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**ADMISSIBILITY OF COMPLAINTS
RELATED TO SPECIES LISTED IN APPENDIX III:
THE BADGER (*MELES MELES*) AS A MODEL**

- GUIDANCE FOR COMPLAINANTS -

*Secretariat Memorandum
prepared by
the Directorate of Democratic Governance*

ADMISSIBILITY OF COMPLAINTS RELATED TO SPECIES LISTED IN APPENDIX III: THE BADGER AS A MODEL SHORT EXPLANATORY NOTE

Introduction

The Eurasian badger (*Meles meles*) is a species listed in Appendix III of the Bern Convention (Protected Species).

The growing number of complaints (more than ten since 2010) submitted under the Convention's case-file system, mainly concerning France, Ireland and the UK, has led the Bureau of the Standing Committee to the Bern Convention to ask for a short guide to the attention of possible complainants, in order to help them understanding on which grounds complaints concerning badgers may be considered admissible.

The Eurasian badger

The Eurasian badger is categorised as Least concern in the IUCN Red List, based on an assessment carried out in June 2008.

The species listed as Least Concern in view of its wide distribution, relatively large population, its occurrence in a number of protected areas, and because it is unlikely to be declining at nearly the rate required to qualify for listing in a threatened category¹. Among the countries around the World where the species is present, 36 are Contracting Parties to the Bern Convention. The population trend is defined by the IUCN as stable. Only in Albania the species is considered Endangered, since it disappeared from many areas and became rare in others, mainly due to uncontrolled hunting.

When identifying the major threats to the conservation of the species, the IUCN stresses that its decline in some agricultural areas has been attributed to land-use changes causing a loss of suitable habitat. The species is in fact also sensitive to habitat fragmentation.

The protection of species under the Bern Convention

The aims of the convention are threefold:

- a. to conserve wild flora and fauna and natural habitats;
- b. to promote co-operation between States;
- c. to give particular attention to endangered and vulnerable species, including endangered and vulnerable migratory species.

The Convention urges the conservation of all flora and fauna species and their habitats, regardless of their scarcity². However, the conservation of endangered and vulnerable species, including migratory species, receives particular emphasis.

Provisions establishing general obligations bind the Parties only to the result but allow them a certain degree of discretion as to the most appropriate means to achieve the requested result. Still, Articles 4 to 8 define more specific obligations, and require Parties to take appropriate and necessary legislative and administrative measures to ensure the special protection of the species and habitats listed in the Convention's Appendices.

Although the Convention does not specify the characteristics that a species must have to qualify for listing in a particular Appendix³, the species listed under Appendices I and II benefit from a stricter degree of protection. In fact, only the species listed in Appendices I and II are subject, respectively to

¹ See IUCN Red List: <http://www.iucnredlist.org/details/29673/0>

² See the [Explanatory Report of the Convention](#)

³ The Appendices refer to a particular degree of protection, not to the conservation status or trends. There is no explicit connection between the degree of threat facing a species and its eligibility to be listed in a particular Appendix (cfr. Claire Shine, document T-PVS/Inf (2005) 18).

the prohibition of all forms of deliberate picking, collecting, cutting or uprooting of such plants (Appendix I) and capture and keeping, and deliberate killing, deliberate damage to or destruction of breeding or resting sites, deliberate disturbance, deliberate destruction or taking or keeping of eggs from the wild, and deliberate possession/internal trade.

The protection granted to species listed in Appendix III

As clearly stated in the [Explanatory Report](#) of the Bern Convention:

- **Appendix I** – “*Strictly protected flora species*”, lists all flora species which are to be **specially** protected⁴. Exceptions from this provision may only be made under the strict conditions set out in Article 9.
- **Appendix II** – “*Strictly protected fauna species*”, lists fauna species which are to be **specially** protected. Exceptions to this provision may only be made under the strict conditions set out in Article 9⁵.
- **Appendix III** – “*Protected fauna species*”, lists species to be protected but for which a certain exploitation is possible if the population levels permit.
- **Appendix IV** – “*Prohibited means and methods of killing, capture and other forms of exploitation*”, lists the means capable of causing local disappearance of or serious disturbance to populations of a species. Appendix IV applies to all species, regardless from the Appendix they are listed in. It should be noted that the prohibition of the use of certain means and methods was limited to those applied for large-scale and/or non-selective capture or killing.

The Article which defines the protection to be given to species listed in Appendix III is **Article 7** which states:

*“Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III. Any exploitation of wild fauna specified in Appendix III shall be regulated **in order to keep the populations out of danger**, taking into account the requirements of Article 2⁶.”*

Measures to be taken shall include:

- *closed seasons and/or other procedures regulating the exploitation;*
- *the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels;*
- *the regulation as appropriate of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals”.*

As stated in the Explanatory report Article 7 of the Convention, “*considering that Appendix III species may all, in varying degrees, **be legitimately subject to exploitation in a particular State**, does not exclude the possibility for each Contracting Party to authorise such exploitation **on condition that this affects only those species not threatened on its territory** and that such exploitation does not jeopardise the animal population concerned”.* In so doing, the Contracting Party **must supervise the exploitation and, if necessary, impose stricter measures.**

Therefore the preliminary considerations which may be drawn from the reading of Article 7 are that, in order to be admissible, a complaint concerning Badgers in a Contracting Party should show clear evidence that:

⁴ Appendix I is based on the list of species endangered in the region covered by the Council of Europe, established, at the request of the ad hoc committee, by IUCN's Threatened Plants Committee at the time of the drafting of the Convention.

⁵ In establishing Appendix II, account was taken of the lists of mammals, birds, amphibians and reptiles threatened in Europe drawn up by the European Committee for the Conservation of Nature and Natural Resources and subject to various resolutions adopted by the Committee of Ministers of the Council of Europe at the time of the drafting of the Convention.

⁶ Article 2 of the Convention requires Parties to take measures to “maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally”, the latter being intended as the national territory (see Explanatory Report on Article 2 of the Convention).

- 1: the Party has not taken the appropriate and necessary legislative and administrative measures to ensure the (general) protection of the species;
- 2: the measure undertaken for its exploitation does jeopardise the animal population concerned;
- 3: the exploitation is not regulated to take the population out of danger;
- 4: The exploitation is not monitored by the Party.

These pre-conditions should also apply when analysing a possible breach of Article 9 by a Party in relation to its reporting obligations regarding species listed in Appendix III.

The reporting obligations under Article 9

Article 9.1 fixes the two general conditions and certain special conditions under which the Parties can make exceptions from the obligations they have accepted in pursuance of Articles 4 to 8; Article 9.2 requires Parties to submit biennial reports whenever they make exceptions to otherwise prohibited actions. This compulsory reporting system enables the Standing Committee to carry out the monitoring of the implementation of the Convention.

Indeed, many complainants do argue a violation of Article 9 when a Party implementing culling programmes affecting badgers fails to report to the Standing Committee under the biennial reports' regime set by Article 9.2.

The reporting obligations in relation to species listed in Appendix III only materialises when a Party makes exceptions from the provisions of Article 7 or 8. While the prohibited means and methods of killing, capture and other forms of exploitation (Article 8) applies indistinctly to all species, regardless from the Appendix in which they are listed, Article 7 does not expressly include all forms of deliberate capture and keeping and deliberate killing, the deliberate damage to or destruction of breeding or resting sites; the deliberate disturbance of wild fauna, the deliberate destruction or taking or keeping of eggs from the wild, the possession of and internal trade in these animals (Article 6), nor for plant species the deliberate picking, collecting, cutting or uprooting (Article 5).

This implies that, potentially, if the species listed in Appendix III is not threatened in the territory of the Contracting Party, the population is not jeopardised, the exploitation is monitored by the concerned authorities, the Party has not used one of the prohibited means listed in Appendix IV (and going further for taking into account the primary aim of the Bern Convention which is to **conserve wild flora and fauna**: the species is not endangered at European level, and it is not a migratory species), the Party can authorise a certain degree of exploitation without being obliged to report to the Standing Committee through the biennial reports.

Nevertheless, when the Party considers that it would need to make an exception from the provisions of Article 7 (or 8), its authorities will need to ensure that the strict conditions set in Article 9 for allowing the exceptions are met. In fact, these conditions bind the Parties in relation to all species, regardless of their presence on one or the other Appendix.

The further reading of the [Revised Resolution No. 2 \(1993\) on the scope of Articles 8 and 9](#) may help better understanding the regime of exceptions under the Convention and the reporting obligations of Parties.

Examples of the two latest decisions taken by the Bureau in relation to badgers:

➤ **2013/7: Presumed risk of national extinction of badgers (*Meles meles*) in England - Dismissed**

The Secretariat registered under this reference a series of complaints submitted in the same period (2013-beginning of 2014) by citizens denouncing the presumed risk of national extinction of the European badgers (*Meles meles*) in England as a result of indiscriminate cull of the species. Many applicants also questioned the humaneness of the practice.

In reply to the questions raised by the Secretariat the U.K. authorities confirmed that the decision to extend the culling period concerned only the two pilot areas of Somerset and Gloucestershire (*limited local scope*), on the basis that further badgers needed to be culled from a disease control

perspective after the initial 6-week period (*extension of the cull “to prevent serious damage to livestock”, Article 9.1*).

The UK affirmed that the estimates of the badgers’ populations were collected immediately before the start of the culling with the objective of removing in the given area 70% of the total badger population. The monitoring of the 20-30% remaining badger activity would be carried out.

The national authorities also reminded that the badger’s natural range stretches across the whole of Great Britain and that the badger’s population’s conservation status is uniform across this natural range.

DECISION: The Bureau thoroughly discussed the issue. It showed understanding for the concern about the alleged cruelty of the culls, but stressed again that animal welfare issues do not fall under the scope of the Convention (except for the prohibited means and methods of killing, capture and other forms of exploitation listed in Annex IV) and cannot be taken into account when examining complaints. Regarding the species, the Bureau recalled that badgers are included in Annex III of the Convention, and that therefore they benefit from a less strict degree of protection than the one accorded to species listed in Annexes I and II. In addition, the badger is a very common species which, according to the latest data available from the IUCN, is present in at least 36 Contracting Parties. Moreover, the species is listed as Least Concern by the IUCN.

Taking all the above into account, the Bureau decided to dismiss the complaint.

➤ **2013/8: Presumed abusive eradication of the badger (*Meles meles*) in France – Kept under scrutiny**

This complaint was submitted in October 2013 by a French citizen, to denounce a possible breach of the Convention by France with regards to the policy of control of the European badger (*Meles meles*) and its possible eradication on the national territory.

The Secretariat provided a summary of the report sent by the complainant, listing among others, several examples of French departments where badgers’ capture and drastic regulation for the purpose of testing for bovine tuberculosis and population control had been ordered. Moreover, the complainant raised possible problems of compliance with Annex IV of the Convention by quoting some regulations (mainly administrative orders) allowing – under certain conditions – the use of snares and artificial light sources for the capture and killing of the badgers.

The concerned Party didn’t reply to the reporting requests in due time. The Bureau couldn’t assess the position of the authorities.

DECISION: The Bureau recalled that – as specified in Article 8 of the Bern Convention- “in respect of the capture or killing of wild fauna species specified in Appendix III (...), Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing (...) and in particular, the means specified in Appendix IV.

Noting the lack of information from the French authorities, the Bureau decided to consider this complaint as a complaint on stand-by at its next meeting. The Bureau further instructed the Secretariat to reiterate its reporting request to French authorities, asking them to namely address the adverse allegations concerning the possible use of the prohibited means and methods of killing listed in Appendix IV of the Convention.