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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

**Third session**

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Item 7 (e) of the provisional agenda

**Review of past activities and discussion of future activities in  
the different areas of work: compliance procedure****Report of the Compliance Committee to the Meeting  
of the Parties to the Protocol on Water and Health***Summary*

The present report by the Compliance Committee under the Protocol on Water and Health was prepared pursuant to decision I/2 of the first session of the Meeting of the Parties to the Protocol on review of compliance, through which the Parties established the Compliance Committee and agreed on its structure and functions and on procedures for the review of compliance (ECE/MP.WH/2/Add.3–EUR/06/5069385/1/Add.3). By the same decision, Parties required the Committee to report on its activities at each ordinary meeting of the Parties and to make such recommendations as it considered appropriate.

Annexed to the report is a draft decision on general issues of compliance prepared by the Committee for possible adoption by the Meeting of the Parties.

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## **I. Background and proposed action by the Meeting of the Parties**

1. At its first session (Geneva, 17–19 January 2007), by its decision I/2 on the compliance procedure under the Protocol on Water and Health, the Meeting of the Parties to the Protocol on Water and Health established the Protocol's Compliance Committee and agreed on its structure and functions, as well as procedures for the review of compliance (ECE/MP.WH/2/Add.3–EUR/06/5069385/1/Add.3).
2. At its second session (Bucharest, 23–25 November 2010), the Meeting of the Parties by its decision II/1 on general issues of compliance (ECE/MP.WH/4/Add.2–EUDHP1003944/4.2/1/Add.2, forthcoming), *inter alia*, supported the decision of the Committee to enter into consultations with Parties that appear to have problems in implementing the Protocol, and encouraged Parties having difficulties with compliance to approach the Committee and to express interest in engaging in that procedure.
3. The present report provides an overview of the activities of the Compliance Committee since the second session of the Meeting of the Parties. In that period the Committee focused its work on the development of the Consultation Process and initiatives to engage Parties in the process. The Committee also focused on the analysis of summary reports submitted by Parties in accordance with article 7, paragraph 5, of the Protocol and those by other States. On the basis of that analysis, the Committee prepared a draft decision on general issues of compliance for possible adoption by the Meeting of the Parties, as annexed to the present report.
4. The Meeting of the Parties may wish to:
  - (a) Take note of the report of the Compliance Committee;
  - (b) Discuss the recommendations by the Compliance Committee and adopt the draft decision on general issues of compliance, reflecting the concerns, findings and recommendations of the Committee as detailed in section VIII.

## **II. Issues related to the functioning of the compliance procedure and the Committee**

### **A. Membership**

5. At its second session, the Meeting of the Parties elected by consensus four members of the Compliance Committee for a full term of office (two intersessional periods) to replace those whose term had expired, taking into account the geographical distribution of membership, a balanced composition between technical experts and lawyers and diversity of experience.
6. At its first meeting after the second session of the Meeting of the Parties, the Committee elected Mr. Veit Koester (Denmark) as its Chair and Ms. Ilona Drulyte (Lithuania) as Vice-Chair.
7. Mr. Truls Krogh (Norway), one of the Committee members elected by the Meeting of the Parties at the first session, resigned from the Committee in February 2012. In accordance with paragraph 7 of the annex to decision I/2, the Bureau in consultation with the Committee appointed Mr. Oddvar Georg Lindholm (Norway) as the new Committee member to replace Mr. Krogh.

8. The members of the Committee in the intersessional period were: Ms. Magdalena Bar (Poland); Mr. Pierre Chantrel (France); Ms. Drulyte (Lithuania); Ms. Diana Iskrevva-Idigo (Bulgaria); Ms. Zsuzsanna Kocsis-Kupper (Hungary); Mr. Koester (Denmark); Mr. Lindholm (Norway); Mr. Ilya Trombitsky (Republic of Moldova); and Mr. Serhiy Vykhryst (Ukraine).

## **B. Meetings held**

9. In the intersessional period the Compliance Committee held four meetings, all of which took place in Geneva. The reports for the meetings, listed below, are available on the Committee's website:<sup>1</sup>

(a) Sixth meeting (1–2 March 2011) (ECE/MP.WH/C.1/2011/2–EUR/DHP1003944/4.2/2011/2);

(b) Seventh meeting (3 November 2011) (ECE/MP.WH/C.1/2011/4–EUR/DHP1003944/4.2/2011/4);

(c) Eighth meeting (10 October 2011) (ECE/MP.WH/C.1/2012/3–EUDCE/1206123/3.1/2012/3);

(d) Ninth meeting (1–2 July 2012) (document ECE/MP.WH/C.1/2013/2–EUDCE/1206123/3.1/2013/06 (forthcoming)).

10. The sixth and eighth meetings of the Compliance Committee were held back to back with the fourth and fifth meetings of the Working Group on Water and Health, respectively, enabling members of the Committee to attend those meetings of the Working Group.

## **C. Rules of procedure**

11. At the eighth meeting of the Compliance Committee the Committee decided to amend rule 4 of its rules of procedure, to align the text with paragraph 7 of the annex to decision I/2 on the compliance procedure under the Protocol. The updated version of the Rules of Procedure is available on the Committee's website.

## **D. Consultation Process of the Compliance Committee**

### **Functioning and main features of the Consultation Process**

12. On the basis of the analysis of the summary reports submitted by Parties before the second session of the Meeting of the Parties, the Committee at its fifth meeting (Geneva, 22–23 June 2010) concluded that a number of Parties were facing difficulties in implementing the Protocol. To respond to that situation, the Committee decided to enhance its facilitation and assistance functions and agreed to enter into consultations with a number of Parties that, on the basis of the national summary reports, appeared to have problems in implementing the Protocol (ECE/MP.WH/C.1/2010/4–EUR/10/56335/16, para. 26). Those decisions were endorsed by the Meeting of the Parties at its second session.

13. At its sixth meeting, the Committee further deliberated on the functioning and main features of the Consultation Process. With regard to the scope of the consultations, it was generally agreed that the Committee should focus on the implementation of article 6 of the Protocol, on targets and target dates, and look at other articles on a case-by-case basis. As

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<sup>1</sup> See [http://www.unece.org/env/water/pwh\\_bodies/cc.html](http://www.unece.org/env/water/pwh_bodies/cc.html).

the starting point for the consultations would be the national summary reports, the scope should be linked to the areas covered by the reports. The Committee considered that the regional report on the status of implementation of the Protocol, prepared by the secretariat on the basis of the national summary reports, was also a useful background for the future consultations.

14. The Committee restated that the overall objective of the consultations would be to facilitate and support implementation and not to ascertain or declare whether a Party was in non-compliance. An invitation to engage in a consultation should therefore not be considered as an initiative of the Committee to raise an individual case of possible non-compliance, nor would the Committee raise a case of non-compliance as a result of a consultation.

15. The Committee agreed that the main results of the consultations would be advice and assistance provided to the Parties to help them in implementing the Protocol and improving their water and health situation, covering scientific, technical, legal and administrative aspects. Such advice and assistance would vary depending on the specific conditions, in particular depending on whether or not the Party had set its targets. The Committee stressed that the whole exercise would be carried out together with the Parties involved and that the final results would be tailored to their needs. Possible results of the consultations could therefore include: (a) assistance to the Parties to develop an accurate analysis of their situation, thereby enabling them to set targets; (b) recommendations to the Parties on how to improve their situation; and (c) assistance in seeking support from donors, specialized agencies and other competent bodies, including assistance to prepare project proposals supporting the implementation of the Protocol.

16. Regarding the ways and means to engage in consultations with Parties, it was agreed that the Committee's approach would involve renewing its offer of assistance and inviting Parties to request the consultations. The Committee might also directly engage with potentially interested Parties, making them aware of the opportunity and encouraging them to take advantage of it.

17. The Committee felt that the proposed process would offer great advantages to the Parties involved. It would provide a safe environment for discussing water and health problems with a high degree of informality, but at the same time a high level of expertise. It would offer to Parties the possibility to get complex and comprehensive advice covering simultaneously and in an integrated manner a broad variety of areas, from legal to technical and scientific issues. Such advice would be based not only on the Committee's experience, but also on knowledge of how the Protocol was implemented in other Parties. Moreover, the process could help the Parties involved in raising awareness on water and health issues at the national level, and could facilitate fundraising for follow-up activities.

18. As for the confidentiality of the Consultation Process, the Committee agreed that its general confidentiality rules would be applicable, i.e., that in general the procedure should not be kept confidential but that the Committee would ensure the confidentiality of any information that was provided to it in confidence by the Party concerned. Thus, if necessary to ensure the confidentiality of information, the Committee would hold meetings in private. In general, the rules of procedure of the Compliance Committee would apply, *mutatis mutandis*.

19. While the initiation of the process itself would be a prerogative of Parties only, non-governmental organizations (NGOs) could participate in meetings held in the context of the Consultation Process unless the Parties concerned requested that such meetings be held in closed session for reasons of confidentiality, although such reasons would have to be substantiated.

20. The Committee recognized that the level of ambition of the exercise would also greatly depend on the resources made available to it. It agreed that it would not be able to engage in consultations with a large number of Parties and it was reasonable to think that it would be able to assist two or three countries in an intersessional period. The Committee considered it desirable to have a good geographical distribution of Parties, including both European Union (EU) and non-EU countries, also reflecting the diversity of problems in the region, so that the conclusions of the exercise could be of use to other Parties too. It considered that countries that had been Parties for a longer time should be given priority over those which had more recently joined and which were not yet expected to have set their targets. It also considered that Parties that were already receiving assistance in the framework of the Protocol should not be approached.

21. The Committee considered that its capacity to assist would very much depend on the information it would have at its disposal. It agreed that the commitment from the Party concerned to make available the needed information was crucial to ensure the success of the procedure. Information needs would vary case by case, and the Committee would seek the most effective and least costly way to gather information. The Committee might request the Party to complete the information provided in the summary report — such as on existing legislation and measures implemented — and gather information during meetings with representatives of the Parties concerned, as well as during country missions, at the invitation of the Party. Moreover, the Committee's approach would need to be flexible and, as applicable, rely on additional sources of information such as partner organizations working in the Party concerned, in particular the United Nations and its specialized agencies. The financial resources available to the Committee would also be a determining factor.

22. The Committee agreed that it would cooperate closely with other bodies under the Protocol. Cooperation could take place during the consultation itself by requesting direct assistance from members of the Protocol's task forces and other bodies. Moreover, one of the outcomes of the Consultation Process could be a recommendation to the other bodies under the Protocol: for instance, a request to a Protocol task force to develop training or guidance material on an issue that had proven to be an obstacle to implementation; or a recommendation to support specific activities in the Party concerned. The Committee also considered cooperation with the World Health Organization Regional Office for Europe (WHO/Europe), part of the joint secretariat, to be very important for health-related issues.

23. Regarding the relationship between the Consultation Process and the compliance procedures, the Committee considered that, if during a consultation the Party concerned was being the subject of a submission, referral or communication, the Committee might decide, taking into account the circumstances and in agreement with the parties concerned, to suspend either the consultation or the deliberations on the submission, referral or communication.

24. The Committee decided that its rules of procedure should be applied, *mutatis mutandis*, to the rules governing the Consultation Process. Hence, a conflict of interest would have to be resolved on the basis of paragraphs 5–8 of those rules, although it was not likely that conflicts of interest would arise in connection with the Consultation Process. The Committee did not consider that a completed consultation *per se* would entail a conflict of interest of the Compliance Committee *vis-à-vis* submissions, referrals or communications concerning the Party.

25. Based on the above considerations, the Committee developed a text on the main features of the Consultation Process, constituting the rules governing the process (ECE/MP.WH/C.1/2011/2–EUR/DHP1003944/4.2/2011/2, annex). The Committee considered the text as an evolving document that might be amended in the future, taking into account experience gained.

### **Promotion of the Consultation Process**

26. The Chair of the Compliance Committee presented the nature, scope, objectives and procedures of the Consultation Process to Parties participating in the fourth meeting of the Working Group on Water and Health (Geneva, 1–2 November 2011), stressing the main features: the process was to be considered outside the framework of the compliance procedure; it was not of an inquisitive nature; and it was simple, consultative and non-adversarial.

27. In consultation with Committee members the Chair wrote a letter on 23 November 2011 to all Parties, circulated by the secretariat to the Protocol focal points in the ministries of health and environment, informing them about the Consultation Process. Furthermore, the letter invited Parties to respond to the offer of assistance by means of the Consultation Process.

28. The above letter also informed countries about a Committee meeting, provisionally scheduled for 24 and/or 25 April 2012, for Parties interested in receiving more information regarding the Consultation Process and discussing opportunities, consequences and possible outcomes of engaging in a consultation. However, as no Party responded to the invitation the meeting was cancelled.

29. At the eighth meeting of the Bureau of the Meeting of Parties (Bonn, Germany, 21–22 February 2012), the Chair of the Committee briefed the Bureau on the above developments and the plan to hold a one-day meeting of the Committee, back to back with the fifth meeting of the Working Group on Water and Health, to provide another opportunity for Parties to approach the Committee with regard to the Consultation Process. The initiative was welcomed by the Bureau.

30. At the fifth meeting of the Working Group on Water and Health (Geneva, 11–12 October 2012) the Chair again presented the main features of the Consultation Process and invited potential interested Parties to informal meetings with members of the Committee to receive more information about the process. No Party, however, responded to the invitation.

31. At its ninth meeting, the Committee noted with pleasure that the Consultation Process was the source of inspiration for including an advisory procedure in the decision on support to implementation and compliance, taken by the sixth session of the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Rome, 28–30 November 2012). According to this procedure a Party may request advice from the Convention's Implementation Committee about its difficulties in implementing the Convention, but the provision of advice by the Implementation Committee will not be regarded as alleging non-compliance (ECE/MP.WAT/37/Add.2, decision VI/1, annex I, section V; forthcoming).

32. The Compliance Committee, however, regretted that no Party had taken advantage of the Consultation Process under the Protocol, despite a number of Parties having serious difficulties in implementing the Protocol and being in non-compliance with several of its provisions.

33. Based upon the negative outcome of the above initiative, the Committee decided that the second reporting exercise under the Protocol would be useful for identifying the challenges faced by Parties in implementing it, and would thereby reconfirm the necessity for a consultation. It was also probable that, when preparing their national summary reports, Parties that faced particular challenges would realize the need to obtain assistance through the Consultation Process.

34. The Committee noted that while NGOs could not directly initiate a consultation, they had an important role to play in prompting Parties to make use of the Consultation

Process. In particular, NGOs could encourage a Party to engage in a consultation as a possible way to resolve an issue that would otherwise be submitted in the form of a communication to the Committee.

35. Taking into account the above considerations and the assessment of the second reporting exercise, the Compliance Committee decided that it might invite a Party or a small group of Parties having identical or almost identical implementation problems to engage in a consultation even if there was no guarantee that Parties would respond favourably to the invitation. The Committee would, at its first meeting after the third session of the Meeting of the Parties, consider whether the rules governing the Consultation Process would need to be amended accordingly.

36. The Committee decided to include in its draft decision on general issues of compliance some elements addressing the Consultation Process.

### **III. Submissions, referrals and communications concerning non-compliance with the Protocol**

37. To date no Party has opted out of the provision of the compliance mechanism enabling members of the public to bring communications before the Committee.

38. Since its establishment up to its ninth meeting, the Compliance Committee has not received any submission, referral or communication concerning non-compliance.

### **IV. Cooperation with the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur on the human right to safe drinking water and sanitation**

39. In the course of the first intersessional period, the Compliance Committee initiated an exchange of information and cooperation with the secretariat of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation appointed by the Human Rights Council, Ms. Catarina de Albuquerque (whose mandate was subsequently changed to that of the Special Rapporteur on the human right to safe drinking water and sanitation).

40. During the second intersessional period, the Committee reconfirmed its continuing interest in further cooperation with OHCHR and decided to keep itself abreast of developments in the field of human rights, exploring other initiatives in the area.

41. At its meetings in the second intersessional period, the Committee noted the close relationship between the Protocol on Water and Health and the right to water and sanitation — as set out in General Assembly resolution 64/292 and the declaration of the European Council on Environmental Law on the right to water — emphasizing the role of the Protocol as a concrete and effective tool for its implementation.

42. The Committee further underscored that the recognition of human rights aspects of access to water and sanitation would be duly taken into consideration when discussing cases of non-compliance, or difficulties with compliance initiated by submissions, referrals and communications.

43. Upon a positive response by the Chairs of the Compliance Committees under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its Protocol on Pollutant Release and Transfer Registers to the suggestion of attending the annual meeting of the



chairs of the seven human rights treaty bodies, and following an informal consultation with the officer at OHCHR responsible for the meeting, the secretariat informed the Committee that the suggested arrangement would be possible. However, as the meeting in 2012 took place in Addis Ababa and in 2013 in New York, due to financial constraints, the project was abandoned.

44. At the Committee's seventh meeting, Mr. Riedel, a member of the United Nations Committee on Economic, Social and Cultural Rights, illustrated the procedure for review of compliance by his Committee, a subsidiary of the Economic and Social Council that monitored the implementation of the International Covenant on Economic, Social and Cultural Rights, including the right to safe drinking water and sanitation.

45. Options for cooperation included participation by members of the Compliance Committee in meetings of the Committee on Economic, Social and Cultural Rights, as well as more informal opportunities for cooperation, by providing relevant information linked to the implementation of the Protocol related to countries reviewed and that could then be used to develop the Committee's concluding observations, containing suggestions and recommendations. However, owing to financial constraints, these options have not been pursued by the Committee.

46. At its eighth meeting, the Committee further considered how to develop synergies with the work carried out under the mandate of the Special Rapporteur on the human right to safe drinking water and sanitation.

47. One area of cooperation with the Special Rapporteur would be an exchange of information before her missions to United Nations Economic Commission for Europe (ECE) countries to make her aware of the opportunities and support provided under the Protocol, including the Consultation Process, so that she could suggest them to countries she visited as a means to further the implementation of the human right to water and sanitation. From its side, the Compliance Committee could more forcefully promote awareness of the human rights obligations of Parties with regard to safe drinking water and sanitation.

48. The Committee mandated the secretariat to remain in close communication with the office of the Special Rapporteur and to inform the Committee of any upcoming missions of the Special Rapporteur to ECE countries and visits to Geneva that would allow another meeting with the Chair or with the full Committee.

49. Mandated by the Committee, the Chair wrote to the Special Rapporteur on 25 November 2011, suggesting a meeting to discuss possibilities for strengthening cooperation and to consider concrete actions.

50. Pursuant to that letter, the Chair had a brief informal meeting with the Special Rapporteur, who suggested arranging a meeting in the context of her next visit to Geneva in September 2012. For various reasons, however, it had not been possible to arrange the meeting.

51. The Committee noted that, in spite of willingness and good intentions from all sides, it was difficult to develop close cooperation and synergies with the work of human rights bodies dealing with the right to water and sanitation. The main reasons were lack of sufficient time of the main actors and, furthermore, as far as the Compliance Committee was concerned, financial constraints. The Committee nevertheless remained open to opportunities for cooperation.

## V. Guidelines and template for summary reports

52. At its ninth meeting, the Committee discussed the guidelines and template for summary reports in accordance with article 7 of the Protocol on Water and Health (ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7), adopted by the Meeting of the Parties at its second session (see ECE/MP.WH/4–EUDHP1003944/4.2/1/06, forthcoming).

53. The Committee noted that, according to article 7, paragraph 5, of the Protocol, Parties were under a legal obligation to provide the Meeting of the Parties with a summary report of the data they had collected and evaluated and an assessment of the progress achieved.

54. It also noted that, by the same paragraph, Parties had a legal obligation to comply with guidelines established by the Meeting of the Parties for their reports. The notion of guidelines was probably the reason that the guidelines adopted were, generally speaking, based on the wording “Parties should” instead of “Parties shall”. That wording might be perceived by Parties as meaning that it was for them to decide whether to follow the guidelines or not, thus entailing the risk that summary reports would become less useful than they might be.

55. In the opinion of the Committee, however, given their basis in article 7, paragraph 5, the guidelines were normative in the sense that summary reports had to be in accordance with the guidelines established by the Meeting of the Parties. So Parties were obliged, to the extent possible, to comply with the guidelines for reporting, including the adopted template for reporting.

56. The Committee decided to include in its draft decision on general issues of compliance an element addressing the above issue.

## VI. Other issues

57. The Chair and a member of the Committee participated in the second Workshop on Reporting under the Protocol (Geneva, 12–13 February 2013), and the sixth meeting of the Task Force on Target Setting and Reporting (Geneva, 14 February 2013), which constituted for both members of the Committee an interesting and useful learning process.

58. An informal network of compliance and implementation bodies under the ECE environmental agreements represented by the Chairs of those bodies was established on the initiative of the Chair of the Aarhus Convention Compliance Committee. The initiative was inspired by the meetings of representatives of the governing bodies of the ECE environmental agreements. The main objective of the network was to share experiences, learn from each other and to discuss common problems. The secretariats of the various bodies were invited to participate in meetings of the network.

59. The Chair of the Compliance Committee under the Protocol and members of the Protocol secretariat participated in the first meeting of the network on 21 March 2013. Four other chairs as well as representatives of secretariats participated in the meeting. The meeting concluded, *inter alia*, that the mechanisms shared many common features but also differed in ways dictated by the nature of the instruments and cultures developed within the respective bodies. Yet, there was room for exchange of ideas, including as a means of strengthening environmental policy within ECE. The next meeting was provisionally scheduled to be held a year later.

## VII. Reporting requirements

60. In accordance with its mandate under decision I/2 (annex, para. 11 (c)), the Committee reviewed the implementation of and compliance with the reporting requirements under article 7, paragraph 5, of the Protocol. Specifically, it looked into whether and how the Parties had prepared their national implementation reports, whether reports were submitted in a timely manner, the quality and the accuracy of data and information provided and the consultations undertaken in preparing the reports.

61. In accordance with the guidelines and template for summary reports, adopted at the second session of the Meeting of the Parties, Parties were to submit their summary reports by 29 April 2013, 210 days before the forthcoming session of the Meeting of the Parties. This, the second reporting exercise, followed a first, pilot reporting exercise carried out in advance of the second session of the Meeting of the Parties to the Protocol, held in 2010.

### A. Procedural aspects of the reporting process

62. The Committee had a generally positive impression of the reports received within the second reporting cycle. Most of the Parties had taken their obligation to report seriously, with 23 of the Protocol's 26 Parties having submitted their summary reports. Moreover, three reports had been received from States that were not Parties, which the Committee considered a particularly positive sign. Accordingly, the Committee took the approach to analyse reports from non-Parties in the same way as the other reports. Hence, there is limited differentiation between Parties and non-Parties in this chapter on reporting, including within the tables provided in the report.

63. The Committee noted that 14 reports were submitted on time (2 of them from non-Parties) and 9 reports with a slight delay (up to one month) (1 from a non-Party). It noted with concern that three reports (Belgium, France and the Netherlands) had been submitted with a delay of over one month. Of these, two reports (Belgium and the Netherlands) had been submitted so late that it was not possible to take them into account in the preparation of the present report. Three Parties (Albania, Luxembourg and Portugal) failed to submit their reports. The Committee noted with considerable concern that two of those (Albania and Luxembourg) also failed to report in the course of the pilot reporting exercise.

64. The Committee noted with appreciation that almost all the reports submitted were close to the suggested length of 50 pages. Two reports were extremely short, so lacking much information, and two reports were excessively and unnecessarily long (over 60 pages). The Committee also noted that the disparity in the length of the reports led to a disparity in the level of detail and to difficulties in analysis by the Committee.

65. It was clear that Parties that had established a mechanism for coordination between the concerned water and health authorities had used the coordination mechanism also to prepare the summary report, with positive consequences for the quality and completeness of the summary report. Conversely, where no specific actions to implement the Protocol had been taken, the reports were prepared by the focal points alone or with inputs from few institutions, without consultation and consolidation of findings and conclusions.

66. The Committee noted that failure to submit summary reports or to submit reports within the specified deadline constituted non-compliance with the reporting requirements under the Protocol, and that all Parties that had failed to submit their summary reports should submit their reports to the joint secretariat by 28 February 2014 for, *inter alia*, forwarding to the Committee.

67. The draft decision on general issues of compliance includes some elements addressing the concerns and findings of the Committee.

## **B. Completeness of the summary reports in accordance with the requirements set out in article 7 and the guidelines and template for summary reports**

68. The Committee noted that the overall level of completeness of information provided in the reports was satisfactory. There was progress overall in this regard as compared with the pilot reporting exercise. However, the information provided was of varying quality. Some Parties provided clear and accurate answers, whereas other reports were confusing and difficult to analyse. Certain reports did not provide sufficient information on all target areas to enable an assessment of implementation.

69. The majority of Parties provided information on the general aspects and the procedural questions (Part One of the template). Parties provided information about the preparation process for reports, including information on which public authorities had the main responsibilities and which other stakeholders had been involved.

70. A number of summary reports had been prepared by public authorities with the involvement of other stakeholders, but almost no summary report had been posted for comments by members of the public. The Compliance Committee noted with concern that many summary reports had been prepared without due involvement of the public and all other relevant stakeholders. It therefore called upon Parties to follow the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*<sup>2</sup> more precisely in this respect.

71. The Committee regretted that, with few exceptions, the Parties had considered that there was no need to perform a cost-benefit analysis, which in the Committee's view was crucial for effective target setting and, ultimately, proper implementation of the Protocol. Also, very few countries reported that they had taken into account, in the process of target setting, emerging issues relevant to water and health (e.g., climate change).

72. The Committee noted with concern that only one Party reported having taken into account the polluter pays principle in setting targets, inter alia, as a way to harmonize the economic approach to target date implementation.

73. Although the completeness and quality of data provided in Part Two of the template (common indicators) had improved as compared with the pilot reporting exercise, the Committee encouraged Parties to use the suggested baseline year for reporting to the extent possible to facilitate the comparability of data.

74. In addition, some Parties failed to report on compliance with the established chemical parameters for drinking water quality and did not provide information on additional priority chemical substances. Some EU countries provided data based on requirements for reporting according to the Directive 98/83/EC:<sup>3</sup> i.e., only from those water supplies that produced more than 1,000 cubic metres of drinking water per day or for more than 5,000 consumers. The Committee noted that such data did not cover all water supplies.

75. In addition, the Committee recommended that Parties clarify whether incidents or outbreaks of reported diseases were water-related or if other routes of exposure had also been included in the data, thus making such a distinction clear, when possible, in accordance with the *Guidelines for the Setting of Targets, Evaluation of Progress and Reporting*.

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<sup>2</sup> United Nations publication, Sales No. E.10.II.E.12. Available from <http://www.unece.org/env/water/publications/pub.html>.

<sup>3</sup> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.

76. The Committee also noted that Parties seemed to have misunderstood some of the terms appearing in different areas of target setting. As such, with regard to the occurrence of discharges of untreated storm water overflows from wastewater collection systems (art. 6, para. 2 (g) (ii)), about half of Parties erroneously considered the issue to be applicable also to separate systems of collection of wastewater and storm water, although it applied only to combined systems.

77. In addition, on the issue of waters used for aquaculture or for the production or harvesting of shellfish (art. 6, para. 2 (j)), some Parties did not treat the term “aquaculture” as related to both freshwater and seawater, as well as to ponds and other areas of fish production. In the opinion of the Committee, the EU Freshwater Fish Directive 2006/44/EC<sup>4</sup> (formerly Directive 78/659/EEC) does not apply to waters in natural or artificial fish ponds used for intensive fish-farming, but that should be clarified. Moreover, in many instances it was clear that Parties did not pay proper attention to the aspect of the impact of aquaculture on the quality of waters that are used as sources for drinking water and for bathing, but instead concentrated primarily on the issue of water quality for fish and invertebrates used in aquaculture, and have not set respective targets in this area.

78. Regarding the target area on the application of recognized good practice in the management of enclosed waters generally available for bathing (art. 6, para. 2 (k)), the earlier limited understanding of this area had improved among Parties, but its implementation was still lagging behind.

79. Some of the above misunderstandings in filling in the template could have been avoided by making use of the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*. The Committee strongly recommended Parties to make use of these Guidelines, as well as the other guidance documents developed under the Protocol, in future reporting cycles, taking into account the suggestions for improvement of the guidance documents contained in the present report.

80. The Committee, however, believed that other misunderstandings identified by the Committee might be avoided by introducing appropriate changes and additional clarifications to the existing guidance documents.

81. In general, the Committee recommended that, if a country had reached a target, it should then have considered whether to establish a new target or to maintain the present level and report accordingly in its summary report.

82. The Committee noted with satisfaction that a number of Parties had provided a full and satisfactory account regarding the overall implementation of the Protocol in Part Four of the reporting template, including information on transboundary cooperation.

83. The draft decision on the general issues of compliance includes some elements addressing the above concerns, findings and recommendations of the Committee.

### **C. Analysis of targets and target dates set and assessment of progress (Part Three of the template)**

84. As a considerable amount of information was provided under Part Three of the template (targets and target dates set and assessment of progress), which varied in quality and completeness for different Parties and target areas, the Committee decided to provide more detailed suggestions and recommendations. The following analysis concerns mostly

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<sup>4</sup> Directive 2006/44/EC of the European Parliament and of the Council of 6 September 2006 on the quality of fresh waters needing protection or improvement in order to support fish life.

the compliance aspects and is complementary to a more substantive overview contained in the regional report on the status of implementation of the Protocol (ECE/MP.WH/2013/3–EUDCE/1206123/3.1/2013/MOP-3/10).

85. Though 14 countries (13 Parties and 1 non-Party) reported they had set the targets and an additional 7 (5 Parties and 2 non-Parties) reported they were in the process of target setting, it was not clear whether these targets were set in accordance with article 6 of the Protocol.

86. The Committee, therefore, recommended that all Parties, and especially those that have been Parties for a long time, to set targets under the Protocol and communicate them to the joint secretariat for wider dissemination. The Committee decided to include that recommendation as an element in the draft decision on general issues of compliance.

#### **Quality of the drinking water supplied**

87. Being a priority target area for most of the countries, the quality of drinking water supplied (art. 6, para. 2 (a)) was addressed in all reports. However, some Parties failed to clearly identify targets. In addition, some reports contained a lot of descriptive information that was not directly related to targets, and failed to reflect the measures taken to implement the targets. In some instances, Parties referred to their previous reports without providing information on the current situation and the progress achieved.

#### **Access to drinking water**

88. The target area on access to drinking water (art. 6, para. 2 (c)) was closely linked to the common indicator for this area (Part Two of the template). Parties, however, chose different methodologies for setting targets on access to drinking water. While some of them used the WHO/United Nations Children's Fund (UNICEF) Joint Monitoring Programme for Water Supply and Sanitation (JMP) definition of access, others used more ambitious definitions, like access to piped water on premises. The Committee noted that the use of the WHO/UNICEF JMP definition as a basis for setting targets on access to drinking water, especially for EU countries, did not encourage continuous progress, as many countries had already achieved or were close to achieving 100 per cent access according to the JMP definition.

89. Though, in the current form, the template for reporting only mentioned the UNICEF/WHO JMP as a possible indicator of access, the Committee recommended that the template be amended in order to provide more clarity to Parties on the possibility of, and options for, using other nationally and globally recognized indicators. The Committee decided to include an element reflecting this recommendation in the draft decision on general issues of compliance.

#### **Access to sanitation**

90. Regarding access to sanitation (art. 6, para. 2 (d)), the EU countries mostly reported on their implementation of the Urban Waste Water Directive.<sup>5</sup> As the requirements of this Directive were based on the size of agglomerations above 2,000 inhabitants, the reports focused on these agglomerations and the situation in small settlements was reported in very different ways, sometimes being poorly described. Some reports, however, included targets for small sanitation systems, including ecological and innovative ones, which could promote cost-effectiveness, energy efficiency and other positive results.

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<sup>5</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

91. The Committee believed that it would be useful to include in the guidelines and template for reporting provisions on taking into consideration relevant United Nations General Assembly and Human Rights Council resolutions on the human right to safe drinking water and sanitation, as well as the applicable Protocol provisions. Thus, progress might be made on including the consideration of vulnerable and otherwise disadvantaged groups of the population (including rural dwellers) in setting targets, especially on access to drinking water and sanitation.

92. The draft decision on the general issues of compliance includes an element addressing the above recommendation of the Committee.

**Levels of performance of collective systems and other systems for water supply and sanitation**

93. A majority of countries had not set clear and concrete targets for the levels of performance of collective systems and other systems for water supply and sanitation (art. 6, para. 2 (e)). As an illustration of the situation for sanitation systems, please see table 1 below.

Table 1

**Overview of situation with regard to levels of performance of collective systems and other systems for sanitation (template, Part Three, sect. VI)**

| <i>Description of situation</i>                              | <i>Number of countries</i> |
|--|----------------------------|
| No relevant information or targets                           | 6                          |
| Some information, but no targets set                         | 7                          |
| Summary report refers to EU directives, but no targets given | 4                          |
| Summary report refers to national law, but no targets given  | 2                          |
| Targets set, but not clear and concrete                      | 2                          |
| Full compliance with an obligation to set targets            | 4                          |

94. Some countries failed to recognize that the concerned target areas also covered the consideration of the infrastructure of pipes and pipe networks for water supply and sanitation and the performance of such infrastructure. Thus, many Parties ignored setting possible concrete targets, such as the percentage of water losses and leakages, minimum renewal rates of the network and maximum pipe failures per kilometre and year.

95. In this regard, the Committee recommended setting clear and concrete targets for the levels of performance of collective systems and other systems for water supply and sanitation. Those targets should also apply in particular to EU countries, as the provisions of the relevant EU directives may not be sufficiently concrete on the issues concerned. An element reflecting this recommendation has been included in the draft decision on general issues of compliance.

**Application of recognized good practices to the management of water supply and sanitation**

96. Many Parties failed to establish targets and target dates on the application of recognized good practices to the management of water supply and sanitation (art. 6, para. 2 (f)). As an example of an overview of the situation regarding the management of water supply, the following was concluded: seven countries complied fully with the requirement to set targets; in one country this area was not selected for the national target-

setting process; one country would need to set a new target in this area due to the expiry of the previous target; eight countries needed to set targets; four countries failed to follow the *Guidelines for the Setting of Targets, Evaluation of Progress and Reporting*; and two countries did not reply clearly to the questions posed under the relevant part of the reporting template.

#### **Occurrence of discharges of untreated wastewater**

97. Regarding the reporting on the occurrence of discharges of untreated wastewater (art. 6, para. 2 (g) (i)), the Parties responding could be divided into two groups: those that had set strict targets and implemented high-quality measures; and those that mostly ignored setting targets in this area and failed to provide relevant information. In addition, in some cases, Parties reported only on discharges of wastewater that was meant to be treated at wastewater treatment facilities, without providing information on the condition of discharges exiting such facilities.

#### **Occurrence of discharges of untreated storm water overflows from wastewater collection systems to waters within the scope of the Protocol**

98. Only a few countries could be considered in full compliance with the setting of targets for the occurrence of discharges of untreated storm water overflows from wastewater collection systems to waters within the scope of the Protocol (art. 6, para. 2 (g) (ii)).

#### **Quality of discharges of wastewater from wastewater treatment installations to waters within the scope of the Protocol**

99. Regarding the quality of discharges of wastewater from wastewater treatment installations to waters within the scope of the Protocol (art. 6, para. 2 (h)), the Committee noted that Parties should monitor the quality of discharges and focus on the results of such monitoring in their reporting. Parties should not simply provide the number and capacities of wastewater treatment facilities, which by itself cannot provide information on the actual quality of discharges. The Committee observed that further guidance might be appropriate to underscore the importance of this point.

#### **Disposal or reuse of sewage sludge from collective systems of sanitation or other sanitation installations and quality of wastewater used for irrigation purposes**

100. Disposal or reuse of sewage sludge from collective systems of sanitation or other sanitation installations (art. 6, para. 2 (i)) continued to be one of the most challenging target areas to report on. Only a few Parties reported practising reuse of sewage sludge, while a number of Parties noted that such a practice is forbidden by national legislation. A similar situation also existed in the target area on the quality of wastewater used for irrigation purposes (*ibid.*), where even fewer countries set targets. The Committee drew the attention of Parties in particular to the setting of targets in these two areas in the next reporting cycle.

#### **Quality of waters used as sources for drinking water**

101. The Committee commended most of the Parties for providing good quality information on the target area on the quality of waters used as sources for drinking water (art. 6, para. 2 (j)). Table 2 provides an overview of the level of compliance of Parties with setting targets in this area.



Table 2

**Overview of situation with regard to the quality of waters used as sources for drinking water (template, Part Three, sect. XIV)**

| <i>Description of situation</i>                              | <i>Number of countries</i> |
|--|----------------------------|
| No relevant information or targets                           | 5                          |
| Some information, but no targets set                         | 3                          |
| Summary report refers to EU directives, but no targets given | 4                          |
| Summary report refers to national law, but no targets given  | 5                          |
| Full compliance with obligation to set targets               | 13                         |

102. A similarly good level of compliance was achieved in the target area on the quality of waters used for bathing (ibid.).

**Identification and remediation of particularly contaminated sites**

103. The Committee noted that a number of Parties had set targets on the identification and remediation of particularly contaminated sites (art. 6, para. 2 (l)), and that reports on this area by some Parties could be commended and used as possible best practices. The Committee therefore urged Parties to consider focusing on establishing inventories of such contaminated sites and compiling programmes of measures to manage them, which could constitute relevant targets under this area.

**Effectiveness of systems for the management, development, protection and use of water resources**

104. The Committee noted that the target setting on the effectiveness of systems for the management, development, protection and use of water resources (art. 6, para. 2 (m)) was strongly related to the relevant EU legislation and specifically the EU Water Framework Directive,<sup>6</sup> which was in force in the EU countries but also implemented by many other countries, either fully or in principle.

105. The information provided under this area both by EU and non-EU countries varied greatly in terms of its content and relation to Protocol implementation. The Committee therefore recommended that EU countries should only provide information on the implementation of EU legislation to the extent that it was relevant to the implementation of the Protocol under this target area in future reporting cycles.

106. For non-EU Parties, however, the Committee recommended that Parties consider explaining the main essence of the strategy implemented in the field of water resources management, the key objectives of the strategy, the dates for the objectives to be reached and the difficulties encountered.

107. Elements reflecting the above recommendations have been included in the draft decision on general issues of compliance.

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<sup>6</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

## VIII. Conclusions and recommendations

108. The Committee examined decision II/1 on general issues of compliance with a view to identifying elements that might still be relevant. It concluded that almost all its elements continued to be relevant, in spite of the progress acknowledged in section VII above. As these elements were directly or indirectly addressed in the new draft decision on general issues of compliance, once it was adopted decision II/1 could be considered as superseded by the new decision on issues of compliance.

109. The Committee analysed also its report to the second session of the Meeting of the Parties (ECE/MP.WH/2010/3–EUDHP1003944/4.2/1/9) to identify concerns that might be relevant also in respect of the second reporting cycle. The Committee, however, concluded that almost all concerns were directly or indirectly addressed by the present report. Thus, no specific follow-up actions were needed.

110. The conclusions and recommendations of the Committee are reflected in the present report and are, furthermore, to the extent that the Committee found this relevant, included as elements in the Committee’s draft decision on general issues of compliance.

111. In order to establish a clear relationship between the report and the draft decision on general issues of compliance, including with a view to facilitating the consideration by the Meeting of the Parties of the draft decision, the Committee developed table 3 below, which shows the correspondence between the paragraphs in the draft decision and the related paragraphs of the present report.

Table 3

**Overview of the correspondence between relevant paragraphs of the draft decision on general issues of compliance and the Committee’s report to the Meeting of the Parties**

| <i>Paragraphs of the draft decision</i> | <i>Paragraphs of the Committee’s report</i> |
|---|---|
| 1                                       | 55, 77, 88, 89, 105, 106                    |
| 2 and 3                                 | 85, 86                                      |
| 4                                       | 65  |
| 5 and 6                                 | 113, 114                                    |
| 7                                       | 71, 72, 81, 85, 86                          |
| 8                                       | 63, 66                                      |
| 9                                       | 73, 79                                      |
| 10                                      | 66  |
| 12–16                                   | 70  |
| 17, 18, 19                              | 25, 32, 35                                  |

112. The Committee noted that some of its recommendations were of a rather technical nature and, in addition, were already sufficiently clearly reflected in the existing guidance documents. Hence, the Committee did not consider it appropriate to include those recommendations in its draft decision on compliance. Reference is made here, inter alia, to paragraphs 99 and 103 of the present report.

113. The Committee concluded, in conformity with its conclusion in the previous report, that implementation of EU legislation was an important and solid cornerstone of the

Protocol's implementation among the EU member States. In addition, while recognizing the important synergies between EU legislation and the Protocol, the Committee considered that implementation of the Protocol went beyond implementation of different EU directives, and it therefore encouraged EU Parties to look into the additional requirements and opportunities under the Protocol. The concerns of the Committee were expressed in the form of recommendations in its draft decision on general issues of compliance and already taken up in decision II/1 (paras. 4 and 5).

114. The Committee believed that the recommendations were still relevant and referred in this respect to paragraphs 74, 77, 90, 95, and 105 in the present report addressing some specific aspects of the Protocol's implementation by the EU Parties.

115. In connection with its analysis of the summary reports, the Committee noted some elements of the reports that might serve as examples of good practices suitable for all Parties as a learning and reference tool. The Committee, however, undertook to approach this issue in a systematic manner when analysing the summary reports for the next reporting cycle, with a view of possibly making recommendations to the next session of the Meeting of the Parties on how best to utilize such good practices.

## Annex

### Draft decision on general issues of compliance

*The Meeting of the Parties,*

*Considering* its decision I/2 on the review of compliance,

*Taking note with appreciation* of the report of the Compliance Committee to the Meeting of the Parties, and endorsing its findings (ECE/MP.WH/2013/4–EUDCE/1206123/3.1/2013/MOP-3/08),

1. *Requests* the Working Group on Water and Health through the Task Force on Target Setting and Reporting to consider and introduce appropriate changes in the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*,<sup>7</sup> as well as in the guidelines and template for summary reports,<sup>8</sup> with a view to addressing the issues raised by the Compliance Committee in paragraphs 55, 77, 88, 89, 105 and 106 of the Committee's report, which shall be applied for the next reporting cycle and presented at the fourth session of the Meeting of the Parties,

#### Setting targets in accordance with the article 6 of the Protocol

2. *Recognizes* that by failing to establish and publish national and/or local targets and dates for achieving them several Parties are not in compliance with article 6, paragraphs 2 to 5, of the Protocol;

3. *Urges* Parties, especially those which have been in a situation of non-compliance for a considerable time, to speed up and finalize the process of target setting and, in doing so, recommends making use of the existing guidance material, in particular the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*;

4. *Recommends* that Parties establish a strong mechanism for coordination between water, health and other concerned authorities as the key prerequisite for an effective implementation of the Protocol, and also recommends that Parties involve their national coordination mechanism in the preparation of the summary reports;

5. *Calls on* Parties that are members of the European Union (EU) to build on the synergies between the Protocol and EU legislation, in particular to make use of the Protocol and the target-setting process to comply with EU directives;

6. *Also recognizes* that the implementation of the Protocol cannot be limited to the transposition of EU legislation, and encourages EU Parties to implement the Protocol beyond EU legislation, for instance by setting targets in areas that are not regulated or addressed in a sufficiently concrete manner by EU legislation;

7. *Stresses* in relation to the targets that:

(a) Targets should be clear and measurable to allow Parties to keep under scrutiny the progress achieved;

(b) Parties should explicitly indicate that targets have been set under the Protocol;

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<sup>7</sup> United Nations publication, Sales No. E.10.ILE.12. Available from <http://www.unecce.org/env/water/publications/pub.html>.

<sup>8</sup> As contained in document ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7, adopted by the Meeting of the Parties at its second session (see ECE/MP.WH/4–EUDHP1003944/4.2/1/06, forthcoming).

(c) Targets should be communicated to the joint secretariat for wider dissemination;

(d) When a target has been reached, Parties should consider whether to establish a new target or to maintain the present level and report accordingly in their summary reports;

(e) In line with article 5, Parties should apply as appropriate a cost-benefit analysis and the polluter-pays principle when setting targets;

#### **Reporting under the Protocol in accordance with the article 7**

8. *Emphasizes*, in line with paragraph 7 of decision II/1, the importance of timeliness of reporting, and recognizes that failure to submit summary reports or to submit reports within the specified deadlines constitutes non-compliance with the article 7 of the Protocol;

9. *Reiterates* the importance of using the adopted guidelines and template for reporting, including in respect of the length of reports, providing clear and accurate answers to all the questions and, when omitting information, specifying the reasons for the omission, using the suggested baseline year to the extent possible, and including information on the measures implemented to reach the targets, the challenges encountered in the process and the progress achieved;

10. *Requests* those Parties that failed to submit their national implementation reports to submit their reports to the joint secretariat, inter alia, for forwarding to the Committee, by 28 February 2014;

11. *Commends* those non-Parties that have submitted summary reports and welcomes the participation of those and other non-Parties in the future reporting cycles;

12. *Requests* Parties to involve all relevant stakeholders in the reporting process in accordance with the *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting* adopted by the Meeting of the Parties;

#### **Public participation**

13. *Recognizes* the importance of access to information and public participation for the effective implementation of the Protocol, as well as the widespread difficulties of Parties in complying with the relevant Protocol obligations, in particular related to the participation of the public in setting targets and target dates;

14. *Urges* Parties to comply with the provisions related to public participation in the process of target setting;

15. *Encourages* Parties to involve the public when preparing their summary reports;

16. *Invites* Parties to make use of the *Guide on Public Participation under the Protocol on Water and Health* developed under the Protocol (ECE/MP.WH/9);<sup>9</sup>

#### **Facilitative role of the Committee**

17. *Endorses* the rules established by the Compliance Committee governing the Consultation Process;

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<sup>9</sup> Forthcoming in September 2013.

18. *Supports* the decision of the Committee that it may, based on its assessment of the results of the second reporting exercise under the Protocol or other information available to the Committee, invite a Party or a small group of Parties having identical or almost identical implementation problems to engage in a consultation;

19. *Encourages* Parties facing challenges in implementing the Protocol to engage in discussions with the Committee on the opportunities offered by the Consultation Process.

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