

Findings and recommendations with regard to communication ACCC/C/2017/147 concerning compliance by the Republic of Moldova

Adopted by the Compliance Committee on 25 July 2021¹

I. Introduction

1. On 9 July 2017, the environmental non-governmental organization “Eco-TIRAS” International Association of River Keepers (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of the Republic of Moldova to comply with its obligations under the Convention with respect to access to information regarding hydrometeorological information.
2. Specifically, the communicant alleges that the Party concerned has failed to comply with articles 3(1) and (2), 4(8) and 5(2)(b)(ii) of the Convention with respect to the regulatory framework for the costs charged for providing certain hydrometeorological information and because of a failure to provide access to information held by the State Hydrometeorological Service in a manner that would accord with the requirements of the Convention.
3. At its fifty-eighth meeting (Budva, 10-13 September 2017), the Committee determined that the communication was admissible on a preliminary basis.
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 19 September 2017 for its response by 19 February 2017.
5. On 29 June 2018, the Director of the UNECE Environment Division sent the Party concerned a letter to express the Committee’s serious concern at the ongoing failure of the Party concerned to provide its response to the communication.
6. On 13 March 2019, the UNECE Executive Secretary sent a letter to the Minister of Foreign Affairs and European Integration of the Party concerned to express the Committee’s serious concern at the ongoing failure of the Party concerned to provide its response to the communication.
7. On 12 July 2019, the Party concerned provided its response to the communication.
8. The Committee held a hearing to discuss the substance of the communication at its sixty-fifth meeting (Geneva, 4-8 November 2019), with the participation of representatives of the communicants and the Party concerned.
9. On 27 February 2020, the communicant sent an update to the Committee.
10. On 3 May 2020, the communicant provided additional documentation.
11. On 4 June 2020, the Committee sent questions to the parties.
12. On 22 June 2020, the communicant replied to the Committee’s questions. On 6 July 2020, the Party concerned replied to the Committee’s questions.

¹ This text will be produced as an official United Nations document in due course. Meanwhile editorial or minor substantive changes (that is changes that have no impact on the findings and conclusions) may take place.

13. On 19 November 2020, the Committee sent further questions to the Party concerned.
14. On 25 November 2020, the Party concerned provided additional information.
15. On 25 November 2020, the communicant provided additional information as well as its comments on the Party concerned's replies to the Committee's questions.
16. The Committee completed its draft findings through its electronic decision-making procedure on 14 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date to the Party concerned and the communicants for comments. Both were invited to provide comments by 23 July 2021.
17. On 18 July 2021, the communicant provided comments on the Committee's draft findings. No comments on the draft findings were received from the Party concerned.
18. The Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings through its electronic decision-making procedure on 25 July 2021 and agreed that they should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues²

A. Legal framework

The 1998 Hydrometeorological Activity Law

19. The State Hydrometeorological Service (SHS) is a state legal body created by Law No. 1536 of 25 February 1998 on Hydrometeorological Activity (1998 Hydrometeorological Activity Law). Pursuant to article 4 of that law, hydrometeorological activity in the Republic of Moldova is carried out by the SHS and by other authorized institutions.³

20. According to article 6 of the 1998 Hydrometeorological Activity Law, the tasks and duties of the SHS include the creation and management of the SHS Hydrometeorological Database (also known as the National Fund of Hydrometeorological Data) to be used to support and justify hydrometeorological design and engineering work, and the construction and operation of social and economic facilities, as well as compliance with the obligations under the conventions and international agreements to which the Republic of Moldova is a party.⁴

21. The SHS Hydrometeorological Database includes all the hydrometeorological data on the state of the environment and its pollution collected in the Party concerned and abroad by the subjects of the national hydrometeorological network.⁵ Pursuant to article 23 of the 1998 Hydrometeorological Activity Law, the SHS is the only holder of the Hydrometeorological Database.⁶

Regulation No. 330

22. Regulation No. 330 of 4 March 2006 "On Approval of the List of Services Provided Free and at Charge by the State Hydrometeorological Service and the Guidelines on the Use of Special Means of the State Hydrometeorological Service" (Regulation No. 330), establishes the

² This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

³ Communication, p. 1, and annex 1.1, p. 2.

⁴ Communication, p. 1, and annex 1.1, p. 2.

⁵ Communication, p. 1, and annex 1.1, p. 2.

⁶ Communication, p. 1, and annex 1.1, p. 2.

basis for access to hydrometeorological information. It includes (a) the list of services the SHS provides for free, (b) the list of services SHS provides for which it charges a fee, and (c) Guidelines on the Use of Special Means of the SHS.⁷

23. In accordance with annex 1 of Regulation No. 330, free services include access to data such as general hydrometeorological forecasts and emergency warnings, published meteorological and hydrological regime data which is held in the SHS Hydrometeorological Database, published data on the quality of the environment which is held in the SHS Hydrometeorological Database, scientific studies, information placed on the SHS website, current weather information and forecasts, the hydrological forecast, information on the weather conditions for certain preceding periods, climate information, advice related to the use of hydrometeorological information, and advice on the use of information on the quality of the environment.⁸

24. Annex 2 of Regulation No. 330 specifies the list of services provided with a charge, including access to “primary” and “specialized” hydrometeorological information.⁹ Charges for “primary information” are set out in Part I of annex 2: for example, according to point I.5.1.2 of annex 2, the charges for hydrometeorological information concerning “stream gauging” for a 24-hour period is 306.00 lei¹⁰ and according to point I.5.2.1 of annex 2, the charges for “water temperature (spot measurement)” for a 24-hour period is 29.60 lei.¹¹ Charges for “specialized information” are set out in Part II of annex 2: for example, according to point II.4.1.2, the charges for “water discharge” are 28.70 lei per item of information¹² and according to point II.2.1.4, the charges for “meteorological data tables from meteorological stations” is 2.50 lei for one indicator at one station for a 24 hour period.¹³ The annex is set out in the format below.

No.	Service	Tariff (in lei)
	I. PRIMARY HYDROMETEOROLOGICAL INFORMATION	
...		
5.	Hydrological information	
5.1.	Water level (for a 24-hour period)	
5.1.1.	Gauged water level and water stage-discharge relationship	28.30
5.1.2.	Stream gauging	306.00
5.2.	Water temperature (for a 24-hour period)	
5.2.1.	Water temperature (spot measurement)	29.60
...		
	II. SPECIALIZED HYDROMETEOROLOGICAL INFORMATION	
...		
4.	Hydrological information (per item of information)	

⁷ Communication, p. 2, and annex 1.3 (ENG), p. 1.

⁸ Communication, p. 2, and annex 1.3 (ENG), pp. 1-2.

⁹ Communication, p. 2, and annex 1.3 (ENG), pp. 2-9.

¹⁰ Communication, annex 1.3 (ENG), p. 3.

¹¹ Communication, annex 1.3 (ENG), p. 4.

¹² Communication, annex 1.3 (ENG), p. 8.

¹³ Communication, annex 1.3 (ENG), p. 7.

4.1.	<u>Information on hydrological regime</u>	
4.1.1.	Water level	21.80
4.1.2.	Water discharge	28.70
4.1.3.	Stream gauging	23.20
...		

Access to Environmental Information Regulation

25. Article 44 of Regulation No. 1467 from 30 December 2016 “On the Access to Environmental Information” (AEI Regulation) stipulates that “where reasonable charges apply for certain information deemed to be environmental, public authorities make the list of such charges available to applicants”.¹⁴

26. The AEI Regulation does not explain what constitutes “reasonable charges” nor provides guidance on the calculation of such charges.¹⁵

2011-2015 National Action Plan

27. Resolution No. 471 from 28 June 2011 “On Approval of the 2011-2015 National Action Plan on the Implementation of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” (2011-2015 National Action Plan) contains a number of legislative, institutional, financial and other actions to improve the implementation of the Convention in the Party concerned. It does not include any provisions on amending Regulation No. 330 relating to reasonable costs.¹⁶

Administrative Court Law

28. Article 4(c) of Law No. 793 from 10 February 2000 on the Administrative Court (Administrative Court Law) provides that laws, normative decrees (orders) of the President of the Republic of Moldova, normative ordinances (regulations) and decrees (resolutions) of the Government and international agreements to which the Republic of Moldova is a party that are under constitutional control are acts that do not fall within the jurisdiction of the Administrative Court.¹⁷

B. Facts

29. The Bălța River is approximately 27 kilometres long. The hydrometeorological station collecting data on the river is located in the village of Bălța.¹⁸ The Bălța hydrometeorological station was operational from 1954 to 2012.¹⁹

The communicant’s information requests

30. On 25 July 2016, the communicant requested the SHS to provide information regarding: (1) temperatures recorded at the Bălța hydrometeorological station for the period from when the station opened until the date of the request (monthly average, maximum average and minimum average), (2) streamflow of the Bălța River for every month during the same period,

¹⁴ Communication, p. 3, and annex 1.5, p. 19.

¹⁵ Communication, p. 3.

¹⁶ Communication, pp. 2-3, and annex 1.4, pp. 13-18.

¹⁷ Communication, p. 8, and annex 1.2, pp. 2-3.

¹⁸ Communication, p. 2.

¹⁹ Letter from the Party, 25 November 2020, p. 2.

and (3) hydrophysical, hydrochemical and biomonitoring observations and analyses of water quality in the Bălța River “according to the observations made by the Hydrometeo Service”.²⁰

31. In letter no. 03/737 of 1 August 2016, the SHS indicated that the information regarding the temperatures at the Bălța hydrometeorological station and the streamflow of the Bălța River could be received by one of two ways:

(a) The SHS staff collects, organizes and presents the information at a cost of 730,374.50 lei (approximately 35,700 euro at the time); or

(b) The SHS provides access to its office where an employee of the communicant can collect the requested information unassisted, without help from SHS staff.²¹

32. The letter did not provide any explanation, justification or breakdown of how the cost of 730,374.50 lei had been calculated.²²

33. With respect to the information requested under point (3), the SHS answered that it did not have this information. It stated that this information was collected in the framework of a project and that the SHS did not have the right to share the information. The SHS advised the communicant that it should check with the members of the project.²³

34. On 8 August 2016, the communicant requested that the SHS share information concerning the project referred to in its reply of 1 August 2016.²⁴

35. On unspecified dates in September and October 2016, the communicant visited the SHS offices. On at least one occasion, the data was not accessible due to the library being either repaired or relocated.²⁵

36. On 22 September 2016, the communicant received the data relating to streamflow by email. The same information was later also sent by letter no. 07/952 of 3 October 2016, responding to the communicant’s letter of 8 August 2016 providing information from the Bălța hydrometeorological station, containing monthly data from 1954-1977 and 1983-2012.²⁶ Following receipt of this information, the communicant visited the SHS offices on two more occasions to clarify omissions and perceived errors in the data.²⁷ No request for payment was made for the data.²⁸

37. On 18 February 2017, the communicant sent another letter to SHS, repeating its request of 8 August 2016 for the title of and information about the project to which the SHS referred in its reply of 1 August 2016, the name and contact details of the project members, or to provide access to the requested data.²⁹

38. On 3 April 2017, the communicant wrote to the Minister of Environment to ask for his assistance in getting a response the communicant’s letter to the SHS of 18 February 2017. In the same correspondence with the Minister, the communicant referred to Regulation No. 330, claiming that it “violates the principle of reasonable costs under the Aarhus Convention (since

²⁰ Communication, p. 2 and p. 3; email from communicant, 3 May 2020, attachment 1.

²¹ Communication, p. 2 and p. 3, and annex 2.3, pp. 6-7.

²² Communication, annex 2.3 pp. 6-7; Communicant’s reply to the Committee’s questions, 22 June 2020, p. 3.

²³ Communication, annex 2.3, pp. 6-7.

²⁴ Communication, annex 2.1, pp. 2-3.

²⁵ Communicant’s reply to the Committee’s questions, 22 June 2020, pp. 1-2.

²⁶ Communicant’s reply to the Committee’s questions, 22 June 2020, pp. 1-3 and annex.

²⁷ Communicant’s reply to the Committee’s questions, 22 June 2020, p. 2.

²⁸ Communicant’s reply to the Committee’s questions, 22 June 2020, p. 3.

²⁹ Communication, pp. 3-4, and annex 2.1 pp. 2-3.

it does not distinguish the costs for the already existing information and the newly collected data) and should be revised accordingly”.³⁰

39. On 21 April 2017 the SHS sent letter 01/662 informing the communicant that the River Bălțața had never been included in the Party concerned’s surface water quality monitoring program with regard to hydrochemical components because the monitoring system was neither sufficiently financed nor properly staffed to enable monitoring of the river of such a size. The SHS indicated that, despite this, it did hold some sporadic data regarding the quality of the River Bălțața, which was provided in the annex to the letter.³¹

40. In letter 01/662, the SHS also added that it considered that the information requested from the 1950s to the present constituted virtually the whole primary data set of the SHS Hydrometeorological Database. Any requested information that is of a primary nature would be provided at a charge, in accordance with Regulation No. 330.³²

The preparation and adoption of the AEI Regulation

41. In summer 2016, the Ministry of the Environment placed a draft of the AEI Regulation on its webpage, seeking comments and suggestions from the public. On 18 August 2016, the communicant submitted nine suggestions and comments, including comments on the issue of reasonable costs, failure to differentiate between newly collected data and already existing data, and lack of guidance on information charges. On 30 December 2016, the government of the Party concerned adopted the AEI Regulation, without any changes that would reflect the communicant’s comments concerning costs.³³

C. Domestic remedies and admissibility

42. The communicant states that, while in general the legal framework of the Party concerned provides the right of natural or legal persons to go to court if their rights are violated by a public authority, this right is limited with respect to challenging legislative or executive acts adopted by the Parliament or Government.³⁴ Specifically the communicant claims that article 4(c) of the Law on Administrative Courts (see para. 28 above) stipulates that government decrees, such as resolutions, regulations, and ordinances of a normative nature, do not fall within the jurisdiction of the Administrative Court and that, as a result, the communicant had no access to domestic legal procedures to challenge Regulation No. 330 directly.³⁵

43. The communicant further states that it did not bring a challenge before the courts and/or Ombudsman regarding the proposed charge of 730,374.50 lei because it did not consider it to be an effective means of challenging that decision due to the lack of independence of the judiciary in the Party concerned at the time and that in any case doing so would not have any effect on the provisions of Regulation No. 330 with respect to costs.³⁶

44. The communicant adds that it repeatedly brought the attention of the Ministry of Environment to the importance of adopting a clear, transparent, and consistent legislative framework on access to environmental information and to the non-compliance with the Convention of some of the Party concerned’s regulatory acts, notably regarding the issue of reasonable costs.³⁷ It points in this regard to the comments it submitted in the summer of 2016

³⁰ Communication, pp. 3-4 and p. 8, and annex 2.2, pp. 4-5.

³¹ Communication, annex 2.4, pp. 8-12.

³² Communication, annex 2.4, p. 12.

³³ Communication, p. 3, p. 8.

³⁴ Communication, p. 8.

³⁵ Communication, p. 8.

³⁶ Communicant’s reply to the Committee’s questions, 22 June 2020, pp. 4-5.

³⁷ Communication, p. 8.

on the draft AEI Regulation (see para. 40 above) and its letter to the Minister of 3 April 2017 (see para. 37 above). The communicant submits that the Ministry of Environment disregarded the communicant's concerns in both instances.³⁸

45. The Party concerned did not comment on the issue of domestic remedies.

D. Substantive issues

Article 3(2) in conjunction with article 5(2)(b)(ii)

46. The communicant submits that the SHS failed to comply with article 3(2) in conjunction with article 5(2)(b)(ii) of the Convention by responding to the communicant's letters of both 25 July 2016 and 18 February 2017 with the suggestion that the communicant collect the information in the SHS office with no assistance from SHS staff. The communicant submits that these provisions of the Convention require officials to offer help to those who seek information and to ensure the provision of guidance and assistance in person.³⁹

47. The communicant refers to the wording of the Aarhus Convention Implementation Guide to support its case. In particular, the communicant contends that the SHS did not "take firm steps towards ensuring that officials and authorities provide the assistance".⁴⁰ The communicant adds that the Implementation Guide mentions two ways of fulfilling the assistance requirement, which are also contained in article 5(2)(b)(ii) and (iii): "one is with special contact persons, the other is through obliging the officials who are in charge of the case in question to offer help to those who seek information".⁴¹ The communicant submits that the Implementation Guide clearly indicates that officials should provide guidance and assistance in person.⁴²

48. The communicant claims that on at least one visit to the SHS offices, it was "impossible to collect data" because the library was being repaired or relocated.⁴³ The communicant states that it undertook two further visits to the SHS offices to clarify questions as to the completeness and accuracy of the data provided on 3 October 2016. The communicant contends that, through these discussions, it became clear that it was "impossible to receive clear explanations".⁴⁴

49. The communicant further submits that it was not provided with assistance upon attending the SHS offices, while also acknowledging that it did not specifically request any such assistance (stating that there was no reason to do so because the library was being repaired or relocated and later the data was partly presented⁴⁵). The communicant's expectation was that it would have been either presented with summaries of the data or permitted to access the databases which contain the factual observations in order to extract that data itself.⁴⁶

50. The Party concerned does not specifically address the communicant's article 3(2) and article 5(2)(b)(ii) allegations but notes that a representative of the communicant was invited to the SHS offices.⁴⁷

³⁸ Communication, p. 8.

³⁹ Communication, p. 6.

⁴⁰ Communication, p. 6, citing the Implementation Guide, p. 62.

⁴¹ Communication, p. 6, citing the Implementation Guide, p. 63.

⁴² Communication, p. 6, citing the Implementation Guide, p. 63.

⁴³ Communicant's reply to the Committee's questions, 22 June 2020, p. 1.

⁴⁴ Communicant's reply to the Committee's questions, 22 June 2020, pp. 1-2.

⁴⁵ Communicant's reply to the Committee's questions, 22 June 2020, p. 2.

⁴⁶ Communicant's reply to the Committee's questions, 22 June 2020, p. 4.

⁴⁷ Party's response to the communication, p. 2.

51. The Party concerned further submits that, during its visits, the communicant was “verbally assisted” and states that the communicant’s allegations are uncorroborated and that “the facts of personal dissatisfaction can be interpreted subjectively”.⁴⁸

Article 4(8)

Regulation No. 330

52. The communicant submits that Regulation No. 330 of the Party concerned violates article 4(8) of the Convention because the regulation treats all information (including information that already exists) as “primary information” and establishes charges for all “primary information”.⁴⁹ The communicant claims that this has a direct impact on applicants requesting access to information because it imposes on them the entire amount of the costs incurred by the State, both direct and indirect, and results in unreasonable costs for those seeking access to existing information that has already been collected in the past.⁵⁰ The communicant states that the key issue with annex 2 to Regulation No. 330 is that applicants for environmental information “have to bear unreasonable costs”.⁵¹

53. The communicant submits that the Party concerned failed to rectify this non-compliance on at least two occasions. Firstly, the 2011-2015 National Action Plan did not require that Regulation No. 330 be revised and lacked any specific measures on bringing the issue of reasonable costs into compliance with the Convention.⁵² Secondly, the AEI Regulation failed to contain any explanation of the term “reasonable charges”, or any specific measures ensuring that charges are reasonable, or any guidance on information charges.⁵³

54. The communicant claims that treating information that already exists in the SHS Hydrometeorological Database as “primary information” and imposing charges for access to it imposes unreasonable costs on those seeking access to information. The communicant claims that the Implementation Guide explains that the term “reasonable” means that Parties are not authorized to pass on to those seeking information the entire amount of the costs, in particular indirect ones, actually incurred for the State budget in conducting an information search.⁵⁴

55. The communicant adds that the Implementation Guide provides that guidance for information charges should include “(a) a schedule of charges; (b) criteria for when the charges may be levied; (c) criteria for when charges may be waived; and (d) criteria for when the supply of information is conditional on the advance payment of a charge”.⁵⁵ The communicant submits that none of these are included in either Regulation No. 330 or the AEI Regulation.⁵⁶

56. The communicant alleges that the provisions of Regulation No. 330, the AEI Regulation and the 2011-2015 National Action Plan results in a situation in which the Party concerned fails to comply with article 4(8) of the Convention and that it has taken no steps to bring its legal framework into compliance since 2006.⁵⁷

57. The Party concerned and the SHS have made a number of statements about the meaning and nature of “primary information”. In letter no. 01/662 of 21 April 2017, the SHS stated that any requested information that is of a primary nature would be provided at a charge, in

⁴⁸ Party’ reply to the Committee’s questions, 6 July 2020, pp. 1-2.

⁴⁹ Communication, p. 6.

⁵⁰ Communication, p. 6.

⁵¹ Communications, p. 2.

⁵² Communication, p. 7.

⁵³ Communication, p. 7.

⁵⁴ Communication, p. 7, citing the Implementation Guide, p. 94.

⁵⁵ Communication, p. 7, citing the Implementation Guide, p. 94.

⁵⁶ Communication, p. 7.

⁵⁷ Communication, p. 7.

accordance with Regulation No. 330.⁵⁸ The Party concerned states that the charge in the present case was not requested for the primary data, but for the “preparation of the processes analytical information, which require staff time and additional separate work”.⁵⁹

58. The Party concerned further states that the “issue of interpretation of primary, historical and processed/analytical information and of calculation of the payment for it hopefully will be possible to be solved by adjusting the legal and regulatory base of concern and re-examine this case in the framework of the re-established Working Group for the implementation of the Aarhus Convention in Moldova”.⁶⁰

59. As to the meaning of the terms “primary information” (первичная информация), as found in annex 2 to Regulation No. 330, “primary data” (date primare) and “information of primary nature” (informația poartă un caracter primar) as used in letter 01/662 of 21 April 2017, the Party concerned states that these terms are not defined in the national legislation, and so must be understood by reference to morphology and dictionary definitions. The Party concerned adds that according to article 5 of the 1998 Hydrometeorological Activity Law “specialized information” is “special purpose information on the state and pollution of the environment, which requires additional costs for obtaining, processing, analysis, storage and presentation, in accordance with consumer requests”.⁶¹ It submits that “consequently, it can be considered different from the primary information, which in terms of assumptions would lead to more actions involving costs, sources and effort to be justified as liable for payment”.⁶²

The communicant’s information request

60. The communicant claims that the SHS’s request that the communicant pay 730,374.50 lei for access to information regarding the temperatures at the Bălțata hydrometeorological station and the streamflow of the Bălțata river exceeds a reasonable amount within the meaning of the Convention.⁶³ While granting that the Convention allows its public authorities to make a charge for supplying information, the communicant also notes that the Convention specifically points out that “such charge shall not exceed a reasonable amount”.⁶⁴ In this regard the communicant submits that the Implementation Guide underlines that information should be accessible as well as affordable, and therefore any charges, if necessary, must be reasonable.⁶⁵

61. The communicant claims that charges in the amount of 730,374.50 lei for access to data regarding the streamflow and temperatures of a 25 km-long river are both unreasonable and unaffordable. It claims that firstly, the charges are disproportionate to the river length and to the nature of the requested data, which was historic data that already existed. The communicant submits secondly that the average salary at the time in the Party concerned was about 200 euro per month and by way of comparison that the SHS staff who implement Regulation No. 330 would have had to work for about five years before they altogether could have saved this sum.⁶⁶

62. The communicant opines that the basis of the initial calculation may have been point I.5.1.2 of annex 2 of Regulation No. 330, which states that determination of the water streamflow costs 306 lei, while also noting that a calculation based on this figure would not obviously result in 730,374.50 lei.⁶⁷

⁵⁸ Communication, annex 2.4, p. 12.

⁵⁹ Party’s response to communication, p. 2.

⁶⁰ Party’s response to the communication, p. 2.

⁶¹ Party’s reply to the Committee’s questions, 6 July 2020, p. 3

⁶² Party’s reply to the Committee questions, 6 July 2020, p. 3

⁶³ Communication, p. 7.

⁶⁴ Communication, p. 7.

⁶⁵ Communication, p. 7.

⁶⁶ Communication, p. 7.

⁶⁷ Communicant’s reply to the Committee’s questions, 22 June 2020, p. 3.

63. The communicant states that such charges make it in general impossible for the public to access data held by the SHS, even if it already exists.⁶⁸

64. With respect to the revised figure of 197,215.80 lei submitted by the Party concerned in the context of the Committee's proceeding (see para. 66 below), the communicant states that it does not consider this sum to be reasonable either.⁶⁹

65. The Party concerned submits that the particular case between the communicant and the SHS has "a specific interpretation, or misinterpretation from both sides".⁷⁰ It claims that "finally the access to the requested data was provided" and that "the payment was requested not for the primary data (for which the [communicant's] representative was invited to the office), but for the preparation of the processes analytical information, which require staff time and additional separate work".⁷¹

66. The Party concerned has submitted an algorithm and cost calculations to the Committee showing a breakdown of how the total cost could have been calculated for the information as requested by the communicant in its letter from 25 July 2016. The total charge resulting from these calculations was 197,215.80 lei.⁷² The Party concerned did not provide clear cross-references to the specific points of Regulation No. 330 and its annex 2 to explain its calculations. However, in its calculations the Party concerned indicates prices that correspond to point II.2.1.4 (2.50 lei) and point II.4.1.2 (28.70 lei) of part II of annex 2 to Regulation No. 330 covering "specialized information" (see. para 24 above).

67. The Party concerned concedes that the amount of 730,374.50 lei was erroneously calculated in 2016 but does not explain how the erroneous figure could have been arrived at.⁷³

Article 3(1)

68. The communicant submits that the Party concerned is in breach of article 3(1) of the Convention because it has not taken the necessary regulatory measures to implement the Convention and has not established a clear and consistent regulatory framework on the issue of reasonable costs.⁷⁴

69. The communicant claims that under Regulation No. 330, all information in the SHS Hydrometeorological Database is considered of a primary nature and so access to it is consequently subject to a charge. As a consequence, the Regulation passes on to those seeking information the entire amount of the costs, resulting in unreasonable charges in a manner contrary to article 4(8) of the Convention. The communicant further submits that the Party concerned has failed to address this issue, for example by revising Regulation No. 330 or adopting a new one that is compliant with the Convention.⁷⁵

70. The communicant claims that the failure of the 2011-2015 National Action Plan to include any provision on the revision of Regulation No. 330 or any other specific measure to bring the issue of reasonable costs in line with article 4(8) maintained non-compliance with the Convention, and led to a general failure to take the necessary legislative and regulatory measures

⁶⁸ Communication, p. 7.

⁶⁹ Communicant's letter of 25 November 2020, p. 1.

⁷⁰ Party's response to the communication, p. 2.

⁷¹ Party's response to the communication, p. 2.

⁷² Letter including additional information from the Party concerned, 25 November 2020, pp. 1-2.

⁷³ Letter including additional information from the Party concerned, 25 November 2020, p. 2.

⁷⁴ Communication, p. 4.

⁷⁵ Communication, pp. 4-5.

to achieve compatibility between existing national provisions and the Convention, pursuant to article 3(1).⁷⁶

71. The communicant alleges that the AEI Regulation does not specify the term “reasonable charges” or include any measures on when and how the information charges shall be applied. It adds that article 44 of that Regulation cross-refers to the respective public authorities and their lists of charges which, in the case of hydrometeorological information, means the list of charges established by Regulation No. 330, which the communicant claims are unreasonable.⁷⁷ The communicant submits that, as a result, the AEI Regulation fails to ensure that any list of charges elaborated by a public authority will indeed accord with the need to be “reasonable”, thereby violating the requirement in article 3(1) that there be “proper enforcement measures”.⁷⁸ In this regard, the communicant cites the Implementation Guide as explaining that the Convention is “about taking concrete practical steps to achieve its goals” and requires that Parties take necessary legislative regulatory and other measures to establish a framework for the implementation of the Convention.⁷⁹

72. The communicant alleges further that the SHS did not take the necessary measures to achieve compatibility between the Convention and Regulation No. 330 on the issue of reasonable costs.⁸⁰ As well as the implementation of the adopted normative acts, the communicant points out that the SHS is also responsible for ensuring compliance with the obligations under the conventions and international agreements to which the Party concerned is a Party according to the 1998 Hydrometeorological Activity Law (see paras. 19-21 above).⁸¹ The communicant submits that this means the SHS should have identified that the costs provided for under Regulation No. 330 would be unreasonable and so addressed the Ministry of the Environment with an initiative to revise Regulation No. 330 to ensure its compliance on the issue of reasonable costs. The communicant claims that, contrary to that, the SHS has remained inactive and has not raised any concerns.⁸²

73. The Party concerned submits that it intends to initiate a revision of the legislation and regulations regarding the “terms and issues related to the primary information, reasonable costs for analytical information, etc. and integrate the process of their amendments and change into the plan of actions of the Ministry”.⁸³

74. The Party concerned also states that, as part of a reform of governmental and environmental institutions, the Environmental Agency, a sub-division of the Environmental Ministry, was established in July 2018.⁸⁴ The Party concerned submits that this new agency has the main objective of the implementation of environmental policies, including in the field of environmental information.⁸⁵ The Party concerned claims that there is a division of integrated environmental information and that a National Environmental Reference Laboratory has been established. The Party concerned submits this will mark a change and improvement in the system of management, collection and dissemination of the environmental information in the country.⁸⁶

⁷⁶ Communication, pp. 4-5.

⁷⁷ Communication, p. 5.

⁷⁸ Communication, p. 5.

⁷⁹ Communication, p. 5, citing the Implementation Guide, p. 59.

⁸⁰ Communication, p. 5.

⁸¹ Communication, p. 5.

⁸² Communication, p. 5.

⁸³ Party’s response to the communication, p. 2.

⁸⁴ Party’s response to the communication, p. 2.

⁸⁵ Party’s response to the communication, p. 2.

⁸⁶ Party’s response to the communication, p. 2.

75. The Party concerned reports that, as of July 2020, while the legal framework remained unchanged,⁸⁷ a new Action Plan on the implementation of the Convention is at the draft stage and other actions to avoid excessive costs for information were due to be started.⁸⁸

76. The Party concerned further states that the SHS has made requests for the amending of Regulation No. 330 to the Ministry of Economy and Infrastructure (no. 02/620 of 17 June 2020) and to the Ministry of Finance (no. 02/619 of 17 June 2020).⁸⁹

III. Consideration and evaluation by the Committee

77. The Republic of Moldova deposited its instrument of ratification of the Convention on 9 August 1999. The Convention entered into force for the Republic of Moldova on 30 October 2001.

Admissibility

78. While the factual background to the communication stems from the communicant's June 2016 request to SHS for hydrometeorological information, the communicant's allegations more broadly concern the schedule of charges for hydrometeorological information set out in Regulation No. 330. The communicant submits that, under the Law on Administrative Courts, there is no possibility to challenge the Regulation in the courts.

79. The Party concerned does not dispute the admissibility of the communication.

80. Based on the foregoing, the Committee finds the communication to be admissible.

Assistance in accessing the environmental information – article 3(2) in conjunction with article 5(2)(b)(ii)

81. The communicant submits that, by responding to its 25 June 2016 request for information with the suggestion that it collect the information in the SHS office with no assistance from SHS staff, the SHS failed to comply with article 3(2) in conjunction with article 5(2)(b)(ii) of the Convention. The communicant submits that these provisions require the responsible officials to offer help to those who seek information and to ensure the provision of guidance and assistance in person.

82. The Committee notes that a representative of the communicant was invited to the SHS offices to access the primary data.⁹⁰ The communicant was also able to engage in oral discussions with members of SHS staff, even if the communicant did not consider those discussions resulted in explanations it found satisfactory as to why certain information was not available or in existence. The communicant has confirmed that its representatives visited the SHS office several times in order to obtain information, however, at the first visit the SHS library was either being repaired or relocated and the communicant consequently could not access the information. In response to the Committee's question as to what kind of assistance was requested the communicant explained that because the library at the first visit was either being repaired or relocated, but later the data were partly presented, there was no reason to ask for further assistance.

83. In the light of the above, the Committee finds the communicant's allegations concerning article 3(2) in conjunction with article 5(2)(b)(ii) to be unsubstantiated.

⁸⁷ Party's reply to the Committee's questions, 6 July 2020, p. 5.

⁸⁸ Party's reply to the Committee's questions, 6 July 2020, p. 5.

⁸⁹ Letter from the Party, 25 November 2020, p. 1.

⁹⁰ Party's response to the communication, p. 2.

Unreasonable costs — article 4(8)

Preliminary remarks

84. As a preliminary point, it is clear to the Committee that the communicant's request of June 2016 for hydrometeorological information was a request for "environmental information" as defined in article 2(3) of the Convention, and the Committee notes that the Party concerned does not dispute that. Accordingly, the communicant's request was a request for information within the scope of article 4 of the Convention.

85. At the outset, the Committee recalls the importance of access to environmental information to achieve the objective set out in the preamble and article 1 of the Convention, that is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.⁹¹ The Committee also considers that the right of access to environmental information is a prerequisite to realize the duty recognized by the Convention on every person, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.⁹²

86. Article 4(8) of the Convention provides that public authorities may charge for supplying information, under the condition that any such charge does not exceed a reasonable amount. Given the importance of the right of access to environmental information to achieve the objective of the Convention and also the wording of article 4(8), it is clear to the Committee that the presumption is that such information should be supplied free of charge, but Parties may allow charges provided that they do not exceed a reasonable amount. The Convention safeguards this requirement by obliging public authorities to make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge. The requirement in article 4(8) for the charge to be reasonable is thus a safeguard for the effective exercise of the Convention's rights and duties. A schedule of charges can help protect against abuse and inconsistency of charges. It also strengthens the ability of members of the public to access information if they know in advance what it will cost.

87. The Committee further points out that the preamble to the Convention acknowledges that public authorities hold environmental information in the public interest.⁹³ The Convention does not permit any charge to be levied for simply having access to information and any charges for supplying environmental information must be calculated while recognising and bearing in mind that such information is held in the public interest.

88. When determining whether the amount of any charge under article 4(8) is reasonable, account must be taken of the objective of access to environmental information as outlined above, the public interest in the protection of the environment, the recognition that public authorities hold environmental information in the public interest, the economic circumstances of the public in general and of the requester, and the justification given for the amount charged. It follows that any such charge should be duly explained, reasoned and justified and must not appear unreasonable to the public.

89. Moreover, the Committee underlines that any charges for supplying environmental information must be based on a transparent calculation and while they may include a contribution towards the material costs for supplying the environmental information, they must not include the cost of the initial production, collection or acquisition of the information itself or any other indirect cost. Thus, information held by public authorities should be provided for free or at no more than the reasonable material costs of supplying the requested information (e.g.

⁹¹ Preamble, paragraph 7.

⁹² Preamble, paragraph 7.

⁹³ Preamble, paragraph 17.

postage or copying costs). Finally, any charge must not have a deterrent effect on persons wishing to obtain information, effectively restricting their right of access to information.

90. The Committee understands Regulation No. 330 to be the legal basis for access to hydrometeorological information in the Party concerned and the annexes to that Regulation to provide a schedule of charges as envisaged in article 4(8) of the Convention. These annexes include both the list of services the SHS provides for free (annex 1) and the list of services for which SHS charges a fee (annex 2) (see paras. 22-24 above). The Committee examines below the application of Regulation No. 330 to the communicant's June 2016 request for information as well as its schedule of charges more generally.

The communicant's request for information

91. As an initial remark, the Committee notes that the charge of 730,374.50 lei initially quoted by the SHS is many times the average monthly salary in the Party concerned. The Committee cannot see how such a high charge, if levied, could ever be considered reasonable to respond to a request for environmental information, bearing in mind the economic circumstances of the public in general in the Party concerned.

92. In its letter no. 03/737 to the communicant of 1 August 2016, the SHS gave no explanation of how that sum had been calculated. The Party concerned has conceded to the Committee that the amount of 730,374.50 lei was erroneously calculated and it is itself unable to understand or explain the calculation through which the initial figure of 730,374.50 lei was reached.

93. At the Committee's request, the Party concerned prepared its own calculation of the amount that should have been charged under Regulation No. 330 for the communicant's request. The resulting sum was 197,215.80 lei – an amount still far in excess of the average monthly salary in the Party concerned.

94. The Committee does not see that the information request by the communicant was especially complex: while it involved quite a large amount of data, all the environmental information provided was already held by SHS and did not require any further analysis. Given this fact, the amounts quoted by the SHS and, during this case, by the Party concerned are both clearly unreasonable. They also both lack adequate explanation, reasoning and justification.

95. The Committee considers that, while ultimately no charge was made for the information requested in this case, even quoting charges at this clearly excessive level and without clear and consistent reasoning would have a deterrent effect for members of the public seeking to exercise their right to environmental information under the Convention.

Regulation No. 330

96. As noted above, public authorities may charge for supplying environmental information under the Convention on the condition that any such charge does not exceed a reasonable amount. The Committee considers that any charges for information held by a public authority must be clearly and carefully explained, reasoned and justified, bearing in mind the objective of the right to access environmental information and that public authorities hold environmental information in the public interest. Furthermore, any legal framework allowing for charges must not be interpreted or applied in a way that may have a deterrent effect on persons wishing to obtain environmental information or that may restrict their right of access to environmental information, nor in any event be, or appear to the public to be, unreasonable.

97. Regulation No. 330 provides the legal framework under which charges may be made to members of the public seeking to access hydrometeorological information. As such, the Convention requires that any charges made under Regulation No. 330 be both reasonable and justifiable.

98. While annex 2 of Regulation No. 330 does contain a schedule of charges that may be levied to applicants under article 4(8) of the Convention, its application in practice can give rise to charges that are not predictable, reasonable or justified. This is clearly demonstrated in the

present case, where first the SHS and later the Party concerned during the present proceeding, proposed two different approaches to calculate the charges for the communicant's request (see paras. 66 - 62 above), neither of which could be considered to be reasonable and neither of which were adequately justified. The Committee notes that the Party concerned in its replies to the communication and to the Committee's questions provided different amounts and inconsistent reasons for the setting of the charge for information requested by the communicant (see paras. 57-59 and 65 above).

99. Based on the foregoing, the Committee finds that, by establishing and maintaining a schedule of charges that does not meet the requirement to ensure that any charge for supplying information does not exceed a reasonable amount, the Party concerned fails to comply with article 4(8) of the Convention.

Article 3(1)

100. As the present case illustrates, Regulation No. 330 creates a situation whereby public authorities can calculate charges in a manner that is inconsistent and cannot be properly explained, reasoned or justified. That Regulation No. 330 enabled such a confusing situation to arise with respect to a relatively straightforward information request such as the communicant's in this case is of concern to the Committee.

101. Moreover, in addition to the differing calculations of the appropriate charge for the information request at issue in this case, the Committee notes the lack of clarity as to what constitutes "primary information" under Regulation No. 330. The concept of "primary information" is not defined in the Regulation, and the Party concerned has not been able to provide a clear or consistent explanation of what the term means (see paras. 57-59 and 65 above).

102. The Committee considers that the legal framework established through Regulation No. 330, including its annex 2 in particular, is unclear, confusing and inconsistent. The Committee fails to see how a member of the public could predict what charges will be made under Regulation No. 330. This lack of clarity may also have a deterrent effect on members of the public seeking to rely on their right to access environmental information in the first place. As demonstrated by SHS' proposed charge of 730,374.50 lei in the present case, the lack of clarity as to how to calculate the cost for supplying environmental information as well as on when charges may be levied or waived, may result in exorbitantly unreasonable charges.

103. The Committee notes that the Party concerned has conceded to the Committee the need to revise its legislation and that it intends to initiate the revision of the relevant legislation and regulations, including in relation to the issues of "primary information" and "reasonable costs" for "analytical information" (see paras. 73-76 above).

104. The Committee emphasizes that any revision of the relevant legislation must ensure both that a clear, transparent and consistent framework is provided to implement article 4(8) of the Convention and that any charges permitted by the framework must be reasonable in nature, with full and coherent explanations for those charges being made available to any member of the public making a request for environmental information. The Committee also recalls that the presumption is for no charge to be made for the supply of environmental information upon request.

105. In the light of the above, the Committee finds that, by not establishing and maintaining a clear, transparent and consistent framework to implement article 4(8) of the Convention, the Party fails to comply with article 3(1) of the Convention.

IV. Conclusions and recommendations

106. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

107. The Committee finds that:

(a) By establishing and maintaining a schedule of charges that does not meet the requirement to ensure that any charge for supplying information does not exceed a reasonable amount, the Party concerned fails to comply with article 4(8) of the Convention;

(b) By not establishing and maintaining a clear, transparent and consistent framework to implement article 4(8) of the Convention, the Party concerned fails to comply with article 3(1) of the Convention.

B. Recommendations

108. The Committee pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 36 (b) of the annex to decision I/7, recommends that the Party concerned:

(a) Take the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent schedule of charges under article 4(8) of the Convention for the supply of hydrometeorological information upon request, including by clearly setting out how any charges should be calculated, and to ensure that all charges, including total charges, are reasonable and properly justified.

(b) Provide training to officials of public authorities handling requests for access to hydrometeorological information to ensure that any charges are no more than reasonable, that they are calculated in a clear, transparent and consistent way and are properly justified.

109. The Committee further recommends to the Meeting of the Parties that it request the Party concerned:

(a) To submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) To provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(c) To provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the above recommendations;

(d) To participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.
