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ECONOMIC COMMISSION FOR EUROPE

**MEETING OF THE PARTIES TO THE CONVENTION ON
THE PROTECTION AND USE OF TRANSBOUNDARY
WATERCOURSES AND INTERNATIONAL LAKES**

Legal Board

Second meeting

Geneva, Switzerland, 16-17 September 2004

**ESTABLISHING A COMPLIANCE REVIEW MECHANISM
UNDER THE 1999 PROTOCOL ON WATER AND HEALTH ***

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Chairperson and Vice-Chairperson of the first meeting

The following text has been prepared on the basis of document MP.WAT/AC.4/2004/4 and the outcome of the first meeting of the Legal Board (Verona, Italy, 28-29 June 2004). Reference can be made to the meeting report MP.WAT/AC.4/2004/2.

* This document has not been formally edited.

DRAFT DECISION¹

REVIEW OF COMPLIANCE

to be adopted at the first meeting of the Parties
to the Protocol on Water and Health

The Meeting of the Parties,

Determined to promote and improve compliance with the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and recalling its article 15,

Recognizing the necessity for rigorous reporting by the Parties on their compliance with the Protocol,

Seeking to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

1. Establishes the Compliance Committee for the review of compliance by the Parties with their obligations under the Protocol.
2. Decides that the structure and functions of the Compliance Committee and the procedures for the review of compliance shall be those set out in the annex to this decision.
3. Encourages Parties to bring issues concerning their own compliance before the Committee.

¹ At the first meeting of the Legal Board, it was suggested to include a draft decision setting the establishment of the Compliance Committee. The draft presented is based on the relevant decisions establishing implementation/compliance committees under the UNECE Convention on Long-Range Transboundary Air Pollution (Decision 1997/2), on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Decision I/7), and on Environmental Impact Assessment in a Transboundary Context (Decision III/2).

Annex

DRAFT COMPLIANCE REVIEW MECHANISM

I. OBJECTIVE, NATURE AND PRINCIPLES

1. The objective of these procedures and mechanisms is to facilitate, promote and aim to secure compliance with the obligations under the Protocol, with a view to preventing disputes, by:

- (a) Addressing cases of non-compliance by Parties; and
- (b) Providing advice or [facilitating] assistance to Parties, where appropriate.

2. The mechanism shall be simple, facilitative, non-adversarial and cooperative in nature and its operation shall be guided by the principles of transparency, fairness, expedition and predictability.

3. The mechanism shall be conducted bearing in mind the interests of the Party facing difficulties, of the Parties as a whole and of populations potentially or actually adversely affected by non-compliance.

II. STRUCTURE

4. The Committee shall consist of nine members who shall serve in their personal capacity and objectively in the best interests of the Protocol.

5. The members shall be persons of high moral character and have recognized expertise in the fields to which the Protocol relates, including [scientific, technical, socio-economic and/or legal experience] [legal and/or technical expertise]. They shall be elected by the Meeting of the Parties to the Protocol, from among candidates proposed by the Parties [, the Signatories] [and NGOs enjoying observer status before the Meeting of the Parties to the Protocol].

6. In the election of the Committee, consideration should be given to the geographical distribution of membership and the diversity of experience. At their first meeting, the Parties will elect [five] [four] members for a full term of office and [four] [five] members for a half term of office. Subsequently, the Meeting of the Parties shall elect for a full term new members to replace those whose term has expired. If a member of the Committee can no longer perform his or her duties as member of the Committee for any reason, the Bureau of the Meeting of the Parties shall appoint another member fulfilling the criteria in this chapter to serve for the remainder of the term, subject to the approval of the Committee. A full term of office commences at the end of an ordinary meeting of the Parties and runs until the second ordinary meeting of the Parties thereafter. Members shall not serve for more than two consecutive terms.

7. [Two non-governmental organizations promoting the objectives of the Protocol and enjoying observer status before the Meeting of the Parties shall be entitled to participate in the meetings of the Committee as observers, without the right to vote. The Meeting of the Parties shall designate these two organizations at each ordinary meeting following the indications of NGOs enjoying observer status before it.]

8. The Committee shall elect its own Chairperson and Vice-Chairperson and approve its rules of procedure.

9. The Committee shall, unless it decides otherwise, meet at least once a year. The joint secretariat shall arrange for and service the meetings of the Committee.

III. FUNCTIONS OF THE COMMITTEE

10. The Committee shall:

(a) Consider any submission, referral [or communication] relating to specific issues of compliance made in accordance with paragraphs 12 to [14][21] below;

(b) Prepare, at the request of the Meeting of the Parties, a report on compliance with or implementation of specific provisions of the Protocol; and

(c) Monitor, assess and facilitate the implementation of and compliance with the reporting requirements under article 7, paragraph 5, of the Protocol;

[and may act pursuant to paragraph 33.]

11. The Committee may examine compliance issues and make recommendations [or take measures] if and as appropriate.

IV. SUBMISSIONS BY PARTIES

12. A submission may be brought before the Committee by a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The joint secretariat shall transmit the submission to the Committee, which shall consider the matter as soon as practicable

13. A submission may be brought before the Committee by one or more Parties that have reservations about another Party's compliance with its obligations under the Protocol. Such a submission shall be addressed in writing to the joint secretariat and supported by corroborating information. The joint secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is at issue. Any reply and supporting information shall be submitted to the joint secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may

require but in no case later than six months. The joint secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Committee, which shall consider the matter as soon as practicable.

V. REFERRALS BY THE JOINT SECRETARIAT

14. Where the joint secretariat, [in particular] upon considering the reports submitted in accordance with the Protocol's reporting requirements, becomes aware of possible non-compliance by a Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require but in no case later than six months, the joint secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable.

[VI. COMMUNICATIONS FROM THE PUBLIC

15. [On the expiry of twelve months from either the date of adoption of this [decision] or from the date of the entry into force of the Protocol with respect to a Party, whichever is the later,] Communications may be brought before the Committee by one or more members of the public concerning [that] [a] Party's compliance with the Protocol.

16. The communications referred to in paragraph 15 shall be addressed to the Committee through the joint secretariat in writing and may be in electronic form. The communications shall be supported by corroborating information.

17. The Committee shall consider any such communication unless it determines that the communication is:

- (a) Anonymous;
- (b) An abuse of the right to make such communications;
- (c) Manifestly unreasonable;
- (d) Incompatible with the provisions of this [decision] or with the Protocol.

18. The Committee should, at all relevant stages, take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.

19. Subject to the provisions of paragraph 17, the Committee shall as soon as possible bring any communications submitted to it under paragraph 15 to the attention of the Party alleged to be in non-compliance.

20. A Party shall, as soon as possible but not later than five months after any communication is brought to its attention by the Committee, submit to the Committee written explanations or statements clarifying the matter and describing any response that it may have made.

21. The Committee shall, as soon as practicable, further consider communications submitted to it pursuant to this chapter and take into account all relevant written information made available to it, and may hold hearings.]

VII. INFORMATION GATHERING

22. In order to perform its functions, the Committee may:

- (a) Request further information on matters under its consideration;
- (b) Undertake, with the consent of any Party concerned, information gathering in the territory of that Party;
- (c) Consider any relevant information submitted to it; and
- (d) Seek the services of experts and advisers as appropriate.

VIII. CONFIDENTIALITY

23. Save as otherwise provided for in this chapter, no information held by the Committee shall be kept confidential.

24. The Committee and any person involved in its work shall ensure the confidentiality of any information that falls within the scope of the exceptions provided for in article 10, paragraphs 4 (c) and 5, of the Protocol and that has been provided in confidence.

25. The Committee and any person involved in its work shall ensure the confidentiality of information that has been provided to it in confidence by a Party when making a submission in respect of its own compliance in accordance with paragraph 12 above.

[26. Information submitted to the Committee, including all information relating to the identity of the member of the public submitting the information, shall be kept confidential if submitted by a person who asks it be kept confidential, unless the Committee considers that there are no reasonable grounds to believe that a member of the public may be penalized, persecuted or harassed because of the communication.]

27. If necessary to ensure the confidentiality of information in any of the above cases, the Committee shall hold private meetings.

28. Committee reports shall not contain any information that the Committee must keep confidential under paragraphs 24 to 26 above. Information that the Committee must keep

confidential under paragraph 24 shall not be made available to any Party. All other information that the Committee receives in confidence and that is related to any recommendations by the Committee to the Meeting of the Parties shall be made available to any Party upon its request; that Party shall ensure the confidentiality of the information that it has received in confidence.

IX. ENTITLEMENT TO PARTICIPATE*

29. A Party in respect of which a submission, referral [or communication] is made or which makes a submission, [as well as the member of the public making a communication], shall be entitled to participate in the discussions of the Committee with respect to that submission, referral [or communication].

30. Only the members of the Committee shall take part in the preparation and adoption of any findings, any measures or any recommendations of the Committee.

31. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Party concerned, the submitting Party [and the member of the public who submitted the communication if applicable], and shall take into account any comments made by them in the finalization of those findings, measures and recommendations.

X. COMMITTEE REPORTS TO THE MEETING OF THE PARTIES TO THE PROTOCOL

32. The Committee shall report on its activities at each ordinary meeting of the Parties and make such recommendations as it considers appropriate, including recommendations on measures referred to in paragraph 34. Each report shall be finalized by the Committee not later than twelve weeks in advance of the meeting of the Parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall be taken by a two-thirds majority of the members present and voting or by five members, whichever is the greater. Committee reports shall be made available to the public.

XI. MEASURES TO PROMOTE COMPLIANCE AND ADDRESS CASES OF NON-COMPLIANCE

33. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance:

* The wording of paragraphs 29 and 30 should be reviewed if it was decided to establish a Committee made of Parties.

(a) Provide advice and facilitate assistance to individual Parties regarding their compliance with the Protocol, [which may include seeking support from specialized agencies and other competent bodies, as appropriate] [which may include advice on which specialized agencies and other competent bodies could provide the Parties with support];

(b) Request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance with the Protocol within a time frame to be agreed upon by the Committee and the Party concerned;

(c) Invite the Party concerned to submit progress reports to the Committee on the efforts that it is making to comply with its obligations under the Protocol; and

(d) Issue cautions; and

(e) [In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public.]

34. The Meeting of the Parties to the Protocol may, upon consideration of the report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Protocol. The Meeting of the Parties to the Protocol may, depending on the particular question before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following measures:

(a) Measures referred to in paragraph 33;

(b) [Recommend to Parties to provide financial and technical assistance, technology transfer, training and other capacity-building measures;]

(c) [Provide] [Facilitate] [Provide advice on the procurement of] financial and technical assistance, technology transfer, training and other capacity-building measures, including when appropriate to seek support from specialized agencies and other competent bodies;

(d) Issue declarations of non-compliance;

(e) Give special publicity to cases of non-compliance;

(f) [Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Protocol; or]

(g) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

XIV. RELATIONSHIP BETWEEN SETTLEMENT OF DISPUTES AND THE COMPLIANCE PROCEDURE

35. The present compliance procedure shall be without prejudice to article 20 of the Protocol on the settlement of disputes.

XV. ENHANCEMENT OF SYNERGIES

36. In order to enhance synergies between this compliance procedure and compliance procedures under other agreements, the Meeting of the Parties to the Protocol may request the Compliance Committee to communicate as appropriate with the relevant bodies of those agreements and report back to it, including with recommendations as appropriate. The Compliance Committee may also submit a report to the Meeting of the Parties to the Protocol on relevant developments between the sessions of the Meeting of the Parties to the Protocol.

[37. If, during its activity, the Committee becomes aware of possible compliance issues under another international environmental agreement [concluded in the framework of the United Nations Economic Commission for Europe (UNECE)] applicable to the Party concerned and falling within the competence of an international mechanism of compliance review, it may transmit the relevant information to the secretariat of the relevant international environmental agreement.]