

Communication to the Aarhus Convention Compliance Committee

I. Information on correspondent submitting the communication

Full name of organization or person(s) submitting the communication: **“Eco-TIRAS” International Association of River Keepers (“Eco-TIRAS”)**

Permanent address: **Str. Teatrala 11A, Chisinau 2012, Moldova**

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

Telephone: **+373 22 225615; 550953; +373 691 21726 (cell)**

E-mail: **ilyatrom@mail.ru**

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

Name: **Ilya Trombitsky**

Title/Position: **Executive Director**

Telephone: **+373 69121726**

E-mail: **ilyatrom@mail.ru**

II. Party concerned

Name of the Party concerned by the communication:

Republic of Moldova:

- **The State Hydrometeorological Service under the Ministry of Environment of the Republic of Moldova**
- **Government of the Republic of Moldova**

IV. 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 lack of compliance with the provisions the Convention.

Fact I. The State Hydrometeorological Service (further - SHS) has been created as a state legal body to carry out the hydrometeorological activity throughout Moldova by the Law #1536 from 25.02.1998 on Hydrometeorological Activity (See *Annex I.1 in the Supporting documents*). According to this law, the head of the SHS is appointed by the Government of the Republic of Moldova and represents Moldova at the World Meteorological Organization. The SHS is the only holder of the National Fund of Hydrometeorological Data (the SHS Hydrometeorological Database) and is responsible for the creation and management of that Database. The SHS Hydrometeorological Database includes all the hydrometeorological data on the state of the environment and its pollution collected in the Republic of Moldova and abroad by the subjects of national hydrometeorological network. The SHS' duties, among others, include the compliance with the obligations under the conventions and international agreements to which Moldova is a party.

As a result, subject to the national law #1536 from 25.02.1998, the SHS is a public authority

under the Art. 2 paragraph (b) of Aarhus Convention since it performs public administrative functions in relation to environment, and in particular, the hydrometeorological duties, activity, and services. That law also establishes the SHS' legal status.

On March 4th, 2006 the Government of Moldova adopted the Regulation #330 "On Approval of the List of Services Provided Free and at Charges by the State Hydrometeorological Service and the Guidelines on the Use of Special Means of the State Hydrometeorological Service" (hereafter Regulation #330). That Regulation established the basis for the access to hydrometeorological information that included (1) the List of Services Provided Free by the State Hydrometeorological Service, (2) the List of Services Provided at Charges by the State Hydrometeorological Service, and (3) the Guidelines on the Use of Special Means of the State Hydrometeorological Service.

In accordance with the Regulation #330, the List of Free Services includes the access to such data as the general hydrometeorologic forecasts and emergency warnings, the published meteorological and hydrological regime data, the published data on quality of environment, the scientific studies, the information placed on the SHS website, the current weather information and forecasts, the hydrological forecast, the information on the weather conditions for the certain last periods, climate information, and the consultations related to the use of hydrometeorological information, and information on the quality of environment.

The List of Services provided at Charges, specified in a separate eight-pages annex to the Regulation #330, includes the services related to the access to the primary hydrometeorologic information and the specialized hydrometeorologic information (*See Annex 1.3 in the Supporting documents*).

Finally, the Guidelines on the Use of Special Means of the State Hydrometeorological Service establish the general framework on the accumulation and use of special funds received from the hydrometeorological services at charge.

The key issue with the List of Chargeable Services, established by the Regulation #330, is in the fact that the applicants, who are in need of an access to the environmental (hydrometeorological) information, have to bear unreasonable costs.

In particular, on July 25th 2016, the Eco-TIRAS requested the SHS to provide environmental information regarding:

1. Temperatures at the hydrometeorologic station Baltata for the period from 1954 till present;
2. Streamflow of the Baltata River for the same period; and
3. Monitoring as well as hydrophysical and hydrochemical data and hydromonitoring of the waters quality in the Baltata River.

The total length of this river is about 27 km and the hydrometeorologic station collecting the data is located in the village of Baltata.

The SHS, in its response #03/737 from 01.08.2016 (*See Annex 2.3 in the Supporting documents*), indicated that the information regarding the temperatures at the hydrometeorologic station Baltata and the streamflow of the Baltata River could be received by two ways:

- 1) **The SHS staff collects, organizes and presents the information at the charges in the amount of 730,374.50 lei [about 35,700.00 euro]** [emphasis added]; or
- 2) The SHS provides an official access in its office to the requested information to the "Eco-TIRAS" employee who collects the information unassisted, with no help from SHS staff.

Fact II. On June 28, 2011, the Government of Moldova adopted its Resolution #471 "On Approval of the 2011-2015 National Action Plan on the Implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

Matters” (hereafter the 2011-2015 National Action Plan) (*See Annex 1.4 in the Supporting documents*). The purpose of the National Action Plan was to improve the practices of implementation of the Aarhus Convention, and indeed, it contains a number of the legislative, institutional, financial, and other actions to achieve that goal. However, the National Action Plan failed to include any provisions on the revision of the Regulation #330 so as to include the specific measures on bringing the issue of reasonable costs in compliance with the Convention. As a result, the existing issue of unreasonable costs set in the Regulation #330 remained unchanged.

Fact III. On December 30th, 2016, the Government of Moldova adopted the Regulation #1467 “On the Access to Environmental Information” (hereafter the Regulation #1467) (*See Annex 1.5 in the Supporting documents*). In its section VI “Charges”, Art. 44 only generally stipulates that “Where reasonable charges apply for certain information deemed to be environmental, public authorities make the list of such charges available to applicants”. This provision merely cross-refers an applicant, who is seeking an access, for example, to the hydrometeorological information, to the list of unreasonable charges established by the Regulation #330. The Regulation #1467 itself neither explains the term “reasonable charges” nor provide the guidance on information charges, as required by Art. 4 para 8 of the Convention, nor introduces the necessary measures on bringing the issue of reasonable costs in compliance with the Convention, as required by the Art. 3 para 1 of the Convention.

Despite the fact that “Eco-TIRAS” has drawn the Government’s attention to the non-compliance of the Regulation #1467 to the Convention with regard to principle of reasonable costs as early as its draft stage, the Government (the Ministry of Environment) did not introduce the necessary changes to remedy the situation on the stage of drafting of the Regulation #1467, when such option was officially open according to the Law on Transparency (2008).

In particular, in the summer 2016, the Ministry of Environment placed a draft of the Government Resolution on adoption of the Regulation on the Access to the Environmental Information on its web page seeking the comments and suggestions from the public. On August 18, 2016, the “Eco-TIRAS” presented to the Ministry of Environment a list of nine suggestions and comments that included the comments on the issue of reasonable costs. Regardless of the concerns raised by the “Eco-TIRAS”, the Government disregarded its suggestions on the issue of the reasonable costs.

Fact IV. The State Hydrometeorological Service as a state public authority, which was established by the Law #1536 from 25.02.1998 to carry out the hydrometeorological activity throughout Moldova, failed to comply with the Aarhus Convention that requires authorities to assist and provide guidance to the public in seeking access to information. In response to two “Eco-TIRAS” requests seeking access to environmental information, the SHS suggested to collect the information in the SHS office unassisted, with no SHS help.

In particular, in its response #03/737 from 01.08.2016 to the “Eco-TIRAS” to provide environmental information (*See Annex 2.3 in the Supporting documents*), the SHS indicated that the information regarding the temperatures at the hydrometeorologic station Baltata and the streamflow of the Baltata River could be received by two ways:

- 1) The SHS staff collects, organizes and present the information at the charges in the amount of 730,374.50 lei [about 35,700.00 euro]; or
- 2) **The SHS provides an official access in its office to the requested information to the “Eco-TIRAS” employee who collects the information unassisted, with no help from SHS staff [emphasis added].**

In addition, the “Eco-TIRAS” sent requests to the SHS (letter 18.02.2017) and to the Ministry of Environment (letter from 03.04.2017) (*See Annexes 2.1; 2.2 in the Supporting documents*) on the

issue of the access to information. The “Eco-TIRAS” asked the SHS to explain how the local public authorities can access the SHS to receive the information and whether there are special conditions to ensure the provision of the already existing hydrologic and hydrochemical information for the whole period of monitoring so that the local public authorities could elaborate subbasin management plans of small rivers. In the response #01/662 from 21.04.2017 (*See Annex 2.4 in the Supporting documents*), the SHS informed “Eco-TIRAS” that “in order to receive hydrological and hydrochemical information, the LPA [local public authorities] should send an official request to the SHS. According to the SHS’ Regulation, the information is kept in the SHS Hydrometeorologic Database and by gaining an official access, **the applicants collect the needed information unassisted by themselves**” [emphasis added].

V. Provisions of the Convention alleged to be in non-compliance

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that you allege the Party concerned has not complied with.

The following provisions have not been complied with: Art. 3 para 1; Art 3 para 2; Art. 4 para 8; Art. 5 para 2 (b) (ii)

VI. Nature of alleged non-compliance

For each of the above provisions which you allege to be in non-compliance, clearly explain how you consider that the Party concerned has failed to comply with that provision based on the facts of your case. (Provide as attachments to your communication the key supporting documentation that will help to substantiate your allegations).

Also indicate whether the communication concerns a specific case of a person’s rights of access to information, public participation or access to justice being violated as a result of the non-compliance of the Party concerned or whether it relates to a general failure by the Party concerned to implement, or to implement correctly, the provisions of the Convention. If you consider that the non-compliance concerns a general failure by the Party concerned, provide as attachments to your communication any key supporting documentation that will help to substantiate that it is a general failure.

1. The SHS and the Government of Moldova failed to comply with the Art. 3 para 1 because it did not

“take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information [...] as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention”.

It represents a general failure of the SHS and the Government of Moldova to implement as well as to implement correctly the provisions of the Convention.

The Government of Moldova did not take the necessary regulatory measures to implement the Convention and did not establish a clear and consistent regulatory framework on the issue of reasonable costs because:

- a) the Regulation #330 considers all SHS Hydrometeorologic Database of primary nature, and proceeding from that, it sets up the charges for services. As a result, such an approach of the Regulation #330 leads to passing on to those seeking information the entire amount of the costs and results in unreasonable charges, contrary to the Art. 4 para 8 of the Convention. The

Government of Moldova failed to address this issue and to ensure that the applicants do not bear the entire amounts of costs when seeking access to information. The Government neither revised the existing Regulation #330 nor adopted a new one that would fully comply with the provision of reasonable costs under the Convention.

- b) the 2011-2015s National Action Plan did not include any specific provisions on the revision of the Regulation #330 or any other specific measures on bringing the issue of reasonable costs in compliance with the Art. 4 para 8 of the Convention, thereby maintaining the situation of non-compliance. According to the Art. 3 para 1, the Government should have taken the necessary legislative and regulatory measures in order to achieve compatibility between the existing national provisions and those required to implement the Convention (in this case, the access to information at reasonable charges).
- c) the Regulation #1467 does not specify the term “reasonable charges” or include any measures on when and how the information charges shall be applied. The Art. 44 (“Where reasonable charges apply for certain information deemed to be environmental, public authorities make the list of such charges available to applicants”) cross-refers to the respective public authorities and their lists of charges. In case of hydrometeorological information, the SHS applies the list of unreasonable charges established by the Regulation #330. As a result, the Regulation #1467 fails to adjust the differences between the idea of “reasonable charges” and a specific list of charges elaborated by public authorities that are not necessarily reasonable, thereby violating the Convention’s requirement on “the proper enforcement measures.” The Aarhus Convention: An Implementation Guide (second edition) from June 2014 (hereafter Convention Implementation Guide) clearly explains that the Convention is “about taking concrete practical steps to achieve its goals” [p.59] and requires to “take necessary legislative, regulatory and other measures to establish framework for implementation of the Convention” [p.59].

In addition, the Government of Moldova did not take the necessary measures to pursue the adoption of legislative measures on the subject of reasonable costs. By adopting the 2011-2015 National Action Plan to improve the implementation of Aarhus Convention, the Government of Moldova undertook an obligation to improve its national legislation and to draft a Law on Access to Environmental Information. Although the draft itself was elaborated, the Parliament did not adopt that Law and demonstrated its unwillingness to ensure implementation of the Aarhus Convention on the national legislative level. The Government of Moldova, in its turn, did not take any further action to ensure the existence of legislative measures for the implementation of the Convention and establishment of a clear legislative framework on the subject of reasonable costs.

The SHS also did not take necessary measures to achieve compatibility between the Convention and the Regulation #330/2006 on the issue of reasonable costs. Although the SHS is responsible for the implementation of the adopted normative acts, according to the Law #1536 from 25.02.1998 that establishes the SHS’ legal status, it is also responsible for ensuring compliance with the obligations under the conventions and international agreements to which Moldova is a party. That suggests that while implementing the Regulation #330 in practice and seeing that the requested sums for access to information exceed the reasonable costs – as it was the case of about 35,700.00 euros requested from the “Eco-TIRAS” in 2016– or, preferably, much earlier, the SHS should have addressed the Ministry of Environment with an initiative of revision of the Regulation #330 to ensure its compliance on the issue of reasonable costs. Contrary to that, the SHS remained inactive and did not raise any concerns with regards to unreasonable costs set in the Regulation #330.

Overall, since 2006, the Government of Moldova did not take measures to ensure compatibility with regard to reasonable costs between the Regulation #330, the 2011-2015 National Action Plan, and the Regulation #1467 on the one hand, and the Convention, on the other hand.

2. The SHS under the Ministry of Environment failed to comply with the Art. 3 para 2 and Art. 5 para 2 (b) (ii) because it did not ensure that it “assist[s] and provide[s] guidance to the public in seeking access to information” and because it failed “to support the public in seeking access to information”.

This non-compliance concerns a general failure of the public authority to ensure the access to information.

To both requests of the “Eco-TIRAS” to provide the information (letters from 25.06.2016 and 18.02.2017), the SHS suggested to collect the information in the SHS office unassisted, with no SHS help.

In particular, in its response #03/737 from 01.08.2016, the SHS indicated that the SHS can provide “an official access in its office to the requested information to the “Eco-TIRAS” employee who collects the information unassisted, with no help from SHS staff”. In addition, in its response #01/662 from 21.04.2017, the SHS informed “Eco-TIRAS” that “in order to receive hydrological and hydrochemical information, the LPA [local public authorities] should send an official request to the SHS. According to the SHS’ Regulation, the information is kept in the SHS Hydrometeorologic Database and by gaining an official access, the applicants collect the needed information unassisted by themselves”.

By refusing to provide assistance in accessing the environmental information, the SHS failed to comply with Art 3 para 2, and Art. 5 para 2 (b) (ii). The Convention requires officials, who are in charge of the case in question, to offer help to those who seek information and to ensure the provision of guidance and assistance in person.

In addition, by openly announcing that it is not going to provide assistance in collecting data, the SHS failed to comply with the Convention Implementation Guide that clearly requires, first, “to take firm steps towards ensuring that officials and authorities provide the assistance” [p.62]. Secondly, it mentions two ways of fulfilling the assistance requirement: “one is with special contact persons, the other is through obliging the officials who are in charge of the case in question to offer help to those who seek information”. It also underlines that “[w]ith respect to access to information, article 5, paragraph 2 (b) (ii) and (iii), contains these two options for practical arrangements for making environmental information available to the public” [p.63]. The Convention Implementation Guide clearly indicates that “officials provide guidance and assistance in person” [p.63]. As a result, the SHS has been responsible to meet the provisions of the Convention, including the Art. 3 para 2 and Art. 5 para 2 (b) (ii) but failed to do so.

3. The SHS and the Government of Moldova did not meet the Art. 4 para 8 because they failed to ensure that the schedule charges do not exceed “a reasonable amount”.

This non-compliance concerns a general failure of the public authorities to ensure the access to information.

The Government of Moldova failed to meet the Art 4 para 8 when it adopted:

- a) the Regulation #330 because it considers all the information as primary, and establishes charges for all information as if it is all being of primary nature. This has a direct impact on the applicants who are in need of access to information because it imposes on them the entire amount of the costs incurred by the state (direct and indirect), and results in unreasonable costs for those who seek the access to the existing information collected in the past;

- b) the 2011-2015 National Action Plan because it did not require the revision of the Regulation #330 and lacked any specific measures on bringing the issue of reasonable costs in compliance with the Convention; and
- c) the Regulation #1467 because it does not contain any explanations of the term “reasonable charges”, or the specific measures on ensuring that the charges are reasonable, or the guidance on information charges.

The fact I above showed that the SHS requested the “Eco-TIRAS” to pay a charge in the amount of 730374,50 lei (about 35,700.00 euro) for having an access to the already existing information regarding the temperatures at the hydrometeorologic station Baltata and the streamflow of the Baltata river. These charges exceed a reasonable amount under the meaning of the Convention.

Although the Convention “allows its public authorities to make a charge for supplying information”, it specifically points out that “such charge shall not exceed a reasonable amount.” The Convention Implementation Guide also underlines that the information should be accessible as well as affordable, and therefore, charges, if necessary, must be reasonable.

The charges in the amount of about 35,700.00 euro on the data regarding streamflow and the temperatures of 25 km long river are both unreasonable and unaffordable. First, the charges are disproportional with regard to the river length and to the nature of requested data as it referred to the already existing information (the period from 1950s to 2010s). Second, the average salary in Moldova is about 200 euros and, to put it in perspectives, the SHS staff (who implement the Regulation #330) would have had to work for about five years before they altogether could have saved the above mentioned amount.

Such charges make it impossible, in general, for public to access the already existing data available at the SHS, and specifically, for actors, like the local public authorities, to implement the EU Water Framework Directive and to elaborate subbasin management plans in accordance with the Art. 50-4 of the Water Law as they limit in practice the access to information.

Viewing the already existing information in the Database as primary imposes unreasonable costs on those seeking the access to information, and contradicts to the Convention Implementation Guide. The Guide clearly explains that the term “reasonable” “must be understood as meaning **that it does not authorise Member States to pass on to those seeking information the entire amount of the costs, in particular indirect ones, actually incurred for the State budget in conducting an information search**” [p.221, emphasis added].

The Convention requires that the charges for supplying the information shall be reasonable whereas the Convention Implementation Guide clearly provides guidance for information charges. They should include “(a) a schedule of charges; (b) criteria for when charges may be levied; (c) criteria for when charges may be waived; and (d) criteria for when the supply of information is conditional on the advance payment of a charge” [p.94]. However, none of that was included in the Regulation #330 or the Regulation #1467.

As a result, the provisions of the Regulation #330 and the Regulation #1467, and the 2011-2015 National Action Plan with regard to reasonable costs fail to comply with the Convention whereas the Government of Moldova did not take any steps to bring those Regulations in compliance since 2006.

VII. Use of domestic remedies

Describe which, if any, domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication. Specify which procedures were used, when, which claims were made, what the results were and whether there are any other domestic remedies available.

If no domestic procedures have been invoked or if there are other domestic remedies available, explain why they have not been used. This information will be important for the Compliance

Committee's decision on admissibility of the case.

The subject of this communication is the non-compliance of the Government Regulation with the Convention on the issue of reasonable costs. Although, in general, the Moldovan legal framework provides for a right of a person (natural or legal) to go to court if his rights are violated by the public authority, this right is limited when it comes to challenging the legislative or executive acts adopted by the Parliament or Government.

In particular, the Law on Administrative Court #793 from 10.02.2000 explicitly stipulates in its Art. 4 para c) that the Government decrees [resolutions/regulations] and ordinances of normative nature do not fall within the jurisdiction of the Administrative Court (See *Annex 1.2 in the Supporting documents*). As a result, the "Eco-TIRAS" was not able to invoke the domestic judicial procedures.

Besides the Administrative Court, the Moldovan legislation does not provide for any other domestic procedures to address the issues involving the public authority and resulting in a binding decision. There is an additional way, in which the NGOs could bring attention to the non-compliance with the Convention, but it does not involve the binding remedies. The "Eco-TIRAS" invoked that procedure in the summer 2016.

More specifically, in accordance with the 2011-2015 National Action Plan to improve the implementation of Aarhus Convention adopted by the Government of Moldova on June 28, 2011, the Government of Moldova, represented by the Ministry of Environment, is the main body responsible for enhancing the efficiency of implementation of Aarhus Convention Moldova. Along with it, the NGOs share responsibility in analyzing the national legislative and regulatory framework with regards to its compliance with the provisions of the Aarhus Convention and bringing the necessary suggestions and recommendations to the Ministry of Environment.

Following this, the "Eco-TIRAS" repeatedly brought attention of the Ministry of Environment to the importance of adoption of clear, transparent, and consistent legislative framework on the access to environmental information and to the non-compliance of some regulatory acts to the Convention, notably, regarding the issue of reasonable costs.

In particular, the "Eco-TIRAS" commented on the summer 2016 draft of the Regulation on the Access to the Environmental Information elaborated by the Ministry of Environment on August 18, 2016. "Eco-TIRAS" specified that the draft Regulation did not comply with the Aarhus Convention (Art. 4, para 8) as it did not differentiate between the primary newly collected data and the already existing data mainly needed for the research purposes. Also, the draft Regulation did not include the provisions on reasonable fees or guidance on information charges that would ensure the access to environmental information.

The Ministry of Environment disregarded the "Eco-TIRAS"'s concerns and recommendations regarding the non-compliance and adopted the Regulation on the Access to the Environmental Information on December 30, 2016 without introducing any clear and consistent guidance on information charges or costs.

The "Eco-TIRAS" also addressed the Ministry of Environment on April 4th, 2017 and once again brought the Minister's attention to the fact that the Regulation #330 from 03.04.2006 contradicts to the principle of reasonable costs set up in the Convention and requires its revision in compliance with the Convention.

The Ministry of Environment dismissed those "Eco-TIRAS" concerns on non-compliance too.

VIII. Use of other international procedures

Indicate if any international procedures besides the Aarhus Convention Compliance Committee have been invoked to address the issue of non-compliance which is the subject of the communication. If

so, specify which procedures were used, when, which claims were made and what the results were.

No other international procedures have been invoked.

IX. Confidentiality

Note that unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including information on your identity, be kept confidential. If you request any information to be kept confidential, clearly indicate which information. It is also helpful for the Committee to know why confidentiality is requested.

X. Supporting documentation (copies, not originals)

Avoid including extraneous, superfluous or bulky documentation. Attach only documentation essential to your case, including:

- Relevant national legislation, highlighting the most relevant provisions.
- Relevant decisions/results of other procedures, highlighting the most relevant sections.
- Relevant correspondence with the Party concerned's authorities or other documentation substantiating your allegations of non-compliance, highlighting the most relevant sections.

For documents other than key legislation and decisions, there should be no more than **five** attachments (one document per attachment).

For all documentation, highlight those parts which are essential to your case.

Provide all documentation in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.

See attached

XI. Signature

Sign and date the communication. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.



**Ilya Trombitsky, Executive Director, “Eco-TIRAS” International Association of River Keepers,
July 5, 2017**

XII. Sending the communication

Send the communication by **e-mail and by registered post** to the following address:

Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland

E-mail: aarhus.compliance@unece.org

Clearly indicate:

“Communication to the Aarhus Convention Compliance Committee”
