

Protocol on Water and Health- compliance mechanisms

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Vice Chair of the Compliance Committee under the
Protocol on Water and Health

Judicial Colloquium, Geneva 27-28 February
2019SDG16: ROLE OF JUDICIARY IN PROMOTING
THE RULE OF LAW IN ENVIRONMENTAL MATTERS



The Protocol was adopted on 17 June 1999, in force on 4 August 2005

Signatories : 36.
Parties : 26.
(as of Feb 2019)

Main aim: to protect human health and well being by better water management, including the protection of water ecosystems, and by preventing, controlling and reducing water-related diseases.



1st international agreement to attain an adequate supply of safe drinking water and adequate sanitation for everyone, and effectively protect water used as a source of drinking water.

Parties are required to establish national and local targets linked to the entire water cycle



(a) to set targets relating to water, sanitation and health, and to monitor them;



(b) to develop systems to respond to emergencies;



(c) to gather, develop and provide relevant information to the public; and



(d) to cooperate with each other in these matters.



Implementation

The process of
target-setting-
2 years after
becoming Party

Triennial
Summary
reports

1st reporting
cycle
2009/2010

2nd reporting
cycle
2012/2013

3rd reporting
cycle
2015/2016

4rd-ongoing
by: 19 April
2019



Reporting considerations

Questions arose related to parties that were also members of the European Union in what way it would be acceptable to refer to the **European Union legislation** in the national summary reports.



3rd cycle: the use of an interministerial coordination mechanism and the involvement of non-governmental stakeholders in preparing the summary reports **has improved.**



At the same time, the Committee noted with concern that **most summary reports were prepared without due involvement of the public.**





Compliance committee-consultation process



Current CC

Compliance Committee consisting of nine independent members serving in their personal capacity

(CH, HU, FR, D, KZ, LT, MD, N, UA-4 lawyers, 5 technical experts)

New consultation process as of 2011:

- Assist Parties in developing an accurate analysis of their situation (enabling them to set targets under the Protocol),
- Provide recommendations to the Parties on how to improve their situation
- Assist Parties in seeking support from donors, specialized agencies and other competent bodies

Consultation criteria with Parties:

- (a) The Party had difficulties in implementing the main obligations of the Protocol (e.g., setting targets and reporting under the Protocol);
- (b) No targeted assistance had been received so far by the Party under consideration;
- (c) The Party was eligible for funding with regard to the Consultation Process;
- (d) The country had been a Party for a considerable period of time vis-à-vis new Parties;
- (e) The Party or Parties represented different subregions;
- (f) The implementation problems at issue were faced by a group of Parties

ECE.MP.WH.CC. CI.1 Portugal

Portugal failed to submit its summary report within the second reporting exercise

19 December 2014- Letter to the Party informing about the decision to initiate the case

Findings and recommendations (Adopted by the Compliance Committee on 15 July 2015)

18 September 2015-Letter to the Party informing about the findings and recommendations as adopted



The Committee has an important function of analysing country reports

Consultation process- experiences with countries

Consultation Process with Albania, Azerbaijan (Bosnia and Herzegovina as observer) in October 2015

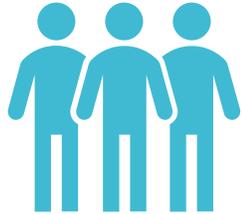
2 steps consultations with Estonia, Latvia and Lithuania in March and November 2018

Findings: <https://www.unece.org/env/water/protocol/compliance-committee/consultation-process.html>

INTERPRETIVE NOTE on relation with EU law -UNDERWAY IN 2019



Main issues for PP under the Protocol



The main challenges to ensuring public participation are:

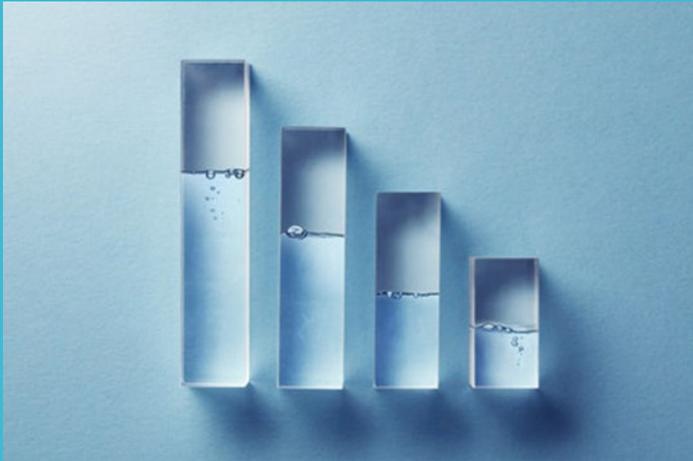
- Lack of awareness of authorities' obligations and the public's rights
- Lack of national legal frameworks
- Lack of access to information on the decision-making process
- Lack of political will
- Lack of cross-sectoral cooperation
- Lack of funding.



Public participation has to be ensured when implementing the Protocol's main provisions:

- Setting targets and target dates (article 6.2)
- Developing water-management plans (article 6.5)
- Ensuring international cooperation (articles 11 to 14)
- Reporting (article 7.5).
- Striking the balance between specialists and non-specialists, between stakeholders coming from different levels and from different sectors is essential when establishing the coordination mechanism.

Involve the public



The Protocol provides for the possibility of members of the public to make communications to the Compliance Committee on cases of alleged non-compliance with the Protocol.

Communications may be submitted to the Committee

by any member of the public.

To submit a communication:
No need to be a citizen of the State Party concerned or to be based in its territory,
neither need to demonstrate injury or to be specifically affected, and the communicant does not need to be represented by or seek advice from a lawyer.

Submission

Communication to the Compliance Committee on the Protocol on Water and Health:

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



Format In writing and must clearly identify the Party concerned.
Concise



Identification Basic information on the identity of the communicant must be provided



Language preferably **English** (French, German or Russian)



Content Facts and the explicit links between the facts and the provisions of the Protocol not complied with.
Clear statement that the Party concerned has failed to comply with each provision mentioned.
Any domestic remedies or international procedures that the communicant has resorted to.



Confidentiality could be kept



Supporting documentation Copies (not originals) of all the documentation strictly relevant to the communication



Signed and dated

Admissibility

- **Admissibility of communications**
- 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.
- The Committee takes into account available domestic remedies, but their exhaustion is not a formal requirement for the admissibility of communications.



New guidelines on communications from the public



<http://www.unece.org/index.php?id=38635>



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

Overview of the system

The Protocol on Water and Health

The **Protocol on Water and Health** is a treaty currently binding upon **26 countries** of the pan-European region. It requires Parties, in essence, to exercise due diligence in ensuring access to water and sanitation and protecting water bodies within their **jurisdiction** and within this general duty:

- (a) to set targets relating to water, sanitation and health, and to monitor them;
- (b) to develop systems to respond to emergencies;
- (c) to gather, develop and provide relevant information to the public; and
- (d) to cooperate with each other in these matters.

The Protocol's Compliance Review Mechanism

To ensure that Parties diligently meet their obligations, the Meeting of the Parties to the Protocol¹ has established, on the basis of an **explicit mandate** in the Protocol, a **Compliance Committee** consisting of nine independent members serving in their personal capacity. 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**.

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**. 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.² Moreover, the member of the public does not need to demonstrate injury or to be specifically affected in order to **submit a communication**. Furthermore, the communicant does not need to be represented by or seek advice from a lawyer, although legal assistance may be useful.

State object of the communication

The communication must concern a State Party.³ 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.⁴

¹ 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.

² 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.

Thank you for
your attention!

