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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

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Item 5 (i) 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

Addendum

The provisions of the Protocol on Water and Health and their relationship with the European Union law governing water and health

Interpretive Note prepared within the framework of the Consultation Process with Estonia, Latvia and Lithuania

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1. Background of the Interpretive Note

1.1. General context of the Interpretive Note

1. The present Interpretive Note was prepared by the Compliance Committee under the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), adopted under the aegis of the United Nations Economic Commission for Europe (ECE) and the World Health Organization (WHO) Regional Office for Europe, within the framework of a Consultation Process held between November 2017 and November 2018 with Estonia, Latvia and Lithuania.¹

2. Estonia, Latvia and Lithuania had requested the Committee to clarify relations between the provisions of the Protocol and the European Union law governing water and health. This issue was also highlighted by the Meeting of the Parties to the Protocol in its decision IV/2 on general issues of compliance (ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2) adopted at its fourth session (Geneva, 14–16 November 2016).

3. Although prepared as a response to this specific request, the present Note is of general relevance and interest to Parties to the Protocol and other States considering accession and/or working within the framework of the Protocol that are also member States of the European Union or that are aligning their national legislation with European Union law.

1.2. Mandate to interpret the provisions of the Protocol on Water and Health by the Compliance Committee

4. Pursuant to paragraph 1, (a) and (b) of decision I/2 of the Meeting of the Parties to the Protocol (ECE/MP.WH/2/Add.3-EUR/06/5069385/1/Add.3), the Committee is entrusted with ‘facilitating, promoting and aiming to secure compliance with the obligations under the Protocol, with a view to preventing disputes ... [by] providing advice or assistance to Parties’. In the light of the above, and acting within its competence to examine compliance issues and make recommendations or take measures as appropriate, the Committee decided to prepare the present Note to clarify the relevant provisions of the Protocol and their relationship with the relevant instruments of European Union law.

5. Previously, the Committee had issued the note “Interpretation of the provisions of the Protocol on Water and Health related to transboundary waters”,² endorsed by the Meeting of the Parties to the Protocol at its fourth session (ECE/MP.WH/13-EUPCR/1611921/2.1/2016/MOP-4/06, paras. 78 and 79 (a)).

2. Overview of the Protocol on Water and Health

2.1. General aims of the Protocol on Water and Health

6. The Protocol is an international legal agreement that, as of September 2019, binds 26 States of the pan-European region, including 16 member States of the European Union.³ At present, the European Union is not a Party to the Protocol.

¹ The Compliance Committee acknowledges the assistance of a dedicated team of lawyers at the law firm White and Case (Ms. Dolores Bentolila, Ms. Zelda Hunter, Ms. Tallat Hussain, Mr. Aqeel Kadri, Mr. Andrew de Lotbinière McDougall, Ms. Sara Nordin, Ms. Katy Norman, Ms. Sophie Sahlin and Ms. April Williamson), who supported the drafting of this Interpretive Note and the correspondence table contained in its annex on a pro bono basis.

² See www.unece.org/fileadmin/DAM/env/documents/2016/wat/06Jun_27-28_Compliance_Committee/Transboundary_analysis_15Nov_final_rev.pdf.

³ The relevant European Union member States are: Belgium, Croatia, Czechia, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia and Spain.

7. The Protocol is an innovative instrument, which approaches its objective from an integrated water, health and environment perspective. The overall objective of the Protocol, as stated in article 1 thereof, is: “to promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease.”

8. Article 4 (2) (a)–(e) specifies this objective by referring to several purposes, including adequate water supply, adequate sanitation, effective protection of water resources, sufficient safeguards for human health against water-related disease and effective systems for monitoring situations likely to result in outbreaks or incidents of water-related disease.

9. Several paragraphs of the Preamble and principles stated in article 5 (a)–(c) thereof, including the precautionary principle, the polluter-pays principle and the prevention principle, make clear that the entire Protocol system is intended to protect the environment.

10. Article 6 (1) of the Protocol spells out the connection with the human rights to water and sanitation by including a universality dimension as part of the aims of the Protocol:

In order to achieve the objective of this Protocol, the Parties shall pursue the aims of:

- (a) Access to drinking water for everyone;
- (b) Provision of sanitation for everyone.

within a framework of integrated water-management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems.

11. These provisions highlight the hybrid nature of the Protocol, which combines a human rights approach⁴ with a regulatory approach based on a governance and accountability framework and an inter-State approach based on transboundary and international cooperation.⁵ The overall objective of the Protocol is placed under the framework of sustainable development, a feature that emphasises the full consistency between the Protocol and the 2030 Agenda for Sustainable Development and its Sustainable Development Goals,⁶ particularly Goal 3 (Ensure healthy lives and promote well-being for all at all ages) and Goal 6 (Ensure availability and sustainable management of water and sanitation for all).

2.2. Nature of the obligations arising from the Protocol on Water and Health

12. In order to achieve its objectives, the Protocol establishes a tiered system consisting of: (a) a general obligation of due diligence to “take all appropriate measures” or “all appropriate action” (art. 4 (1) and (5), respectively); (b) principles and approaches (art. 5); and (c) four more specific clusters of obligations: (i) target setting, monitoring and progressive achievement (arts. 6 and 7); (ii) establishing, improving or maintaining comprehensive surveillance, early-warning and responses systems against outbreaks, incidents or risks of water-related disease at the national and local levels (art. 8); (iii) allowing access to information, public participation in decision-making processes and access to justice regarding the areas of the Protocol (arts. 5 (i), 6 (2) and (5) (b), 7 (3), 9 (1) (a) and (b), 10 and 16 (3) (g)); and (iv) cooperating in transboundary and international matters relating to water and health (arts. 6 (5) (b) and 11–14).

⁴ See *Guidance Note on the Development of Action Plans to Ensure Equitable Access to Water and Sanitation* (United Nations publication, ECE/MP.WH/15).

⁵ See “Interpretation of the provisions of the Protocol on Water and Health related to transboundary waters”, available at www.unece.org/fileadmin/DAM/env/documents/2016/wat/06Jun_27-28_Compliance_Committee/Transboundary_analysis_15Nov_final_rev.pdf.

⁶ General Assembly resolution 70/1.

13. This tiered system rests on the requirement to exercise due diligence in the pursuit and achievement of the objectives of the Protocol. The nature of this requirement has been clarified in international case law. In the *Pulp Mills* case, the International Court of Justice observed that an obligation to act with due diligence: “is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators”.⁷

14. Obligations to act with due diligence do not require the duty-bearer to guarantee a certain outcome. Thus, if, despite duly diligent efforts to adopt all appropriate measures or action to pursue and achieve a certain objective, and to proactively enforce such measures or action, this objective is not achieved, the obligation is not breached. The requirements of obligations to act with due diligence may vary depending on the specific wording of each provision of the Protocol, as discussed in subsequent paragraphs of this Note.

2.3. Content of obligations arising from the Protocol on Water and Health

15. In order to achieve the objective pursued by the obligations of due diligence set out in the Protocol, the Parties may be required to take certain procedural steps. These steps are envisaged by the Protocol as a means to an end, which is the overall objective set for the Protocol in article 1, as further specified in provisions such as articles 4 (2) and 6 (1).

16. Discretion in the choice of means afforded to Parties by the due diligence nature of the obligations under the Protocol may thus be circumscribed by the identification, in certain provisions of the Protocol, of certain specific means. Whereas the establishment of surveillance, early-warning and response systems and the setting of targets and reporting on progress is required (obligation of result), the Parties retain discretion as to the form, scope and content of such systems or targets within the general parameters set by the provisions of the Protocol (obligation of conduct or due diligence).

17. Such discretion is important in reflecting the different circumstances and the legal and political systems of Parties, a matter which is of particular relevance for the articulation between the obligations under the Protocol, the applicable European Union law and the domestic law of each Party.

18. Thus, the Protocol aims to provide a threshold level of protection of environment, water resources and human health, which ensures that the rights to water and sanitation are sufficiently protected in each Party. A Party may, however, establish a higher level of protection than the one required under the Protocol. Article 4 (8) of the Protocol specifically provides that: “The provisions of this Protocol shall not affect the rights of Parties to maintain, adopt or implement more stringent measures than those set down in this Protocol.” Article 4 (9) of the Protocol further provides that such higher level of protection may also result from another international obligation, such as those arising from European Union Law.

19. Thus, the Protocol only sets a “floor”, not a “ceiling”, with respect to the level of protection of water, health and the environment arising from domestic and/or international law.

2.4. Obligations of due diligence and the human rights to water and sanitation

20. It is generally acknowledged that each human right, including the rights to water and sanitation, entails three correlative obligations for States: (a) an obligation to respect the content of the human right; (b) the obligation to protect the human right from encroachments

⁷ See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, at para. 197; and, for a converging understanding under the prevention principle, *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, at para. 117.

by third parties or external events; and (c) an obligation to progressively fulfil the conditions for the full enjoyment of the human right.⁸

21. In the specific context of the human rights to water and sanitation, these three types of obligations require conduct that is consistent, i.e. similarly required by the due diligence obligations arising under the Protocol.⁹ Thus, the Protocol gives expression, within its scope of application, to the correlative obligations arising from the human rights to water and sanitation recognized by the Human Rights Council,¹⁰ the Committee on Economic, Social and Cultural Rights,¹¹ the General Assembly,¹² and Sustainable Development Goal 6, among others.

22. The content of the rights to water and sanitation has been summarized by the General Assembly in the following terms:

[T]he human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity¹³

23. The correlative obligations arising from these two rights have both substantive and procedural aspects. Whereas the establishment of a system or the adoption of a measure may be required (obligation of result), neither the obligations arising from the Protocol nor those arising from human rights entail the strict liability of States in cases where the adverse outcome materializes. There must be fault, i.e. intent, gross negligence or lack of sufficient diligence, on the part of the State, its instrumentalities or non-State actors for such obligations to be breached.¹⁴

24. The language used in General Assembly resolution 70/169 is consistent with that used in the Protocol, as well as in the main sources of the rights to water and sanitation, in that:

States have the primary responsibility to ensure the full realization of all human rights and to endeavour to take steps, individually and through international assistance and cooperation, especially economic and technical cooperation, to the maximum of their available resources, with a view to progressively achieving the full realization of the

⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, paras. 20–29; and General Assembly resolution 70/169, para. 5 (d).

⁹ See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 8 (corresponding, inter alia, to arts. 4 (2) (a) and 8 of the Protocol on Water and Health), paras. 15, 16 and 21 (corresponding, inter alia, to arts. 5 (k) and (l) of the Protocol), paras. 23 and 24 (corresponding, inter alia, to arts. 4 (2) (c) and (d), 4 (5), 5 (i) and (m), 6 (2), 7 (3), 8, 9 (1) (b), 10, 12 (c) and (d) and 13 (1) (b) of the Protocol), paras. 25–29 (corresponding, inter alia, to arts. 4, 6–10 and 14 of the Protocol), paras. 30–36 (corresponding, inter alia, to arts. 11–14 of the Protocol), paras. 45–52 (corresponding, inter alia, to arts. 4–10 of the Protocol), paras. 53 and 54 (corresponding, inter alia, to arts. 6 and 7 of the Protocol); and E/C.12/2010/1 (corresponding, inter alia, to arts. 5 (i), 6 (2), 7 (3), 9 and 10 of the Protocol).

¹⁰ See A/HRC/12/24; and Human Rights Council resolution 15/9.

¹¹ Committee on Economic, Social and Cultural Rights, general comment No. 15; and E/C.12/2010/1.

¹² See General Assembly resolutions 64/292 and 70/169.

¹³ General Assembly resolution 70/169, para. 2.

¹⁴ The obligations arising for non-State actors in connection with the rights to water and sanitation are increasingly recognized. See, inter alia, General Assembly resolution 70/169, para. 6; Committee on Economic, Social and Cultural Rights, general comment No. 15, paras. 23 and 24; Protocol on Water and Health, arts. 4 (5), 5 (m) and 9 (1) (b); International Centre for Settlement of Investment Disputes, *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, Case No. ARB/07/26, Award, 8 December 2016, paras. 1193–1210. But States have the “primary responsibility” to abide by the obligations arising from the human rights to water and sanitation, see General Assembly resolution 70/169, para. 9.

rights to safe drinking water and sanitation by all appropriate means, including, in particular, the adoption of legislative measures.¹⁵

25. The use of the term “to ensure”, which is equivalent to the terms “take all appropriate measures” or “all appropriate action” under article 4 (1) and (5) of the Protocol, places the obligations of States under the framework of due diligence. Similar language is used in the International Covenant on Economic, Social and Cultural Rights, on which the rights to water and sanitation also rest.¹⁶

26. Similarly, according to the 2010 Statement on the Right to Sanitation of the Committee on Economic, Social and Cultural Rights (E/C.12/2010/1, para. 8): “States must ensure that everyone, without discrimination, has physical and affordable access to sanitation ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’”. States are required to adopt the necessary measures and to proactively and diligently enforce them,¹⁷ including against third parties or natural disaster.¹⁸ Therefore, despite the due diligence nature of the obligations through which the rights to water and sanitation are implemented, they require not only progressive action, but also immediate and constant action.¹⁹

3. The system of the Protocol on Water and Health

3.1. Four clusters of provisions of the Protocol provisions

27. As noted in section 2.2. above, the legal obligations of the Protocol are organized in a tiered system.

28. In this section of the Note, the third tier (the four clusters of specific obligations) is described. The table below recalls the main provisions of each cluster. Their operation is discussed in detail in section 3.2 below.

29. As a general matter, the four clusters of specific obligations under the third tier must be understood, interpreted and applied in the light of the general due diligence obligations of the first tier (art. 4) and the principles and approaches of the second tier (art. 5).

Main provisions of each cluster of the Protocol provisions

<i>Cluster</i>	<i>Main provisions</i>
(i) Target setting, monitoring and progressive achievement	Article 6: Targets and target dates, including promotion of target achievement Article 7: Review and assessment of progress ²⁰

¹⁵ General Assembly resolution 70/169, para. 9.

¹⁶ Committee on Economic, Social and Cultural Rights, general comment No.15, para. 45.

¹⁷ *Pulp Mills on the River Uruguay*, para. 197.

¹⁸ Regarding the positive obligations to enforce against third parties, see European Court of Human Rights, *Tatar v. Romania*, Application No. 67021/01, Judgment, 6 July 2009, paras. 85–8; European Court of Human Rights, *Apanasewicz v. Poland*, Application No. 6854/07, Judgment, 3 May 2011, paras. 93–104; European Court of Human Rights, *Chis v. Romania*, Application No. 55396/07, Decision (admissibility), 9 September 2014, paras. 30 and 35–7. On the positive duty to protect against natural disaster, see European Court of Human Rights, *Budayeva and others v. Russia*, Application Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgment, 29 September 2008, paras. 128–137; European Court of Human Rights, *Özel and others v. Turkey*, Application Nos. 14350/05, 15245/05, and 16051/05, Judgment, 17 November 2015, paras. 170–175.

¹⁹ See, for example, Inter-American Commission on Human Rights, *Children and adolescents of the communities of Uribíá, Manaure, Riohacha and Maicao of the Wayúu people, in the department of the Guajira, Colombia*, precautionary measure No. 51/15, 11 December 2015; Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 17.

²⁰ See further *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting under the Protocol on Water and Health* (United Nations publication, Sales No. E.10.II.E.12).

<i>Cluster</i>	<i>Main provisions</i>
(ii) Establishing, improving or maintaining comprehensive surveillance, early-warning and response systems against outbreaks, incidents or risks of water-related disease at the national and local levels	Article 8: Response systems
(iii) Allowing access to information and public participation in decision-making processes and access to justice regarding the areas of the Protocol.	<p>Article 5(i): Access to information and public participation in decision-making processes, and access to justice</p> <p>Article 6 (2) <i>chapeau</i>: Transparency and public participation in the target-setting process</p> <p>Article 6 (5) (b): Transparency and public participation in the development of water-management plans</p> <p>Article 7 (3): Availability of information on water and effluent sampling</p> <p>Article 8 (1) (a) (iii): Dissemination of information regarding imminent threats to public health from water-related disease</p> <p>Article 9: Public awareness, education, training, research and development and information</p> <p>Article 10: Public information</p> <p>Article 16 (3) (g): Consideration by the Meeting of the Parties of further provisions on access to information, participation in decision-making and access to justice ²¹</p>
(iv) Cooperating in transboundary and international matters relating to water and health.	<p>Article 6 (5) (b): Development of water management plans in a transboundary context</p> <p>Article 11: International cooperation</p> <p>Article 12: Joint and coordinated international action</p> <p>Article 13: Cooperation in relation to transboundary waters</p> <p>Article 14: International support for national action</p>

3.2. Analysis of each cluster of the Protocol provisions

First cluster

30. The first cluster integrates objectives of environmental protection and protection of human health with requirements that are similar to those arising under the human rights to water and sanitation, spelt out by the Committee on Economic, Social and Cultural Rights.²²

²¹ See further *Guide to Public Participation under the Protocol on Water and Health* (United Nations publication, ECE/MP.WH/9).

²² See Committee on Economic, Social and Cultural Rights, general comment No. 15, paras. 45, 53 and 54; E/C.12/2010/1, paras. 7 and 8; General Assembly resolution 70/169, paras. 2–4 (welcoming the work of the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller), 5 (c), (d) and (g) and 9.

It contains a substantive due diligence duty to provide access to water and sanitation for everyone while protecting water resources and human health (art. 6 (1)), which must be implemented through a procedural obligation of result, i.e. a system of target-setting and monitoring organized mainly under article 6 (2).²³

31. Parties are required to set targets in all the areas indicated in article 6 (2) of the Protocol, unless the: “national or local circumstances make [targets in some areas] irrelevant” (art. 6 (2) *in fine*). Parties have a measure of discretion to decide whether the national or local circumstances make targets “irrelevant”. However, such discretion is not unrestrained. Ultimately, targets are a means to an end, i.e.: “access to ...water ...[and] sanitation for everyone within a framework of integrated water management systems aimed at sustainable use of water resources, ambient water quality which does not endanger human health, and protection of water ecosystems” (art. 6 (1)). Therefore, the relevance/irrelevance of a target must be assessed in the light of this purpose.

32. The procedural obligation of result set out in article 6 (2) is a step within the due diligence obligation to ensure the implementation of the rights to water and sanitation and the protection of water resources and human health. This is highlighted by article 6 (3), which specifically requires Parties to set dates for the achievement of targets, article 6 (5), which identifies types of measures “to promote the achievement of the targets”, and article 7, which requires each Party to collect, publish, review and report information on progress towards the achievement of targets.

33. Of specific note is the reporting requirement set out in article 7 (5) of the Protocol, according to which: “Each Party shall provide to the secretariat referred to in article 17, for circulation to the other Parties, a summary report of the data collected and evaluated and the assessment of the progress achieved.”

34. At its first session, the Meeting of the Parties decided that the reporting system contemplated in this provision was to be organized in triennial reporting cycles (see ECE/MP.WH/2, para. 39). Reporting must follow a specific format adopted by the Meeting of the Parties, as set out in Decision IV/1 (see ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2, decision IV/1, annexes I and II), which enables analysis of implementation at the regional level. The reports are reviewed by the Committee, which has a general mandate to oversee compliance matters, and analysed by the joint secretariat. The reporting obligation under article 7 (5) of the Protocol is distinct and additional to the reporting obligations that a Party to the Protocol may have under other international agreements and their *droit dérivé*, including European Union law.

35. The goal of this initial cluster of obligations is one of harmonization across countries to ensure a common level of protection of waterbodies that can meet human needs, but the approach is necessarily one of “equivalence” under certain common parameters, i.e. one whereby country systems may differ as long as they constitute duly diligent efforts to ensure the threshold standard.

Second cluster

36. The second cluster of obligations requires the establishment, enhancement and/or maintenance of comprehensive surveillance, early-warning and response systems against outbreaks, incidents or risks of water-related disease at the national and local levels, in accordance with article 8 of the Protocol. Whereas surveillance and early-warning systems must be established at the national “and/or” local levels, the contingency response plans must be established at both the national “and” local levels.

37. Regarding the contents of such plans, article 8 (1) (a) provides some broad parameters for surveillance and early-warning systems, which must cover “outbreaks, incidents or threats” of “water-related disease”, whether these stem from human-made pollution or extreme weather events. Article 8 (1) (b) does not provide for such parameters but article 8

²³ See further *Guidelines on the Setting of Targets, Evaluation of Progress and Reporting*.

(1) (c) highlights that the relevant authorities must have the capacity to respond. This capacity involves both legal and effective capacity to do so.²⁴

38. The requirements of article 8 are an expression of the broad duty of due diligence as highlighted by the wording of the *chapeau* in article 8 (1), according to which the Parties: “shall each, as appropriate, ensure that”. Disease-related emergencies may arise from different causes, including major industrial accidents or natural disaster. The requirements of article 8 are therefore also consistent with the broader body of human rights law, which requires States to exercise due diligence “to protect” the human rights of individuals under their effective control from deprivation by both third parties and natural threats.²⁵

Third cluster

39. The third cluster of obligations heavily relies on the broader normative context of the Protocol on Water and Health and, particularly, on the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).²⁶ It provides for information development (through awareness-raising, training and research), access to information, public participation in decision-making processes and appropriate access to judicial and administrative review of relevant decisions.

40. For this cluster of obligations, the overarching principle is stated in article 5 *chapeau* and (i) of the Protocol:²⁷

In taking measures to implement this Protocol, the Parties shall be guided in particular by the following principles and approaches:

...

(i) Access to information and public participation in decision-making concerning water and health are needed, inter alia, in order to enhance the quality and the implementation of the decisions, to build public awareness of issues, to give the public the opportunity to express its concerns and to enable public authorities to take due account of such concerns. Such access and participation should be supplemented by

²⁴ See World Health Organization (WHO) Regional Office for Europe, Policy guidance on water-related disease surveillance (Copenhagen, 2011). Available at www.euro.who.int/__data/assets/pdf_file/0011/149186/e95619.pdf; E. Funari, T. Kistemann, S. Herbst and A. Rechenburg, eds., Technical guidance on water-related disease surveillance (Copenhagen, 2011). Available at www.euro.who.int/__data/assets/pdf_file/0009/149184/e95620.pdf; WHO/Economic Commission for Europe/European Environment and Health Process, Effective approaches to drinking-water quality surveillance, Meeting report, 6 and 7 May 2015, Oslo. Available at www.euro.who.int/__data/assets/pdf_file/0004/284179/Effective-approaches-drinking-water-quality-surveillance-Oslo-report.pdf?ua=1; Alexandra V Kulinkina, Enkhtsetseg Shinee, Bernardo Rafael Guzmán Herrador, Karin Nygård and Oliver Schmoll, *The Situation of Water-related Infectious Diseases in the Pan-European Region*, (Copenhagen, WHO Regional Office for Europe/United Nations Economic Commission for Europe (ECE), 2016). Available at www.euro.who.int/__data/assets/pdf_file/0019/322165/Situation-water-related-infectious-diseases.pdf?ua=1; ECE/MP.WH/13-EUPCR/1611921/2.1/2016/MOP-4/06, para. 52; ECE/MP.WH/13/Add.1-EUPCR/1611921/2.1/2016/MOP-4/06/Add.1, pp. 8 and 9; Draft manuscript “Technical Guidance on the Surveillance and Management of Outbreaks of Water-related Infectious Diseases Associated with Water Supply Systems” (forthcoming).

²⁵ See European Court of Human Rights, *Tatar v. Romania*, paras. 85–8; European Court of Human Rights, *Apanasewicz v. Poland*, paras. 93–104; European Court of Human Rights, *Chis v. Romania*, Decision (admissibility), paras. 30, 35–7. On the positive duty to protect against natural disaster, see European Court of Human Rights, *Budayeva and others v. Russia*, paras. 128–37; European Court of Human Rights, *Özel and others v. Turkey*, paras. 170–175.

²⁶ The wider context of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) is provided by Principle 10 of the Rio Declaration on Environment and Development (A/CONF.151/26.Rev.1, annex I). According to its preambular clause 7, the Protocol is expressly based upon the Rio Declaration.

²⁷ See further *Guide to Public Participation*.

appropriate access to judicial and administrative review of relevant decisions;
(emphasis added)

41. Access to information is contemplated in article 7 (3) (obligation to “ensure” the availability of information on water and effluent sampling), article 8 (1) (a) (iii) (obligation to “as appropriate, ensure” that the national and/or local surveillance and early-warning systems disseminate the relevant information in case of imminent threat to public health from water-related disease), article 9 (obligation to “take steps” or “promote” or “encourage” public awareness, education, training, research and development and information), and article 10 (obligation to “take steps” or “ensure” public information).²⁸

42. Participation in decision-making processes is contemplated in article 6 (2) *chapeau* (obligation to “make appropriate practical and/or other provisions” for transparency and public participation in the target-setting process) and article 6 (5) (b) (obligation to “make appropriate practical and/or other provisions” for transparency and public participation in the development of water-management plans).

43. Access to justice is mentioned in article 5 (i). The lack of additional provisions must not be interpreted as a lack of recognition of this procedural right under the Protocol. This is confirmed by the preambular references to the Rio Declaration and the Aarhus Convention, and, more specifically, by article 16 (3) *chapeau* and (g), according to which:

(3) At their meetings, the Parties shall keep under continuous review the implementation of this Protocol, and, with this purpose in mind, shall:

...

Consider the need for further provisions on access to information, public participation in decision-making and public access to judicial and administrative review of decisions within the scope of this Protocol, in the light of experience gained on these matters in other international forums; (emphasis added)

44. The term “further” confirms that the Protocol is understood to already contain: “provisions on access to information, public participation in decision-making and public access to judicial and administrative review of decisions”.

45. The wording used in all these provisions makes clear that they must be understood as obligations of due diligence. Even when a specific procedural step is required, such step is a means to an end, in the same manner as for previous clusters of obligations.

Fourth cluster

46. The fourth cluster of obligations focuses on inter-State – horizontal – cooperation in water, sanitation and health. This cluster incorporates the obligations of cooperation on transboundary waters for Parties to the Water Convention and, on one point, it goes beyond them.

47. Article 13 (1) (c), requires State Parties to the Protocol to adapt or define the relevant agreements or arrangements in a manner consistent with the Protocol, subject to certain conditions. This specificity is noted in the Interpretive Note prepared by the Compliance Committee to clarify the scope of this cluster of obligations.²⁹

48. Whether the provisions mention that “[i]n order to promote the achievement of the targets ... the Parties shall” develop transboundary plans (art. 6 (5) (b)), or direct the Parties to “cooperate and, as appropriate, assist each other” (arts. 11 and 13), or to “promote cooperation in international action” (art. 12) or “consider how they can best help to promote” support for national action (art. 14), these are all obligations of conduct. Thus, they envisage

²⁸ The obligation under art. 10 is specifically circumscribed under its paragraphs 4 and 5, which exclude certain situations and types of information from the general requirement to publish or make available information to the public.

²⁹ See “Interpretation of the provisions of the Protocol on Water and Health related to transboundary waters”.

cooperation as a means to an end, the pursuit and achievement of the objectives of the Protocol.

4. Relations to relevant European Union Instruments

4.1. Most relevant European Union instruments surveyed for this Interpretive Note

49. For the purposes of this Note, the Compliance Committee has analysed a set of European Union legal instruments relating to water and to the relevant public health aspects, consisting of the following:

- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy (“Water Framework Directive”);³⁰
- Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (“Environmental Quality Standards Directive”);³¹
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (“Nitrates Directive”);³²
- Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment (“Urban Wastewater Directive”);³³
- Council Directive 76/160/EEC of 8 December 1975 concerning the Quality of Bathing Water (“Bathing Water Directive”);³⁴
- Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (“Groundwater Directive”);³⁵
- Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (“Floods Directive”);³⁶
- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (“Drinking Water Directive”);³⁷
- Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (“Access to Information Directive”);³⁸
- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public

³⁰ *Official Journal of the European Communities*, L 327 (2000), pp. 1–72.

³¹ *Official Journal of the European Union*, L 348 (2008), pp. 84–97.

³² *Official Journal of the European Communities*, L 375 (1991), pp. 1–8.

³³ *Ibid.*, L 135 (1991), pp. 40–52.

³⁴ *Ibid.*, L 31 (1976), pp. 1–7.

³⁵ *Official Journal of the European Union*, L 372 (2006), pp. 19–31.

³⁶ *Ibid.*, L 288 (2007), pp. 27–34.

³⁷ *Official Journal of the European Communities*, L 330 (1998), pp. 32–54.

³⁸ *Official Journal of the European Union*, L 41 (2003), pp. 26–32.

participation and access to justice Council Directives 85/337/EEC and 96/61/EC (“Public Participation Directive”);³⁹

- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and, in particular of the soil, when sewage sludge is used in agriculture (“Sewage Sludge Directive”).⁴⁰
- Commission staff working document, Agriculture and Sustainable Water Management in the EU, 28 April 2017, SWD (2017) 153 Final.⁴¹
- Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM (2017) 753 Final.⁴²
- Proposal for a Regulation of the European Parliament and of the Council on minimum requirement for water reuse, COM (2018) 337 Final.⁴³
- Council Conclusions on Water Diplomacy, adopted at the 3652nd meeting of the Council, 19 November 2018, 13991/18.⁴⁴
- Decision No. 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No. 2119/98/EC.⁴⁵ (Decision No. 1082/2013)

50. The relevance of these different instruments for the present Note varies, but each of them was considered in the light of the system of obligations arising from the Protocol. The results are discussed in general terms in the next two sections and summarized in annex I to this Note.

4.2. Relationship between the Protocol and European Union Directives related to water

51. The Note reaches the conclusion that the Protocol and the European Union Water Directives entertain a synergistic relationship. No conflicts between them have been identified. The obligations arising under the Protocol and under the European Union Water Directives converge. Specifically, three situations can arise: (a) cases where a certain area or issue is regulated by both European Union Directives and the Protocol in a synergistic manner; (b) cases where the Protocol can lend support to the European Union Water Directives; and (c) the specific issue of reporting under the Protocol and the European Union Water Directives.

52. In cases where both the Protocol and the European Union Water Directives address a certain area or issue, the approach is, overall, consistent. In most cases, the European Union Water Directives are more specific than the Protocol and, therefore, they can serve to implement the obligations under the Protocol. This situation is summarized in the annex to the present Note.

53. In some cases, such as the quality of technical infrastructure for water supply and sanitation, the Protocol provides a framework to further specify the system established by the European Union Water Directives. In this area, the Protocol requires Parties to set targets on the levels of performance of collective systems for water supply and sanitation and on the occurrence of discharges of untreated wastewater and untreated stormwater overflows from

³⁹ Ibid., L 156 (2003), pp. 7–24.

⁴⁰ *Official Journal of the European Communities*, L 181 (1986), pp. 6–12.

⁴¹ See <https://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-153-F1-EN-MAIN-PART-1.PDF>.

⁴² See https://eur-lex.europa.eu/resource.html?uri=cellar:8c5065b2-074f-11e8-b8f5-01aa75ed71a1.0016.02/DOC_1&format=PDF.

⁴³ See https://eur-lex.europa.eu/resource.html?uri=cellar:e8951067-627c-11e8-ab9c-01aa75ed71a1.0001.03/DOC_1&format=PDF.

⁴⁴ See www.consilium.europa.eu/media/37022/st13991-en18.pdf.

⁴⁵ *Official Journal of the European Union*, L 293 (2013), pp. 1–15.

wastewater collection systems. The Protocol's framework covers agglomerations of any scale, and it can also address the performance of technical infrastructure in emergency situations, including extreme weather events, for which specific guidance has been developed.⁴⁶ The resilience of technical infrastructure to extreme weather events has also been addressed under the Protocol programme area of increasing resilience to climate change.⁴⁷

54. There are some areas that have a clearer legal basis in the Protocol. For these areas, the Protocol can lend support to the European Union Water Directives. They include, most notably: the rights to water and sanitation and related targets (arts. 5 (l), 6 (1) and (2) (c)); good practices for management of water supply and related targets (art. 6 (2) (f)); quality of wastewater used for irrigation and related targets (arts. 4 (2) (d) and 6 (2) (i)); the protection of vulnerable groups (art. 5 (k)); reduction and response systems for outbreaks or incidents of water-related disease (arts. 6 (2) (b) and 8); and international/transboundary cooperation with States Parties to the Protocol, including non-European Union member States (arts. 11, 12 and 14).

55. The need for a clearer or updated regulatory basis in some of these areas has been recognized by European Union institutions. For example, the proposal for a recast of the Drinking Water Directive specifically addresses access to water (draft art, 13), good practices for the management of water supply (draft arts, 7–10) and the special needs of vulnerable groups (draft art. 13). Similarly, the quality of wastewater used for irrigation is the subject of a proposal for a regulation on minimum requirements for water reuse.

56. In these areas and in the context of revising the relevant European Union instruments, the Protocol can have a useful role in informing discussions, as has been the case for small-scale water supplies and risk-based approaches. On this matter, experience under the Protocol has shown that, in fact, it is small-scale water supplies that benefit most clearly from developing Water Safety Plans⁴⁸ and that it is quite feasible for them to meet related requirements, as sufficient guidance material (specifically for small supplies) is available from WHO and the Protocol.

57. Reporting is regulated by both the Protocol and the European Union Water Directives in a different form. Article 7 (5) of the Protocol requires Parties to report on “the data collected and evaluated and the assessment of the progress achieved” on a triennial basis (see ECE/MP.WH/2-EUR/06/5069385/1, para. 39) and using a specific reporting format (ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2, decision IV/1, annexes I and II). This reporting obligation is distinct and additional to the reporting obligations of European Union member States under the relevant Directives.

58. Reporting under the Protocol performs an essential function for the monitoring of progress and the confidence of all Parties to the Protocol in the effectiveness of the system. The information required for reporting under the Protocol can rely in part on information compiled and used for European Union reporting. There are also some specific benefits of reporting under the Protocol for Parties, including the possibility of carrying out self-evaluation at national and/or subnational levels and collecting integrated data on water, sanitation and health and the correspondent enhancement of intersectoral cooperation.

4.3. Public health aspects of the Protocol and European Union law

59. In the field of public health, the relevant international legal framework is constituted by the International Health Regulations. The International Health Regulations bind all WHO

⁴⁶ L. Sinisi and R. Aertgeerts, *Guidance on Water Supply and Sanitation in Extreme Weather Events* (Copenhagen, WHO Regional Office for Europe/ECE/, 2011).

⁴⁷ For more information, see ECE/MP.WH/13/Add.1-EUPCR/1611921/2.1/2016/MOP-4/06/Add.1.

⁴⁸ See WHO Regional Office for Europe, Subregional workshop on improving small-scale supplies for better health in European Union countries, Meeting report, 18–20 June 2018, Dessau, Germany. Available at www.euro.who.int/__data/assets/pdf_file/0020/392231/REPORT-10-edited-final.pdf?ua=1.

member States, including all European Union members States and all States Parties to the Protocol, and they aim to “*prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade*”.⁴⁹ The European framework and the Protocol are aligned with the International Health Regulations.

60. The Protocol has both a vertical and a horizontal public health dimension. At the vertical level, article 8 provides for the establishment of surveillance, early warning and response systems and article 6 requires States Parties to set targets to maintain a high level of protection against water-related diseases (see section 3.2 above). At the horizontal level, articles 11 to 14 require States Parties to cooperate and coordinate actions to establish joint systems for surveillance and early warning, contingency plans and response capacities to prevent, control and reduce water-related diseases.

61. European Union action in the field of public health, in accordance with its competences, complements national policies and encourages cooperation between member States, lending support to national action, if necessary.⁵⁰ In the area of infectious diseases, the European Union member States have established the European Centre for Disease Prevention and Control, whose objective is to “*identify, assess and communicate current and emerging threats to human health from communicable diseases*”.⁵¹ European Union action in the field of public health further covers the monitoring, early warning and combating of serious cross-border threats to health,⁵² which is addressed specifically in Decision No. 1082/2013 and is an area also regulated by the Protocol.

62. The present Note reaches the conclusion that the Protocol and Decision No. 1082/2013 entertain a synergistic relationship. The Protocol’s horizontal dimension is consistent with Decision No. 1082/2013 and both instruments support cooperation and coordination in the area of public health. Specifically, the following observations can be made with respect to: (1) the objectives of the two instruments; (2) the methods of cooperation and coordination described and (3) reporting.

63. Decision No. 1082/2013 aims to “*support cooperation and coordination between the Member States in order to improve the prevention and control of the spread of severe human diseases across the borders of the Member States, and to combat other serious cross-border threats to health (..)*”.⁵³ The Protocol’s horizontal dimension contains provisions on international cooperation and assistance in support of its objectives,⁵⁴ joint and coordinated international action in matters related to the prevention, reduction and control of water-related diseases,⁵⁵ and international support for national action.⁵⁶ The objectives of the two instruments are therefore consistent and mutually supportive.

64. Decision No. 1082/2013 also clarifies the methods of cooperation and coordination between the various actors at the European Union level,⁵⁷ including member States of the European Union and the relevant European institutions. In this respect, the following areas are approached in a coherent manner by the Protocol and Decision No. 1082/2013: (a)

⁴⁹ World Health Organization (WHO) *International Health Regulations (2005): Third Edition* (2016), p. 10 art. 2.

⁵⁰ Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 326 (2012), pp. 47–390, at art. 168.

⁵¹ Regulation (EC) No 851/2004 of the European Parliament and of the Council of April 2004 establishing a European centre for disease prevention and control, *Official Journal of the European Union*, L 142/1 (2004), pp. 1-11. Art 3

⁵² Consolidated version of the Treaty on the Functioning of the European Union, pp. 47–390, at art. 168.

⁵³ Decision No. 1082/2013 of the European Parliament and of the Council on serious cross-border threats to health, *Official Journal of the European Union*, L 293 (2013), pp. 1–15, at art. 1.

⁵⁴ Protocol, arts. 11 (international cooperation) and 13 (transboundary waters).

⁵⁵ *Ibid.*, art. 12.

⁵⁶ *Ibid.*, art. 14.

⁵⁷ Decision No. 1082/2013, art. 1 (3).

preparedness and response planning;⁵⁸ (b) epidemiological surveillance;⁵⁹ (c) early warning and notification;⁶⁰ and (d) response to cross-border health threats and risk and crisis communication.⁶¹ In most of these areas, Decision No. 1082/2013 establishes specific bodies and arrangements that operate within the European Union, such as the rapid alert system for notifying alerts to serious cross-border threats to health (Early Warning and Response System)⁶² or the Health Security Committee,⁶³ an intergovernmental body entrusted with a coordinating function. In these areas, Decision No. 1082/2013 can serve as a framework for implementation of the Protocol.

65. The Protocol addresses some additional ways to achieve cooperation and coordination in public health matters. Article 12 requires States Parties to promote cooperation in the development of commonly agreed targets for matters covered by article 6 (2), which include the quality of the drinking water supplied and the reduction of the scale of outbreaks and incidents of water-related diseases. Parties may also cooperate in the development of indicators designed to show how far action has been successful in preventing, controlling and reducing water-related diseases.

66. Furthermore, the Protocol offers a solid framework for fostering cooperation with countries that are not members of the European Union, an aspect which is mentioned both in the Treaty on the Functioning of the European Union and in Decision No. 1082/2013.⁶⁴ Amongst other things, the Protocol facilitates the exchange of relevant information, which is specifically required in Decision No. 1082/2013 for purposes of epidemiological surveillance.⁶⁵

67. The tools and guidance material developed under the Protocol can be used to strengthen capacity for monitoring, early warning and response in the specific context of water-related diseases, as well as to share best practices from across the pan-European region.⁶⁶ This approach is consistent with Decision No. 1082/2013 and can support its implementation.

68. With respect to reporting, Decision No. 1082/2013 establishes a system whereby, every three years, European Union member States provide the Commission with an “update” on the situation with regard to their preparedness and response at the domestic level.⁶⁷ On the basis of the information received, the Commission initiates discussions within the Health Security Committee⁶⁸.

69. The Protocol reporting system covers both vertical and horizontal public health aspects. These include: information on targets set in order to prevent and reduce water-related diseases; measures taken to strengthen early warning, surveillance and response capacities; and progress in achieving international cooperation and coordination in relation to water-related diseases.

4.4. The Protocol, European Union instruments and domestic measures

70. Article 4 (8) of the Protocol expressly reserves the power of States “to maintain, adopt or implement more stringent measures”. Whether these measures are based only on domestic law, or on domestic law that implements European Union law, or on directly applicable European Union law, makes no difference from the Protocol’s perspective. Article 4 (9) of

⁵⁸ Ibid., art. 4; and Protocol, arts. 12 and 13.

⁵⁹ Decision No. 1082/2013, art. 6; and Protocol, arts. 12 and 13.

⁶⁰ Decision No. 1082/2013, arts. 8 and 9; Protocol, arts. 12 and 13.

⁶¹ Decision No. 1082/2013, art. 11; Protocol, arts. 12 and 13.

⁶² Decision No. 1082/2013, art. 8.

⁶³ Ibid., art. 17.

⁶⁴ Decision 1082/2013, recital 26; and Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 326 (2012), pp. 47–390, at art. 168.

⁶⁵ Decision 1082/2013, art. 6 (3).

⁶⁶ See, for instance, “Technical Guidance on the Surveillance and Management of Outbreaks of Water-related Infectious Diseases Associated with Water Supply Systems” (forthcoming).

⁶⁷ Ibid., art. 4.

⁶⁸ Ibid.

the Protocol expressly reserves more stringent measures based on international law. These two provisions clearly encompass primary and secondary European Union legislation.

71. Given that the requirements under the European Union Directives related to water and Decision No. 1082/2013 are consistent with the obligations under the Protocol, the only remaining issue in the relations between the Protocol, European Union instruments and domestic measures concerns the consistency with European Union law of domestic measures implementing the requirements of the Protocol.

72. In the case of public health, article 2.6 of Decision No. 1082/2013 reserves the right of Member States to adopt additional arrangements in the area of cross-border threats to health, subject to the “condition that such additional arrangements, procedures and measures do not impair the application of this Decision”.

73. In the case of water, the use of directives, as an instrument of European Union law, is intended to set a goal or policy, while allowing European Union member States to implement it through means of their own choosing. In implementing the European Union law related to water, member States must use means that are no less stringent than the floor set by the relevant directive. Unlike the Protocol, however, European Union law requires member States to avoid a level of regulation or specific provisions that would defeat other purposes pursued by the European Union, such as the freedoms within the internal market.⁶⁹

5. Conclusions

74. This Interpretive Note is issued on the basis of paragraph 1, letters (a) and (b) of Decision I/2 (ECE/MP.WH/2/Add.3-EUR/06/5069385/1/Add.3), in response to a specific request made to the Committee in the context of the Consultation Process with Estonia, Latvia and Lithuania, and in furtherance of paragraph 19 of decision IV/2 of the Meeting of the Parties to the Protocol on general issues of compliance (ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2).

75. The Protocol pursues the interrelated goals of water, health and environment protection (arts. 1, 4 (2), 5 (a)–(c)), and the implementation of the human rights to water and sanitation (art. 6 (1)). It is organized around a three-tiered system consisting of a general duty of due diligence (art. 4), guiding principles and approaches (art. 5), and four clusters of more specific obligations: target setting, monitoring and progressive achievement (arts. 6 and 7); surveillance, early-warning and response systems against disease outbreaks and risks thereof (art. 8); access to information, public participation and access to justice (arts. 5 (i), 6 (2) and (5) (b), 7 (3), 8 (1) (a) (iii), 9, 10 and 16 (3) (g)); and cooperation in transboundary and international matters relating to water and health (arts. 6 (5) (b) and 11–14).

76. The Protocol and the relevant European Union instruments analysed in this Note entertain an overall synergistic relationship.

77. In most areas, the European Union Directives related to water are more specific than the provisions of the Protocol, and they can therefore serve to implement the Protocol (see annex I).

78. In some specific areas, such as the quality of technical infrastructure for water supply and sanitation or the regulation of small-scale water supplies and sanitation services below a certain threshold of magnitude, the Protocol provides a basis to further specify or extend the European Union Directives related to water.

79. There are some other areas that have a clearer legal basis in the Protocol, and for which the Protocol can lend support to the European Union framework. These include: the rights to water and sanitation (arts. 5 (l), 6 (1) and (2) (c)); good practices for management of water supply (art. 6 (2) (f)); quality of wastewater used for irrigation (arts. 4 (2) (d) and 6 (2) (i)); the protection of vulnerable groups (art. 5 (k)); and reduction and response systems for outbreaks or incidents of water-related disease (arts. 6 (2) (b) and 8).

⁶⁹ European Parliament, “Gold-Plating” in the EAFRD: To what extent do national rules unnecessarily add to complexity and, as a result, increase the risk of errors? (Brussels, 2014).

80. The Protocol offers a clear basis (arts. 11, 12, 13 and 14) for international/transboundary cooperation with States Parties to the Protocol, including neighbouring States that are in the process of accession to the European Union and other neighbouring States, which are not subject to European Union law. Moreover, the Protocol can be used as model for wider development and international cooperation efforts in the relevant sectors.

81. The Protocol includes a triennial reporting obligation (art. 7 (5)), which is distinct and additional to those under the relevant European Union instruments.

82. In the field of public health, the Protocol has both a vertical and a horizontal dimension. The horizontal dimension of the Protocol is consistent with European Union law on cross-border threats to health, supporting cooperation and coordination among States. The Protocol also supports cooperation with non- European Union member States and has a thorough reporting system for water-related diseases.

83. The Protocol sets a floor of minimum requirements. States are free to adopt more stringent measures, whether under European Union law or domestic law.

Annex

Table of correspondence between the main provisions of the Protocol on Water and Health and the European Union Directives related to water

Provisions of the Protocol on Water and Health		Water Framework Directive	Environmental Quality Standards Directive	Nitrates Directive	Urban Waste-water Directive	Bathing Water Directive	Groundwater Directive	Floods Directive	Drinking Water Directive	Access to Information Directive	Public Participation Directive	Sewage Sludge Directive
1	Quality of drinking water (Art. 6 (2) (a))	✓					✓		✓			
2	Reduction of water-related outbreaks and diseases (Art. 6 (2) (b))								✓			
3	Access to drinking water (Arts. 6 (2) (c) and 4 (2) (a))								✓			
4	Access to sanitation (Arts. 6 (2) (d) and 4 (2) (b))				✓							
5	Performance of water supply systems (Art. 6 (2) (e))								✓			
6	Performance of sanitation systems (Art. 6 (2) (e) (cont.))				✓							
7	Good practices for management of water supply (Art. 6 (2) (f))								✓			
8	Good practices for management of sanitation (Art. 6 (2) (f) (cont.))				✓							
9	Occurrence of discharges of untreated wastewater (Art. 6 (2) (g) (i))				✓							
10	Occurrence of discharges of untreated storm water overflows (Art. 6 (2) (g) (ii))				✓							
11	Quality of discharges of wastewater (Art. 6 (2) (h))	✓			✓							

<i>Provisions of the Protocol on Water and Health</i>		<i>Water Framework Directive</i>	<i>Environmental Quality Standards Directive</i>	<i>Nitrates Directive</i>	<i>Urban Waste-water Directive</i>	<i>Bathing Water Directive</i>	<i>Groundwater Directive</i>	<i>Floods Directive</i>	<i>Drinking Water Directive</i>	<i>Access to Information Directive</i>	<i>Public Participation Directive</i>	<i>Sewage Sludge Directive</i>
12	Disposal or reuse of sewage sludge (Art. 6 (2) (i))				✓							✓
13	Quality of wastewater used for irrigation (Arts. 6 (2) (i) and 4 (2) (d))	European Union has proposed a regulation on minimum requirements for water reuse										
14	Quality of waters used as sources for drinking water (Arts. 6 (2) (j) and 4 (2) (b))	✓	✓				✓		✓			
15	Quality of waters used for bathing (Arts. 6 (2) (j) and 4(2) (d))					✓						
16	Quality of waters used for aquaculture or shellfish (Arts. 6 (2) (j) and 4 (2) (d))								✓			
17	Good practices in the management of waters used for bathing (Art. 6 (2) (k))					✓						
18	Identification and remediation of particularly contaminated sites (Art. 6 (2) (l))	✓	✓	✓	✓		✓	✓	✓			
19	Effectiveness of systems for the management, development, protection and use of water resources (Art. 6 (2) (m))						✓	✓				
20	Monitoring system (Arts. 4 (2) (e) and 6 (5) (c))	✓	✓	✓	✓	✓	✓	✓	✓			✓
21	Develop water-management plans (Art. 6 (5) (b))	✓	✓				✓	✓				
22	Impact assessments by public authorities (Art. 4 (6))	✓						✓		✓		
23	Principles and approaches: precaution (Art. 5 (a))	✓										
24	Principles and approaches: polluter pays (Art. 5 (b))	✓										

<i>Provisions of the Protocol on Water and Health</i>		<i>Water Framework Directive</i>	<i>Environmental Quality Standards Directive</i>	<i>Nitrates Directive</i>	<i>Urban Waste-water Directive</i>	<i>Bathing Water Directive</i>	<i>Groundwater Directive</i>	<i>Floods Directive</i>	<i>Drinking Water Directive</i>	<i>Access to Information Directive</i>	<i>Public Participation Directive</i>	<i>Sewage Sludge Directive</i>
25	Principles and approaches: prevention (Art. 5 (c))		✓				✓	✓				
26	Principles and approaches: intergenerational equity (Art. 5 (d))	Most of the directives embrace the sustainable development model and its recognition of the environmental needs of future generations.										
27	Principles and approaches: prevention of water-related outbreaks and incidents (Art. 5 (e))					✓			✓			
28	Principles and approaches: action should be taken at lowest appropriate administrative level (Art. 5 (f))	✓										
29	Principles and approaches: sustainable management of water (Art. 5 (g))	✓						✓	✓			
30	Principles and approaches: promotion through economic instruments and awareness-building (Art. 5 (h))	✓							✓			
31	Principles and approaches: access to information and public participation (Art. 5 (i))	✓	✓			✓		✓	✓	✓	✓	
32	Principles and approaches: access to judicial and administrative review (Art. 5 (i))								✓	✓	✓	
33	Principles and approaches: integrated approach to water management (Art. 5 (j))	✓						✓	✓			
34	Principles and approaches: protection of vulnerable people (Art. 5 (k))								✓			
35	Principles and approaches: equitable access to water (Art. 5 (l))								✓			
36	Principles and approaches: the public and private sector should contribute to the protection of the water environment (Art. 5 (m))	✓										

<i>Provisions of the Protocol on Water and Health</i>		<i>Water Framework Directive</i>	<i>Environmental Quality Standards Directive</i>	<i>Nitrates Directive</i>	<i>Urban Waste-water Directive</i>	<i>Bathing Water Directive</i>	<i>Groundwater Directive</i>	<i>Floods Directive</i>	<i>Drinking Water Directive</i>	<i>Access to Information Directive</i>	<i>Public Participation Directive</i>	<i>Sewage Sludge Directive</i>
37	Principles and approaches: due account to local problems, needs and knowledge (Art. 5 (n))	✓		✓	✓			✓	✓	✓		
38	Reporting (Art. 7)	✓	✓	✓	✓	✓	✓	✓	✓			✓
39	Response systems (Art. 8)	Most States have this requirement under the WHO International Health Regulations (Arts. 5 and 13)										
40	Public awareness, education, training, research (Art. 9)	✓							✓	✓		
41	Public information (Art. 10)	✓	✓			✓		✓	✓	✓	✓	
42	Create legal, administrative and economic frameworks that enable the public to contribute to improving water management (Art. 4 (5))	✓										
43	Joint and coordinated international action (Arts. 12 and 14)	Most States have this requirement under the WHO International Health Regulations (Arts. 5 and 13)										
44	Cooperation in relation to transboundary waters (Art. 13)	✓			✓	✓	✓	✓				

Notes: The symbol (✓) refers to the correspondence between the relevant provisions of the Protocol and the relevant European Union Directives. The colour scheme below refers to the following:

- Areas of synergy between Protocol's provisions and the relevant European Union Directives.
- Areas where the Protocol can lend support for the implementation of the relevant European Union Directives.
- Distinct reporting requirements.