



**UNITED NATIONS
ECONOMIC COMMISSION FOR
EUROPE**

**WORLD HEALTH ORGANIZATION
REGIONAL OFFICE FOR EUROPE**

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 procedure

GUIDELINES ON COMMUNICATIONS FROM THE PUBLIC

The guidelines on communications from the public have been developed by the Compliance Committee during its three meetings

Introduction

1. The Protocol on Water and Health entered into force on 4 August 2005. From that date, its provisions are legally binding on its Parties. The compliance review mechanism, developed under the Protocol, is expected to provide an important stimulus for Parties to comply with their obligations. To that end the Meeting of the Parties to the Protocol¹ has established a reviewing body, the Compliance Committee, made of nine independent members serving in their personal capacity.
2. One important feature of the Protocol's compliance mechanism is that it allows members of the public to make communications to the Compliance Committee in cases of alleged non-compliance with the Protocol, which the Committee is then required to deal with. This could be seen as a logical consequence of the fact that the Protocol seeks to guarantee the rights of individuals and the public, not only the rights of Parties vis-à-vis one another. In other fields of international law, in particular human rights law, similar mechanisms are well-established and much-used to ensure that States respect the basic human rights set out in various treaties. The Compliance Committee will therefore draw on the experience of other international

¹ The Meeting of the Parties (MoP) is the governing body of the Protocol where representatives of States Parties meet at regular intervals (normally every three years) to make decisions on matters concerning the Protocol, including on implementation and compliance.

environmental agreements, in particular the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the Aarhus Convention, and of various human rights bodies, in particular the Human Rights Committee.

Objective of the compliance review

3. The objective of the compliance mechanism is to facilitate, promote and secure compliance by Parties with their obligations under the Protocol. The mechanism itself and any measures undertaken in the course of, or as a result of the compliance review procedure are meant, by their nature, to be non-adversarial, non-confrontational, non-judicial and consultative.
4. “Non-confrontational nature” means that the procedure should not be seen as a confrontation between the person filing the communication – hereafter referred to as the communicant – and the concerned Government. “Non-judicial nature” means that the compliance review procedure is not a trial. “Consultative nature” means that the procedure aims at assisting Parties on problems of compliance.
5. The ultimate goal of the Committee is to facilitate and assist Parties in resolving problems rather than condemning Governments. The general assumption is that a situation of non-compliance with the Protocol by a Party is not the result of its intention to breach the Protocol’s provisions.
6. One of the goals of the compliance review procedure is to help to redress a situation of non-compliance by Parties concerned, which may also affect individuals. However, the Committee is not empowered to overrule decisions of national courts or administrative authorities, or abrogate national laws, nor can it intervene directly on a communicant’s behalf with the authority the communicant is complaining about. The Committee is not empowered to decide on any monetary compensation of damages resulting from a Party’s non-compliance with its obligations under the Protocol. However, the Committee is able to decide on measures or make recommendations to the Meeting of the Parties to the Protocol in order to enable it to make a decision assisting a Party in its efforts to comply with the provisions of the Protocol.

More information concerning the Compliance Committee and all relevant documentation are available at http://www.unece.org/env/water/meetings/documents_CC.htm.

More information concerning the Protocol is available on the Protocol’s web site: http://www.unece.org/env/water/text/text_protocol.htm.

What is a communication from the public?

7. A “communication from the public” is a documented assertion made by a member of the public, alleging that a Party is not in compliance with the Protocol on Water and Health by failing to effectively transpose, implement or enforce its obligations under the Protocol.

Who may submit a communication?

8. Any member of the public, i.e. any natural or legal person, or group of people may submit a communication to the Committee. A communication may also be filed by a non-governmental organization, including an environmental organization or a human rights organization. The person filing the communication is not required to be a citizen of the State Party concerned, or, in the case of an organization, to be based in the State Party concerned².
9. A member of the public does not need to be affected in order for him or her to submit a communication.
10. It is not necessary for the communicant to be represented by a lawyer or have the communication prepared with legal assistance. However, a legally accurate communication might enhance the effectiveness of its proceedings.

Concerning which States may a communication be filed?

11. A communication may be made concerning a State that fulfils two conditions:
 - (a) The State in question must be a Party to the Protocol on Water and Health. It should be noted that a State which has signed a Protocol is not necessarily a Party to it. In order for a State to become a Party to the Protocol it has to ratify, accept, approve or accede to the Protocol. The list of States that have ratified, accepted, approved or acceded to the Protocol can be found at http://www.unece.org/env/water/status/lega_wh.htm.³
 - (b) The State in question should not have ‘opted out’ of the compliance mechanism with respect to communications from members of the public.⁴ Information on States that have opted out is available on the Protocol’s web site. As of 30 of June 2009, no State has opted out.
12. Communications may not concern States that are not Parties to the Protocol, even if they have signed it.

When may a communication be made?

13. A member of the Public may make a communication concerning a State which has been a Party to the Protocol for at least one year (one year “grace period”), provided it has not “opted out”.
14. Such a communication may address only actions, omissions, events or situations which have occurred when the State in question was under a legal obligation under the Protocol, i.e. after it has become a Party. This does not prevent the Committee from considering communications concerning events or situations which, while presenting themselves after the State concerned

² Unless the context indicates otherwise, the term ‘State’ should be understood to also cover any regional economic integration organization that is entitled to become a Party to the Protocol under its Article 21, such as the European Community.

³ The Protocol enters into force for a State only on the ninetieth day after the date on which it has deposited its instrument of ratification, acceptance, approval or accession.

⁴ A Party ‘opts out’ when it notifies the Secretary-General of the United Nations that it does not accept the consideration of communications from the public for a period up to four years

has become a Party, originated before that State has become a Party. Any communications should not address problems that have been solved or have otherwise become obsolete.

Example: State A deposits its instrument of ratification on 1 January 2009. The Protocol enters into force for that State 90 days later, i.e. on 31 March 2009. Communications may be made with respect to that Party from 31 March 2010, assuming that it has not made an “opting out” notification according to paragraph 16 of the Decision I/2.

15. When bringing communications dealing with setting targets and target dates within the meaning of Article 6 of the Protocol and/or communications dealing with the establishment of surveillance and early-warning systems, contingency plans and response capacities within the meaning of Article 8 of the Protocol, communicants should keep in mind the timelines foreseen by the mentioned provisions (respectively 2 and 3 years since the entry into force of the Protocol for the Party concerned).

Example: State X was a Party to the Protocol in August 2005, when the Protocol entered into force. In order to comply with provisions of the Protocol it should have set target and target dates within the meaning of Article 6 by August 2007, and should have established the surveillance and early-warning systems, contingency plans and response capacities referred to in paragraph 1 of Article 8 of the Protocol by August 2008. If, as of September 2007, State-Party X has not established a target and a target date for the reduction of the scale of outbreaks and incidents of water-related diseases, a communication may be brought challenging this Party’s compliance with its obligations under Article 6 of the Protocol at any time. Likewise, a communication may be brought at any time, challenging this Party’s compliance with its obligations under Article 8, if as of September 2008 State-Party X has not established a national surveillance system identifying outbreaks of water-related diseases.

16. A communication for not meeting obligations referred to in paragraphs 14 and 15 above within the deadline will normally have to be addressed after the relevant deadline has expired. However, since the compliance procedure is aimed at avoiding and preventing non-compliance and at facilitating compliance, a communication could be made in advance of the relevant deadline, when it is evident that a Party will not be in a position to timely meet its own obligations and assistance of the Committee is deemed to be useful.

What types of non-compliance may a communication address?

17. A communication may address any or a combination of the following situations:
- (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 violation of rights of individuals under the Protocol.

What criteria should the communication meet?

18. In order for a communication to be admissible, it should not be:

- (a) Anonymous;
- (b) An abuse of the right to make such a communication;
- (c) Manifestly unreasonable;
- (d) Incompatible with the Protocol and its compliance review procedure.

19. The Committee also takes into account the availability of effective domestic remedies and whether they have been resorted to by the communicant. This means that although there is not a strict requirement that all domestic remedies must be exhausted, the communicants are strongly advised to address themselves first to the domestic competent authorities and use available domestic means of redress. The Committee may decide not to pursue the substance of a communication if it considers that the communicant has not sufficiently explored the possibilities for resolving the issue through national administrative or judicial review procedures.

20. A communication concerning a Party may be made only one year after the Protocol has entered into force for that Party. However the Protocol does bind the Party during this period, therefore a communication may concern events occurred during this period unless the matter has been resolved.

To whom should communications be sent, and how?

21. Communications should be addressed to the Committee through the joint secretariat at the following address:

Co-Secretary of the Protocol on Water and Health
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Palais des Nations
CH-1211 Geneva 10, Switzerland
Tel.: +41 22 917 24 63
Fax: +41 22 917 01 07
e-mail: protocol.water_health@unece.org

Clearly indicate: “Communication to the Compliance Committee on the Protocol on Water and Health”

22. Communications should not be sent to the individual members of the Committee or to its Chairperson.
23. Communicants are also advised to forward communications to the government of the Party concerned at the time of the delivery to the Committee.
24. Whenever possible, communications should be sent by e-mail with the enclosures attached. In addition, a signed paper copy of the communication, together with any corroborating material, should be sent by registered post or otherwise delivered to the joint secretariat.

What information should be included in the communication?

Form of the communication

25. A communication to the Committee should be in writing. There are no special requirements for the format of the communication. However, the annex to these guidelines contains a checklist of items of information to be included in the communication, which communicants are strongly advised to carefully examine.
26. Communications should be kept as concise as possible, avoiding the inclusion of information which is not necessary for establishing the alleged case of non-compliance. Communicants are recommended to attach one-page summary of their communication including explicit reference to the provisions allegedly not complied with by the Party concerned.

Information on the author of the communication – the communicant

27. The communication should provide basic information on the identity of the communicant – name and contact details, whether this is an individual or an organization. If the communicant is a registered organization, the communication should be signed by a person legally authorized to represent the organization. If the communication is made by a group of people, a contact person should be designated to correspond on behalf of the group and the name and contact details for that person should be provided. The Committee will not consider anonymous communications.

The Party concerned by the communication

28. The communication should clearly identify the Party whose compliance is addressed in the communication. When a person wishes to draw the attention of the Committee to what he or she considers being a case of non-compliance by more than one Party, a separate communication should be submitted for each Party involved.

The facts concerning the alleged non-compliance

29. The communication should provide, preferably in reverse chronological order, the facts on which the communication is based.

Provisions of the Protocol allegedly contravened

30. The communication should contain all information which is considered essential to establish non-compliance. The specific provisions of the Protocol which are allegedly violated, or are otherwise relevant, should be identified as precisely as possible. The communication should clearly indicate the specific provisions of the Protocol allegedly not complied with and make explicit links between these provisions and the concrete facts presented in the communication.

Domestic and other remedies

31. The communication should specify whether steps have been taken to use the remedies available in the country in question to obtain redress in the case which is the subject of the communication (e.g. administrative or judicial review or appeals procedures before public authorities, courts, tribunals, ombudsperson, etc.) and if so, which steps were taken, when they were taken and what the results were. If no steps have been taken, it should be explained why not (e.g. because no remedies were available or because they were ineffective, insufficient or involved an unreasonably lengthy procedure). If remedies were resorted to in connection with the matter which is addressed in the communication, or in a closely related case, by a person other than the communicant, this should also be mentioned in the communication.⁵
32. It should also be indicated whether the matter has been submitted to another means of international investigation or settlement and, if so, which steps were taken, when they were taken and what the results were.

Confidentiality

33. If the communicant is concerned that the disclosure of information submitted to the Committee could result in him or her being penalized, persecuted or harassed, he or she is entitled to request that such information, including any information relating to his or her identity, be kept confidential. The same applies if the communicant is concerned that the disclosure of information submitted to the Committee could result in another person or group of persons being penalized, persecuted or harassed. The Committee must respect any such request. If any of the information in the communication is submitted in confidence to the Committee, this should be clearly indicated. If there is no specific request for confidentiality, the information communicated to the Committee will not be considered confidential.

⁵ See furthermore section above on criteria.

34. If the joint secretariat receives a communication and/or supporting documentation parts of which are confidential, it will prepare a redacted copy of the communication and/or supporting documentation for public use.
35. A communicant requesting that any of the information submitted is treated as confidential may, if he or she chooses so, elaborate on why such a request is being made, but there is no obligation to do so. It should be borne in mind that, if too much information is required to be kept confidential, this may impede the processing of the case, as the Committee will need to decide whether the non-confidential information is enough for it to have a meaningful discussion with the Party concerned in the process of review. While requests for confidentiality are not discouraged, it is recommended that they be made only if strictly necessary.

Copies of relevant documentation

36. Copies of all documentation strictly relevant to the communication, including any pertinent legislative and administrative acts, should be submitted as corroborating material to facilitate the Committee's work.
37. In the course of the procedure the Committee may ask the communicant to provide additional information. However, no such information will be considered by the Committee unless it is received at least four weeks before its next meeting.

Languages

38. Communications and/or supporting documentation may be submitted in any of the official languages of the Protocol (English, French, German or Russian). It is however recommended to submit communications in English as this will considerably speed up its consideration.
39. If the communication and/or supporting documentation are submitted in an official language other than English, the joint secretariat will endeavour to arrange for at least the essential documentation to be translated into English, depending on availability of resources. Reasonable amount of supporting documentation may also be translated. The joint secretariat may also request the communicant to provide an English translation of certain materials. Account should be taken of the fact that in the event of any of the above, the procedure will be considerably delayed.
40. If a document of importance to the matter of the communication is not available in English, French, German or Russian, in order to avoid or minimise delays, it should preferably be translated into English by the communicant and submitted in both languages. This does not have to be a certified translation, though in some cases that might be preferable.

What happens after the Committee receives a communication

41. When a communication is received, the joint secretariat will register it and send a reference number to the communicant by e-mail, or, if not possible, by registered mail. If the communication lacks certain essential information, the joint secretariat has the discretion to try to clarify uncertainties directly with the communicant. However, if, within a reasonable time indicated in the cover letter, but not later than 15 days from the request, no answer from the communicant is received and a complete communication is not filed, the matter shall not be

pursued further. In such a case the communication will be considered as never having been made and the joint secretariat will inform the Committee accordingly, at the latest at its next meeting. The joint secretariat will then prepare a data sheet on the communication that will be posted on the Committee's website. Late responses will be treated as a new communication.

42. The complete communication, together with supporting information, is then circulated to the Committee that will consider, on a provisional basis, whether it appears to be preliminary admissible. In case of doubt, the Committee may seek further clarifications from the communicant.
43. If the Committee determines that the communication is preliminary inadmissible, it will not pursue it further and will inform the communicant accordingly. Such a decision will be posted on the Committee's website.
44. If the Committee determines that the communication is preliminary admissible, it will then bring it to the attention of the Party concerned. Following this, the communication, along with its supporting documentation, will be posted on the web site⁶ with no editorial changes or amendments.
45. The Committee may at the same time address a number of questions to the communicant. Such questions would be transmitted to the communicant by the letter from the joint secretariat together with confirmation of preliminary admissibility.
46. When the Party concerned receives the letter from the joint secretariat, it should, as soon as possible and in any case within five months, submit written explanations or statements on the matter. No response from the Party within five months of the communication being forwarded to it entails confirmation of its admissibility.
47. If the Party concerned challenges the admissibility of the communication, the Committee will consider this and the communicant will be given an opportunity to comment or provide additional information. If the Committee confirms the admissibility of the communication, it will consider the substance of it.
48. The discussion of the matter in order to establish the relevant facts will take place in open meetings. The secretariat will notify the communicant and the representative(s) of the Party concerned on the date and the venue of the meeting at which the matter will be discussed and on their rights to participate in the discussion. If the Committee considers that the information available to it is not sufficient to consider all aspects of the case, it may undertake further information gathering.
49. On the basis of the established facts and other elements, the Committee will determine in closed session whether or not the Party concerned by the communication is or has been failing to comply with the Protocol. If the Committee determines that the Party concerned is in non-compliance, it will consider what measures are appropriate in the specific circumstances. The Committee will take into account all elements of the case, including the cause and frequency of non-compliance as well as socio-economic conditions and the capacity of the Party concerned to implement the Protocol.

⁶ Please note that this does not imply endorsement of its content by the Committee or by the joint secretariat.

50. The Committee is not bound to address all issues, points or arguments put forward in the communication or during its consideration. On the other hand, the Committee is free to address issues related to the communication which may not directly emerge from the points or arguments put forward in the communication.
51. The draft findings, draft decisions on measures and draft recommendations of the Committee will be sent to the Party concerned as well as to the communicant for comments. Such comments will be taken into account by the Committee when finalizing its consideration of the matter.
52. Committee's final findings, decision on measures and/or recommendations are sent to the Party concerned and to the communicant. They are also made publicly available on the Committee's website: http://www.unece.org/env/water/meetings/documents_CC.htm

What may the Committee do when it finds that there is a situation of non-compliance?

53. The Committee may take action directly towards the Party concerned, including one or more of the following measures:
 - (a) Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate;
 - (b) Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;
 - (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) Issue cautions; and
 - (e) Make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.
54. Findings, decision on measures and any recommendations of the Committee will also be reported to the Meeting of the Parties, which in its turn may then decide upon one or more of the following:
 - (a) Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, which may include assistance in seeking support from specialized agencies and other competent bodies, as appropriate;
 - (b) Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;
 - (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) Issue cautions;
- (e) Make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (f) Recommend to Parties to provide financial and technical assistance, training and other capacity-building measures and facilitate technology transfer;
- (g) Facilitate financial assistance and provide technical assistance, training and other capacity-building measures, subject to financial approval, including, when appropriate, seeking support from specialized agencies and other competent bodies;
- (h) Issue declarations of non-compliance;
- (i) Give special publicity to cases of non-compliance;
- (j) 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
- (k) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

55. Decisions of the Meeting of the Parties are communicated directly to the Party concerned and to the communicant and made publicly available on the Committee's website.

Follow-up to measures decided by the Meeting of the Parties

56. The Meeting of the Parties may decide to give a mandate to the Committee to monitor the implementation of its decision. If given such a mandate, the Committee will in its turn report on this to the Meeting of the Parties.

ANNEX

CHECKLIST FOR COMMUNICATIONS

I. Information on correspondent submitting the communication

Full name of submitting organization or person(s):

Permanent address:

Address for correspondence on this matter, if different from permanent address:

Telephone:

Fax:

E-mail:

If the communication is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication is submitted by an organization, give the following information for the contact person authorized to represent the organization in connection with this communication:

Name:

Title/Position:

II. State Party concerned

Name of the State Party concerned by the communication:

III. Facts of the communication

Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a breach of the provisions of the Protocol

IV. Nature of alleged non-compliance

Indicate whether the communication concerns a specific case of alleged non-compliance, including a situation of a person's rights being violated as a result of it, or relates to a general failure to transpose, implement or enforce in a correct way (certain of) the provisions of the Protocol by the Party concerned:

V. Provisions of the Protocol relevant for the communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Protocol that the State is alleged not to comply with:

VI. Use of domestic remedies or other international procedures

Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:

If no domestic procedures have been invoked, indicate why not:

Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and if so, provide details (as for domestic procedures):

VII. Confidentiality

Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you or other persons may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity or other persons' identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.

VIII. Supporting documentation (copies, not originals)

- Relevant national legislation, highlighting the most relevant provisions;
- Decisions/results of other procedures;
- Any other documentation substantiating the information provided under section VII above;
- Relevant pieces of correspondence with the authorities.

Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.

XI. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

X. Signature

The communication should 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.

XI. Address

Communications shall be sent to:

Co-Secretary of the Protocol on Water and Health
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
Palais des Nations
CH-1211 Geneva 10, Switzerland
Tel.: +41 22 917 24 63
Fax: +41 22 917 01 07
e-mail: e-mail: protocol.water_health@unece.org

Clearly indicate: "Communication to the Compliance Committee on the Protocol on Water and Health"