



Meeting of the Parties to the Protocol on
Water and Health to the Convention on
the Protection and Use of Transboundary
Watercourses and International Lakes

Compliance Committee

Twelfth meeting

Geneva, 19 and 20 October 2015

Item 4 of the provisional agenda

**Implementation of and compliance with the
reporting requirements**

28 June 2016

**Analysis of the links between the obligation to set targets under article 6 and the obligation to
report under article 7 of the Protocol on Water and Health**

*Prepared by a member of the Compliance Committee, in consultation with the Committee's Chair
and the secretariat, and endorsed by the Committee (at its 13th meeting)*

Both obligations 'to establish targets and target dates' and 'to report' are clearly enshrined in the Protocol on Water and Health. Thus, pursuant to Article 6(3) of the Protocol "[w]ithin two years of becoming a Party, each Party shall establish and publish targets referred to in paragraph 2 of this article, and target dates for achieving them"; and pursuant to Article 7(5) "[e]ach Party shall provide to the secretariat referred to in article 17, for circulation to the other Parties, a summary report of the data collected and evaluated and the assessment of the progress achieved".

At its second session the Meeting of the Parties to the Protocol "[r]ecognized that setting targets and reporting were one of the mainstays of the Protocol's implementation" [ECE/MP.WH/4-EUDHP1003944/4.2/1/06, para. 27(g)]. This is built upon the provisions of the Protocol. Namely, pursuant to Article 6(1) of the Protocol the targets and target dates shall be established "[i]n order to achieve the objective of this Protocol" and pursuant to Article 7(6) "[t]he Meeting of the Parties shall evaluate progress in implementing this Protocol on the basis of such summary reports".

Three questions arise as to the relation between the obligations in question:

- (a) Should the reports be focused only on targets and target dates established under Article 6(2)?
- (b) Is there an obligation to communicate to the secretariat of the establishment of targets and target dates?
- (c) To what extent is the Compliance Committee under the Protocol on Water and Health entitled to raise itself concrete non-compliance cases regarding (grave) failures or imperfections relating to the contents of summary reports?

(a) As mentioned above, pursuant to Article 7(5) a summary report is to be “of the data collected and evaluated and the assessment of the progress achieved”. If to read this provision in conjunction with Articles 7(1(a))¹, 7(2)² and 7(4)³, it becomes clear that reporting on targets and target dates established under Article 6(2) is the fundamental element of the reporting under the Protocol.

At its second session the Meeting of the Parties to the Protocol “[a]dopted the guidelines and template for summary reports in accordance with article 7 of the Protocol on Water and Health, as contained in document ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7 and its annex, recognizing their strategic importance for assessing progress with the implementation of the Protocol” [ECE/MP.WH/4–EUDHP1003944/4.2/1/06, para. 52(a)]. Paragraph 9 of the above document states: “for the sake of promoting harmonization in the whole region covered by the United Nations Economic Commission for Europe (UNECE) and the World Health Organization Regional Office for Europe (WHO-Europe), Parties have agreed to report on a limited number of issues using commonly agreed indicators that are closely related to the areas under article 6, paragraph 2, for which targets should be set” [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7, para. 9].

However, reporting on targets and target dates established under Article 6(2) is not the only element of the reporting under the Protocol. Article 7(1(b))⁴, para. 14 of the ‘Guidelines for summary reports in accordance with article 7 of the Protocol on Water and Health’ [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7] and parts Two and Four of the ‘Template for summary reports under the Protocol on Water and Health’ [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7, annex], read in conjunction with the second sentence of Article 7(5) of the Protocol⁵, support such a conclusion. At its second session the Meeting of the Parties to the Protocol “decided that Parties should publish at least every three years the results of data collection and evaluation in accordance with the requirements of article 7 paragraph 2 of the Protocol. It also agreed that, in accordance with article 7 paragraph 4 of the Protocol, Parties should review progress made in achieving the targets at least every three years, starting from 2009” [ECE/MP.WH/2–EUR/06/5069385/1, para. 39]. Moreover, “[t]he Meeting emphasized that the review of progress should be based both on the published data on target and target dates and on the reports of Parties submitted to the joint secretariat in accordance with article 7” [ECE/MP.WH/2–EUR/06/5069385/1, para. 40].

Hence, there is a solid legal basis for the reporting template to address issues beyond target areas.

(b) The Protocol does not establish a clear obligation for the Parties to inform the secretariat of the targets and target dates set. At its first session the Meeting of the Parties to the Protocol explicitly “invited Parties that had not yet done so to send to the joint secretariat information on established targets and target dates” [ECE/MP.WH/2–EUR/06/5069385/1, para. 31]. In the decisions or in the

¹ Pursuant to Article 7(1) “[t]he Parties shall each collect and evaluate data on: (a) [t]heir progress towards the achievement of the targets referred to in article 6, paragraph 2”.

² Pursuant to Article 7(2) “[t]he Parties shall each publish periodically the results of this collection and evaluation of data”.

³ Pursuant to Article 7(4) “[o]n the basis of this collection and evaluation of data, each Party shall review periodically the progress made in achieving the targets referred to in article 6, paragraph 2, and publish an assessment of that progress”.

⁴ Pursuant to Article 7(1) “[t]he Parties shall each collect and evaluate data on: (b) [i]ndicators that are designed to show how far that progress has contributed towards preventing, controlling or reducing water-related disease”.

⁵ Pursuant to Article 7(5) “[s]uch reports shall be in accordance with guidelines established by the Meeting of the Parties”.

proceedings of the sessions of the Meeting of the Parties that followed such an invitation or request has not been reiterated, despite the fact that the Meeting of the Parties has been continuously urging those Parties that have not yet done so to establish targets and target dates referred to in Article 6(2). It should be recalled, however, that since the information on ‘the targets and target dates set’ falls within the reporting requirements and the secretariat is the body to which the reports shall be provided “for circulation to the other Parties”, it could be established that the obligation to inform the secretariat and, via the latter, the other Parties exists as part of the obligation to provide a summary report pursuant to Article 7(5) of the Protocol.

Hence, there is solid legal basis for considering that obligation of communicating targets to the joint secretariat is implicit in the template of the summary reports.

(d) Pursuant to Article 15 of the Protocol on the ‘Review of compliance’ “[t]he Parties shall review the compliance of the Parties with the provisions of this Protocol on the basis of the reviews and assessments referred to in article 7”. To that end the Meeting of the Parties, pursuant to the second and third sentences of Article 15, and with its Decision I/2 [ECE/MP.WH/2/Add.3–EUR/06/5069385/1/Add.3], have established the Compliance Committee.

It should be noted that Article 7 refers to a number of reviews and assessments. In its paragraph 4 Article 7 contains an obligation for each Party to conduct a ‘self-assessment’. It reads as follows: “[e]ach Party shall review periodically the progress made in achieving the targets referred to in article 6, paragraph 2, and publish an assessment of that progress. The frequency of such reviews shall be established by the Meeting of the Parties”. In its paragraph 5 Article 7 establishes that “[e]ach Party shall provide to the secretariat ... a summary report of the data collected and evaluated and the assessment of the progress achieved”.⁶ Finally, one could argue that the ‘evaluation of data’ referred to in Article 7(2) and, consequently, in Article 7(4) and (5), and the ‘evaluation of progress’ referred to in Article 7(6) of the Protocol could also be considered as ‘assessments’.

At its second session, the Meeting of the Parties adopted the ‘Guidelines for summary reports in accordance with article 7 of the Protocol on Water and Health’ [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7] and requested Parties to the Protocol and other States to follow the guidelines and template in the following reporting cycle for the third session of the Meeting of the Parties. The guidelines, inter alia, “require” Parties to “[s]tructure their summary reports according to the template contained in the annex to these guidelines”. Furthermore, “[t]o ensure completeness, no mandatory element should be excluded. If mandatory elements cannot be reported for any reason, Parties should explain the omission or the reason for partial reporting in the section relating to that element” [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7, para. 11].

Bearing in mind that “[t]he aims of the guidelines are: (a) [t]o assist Parties in meeting their commitments under article 7 of the Protocol; (b) [t]o promote the provision of consistent, transparent, accurate and complete information in order to enable a thorough review and assessment of the implementation of the Protocol by the Parties; (c) [t]o assist the Meeting of the Parties in carrying out its responsibilities to review the progress in implementation of the Protocol pursuant to

⁶ One could establish that the Protocol is not completely clear if the summary report referred to in Article 7(5) of the Protocol shall contain a copy of the ‘self-assessment’ referred to in Article 7 (4), or a summary of that ‘self-assessment’. Moreover, paragraph 12 of the ‘Guidelines for summary reports in accordance with article 7 of the Protocol on Water and Health’ [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7] suggests that “[t]he summary reports should be useful for the self-assessment of Parties” and not vice versa, but, perhaps, the concept of ‘self-assessment’ here has no direct linkage to the ‘self-assessment’ under Article 7 (4) of the Protocol.

article 7, paragraph 6” [ECE/MP.WH/2010/L.5–EUDHP1003944/4.2/1/7, para. 9] and the fact that pursuant to the second sentence of Article 7(5) “[summary] reports shall be in accordance with guidelines established by the Meeting of the Parties” the provisions of paragraph 11 of the Guidelines on the structure and completeness of the summary reports contain a requirement. Therefore, the Compliance Committee is entitled to raise itself concrete non-compliance cases regarding (grave) failures or imperfections relating to the contents of summary reports as regards their consistency, transparency, accuracy and completeness.

The above analysis corroborates the decision taken by the Committee at its tenth meeting on its competence to examine non-compliance issues which are not related to the obligation to submit the summary report.