

ANNEX

Advice provided by the Compliance Committee within the Consultation process under the Protocol on Water and Health

Based on decision IV/2 of the Meeting of the Parties to the UNECE-WHO Regional Office for Europe Protocol on Water and Health on general issues of compliance (ECE/MP.WH/13/Add.2-EUPCR/1611921/2.1/2016/MOP-4/06/Add.2), at its 15th meeting (Geneva, 13-14 November 2017), the Committee decided to invite Estonia, Latvia and Lithuania to engage in the Consultation Process. The three Parties accepted the invitation. The consultations took place between November 2017 and November 2018 and had the following components:

- A stock-taking exercise to understand the situation regarding water and health in each country prior and during the Committee's 16th meeting (Geneva, 6-7 March 2018).
- An Interpretive Note clarifying the relevant legal provisions of the Protocol, based on the information gathered and lessons learned during the process.
- Provision of specific advice during and after the Committee's 17th meeting (Geneva, 5-6 November 2018).

The Committee has also planned, as a fourth component, to follow-up on action taken in response to the advice provided, including in the framework of the 4th reporting exercise under the Protocol to be launched in October 2018.

In the course of the consultations, the Committee held plenary and individual discussions with the Parties on the situation of water and health in Estonia, Latvia and Lithuania and on their needs and expectations from the process. The Committee identified specific challenges faced by each country and also a number of cross-cutting priorities, namely the target-setting process under the Protocol and its relation to the implementation of the European Union legislation, small-scale water supply and sanitation systems, the organizational structure at the domestic level and financing.

Accordingly, the Committee provided the following advice regarding the common needs and expectations of the three Baltic states:

1. Relationship between the Protocol on Water and Health and the relevant European Union instruments

A key concern of all three States Parties to the Protocol involved in the Consultation Process relates to the consistency between their obligations arising from the Protocol and those arising from the European law instruments relevant to the pursuance of the Protocol's goals. To provide guidance on this topic, which is of broader interest also to other Parties to the Protocol, the Compliance Committee is currently working on an Interpretive Note analyzing the relevant provisions of the Protocol. At this stage and for the purpose of the Consultation Process, the Committee provides the following preliminary guidance.

Overall, the Protocol requires States Parties to exercise due diligence so as to provide access to water and sanitation. This general duty is fleshed out through four clusters of obligations. The first cluster requires States to set targets in several areas relating to water management, sanitation and health, as well as to monitor them and regularly report on their achievement. Although this is a procedural obligation of result, such a system is flexible and admits several implementation approaches. From this perspective, a significant strength of the Protocol is its flexibility as the national water and health

targets are to be adapted to the situation of each particular country. The second cluster of obligations concerns the establishment, improvement and maintenance of a system to respond to water and health-related emergencies. The third cluster of obligations provides for access to the relevant information, public participation in decision-making processes, and appropriate access to justice. The fourth cluster of obligations focuses on inter-State – horizontal – cooperation. A significant benefit of participating in the Protocol activities is thus that it offers a platform for exchanging experience and learning among countries.

States Parties to the Protocol can discharge these due diligence obligations through means of their own choosing. The parameters within which such discretion is to be exercised depend upon each specific obligation. Some obligations afford wider discretion than others in the selection of means. Within the parameters set for a given obligation, States Parties to the Protocol are entitled to adopt measures that are more stringent than those arising from the Protocol.

From the perspective of the Protocol, thus characterized, European Law instruments are means that States Parties to the Protocol, which are also Members of the European Union, may choose as part of their discretion in the selection of means to implement their obligations under the Protocol or to adopt measures that are more stringent than the latter. In addition, such States Parties to the Protocol are also entitled to adopt domestic measures that are more stringent than the standards arising from European Law instruments. This is a possibility expressly stated in European Union law, for example, in Article 193 of the Treaty on the Functioning of the European Union.

On the basis of the foregoing observations, the Compliance Committee considers that the European Union instruments relating to water and sanitation are generally consistent with the obligations arising from the Protocol because they give effect to some or all of these obligations and permit State Parties to the Protocol which are also Members of the European Union to adopt more stringent measures in their domestic law whenever this may be appropriate.

Moreover, there are important synergies between the Protocol and European Union instruments. Access to water and sanitation as human rights are widely acknowledged and endorsed by the Member States of the European Union. The Protocol supports countries in fulfilling their commitment to ensure access to water and sanitation for all, including vulnerable and marginalized groups. One apposite illustration is provided by the [Methodology for equitable access self-assessment](#) developed under the Protocol, which has been successfully applied in a number of Member States of the European Union, including France, Hungary and Portugal. The work supported by the Protocol in this area is therefore in line with the policy objective of the EU Drinking Water Directive recast, namely improving access to safe drinking water for all, including vulnerable and marginalized groups.

Further important synergies between the Protocol and European Union instruments and policy goals can be identified with respect to small-scale water supply and sanitation systems, which has been identified as an important area of policy attention under both legal regimes. Furthermore, ensuring safely managed drinking-water and sanitation services in accordance with relevant WHO guidelines is another area where synergies can be achieved. This is particularly the case in the context of the recast of the EU Drinking Water Directive. The recast process is expected to strengthen water safety planning (WSP) principles, which are also strongly supported by the Protocol. Several policy guidance documents and tools have been developed under the Protocol to address issues such as [baseline assessment of the status of small-scale water supplies](#), [good practices for policy action to improve small-scale water supply and sanitation systems](#), [guidance on WSP uptake in small community water supplies](#) and facilitation of networking through a series of [sub-regional events on small-scale water supplies](#), including for Baltic countries.

2. Relying on the Protocol to raise awareness among policy-makers and consumers, ensuring involvement of the general public and fundraising for targets set in the country

- Recommendation: consider establishing specific targets on public awareness and conducting education campaigns to further strengthen stakeholder engagement

The Protocol places great emphasis on public information and public participation as it recognizes that awareness and participation are key for the quality and acceptability of decisions. In addition, raising awareness among policy-makers is crucial to ensure the requisite political will for adequate implementation of the Protocol. The Baltic countries would benefit from improving awareness of the situation with water, sanitation and health to ensure political support, address and prevent population concerns (e.g. water quality and safety, pollution from oil shale mining), promote safe practices, and increase willingness to pay for water and sanitation services.

Communicating progress, achievements and remaining challenges to the public and other stakeholders is key to attract attention to water, sanitation and health issues. The momentum provided by the 2030 Agenda for Sustainable Development (2030 Agenda) can be leveraged to raise awareness of the central position of water, sanitation and health to achieving several other development goals. The Protocol and the 2030 Agenda provide an opportunity for joint promotion, as well as the possibility of bringing the Protocol to the attention of high-level decision-makers.

The setting of national targets and the development of a summary report under the 4th reporting cycle of the Protocol are key actions in a strategy to increase the public profile of Protocol among policy-makers and the public. By engaging representatives of different ministries and agencies involved in water, sanitation and health issues, and raising awareness on it among the general public, these processes offer an ideal platform for awareness and profile raising, particularly if the summary report contains an overall assessment of the situation of water and health and highlights success stories and achievements.

In addition, the following opportunities could be used to raise awareness of the Protocol:

- Involving stakeholders representing different sectors at the national, regional and local level by holding dedicated workshops and awareness campaigns. This would increase their commitment and facilitate their contribution to the implementation of the targets.
- Widespread publication of information relating to the Protocol and the achievement of targets through government and public websites and national resource centres, etc.
- Raising awareness on the WHO water safety plan (WSP) approach as a tool that supports water suppliers in assessing the risks to water quality and managing them appropriately. The Protocol provides guidance and practical support for WSP uptake at national level.
- Engaging with media to draw public attention to the needs and challenges of the country, including through preparing articles for magazines, newspapers and online platforms.
- Taking part in the relevant conferences, seminars and professional meetings to discuss the challenges in the area of water, sanitation and health and to present the benefits of the Protocol.

In terms of engaging the public specifically, the [Guide to public participation under the Protocol on Water and Health](#) provides information on the Protocol provisions relating to public participation and outlines good practices and tools for raising public awareness illustrated by case studies from different countries.

The Committee recommends countries to establish clear modalities for public involvement in the process of setting targets and reporting under the Protocol, through carrying out public consultations

and involving representatives of the public in the intersectoral mechanisms on Protocol implementation.

3. Financial instruments and mechanisms to implement targets under the Protocol, with a particular focus on small-scale and individual water supply systems

- Recommendation: consider increasing financing of the water and sanitation sector with specific focus on small-scale and individual water supply systems
- Recommendation: consider setting specific targets on individual water supply and sanitation systems

The water and sanitation sector requires increased financing to maintain the necessary quality and safety standards. In the Baltic countries, maintenance, reconstruction and extension of water and sanitation systems, wastewater treatment, protection of water resources and the environment, efficiency of energy and water use and connection of individuals to centralized systems are all issues of particular concern.

Over the last decade, the European Union has channeled significant amounts of investment to upgrade water infrastructure in Estonia, Latvia and Lithuania. However, the current funding scheme will only continue until 2020.

In terms of future opportunities, the investment priority for the EU [Cohesion Policy](#) in 2021-2027 will be supporting locally-led development strategies and empowering local authorities in the management of the funds. Countries could benefit, for example, from strengthening the urban dimension of the Cohesion Policy and seeking funding opportunities under the [EU Urban Innovative Actions initiative](#) that could also cover water and sanitation systems. Moreover, the [EU Strategy for the Baltic Sea Region](#) provides for a number of possible [funding instruments](#).

It is important to consider, in addition to funding from the European Union, other funding sources and initiatives, including the [Baltic Smart Water Hub](#), Central and Regional [Operative Programmes](#), further financing programs and loans, such as funding and advisory assistance available from the [European Investment Bank](#), from the [World Bank](#), the [Nordic Council](#), etc.

For the individual and small-scale water supply and sanitation systems, the joint secretariat of the Protocol is currently preparing a guide on costing and financing of such systems. This guide, which is expected to be released by November 2019, focuses on small systems but it builds on general principles of costing and financing of water, sanitation and hygiene (WASH) services.

While the Committee neither has the necessary resources nor the expertise to provide specific advice on financing of water supply and sanitation systems, it can draw the attention of the Working Group on Water and Health and of the Meeting of the Parties to the Protocol to focus on the issue of financing in the future programme of work of the Protocol for 2020-2022.

The Committee also recommends setting specific targets on individual water supply and sanitation systems that are a common challenge in the Baltic countries. Unlike centralized water supply systems that are covered by the requirements of the EU Drinking Water Directive, individual systems are less specifically regulated, and the necessary funding and capacity for monitoring the quality of water supplied is often lacking.

A possible target in this area would be to carry out a baseline analysis for individual water supplies, including issues such as mapping, surveillance, compliance with water quality standards, efficiency and sustainability of the infrastructure, financing needs and potential sources of funding, capacity

building, and awareness raising of individual supplies users and operators and issues of affordability and equity.

4. Capacity building for water suppliers and municipalities, with a special focus on risk assessment of water supply systems

- Recommendation: consider setting target on evaluating the needs and organizing training and capacity building for both large and small-scale water operators.

Adequately trained operating personnel are vitally important to the sustained, safe operation of water systems. The Baltic countries need to ensure that there are sufficient opportunities for training and capacity building available to the water and sanitation operators. In terms of risk assessment, the area 5 of the programme of work of the Protocol for 2017-2019 is designed to support Parties to build capacity towards adopting and scaling up the water safety plan approach, or in other words, risk assessment and risk management in water and sanitation systems. In this regard, the Committee recommends the joint secretariat continues providing assistance to Parties in developing national capacities and strategies towards scaling-up risk assessment (WSP) approaches.

For on-site staff education, it is possible to rely on e-learning programmes. Different funding opportunities exist for developing such programmes, including [the EEA and Norway Grants, EU Operative Programmes](#) and the [World Bank programmes](#). In Norway, for example, the National Water Association is entrusted with the development of e-learning programmes for utilities. It is also possible to rely on some existing training centers such as the [Gdansk Water Foundation](#).

The Baltic countries could also benefit from setting up a joint training center for the three countries. A good example of such joint initiative would be the [Danube Learning Partnership \(D-LeaP\)](#) which is a capacity building center for national water utility associations in the Danube region.

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The representatives of the Baltic countries also raised a number of specific needs. Given the potential relevance of the Committee recommendations to the three countries, the basis for these recommendations is discussed hereafter.

5. Institutional set up for implementing the Protocol (Estonia and Lithuania)

- Recommendation: establish an interministerial mechanism to implement the Protocol, involving all the relevant stakeholders, beyond the environment and health ministries.

Establishing an interministerial mechanism for implementing the Protocol (e.g. a committee, a steering mechanism, a working group) is an important precondition for bringing together all the relevant stakeholders and ensuring their participation in setting and subsequently implementing the targets as well as, more generally, for discharging the four clusters of obligations arising from the Protocol. Good practices from States Parties to the Protocol suggest that, beyond environment and health, involvement of other relevant ministries such as social affairs, education, agriculture, energy, economic affairs and infrastructure, rural development and finance, together with water and wastewater operators and water users associations, civil society and environmental protection organizations, can be very useful to strengthen the implementation of the Protocol.

Whether such a mechanism is established specifically for implementing the Protocol or based on an existing one, such as the structures for implementing the relevant European Union instruments,

depends on the specific institutional setting. States have wide discretion to select the mechanisms most appropriate to their needs.

The interministerial mechanism, whether existing or newly established, should also provide the framework for the development and discussion of a baseline analysis covering all areas under Article 6, para. 2 of the Protocol, which is a prerequisite to set comprehensive targets and ensure implementation of the Protocol.

6. Enforcement of the targets set under the Protocol (Estonia and Lithuania)

- Recommendation: consider endorsing the targets set under the Protocol at the highest possible political level in order to ensure their implementation

Setting targets under the Protocol is not an end per se but a mean to enhance the water and health situation in the country through their implementation, monitoring and regular revision. As noted earlier in this letter, the obligations arising from the Protocol are of a due diligence nature. Hence, their expression *inter alia* through a procedural obligation of result is only a component within the overall duty to exercise due diligence to ensure access to water and sanitation. To this end, the final agreed targets should be formally endorsed at the appropriate political level which is to be decided depending on the national situation (e.g. decision by the Cabinet of Ministers or Parliament, interministerial decision, etc.). Targets and target dates can also be adopted as part of a national programme dealing with water and health issues or a broader strategy on sustainable development. The Protocol leaves ample discretion to States Parties in this regard, as long as targets are officially adopted.

Official adoption is also important to facilitate the financing of measures necessary to achieve the targets which should be developed as part of the target setting process. While one ministry usually assumes the leading role during the official adoption process, an interministerial consultation, including the ministry of finance and ministries and agencies responsible for implementation, is an important step in confirming the commitment to the future implementation of targets.

For example, in the case of Norway, the targets focused on repairing and upgrading the infrastructure for water supply, sewerage and urban drainage. The implementation plan, with the required measures and the estimated total investment needs, was widely publicized by the national media attracting high attention and priority among the policy-makers and municipalities.

7. Consolidation of water companies – achieving the long-term water management sustainability (Estonia)

- Recommendation: consider establishing one or more targets to strengthen the effectiveness and financial sustainability of small public utilities, addressing among others, the consolidation of the sector and the capacity of operators.

According to information provided by Estonia, there are at present over 200 water companies operating in the country. The high number of small or individual public utilities limits their effectiveness and financial sustainability. Some important progress in the efforts to consolidate the sector has been made in the past years but further consolidation is needed.

Estonia has already acquired experience in addressing this challenge, which could be shared with other Parties to the Protocol facing a similar challenge. There are several examples of countries in Europe, which have gone through such consolidation processes (e.g. Italy and the United Kingdom). While

these two countries are not Parties to the Protocol, the Committee recommends the joint secretariat to facilitate twinning for exchanging experience on possible consolidation models and also to address this topic in one of the future technical meetings under the Protocol.

In addition, the Committee notes that the issue of water sector consolidation is also partially addressed in the publication [Taking policy action to improve small-scale water supply and sanitation systems. Tools and good practices from the pan-European Region](#) developed under the Protocol.

8. Water Safety Plans uptake (Lithuania)

A wealth of [WHO resource materials](#) are available to support Water Safety Plans (WSP) uptake at the national level. Following the initial consultation with the Committee, which took place in November 2017, Lithuania requested the joint secretariat to organize a comprehensive WSP capacity building workshop which was delivered by WHO Regional Office for Europe in August 2018. Several follow up actions were agreed as the result of this activity, including piloting WSPs and producing a national guidance document on this issue.

9. Relationship between the requirements of the Protocol and other global and regional commitments such as the 2030 Agenda for Sustainable Development and the Ostrava Declaration (Lithuania)

The 2030 Agenda for Sustainable Development, with its Sustainable Development Goals 3, 6 and other water, sanitation and health related targets, is an international instrument of utmost importance towards providing equitable access to safely managed drinking water. The Protocol and the 2030 Agenda are mutually reinforcing. The provisions and principles of the Protocol, with its integrated and intersectoral approach, its focus on prevention and on the whole water cycle, and its attention to safety and equity aspects, are fully aligned with the water, sanitation and health related Sustainable Development Goals and targets. Since the adoption of the 2030 Agenda, the Protocol, through its target setting mechanism, has provided a framework to operationalize the implementation of the relevant goals and to foster their achievement in the pan-European region, while avoiding duplication of efforts and reducing burden on national authorities. In turn, implementation of the 2030 Agenda can be used to promote accession to the Protocol and its implementation, at national, regional and global level, thereby facilitating achievement of the Protocol objectives – universal access to safe drinking water and adequate sanitation.

The joint secretariat is currently finalizing the Guide on the joint implementation of the Protocol and the 2030 Agenda. This Guide, which is expected to be released in early 2019, aims to highlight the synergies between the Protocol and the 20130 Agenda and to provide step-by-step guidance for coordinated action.

As regards the [Declaration of the Sixth Ministerial Conference on Environment and Health](#) (Ostrava, Czech Republic, 13–15 June 2017), the WASH-related requirements of the Ostrava Declaration are clearly spelled out in its [Annex 1](#). All of them are in line with the priorities and the programme of work of the Protocol for 2017-2019 as well as with Sustainable Development Goals 3, 4 and 6. The Committee recommends the joint secretariat to provide further advice on this matter, as needed.

Follow up on the Committee's specific advice

As noted earlier, in addition to the specific advice offered to the three States participating in this Consultation Process, the Committee will issue a more detailed Interpretive Note on the relations between the Protocol and the relevant European Union instruments.

With regard to the above common challenges and priorities, the Committee recommends that the Baltic states use the target setting under the Protocol as a tool for establishing clear objectives that would reflect country priorities in line with the EU Directives and going beyond them, as needed. The 2018-2019 4th reporting exercise under the Protocol provides an opportunity for publicizing the targets and bringing them to the attention of the high-level decision makers, international financing institutions, donor community, investors, etc.

The Committee also recommends that the three Baltic states continue exchanging experience on the issues of common interest both bilaterally and using the intergovernmental platform offered by the Protocol. Implementing the Committee advice jointly, where practicable, would also be of added value. Such examples of interstate cooperation could be reported within the 4th reporting cycle under the Protocol.

The Committee will follow up regarding the implementation of its specific advice by the end of 2019.

The Committee trusts that the recommendations and resources provided in this document will be helpful to support the three States in their diligent efforts to ensure access to water and sanitation for all under the Protocol.