner which is in conformity with its objectives and provisions;

(b) Failure of such legislative, regulatory, institutional, administrative, operational, budgetary/financial, technical, infrastructural, management, enforcement or other measures to meet the requirements of the Protocol's provisions;

(c) Specific events, acts, omissions or situations which demonstrate a failure of the State authorities to comply with or enforce the Protocol;

(d) Specific instances of the violation of rights of individuals under the Protocol.²¹

C. Steps that the public should take when submitting communications

7. *Format* – A communication to the Committee must be in writing and must clearly²² identify the Party concerned.²³ Communications should be kept as concise as possible. A template with the relevant headings to be covered in a communication appears in the annex to the Guidelines on Communications from the Public.

¹⁴ Guidelines on Communications, para. 9.

¹⁵ Ibid.

¹⁶ Ibid., paras. 11-13. The additional one-year time requirement and four-year opting-out possibility envisioned in paragraph 16 of decision I/2 have elapsed for all 26 States Parties.

¹⁷ Protocol, article 23, para. 3. The time requirements in paragraph 16 of decision I/2 apply to new Parties. For the calculation of the deadline of one year after the date of entry into force of the Protocol for that Party or, if a declaration is made, of the additional four-year period.

¹⁸ Decision I/2, annex, para. 18.

¹⁹ Ibid., para. 19; and Guidelines on Communications, paras. 19 and 31–32.

²⁰ Guidelines on Communications, paras. 14 and 20.

²¹ Ibid., para. 17.

²² Ibid., paras. 25–26.

²³ Ibid., para. 28.

8. *Identification* – Basic information on the identity of the communicant must be provided, i.e., full name, relevant address, telephone, email and a contact person where a group or non-governmental organization is the author of the communication.²⁴

9. *Language* – Communications and/or supporting documentation may be submitted in the English, French, German or Russian languages. It is recommended to submit communications in English as this will considerably speed up its consideration. To minimize delays, documents important to the matter of the communication which are not available in one of the official languages should be translated into English by the communicant, even if not as a certified translation, and submitted in both English and the original language.²⁵

10. *Confidentiality* – If the disclosure of information submitted could result in communicants being penalized, persecuted or harassed, he or she is entitled to request that such information be kept confidential. The communicant may elaborate on why such a request is being made but this is not a requirement.²⁶

11. *Content* – The communication must provide the facts on which it is based and the explicit links between the facts and the provisions of the Protocol allegedly not complied with. It must clearly explain how the communicant considers that the Party concerned has failed to comply with each provision mentioned.²⁷ The communication must also mention in detail any domestic remedies or international procedures that the communicant has resorted to, when, which claims were made, with what results and whether there are any other domestic remedies available.²⁸

12. *Supporting documentation* – Copies (not originals) of all the documentation strictly relevant to the communication, including any pertinent legislative and administrative acts, have to be submitted as corroborating material. In the course of the procedure the Committee may ask the communicant to provide additional information.²⁹

13. *Signature* – The communication must be signed and dated. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.³⁰

14. *Address* – Communications must be addressed to the Committee through the joint secretariat at the following address (in writing and by email):³¹

Co-Secretary of the Protocol on Water and Health
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland
Tel.: +41 22 917 10 32
email: protocol.water_health@unece.org
Website: https://www.unece.org/env/water/pwh_text/text_protocol.html

and should clearly indicate: “Communication to the Compliance Committee on the Protocol on Water and Health”.

²⁴ Ibid., para. 27.

²⁵ Ibid., paras. 38–40.

²⁶ Ibid., paras. 33–35.

²⁷ Ibid., paras. 29–30.

²⁸ Ibid., paras. 31–32.

²⁹ Ibid., paras. 36–37.

³⁰ Decision I/2, annex, para. 18 (a); and Guidelines on Communications, paras. 24, 27 and annex, sect. X.

³¹ Guidelines on Communications, para. 24.