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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

27<sup>th</sup> meeting  
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**Analysis of the Rules of Procedure  
for the Case File System**

*Secretariat Memorandum  
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## **I. INTRODUCTION**

In its 25 years of existence (1982-2007), the *case-file system* has proven to be an excellent tool to achieve the aims of the Bern Convention through co-operation at the international level. From the first cases, dating back to 1982, when the Standing Committee limited its action to very general Recommendations, to the current cases dealt with great detail and attention, the practice has created a set of steps that have become real rules of procedure for the case-file system.

The success of these procedural steps derives from the very fact that the Standing Committee remains free to decide the solution in each case, without being constrained by strict obligations that may be a burden for the smooth co-operation among Contracting Parties. This is a clear reflection of the commitment embodied in Article 18(1): “The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise”. In fact, the purpose behind the rules currently applied has been to guide the procedure itself, not to influence the flexibility that Contracting Parties have when addressing a particular situation at the Standing Committee. This institution has always been a forum to express opinions and to propose solutions, and strict rules would compromise such freedom.

The current set of rules, adopted in 1993, has been since applied provisionally. Practice has shown that the success or the failure of a case-file procedure does not depend on the procedural rules themselves, but on the will of the Parties. Nevertheless, some changes in these rules could help to have a quicker outcome and, above all, to improve the results achieved by the case-files system through addressing certain problems encountered.

This report is based in two elements: a review of the procedural steps used for the opening and closing of files. The author will firstly review the evolution of the case-file system from the first cases assessed. Secondly, the procedure, as it stands, will be analysed based on the experience gained in 25 years of practice. Thirdly, specific issues not addressed by the rules will be identified and some solutions proposed.

A second element of the report is an up-to-date table containing all basic information on each of the 96 cases assessed by the Standing Committee in its 25 years of experience.

## **II. SUMMARY**

This report contains:

### **1. An analysis of the rules of procedure for the case-file system**

The analysis, introduced by a review of the history of the rules, covers the guidelines applied provisionally since 1993 in the light of the practice developed during the past 25 years of experience. It concludes with a list of issues not covered by the existing rules.

### **2. A table of the cases dealt with**

This table includes information on the complaints, such as the date and identity of the complainant, the species affected, and the reason giving rise to the complaint.

The different decisions taken with regard to each case are also included, such as specific recommendations, on-the-spot appraisals and follow-up actions. Reference to relevant documents are included whenever possible.

In addition, and in accordance with the proposal made by the author, the table includes a reference number for each case dealt with by the Standing Committee.

As of December 2006:

**a. Number of cases examined by the Standing Committee: 96**

(Please note that cases in stand-by that are analysed by the Bureau are not included in this list)

STATUS	NUMBER
Possible files	5 (1992/1- 1998/3- 2006/2- 2006/3- 2006/4)
Open	4 (2004/2- 2004/1- 2001/3- 1995/6)
Not open	49
Closed	34
Follow-up of Recommendations	4 (2001/6- 2002/4-2003/2- 2003/1)

41 Recommendations, 27 on-the-spot appraisals, 2 declarations and 2 decisions

**b. Timing of discussions by the Standing Committee:**

63 cases were discussed	within 2-3 Committee Meetings
16 cases	Within 4-6 Committee Meetings
8 cases	Within 7-14 Committee Meetings
9 cases are still being discussed	

This duration implies the actual time that the Standing Committee takes to decide on a case (whether to open a file or not, to issue a recommendation, or to close a file). The follow-up actions or *items for information* are not included in the consideration of the time-span.

Most of the cases are dealt within one Standing Committee meeting. The reasons for this are different: sometimes it is because the problem is already solved when it finally reaches the Committee. In other cases, the Committee has enough data to issue a Recommendation and, after that, it is the relevant Group of Experts which monitors the case. It may also happen that the measures put in place by the Contracting Party while it is being treated by the Bureau and the Secretariat are dealing with the case, are considered good enough later on by the Standing Committee, and therefore there is no reason to continue discussions.

We could say that the reasons to end discussions on a case are the same regardless of the time spent in the Standing Committee. Discussions may take more or less meetings depending on the circumstances and including: the time that information from the relevant parties takes to reach the Secretariat; the need for more information; the situation of the case at the national level (pending judgement, pending licences, etc.); the need to have an on-the-spot appraisal; the consensus or lack of consensus of the parties on a certain point; even the lack of presence of the delegate representing the relevant Contracting Party has been a cause of delay for decisions at the Standing Committee.

**c. List of countries affected by complaints:**

<b>Greece</b>	<b>12</b>
<b>United Kingdom</b>	<b>11</b>
<b>Spain</b>	<b>10</b>
<b>Turkey</b>	<b>9</b>
France	8
The Netherlands	7
Italy	6
Cyprus	4
Germany	4
Ireland	3
Poland	3

Sweden	3
Switzerland	3
Bulgaria	2
Iceland	2
Norway	2
Portugal	2
Croatia, Hungary, Luxembourg, Senegal, Slovenia and Ukraine	1

**d. List of species referred to in the complaints:**

Amphibians & Reptiles	28
Natural habitats	27
Birds	21
Mammals	17
Plants and Invertebrates	3

**e. Main causes for the complaints:**

Specific plans or projects requesting EIA (road constructions, dams, wind farms, etc.)	44
Conservation problems in general (bad site management; illegal trade of species; lack of appropriate conservation measures; lack of appropriate legislation, etc.)	24
Tourism or related developments (hotels, ski resorts, etc.)	15
Other reasons (uncontrolled released of species, military operations, etc.)	13

**f. Complainants:**

Local or national NGOs specialised in the subject (individuals, political groups, or even academic institutions)	45
International NGOs ( SEH, MEDASSET, Birdlife International, WWF, Greenpeace)	34
Secretariat or Group of Experts	9
Parties to the Convention	4
Others (addition of two/three complainants, MEP, EC Commission, Expert, etc/)	4

### III. DEVELOPMENT OF THE PROCEDURE

The Convention on the Conservation of European Wildlife and Natural Habitats entered into force on 1<sup>st</sup> June 1982. A few months later, from 13<sup>th</sup> to 15<sup>th</sup> September 1982, the first Standing Committee meeting took place, where the first two case-files were presented. Even if the provisions of the Convention do not expressly provide for the creation of a case-file system to monitor its implementation, Article 14(1) envisages the possibility that the Standing Committee may address recommendations to the Parties “concerning measures to be taken for the purposes of this Convention”. At the same time, and in line with the Council of Europe’s tradition, NGOs were invited to play an active role in the implementation of the Bern Convention. They can submit complaints for specific violations of the Convention’s provisions to the Standing Committee. In 1982, the first two Recommendations of the Standing Committee were issued addressed to Italy and regarding several species protected under the Convention. One concerned species threatened by a winter-sport project (Case 1982/1), and the other, hunting activities (1982/2).

#### A. The origins of the case-file system

The Bern Convention Secretariat soon understood that there was a clear need for a procedure that would structure this form of monitoring the implementation of the obligations of the Convention. In 1983, the Secretariat issued a Memorandum asking for a definition of the system<sup>1</sup>. At this point, and maybe due to the vagueness of the previous Recommendations, the interest was focused in Article 14(1). Nevertheless, it is in this document that we found the first references to the case-file system, as the Standing Committee is asked to define the guidelines that will determine the requirements for opening a file, and the procedure between opening a file and issuing a Recommendation. After adapting the document to the feedback from Parties<sup>2</sup>, the practice of the case-file system was approved at the 3<sup>rd</sup> meeting of the Standing Committee, in 1984. At this stage, the Standing Committee was already dealing with eight cases. In 1987, the first serious concern appeared: the information requested to the Parties concerned in a specific case-file frequently arrived too late or did not even reach the Secretariat before the Standing Committee meeting. The Secretariat requested a discussion on this issue at the Standing Committee, concerning the better implementation of the Convention.

#### B. Provisional guidelines

The first attempts to give a certain structure to a procedure that had already been working for 10 years, and in accordance to which 44 case-files had been discussed by the Standing Committee, were taken in 1992. At the 12<sup>th</sup> meeting of the Standing Committee, the Secretariat and a group of NGOs including Societas Europaea Herpetologica (SEH), the Royal Society for the Protection of Birds (RSPB) and WWF-UK presented two proposals<sup>3</sup>. It was then decided that the Parties would provide comments and that a new document would be drafted taking into consideration all opinions, and including the views of the three NGOs involved. The outcome<sup>4</sup>, presented at the 13<sup>th</sup> meeting of the Standing Committee, proposed *an approach to be followed for the implementation of the Convention*, which was based on Article 18(1):

*“The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise”*

The document also responded to the principles adopted in the Agenda 21 programme of the UNCED and in the Lucerne Declaration, whereby effective monitoring of compliance with international legal instruments in the field of environment was requested.

<sup>1</sup> T-PVS (83)3, Recommendations ex Article 14- Secretariat Memorandum, 05/05/1983.

<sup>2</sup> Only the UK replied to the request for comments, stating that the Standing Committee is a forum for the Parties to assist each other and insisting in the idea that the procedure should only be an outline in order not to restrict the Committee with over-precised rules. T-PVS (83)6.

<sup>3</sup> T-PVS (92)70, Implementation of the Bern Convention: Opening and closing of files and follow-up of recommendations, 10/11/1992.

<sup>4</sup> T-PVS (93)22, Implementation of the Bern Convention: Opening and closing of files and follow-up of recommendations, 3/11/1993.

After adopting various amendments, and at the request of the European Union which preferred to examine the document more thoroughly, the Standing Committee considered it preferable to postpone the final decision on adopting the procedures for the follow-up and implementation of the Convention to its next meeting. However, it decided to apply these rules provisionally, which has been the case ever since. In 1995 the decision was postponed again, and a Group of Experts on the File Procedures including the European Community (EC) member States was set up in order to deal with the potential problems that this system might arise<sup>5</sup>. The European Commission was concerned with the type of instrument, proposing that it should be adopted as a Protocol to the Convention. Nonetheless, after the debate, it considered it preferable to opt for an interpretative resolution, independent of the Convention. The content was also discussed within the meeting of the Group, especially the situation that a file might be opened under the Bern Convention at the same time than an infringement procedure on the basis of the EC Treaty. In addition, the possibility of using arbitration for Parties which are also members of the EC was also considered. All proposals were included in a document amending the previous one<sup>6</sup>. However, and despite having discussed it at the 15<sup>th</sup> meeting of the Standing Committee, the European Commission asked to postpone the debate once more due to concerns about the relationship between the EC infringement procedure and Bern Convention case-file system, which were yet unresolved. The European Commission expressed its preference for a Protocol rather than an interpretative resolution on this issue. Again, the document issued in 1993 would be applied provisionally until these questions were solved.

### **C. Current situation**

This has been the case ever since. The rules of procedure approved in 1993 have been used every time the Committee has been confronted with a case-file. In 2000, in the framework of a meeting of the Select Committee for the Strategic Development of the Convention, Birdlife International presented a review analysing the situation and proposing solutions for the problems encountered<sup>7</sup>. The review addressed several issues, including: the lack of response by a Contracting Party, which was not included in the rules; the lack of stated basis for the Secretariat/Bureau's decision to accept a complaint or not; the lack of priorities among cases; the fact that the consensus rule may block important decisions; the lack of established grounds for closing the files; and the lax follow-up of specific recommendations. As a result, the Select Committee for the Strategic Development of the Bern Convention asked for more transparency and the Secretary was requested to submit regular reports of the complaints received and their progress. Information needed to be public or available on request<sup>8</sup>. The Bureau also discussed the issue<sup>9</sup> and decided that it was necessary to enhance the follow-up of the recommendations. Finally, the Standing Committee, at its 20<sup>th</sup> meeting, agreed that the monitoring of the Convention should be the highest priority in the future programme of activities.

The status of the 1993 document has not been discussed ever since. Practice during the last 14 years has shown that the case-file system works properly and that its success relies more on the will of the Parties to collaborate than on the rules applied.

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<sup>5</sup> T-PVS (95)49, Report File procedure and cases likely to affect Member States of the European Community, contracting parties to the Bern Convention, 30/11/1995.

<sup>6</sup> T-PVS (95)49, Appendix 5.

<sup>7</sup> T-PVS (2000)16, Review of the case file system, 18/09/2000.

<sup>8</sup> T\_PVS (2000)44, Select Committee for the Strategic Development of the Bern Convention, Report of the meeting, 13/10/2000.

<sup>9</sup> T-PVS (2000)42, Bureau meeting Report, 6/09/2000.

#### IV. 25 YEARS OF PRACTICE: AN ANALYSIS OF THE CASE-FILE PROCEDURE

The provisional rules adopted in 1993 continue to be used as the framework to guide the procedure of the case-file system. The current version dates from 1999, where the date limit to answer information requests from the Secretariat changed from three to four months<sup>10</sup>. The following analysis will be structured according to these rules, accompanied by comments based on the 25 years of experience with the system.

As it will become evident, most of these rules have evolved with time, helping achieve the success of the case-file system of the Bern Convention.

##### A. Opening of files

**1. The Secretariat examines all letters sent to the Standing Committee of the Bern Convention ("the Convention") itself or to its Chairman or Secretariat by a Contracting Party, individual, non-governmental organisation or group of private persons containing a complaint about one or more Contracting Parties' failure to comply with one or more provisions of the Convention.**

##### ➤ The complainants:

The majority of complainants are local or national NGOs specialised in the protection of the species affected by the case, as well as local associations directly concerned in the matter, including civil society, association of political groups or even simple individuals who are directly affected.

International NGOs do also actively participate in the procedure, sometimes even supporting complaints from local NGO and contributing to their efforts. These international NGOs have a strong presence and participation, in general, in the Bern Convention.

As the rules envisage, other Contracting Parties have also drawn the attention of the Secretariat to specific situations, although this has rarely happened. Only in four cases: *1983/2* (Hainburg Alluvial Forest), *1986/7* (*Caretta caretta* in Dalyan Beach), *1995/5* (Introduction of exotic bees in Portugal) and *2005/1* (Lesser white-fronted goose in Sweden<sup>11</sup>). In the specific case of the Hainburg Alluvial Forest, it was not just the Dutch delegation who complained, but also an NGO and the European Commission contacted the Secretariat about the issue. This has been the only time when the European Commission has formally initiated a complaint.

It is interesting to stress that, even if the rules do not contemplate certain options, practice has evolved to the point of allowing the Secretariat itself and the different Groups of Experts under the Convention to raise awareness of cases that have later been reviewed by the Standing Committee. In particular, the Group of Experts on Amphibians and Reptiles has been very active. In 1991, two general recommendations on the conservation of reptiles and amphibians in Europe were adopted: *Recommendation 26 and 27 (1991)*. In the framework of the follow-up of these two recommendations, the Group of Experts has called the attention of the Standing Committee to certain cases such as *case 1992/1* (*Testudo hermani* in Maures, France) or *case 1992/3* (Totes Moores in Saxony, Germany). Due to their importance, they were finally discussed as specific files. This report only deals with file cases regarding specific sites, and not with those followed-up by the Group of Experts. The practice is that when a case is considered to be of serious concern, it is placed as a *specific sites* agenda item.

The Secretariat has initiated two cases: *1991/1* (La Loire, in France) and *2000/1*. In the former, it justified its initiative due to the increasing number of problems facing the River Loire in France, and proposed the Standing Committee to consider the subject. The file was opened and closed within one year due to the satisfactory development plan for the Loire presented by France<sup>12</sup>. In the case of the Green

<sup>10</sup>T-PVS (99)16-, Secretariat Memorandum "Opening and closing of files and follow-up of Recommendations", 3/03/1999.

<sup>11</sup> These cases can be found by their references in Annex I.

<sup>12</sup> T-PVS (91)1, 10<sup>th</sup> Standing Committee meeting Report, January 1991.

Turtle in Kazanli, the case was based on a commissioned study on the impact of tourism activities on marine turtles. It was justified on the basis of the serious conservation concerns for the species and on previous files opened by the Standing Committee for populations of Appendix II species that become critically endangered through lack of conservation action by governments<sup>13</sup>. These precedents would justify the introduction of new cases on the basis of their geographical importance and the seriousness of the threat faced.

Moreover, there has been the 1989/8 case (Dam of Vidrieros or *Ursus arctos* in Cantabria, Spain), when the report of the on-the-spot appraisal delivered by the expert raised awareness of the situation of the *Ursus arctos* in the French Pyrenees. This situation triggered a new and different case without the need of a formal complaint: *Case 1992/2 (Ursus arctos in the Pyrenees, France)*.

The situations presented above show that a formal complaint is not the only way to initiate a case-file procedure, and that the flexibility of the rules allow for diverse approaches in the interest of conservation and the Convention's objectives.

➤ **The species affected:**

Most of the complaints either refer to amphibians and reptile species or to specific natural habitats containing numerous species of either Appendix I or II. This situation may have been created by the activities of the Group of Experts on Amphibians and Reptiles, and would therefore be subject to changes in the future depending on the activities of other Group of Experts under the Bern Convention.

Complaints on amphibians and reptiles are closely followed by complaints related to birds and mammals. Only very rarely have complaints related to invertebrates or plants.

➤ **The rationale of the complaint:**

The main reasons for complaints to the Bern Convention are specific plans or projects requiring EIA. These type of projects are always related to economic development such as road constructions passing through or close to a natural protected area, or projects to build dams or wind farms. In many cases the EIA had not been carried out or, if it had been conducted, the project did not respect the conditions for the conservation of the environment. The Parties concerned are always requested to take into consideration the EIA.

Other reasons to trigger a complaint have been related to conservation measures like the lack of proper measures to ensure the conservation of a species, bad site management or the lack of legislation.

Tourism development has also been a great concern, especially for the conservation of marine turtles in the Mediterranean Sea.

Other reasons mentioned have been as the destruction of explosives in a bay habitat for the *phoca vitulina* (Case 1993/2, Phoca Vitulina in the Bay of Somme) or military operations in a protected area (Case 1987/2, Chafarinas Islands, Spain).

***2. The Secretariat, on the basis of the information available to it, and if necessary requesting further information from the complainant, informs the Contracting Party (-ies) and decides whether to act on the complaint. It ensures in particular that the complaint is not anonymous and examines, taking account of any procedures that may be pending at national and/or international level, whether the complaint is sufficiently serious to warrant examination at international level.***

➤ **Screening by the Secretariat**

After reception of the complaint, the case goes through a first screening by the Secretariat. There are no written criteria but a number of points are taken into consideration. As an initial *conditio sine qua non*, it is assessed whether the focus of the complaint is covered by the Bern Convention. If clarity is needed, the Secretariat contacts the relevant Contracting Party asking for information. Afterwards, the Secretariat

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<sup>13</sup> T-PVS (2000)59, Report of the Secretariat, Specific File on Green Turtle *Chelonias Mydas*, 2/10/2000.

generally bases its decision in terms of the substantive and geographical importance of the complaint. There are no records on the decisions taken by the Secretariat in this respect, neither there is a written list of issues considered as important for this first screening.

In case there is a judicial procedure opened in the country concerned, the Secretariat takes this information into consideration, although this should not hinder the international procedure. In *case 1993/5* (Dam Project at Itoiz, Spain), there was a Supreme Court ruling pending over the construction licence. This fact did not prevent the Secretariat from placing the case in the agenda of the Standing Committee meeting as a possible file. Nevertheless, once it reaches this level the Standing Committee always decides to postpone its consideration until the national court has decided on the matter.

It has also been established practice that when a complaint is related to a member state of the EU, the Secretariat informs the European Commission and requests information about it. This issue was already raised as a core point of concern when the guidelines for the case-file system were first discussed. In 1995 the Group of Experts on the file procedures concerning EC countries agreed that the Secretariat should ask the Commission about whether an infringement procedure had been already started, and consult whether it should follow-up the complaint. This was included in the amended text proposed by the Group of Experts, but it was never adopted. However, this approach is followed in practice. The answer coming from the Commission hardly influences the Secretariat's decision to put the case forward. If an infringement procedure has been opened by the European Commission, this does not hinder the development of a case under the Bern Convention. However, the only reason to withdraw would be the submission of the case to the European Court of Justice (ECJ). In two occasions files dealt with by the Standing Committee of the Bern Convention have been afterwards considered by the ECJ, resulting in core decisions for the development of EC law: the Laganas Bay case (*1986/8*) and the Santoña Marshes (*1987/3*). There is currently another one registered: Via Baltica in Poland (*2003/2*).

This first stage of the procedure may create some difficulties for the Secretariat to assess whether complaints are considered to be within the scope of the Convention. Since there are no records of previous decisions, no general conclusions can be withdrawn, and a resolution needs to be taken on a case-by-case basis, at the discretion of the Secretariat. This creates a certain lack of transparency towards the complainant. Firstly, they do not know what kind of information they should be sending to the Secretariat or how, a situation that in several occasions, has provoked unnecessary delays. Complaints sent in other languages or lacking the basic information elements are common. Secondly, the Secretariat does not make public the issues it considers for the first screening, which creates uncertainty on the important elements considered. Negative answers may be responded with demands from the complainant with respect of the points taken into consideration to refuse their cause. Moreover, in cases of doubt, these complaints will be directly presented to the Bureau meeting, which sometimes overloads the sessions with short cases, taking time out of more important discussions.

***3. Where it decides on such action, the Secretariat forwards the complaint to the Contracting Party or Parties concerned, seeking their opinion and, if necessary, further information. It informs the Bureau of the action taken.***

***4. The Contracting Parties must respond to the Secretariat's request within a period of about four months.***

***5. In the light of the reply received, the Secretariat decides, in agreement with the Bureau, whether there are grounds for placing the complaint on the agenda for the next meeting of the Standing Committee. The Contracting Party or Parties concerned are informed of this at least two months before the date of the meeting.***

***6. In cases of urgency and in order to expedite the possible settlement of a difficulty between two meetings of the Standing Committee, the Bureau may decide, with the agreement of the Contracting Party concerned, to organise an on-site assessment.***

➤ **Submission of information:**

Once the Secretariat has contacted the concerned party, it awaits for the information to arrive. In the only amendment of the provisional rules, the original time span of three months was changed to four months. During its 1995 meeting, the Group of Experts on the file procedures concerning EC countries proposed a time limit of six months, but it was never adopted. Nowadays, the time limit is *about* four months. While waiting for the information to reach the Secretariat, these cases are considered as pending cases.

This stage of the procedure poses an old problem that has not been resolved yet: the eventual lack of response from the Parties concerned. From the very beginning, problems with delays in responses were underlined by the Secretariat<sup>14</sup>. The first approach to this problem was quite a soft one, eventually sending a second letter of request for information. The waiting period could then last up to a whole year, delaying the procedure, minimising the possibilities of solving the situation, and furthermore, undermining the credibility of the whole system. The reasons for delays are several and different (lack of co-ordination between national administrations, information not sent in one of the two official languages, etc.), but the final consequence is always the same: without the necessary information the Bureau is not able to take a decision on whether to submit the case to the Standing Committee. Consequently, the Standing Committee will not be informed of the case until it is presented to it. In these circumstances, cases are treated as pending complaints. This problem is not yet solved but nowadays the Secretariat's approach is much more pragmatic and once the deadline is over, the case moves automatically to the next stage in the procedure: as a possible new file<sup>15</sup>.

Another issue to be considered is the short delay with which documents are sent to Bureau meetings. This cannot be considered as complete lack of information, but when documents from concerned parties, either NGOs or governments, arrive on the day of the meeting or just before, it is very difficult for the Secretariat to deal with them as they need to be classified, registered and sent to the members of the Bureau for their information. This creates a great deal of confusion during the meeting, for the draft agenda does not contain many new documents and the members of the Bureau have not had enough time to adequately prepare. In the three days prior to the Bureau meeting of April 2007, the Secretariat had received nine new documents related to case-files on the agenda, which as a result had to be reviewed at the following meeting in September 2007. At the April meeting, the Bureau decided that the Secretariat would fix a deadline for receiving documents several days before the next meeting. Documents sent after that time will not be considered by the Bureau<sup>16</sup>.

➤ **Bureau meetings:**

The Bureau remains as free as the Standing Committee to decide on complaints received, and their reasons may vary from case to case, which is as positive as the system followed by the Standing Committee. Nevertheless, some voices have been raised asking for a statement of reasons. In 2000, Birdlife International presented a review analysing the case-file system, which included as a point of consideration the need to produce a statement of reasons everytime any of the three Convention institutions takes a decision. This idea would be worth of consideration, since a list of reasons would follow existing practice and concerned parties would know where they stand when they make a complaint.

In a few urgent cases, the Bureau has taken the decision of proposing an on-the-spot appraisal, as in *case 1993/1 (Caretta caretta in Patara, Turkey)*, *case 1995/6 (Akamas Peninsula)* and *case 2004/1 (Bystroe Estuary Canal)*.

***7. At the meeting of the Standing Committee, the Secretariat or - with the consent of the Chairman or a Contracting Party - an observer concerned in the matter explains the complaint and, depending on the***

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<sup>14</sup> T-PVS (87)40, 6<sup>th</sup> Standing Committee meeting Report, December 1987.

<sup>15</sup> T-PVS (2006)24, 26<sup>th</sup> Standing Committee Meeting Report, December 2006.

<sup>16</sup> The deadline for receiving documents to be considered at the September Bureau meeting (on 11<sup>th</sup> September 2007) was fixed at 3 September 2007.

*circumstances, proposes that further information be awaited or requested, that a specific recommendation be adopted (see II below) or that an on-the-spot enquiry be conducted for the purpose of a more thorough examination in accordance with Rule 11 of the Rules of Procedure.*

*In accordance with Rule 9.c of the Rules of Procedure, proposals made by observers may be put to the vote if sponsored by a delegation.*

This stage is the most important of the whole procedure. As it has already been mentioned, the Standing Committee is free to decide concerning cases presented to it.

Most often it is the Secretariat who presents complaints to the Standing Committee. Nevertheless, it is worth recalling that the Groups of Experts also play an important role. A certain number of cases, especially those related to the conservation of amphibians and reptiles, have been raised through the discussions and assessments done in the framework of this Expert Group. At the Standing Committee meetings, the Groups of Experts also have the opportunity to present their findings and main points of concern. These cases will not be considered as *specific files*, but their presentation raises the awareness of the Standing Committee and NGOs and eventually a new complaint may follow.

NGOs are not Contracting Parties to the Convention but their official status as “Observers” allows them to play an active role in this part of the procedure. In principle, anyone may submit a proposal. NGOs generally submit their reports on complaints or case files with draft recommendations annexed. At the meetings of the Standing Committee, they may only put forward their proposals if supported by a Contracting Party. So do experts in the cases of on-the-spot appraisals. Contracting Parties and the Secretariat itself, when requested to do so, may as well present their proposal and draft recommendations.

***8. The Standing Committee then studies the complaint submitted and proposals formulated and decides in the absence of consensus and as required by Rules 8.c of the Rules of Procedure, by a two-thirds majority of the votes cast, whether it is appropriate to open a file.***

*If such is the case, the Standing Committee, also by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required by Rule 8.b of the Rules of Procedure, decides whether it is preferable to adopt a specific recommendation or to conduct an on-the-spot enquiry first.*

***9. The recommendations adopted are communicated to the Contracting Parties for implementation and are public.***

It is important to stress the freedom of the Committee when deciding on a case. The Bern Convention is an instrument of co-operation among equal Parties. The Standing Committee plays the role of a forum to discuss and help resolve problems, rather than that of a watchdog. Therefore, the procedure governing the case-files system is flexible, allowing for rapid decision making, and for freedom of choice in terms of the solutions proposed concerning the case files opened.

Once again, the late submission of certain important documents by the parties concerned may delay this stage of the procedure and result in poor discussion and therefore a poor assessment of the situation. On the other hand, parties that have not answered the requests for information from the Secretariat may do so orally at the meeting of the Standing Committee.

➤ **Discussions in the Standing Committee:**

The Standing Committee assesses the case files and takes decisions on the measures to be adopted and on the status of the file. Decisions are taken by a two-thirds majority of the votes cast. This rule has not always been the same. Previous rules of procedure of the Standing Committee requested consensus to take decisions, a situation that could block important steps if the concerned Party was against the measures. Proposed. This was the case, for instance, in *case 1986/3* (Hares Doen and Knowston Moores). In this case file, the UK planned to build a road crossing areas of national importance with a particular scientific interest. These sites represented the largest area of plane-land in the north of Devon. The file had to be closed due to the opposition of the UK. The only thing that the Standing Committee could do is to regret the new disappearance of natural areas. Again in *case 1989/2* (Dorset Heathlands), the file had to be

provisionally closed due to a lack of consensus. However, in this case an agreement was reached with the NGOs and the government of the UK to have biennial reports on the matter. The case was reviewed in 1997, at the request of the Bureau, and finally closed in 1998.

➤ **Measures that may be taken regarding complaints and case files:**

- Requests for information and reports to be presented either to the following Bureau meeting or to the next Standing Committee meeting. The reason for this is to gather more information in order to take a decision.
- Request for an on-the-spot appraisal, always with the agreement of the Party concerned. These visits were not included in the provisions of the Convention. However, it was considered that Article 14 could be interpreted in such a way so as to allow for on-the-spot appraisals<sup>17</sup>, and the rules of procedure of the Standing Committee meeting were amended accordingly. There has been 27 on-the-spot visits to date. Normally they are requested when the situation is not clear. They are of extreme importance, and therefore the report of the expert resulting from the visit is analysed by the Standing Committee. These visits are crucial for the Standing Committee to take a further step on the case. Generally, the measures or draft recommendations proposed by the expert are adopted (with or without amendments), except in those cases when the representative of the country concerned is not present, as it happened for example in *cases 1986/1 and 1989/1* (Sorgenti dil Fiume and Gulf of Orosei, both Italian cases), when the approval had to be postponed to the following meeting. An example of their importance is *case 1989/8* (Dam of Vidrieros), where the expert's report triggered a new case file: *1992/ 2* (*Ursus arctos* in France).
- Adopt a specific Recommendation on the matter, whose implementation will be followed-up afterwards. 41 specific recommendations have been adopted since 1982, many of which originated in proposals coming from the experts after undertaking on-the-spot appraisals. The first recommendations were quite general, stating solely that measures needed to be taken to ensure the safeguard of the area and to meet the conservation requirements. Maybe this vagueness was the origin of the first steps taken in 1983 to better define the characteristics of the proposal and adoption of Recommendations<sup>18</sup>. This first reflexion of the procedure for recommendations was concerned with whom should take the initiative, what kind of procedure should be followed, and how to follow it up. It was agreed that these were to be "*important means of ensuring the effective application of the varying obligations arising out of the Convention*"<sup>19</sup>. Meanwhile, the drafting of recommendations changed to a more detailed listing of specific measures, such as the third specific recommendation issued (Recommendation No. 8(1987)<sup>20</sup>. A few years later, efforts concentrated in the follow-up procedure. At its 12<sup>th</sup> meeting, the Standing Committee agreed to the Secretariat's proposal that certain recommendations should be followed-up on an experimental basis, and draw general conclusions from that<sup>21</sup>. The result of this exercise is included in the current rules of procedure. This follow-up procedure is analysed herebelow.

➤ **Status of the case-files:**

Once measures have been taken, the Standing Committee needs to decide on the status of the case. In this respect:

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<sup>17</sup> T-PVS (86)5, Draft Regulations concerning on-the-spot enquiries to be carried out in connection with the Bern Convention, 18/07/ 1985.

<sup>18</sup> T-PVS (83)3, Recommendations ex Article 14, 5/05/1983.

<sup>19</sup> T-PVS (84)6, Secretariat Memorandum, Recommendation Article 14, 12 October 1984.

<sup>20</sup> Recommendation n° 8 (1987) of the Standing Committee on the protection of marine turtles in Dalyan and other important areas in Turkey.

<sup>21</sup> T-PVS (92)84, 12<sup>th</sup> Standing Committee meeting, 17/12/ 1992.

- “Possible new files” are those complaints being assessed by the Committee and which have not been formally opened. These cases are placed in the agenda of the Standing Committee after decision by the Bureau, and await a decision to be taken on the whether to open a file or not. Sometimes complaints do not change status immediately after the Standing Committee meeting. This is due mainly to the fact that the situation is not clear at the moment and further developments are awaited. For instance, in a case where an on-the-spot appraisal was proposed (case 2001/5, Exotic Forest Plantations in Iceland), the Standing Committee decided to consider the case as a “possible file” until receiving the outcome of the visit<sup>22</sup>. The same situation occurred in case 2002/3 (Wolf control, Switzerland), when the Swiss Government was required to submit more information on the withdrawal of the wolf from the list of protected species. Another example is case 1984/6 (illegal killing and trade of birds in Cyprus). The Standing Committee decided to consider the case as a *possible file* due to divided opinions regarding the need to open a file. There are times when the gravity of the situation makes the Standing Committee to take the decision of leaving the file as a *possible file* even if a recommendation has already been adopted, in order to the better follow-up its implementation, as in case 1992/1 (*Hermann tortoise* in the Maures).
- The following decisions at this point would be: either not to open a file (generally accompanied by a specific recommendation) or to open it.
  - Open files: These are generally files which deserve a special attention from the Standing Committee. It is difficult to assess why a file has been opened sometimes, because the reports do not always contain the circumstances and reasons argued by the Committee. In general, the reasons to open a file are mainly the breach of the Convention provisions<sup>23</sup>, the great international importance of the site/species concerned<sup>24</sup>, the scope of the threat<sup>25</sup> and the urgency with which measures are needed<sup>26</sup>. A file is formally opened, it cannot be deduced from the measures adopted. There are times when the file is opened due to different reasons from the ones presented. In Case 1998/4 (*Meles Meles* in UK), the Standing Committee decided to open a file to study the possible breach of the Bern Convention provisions, contrary to its normal approach of opening it once a breach has been identified<sup>27</sup>. In the case of *Caretta Caretta* in Patara (1993/1) a file was opened in order to ensure that the Plan for the Development of the Specially Protected Area of Patara took account of the preservation of the species.
  - Not opened cases are those who are dropped because there were no real grounds to open it. This happens, for instance, when the cause of the complaint is withdrawn, like for instance potentially harmful projects that have been halted at the last moment<sup>28</sup>. Or simply when there are no reasons that justify a file to be opened<sup>29</sup>. It may also occur because the measures taken by the Party concerned are considered satisfactory<sup>30</sup> and, finally, because a specific recommendation has been issued and will be followed-up and therefore there is no need to open a file<sup>31</sup>. The latter are generally followed by the issue of a specific

<sup>22</sup> Other similar cases are: 2003/1 (Hydro-electric Damsat Kárahnjúkar and Nordlingaalda); 2001/7 (Tourist Development in Souss Massa Nat. Park); 2002/1 (Odelouca Dam); 1989/2 (Dorset Heathlands).

<sup>23</sup> Case 1989/4; Case 1999/6.

<sup>24</sup> Cases 1987/4; 1991/1; 1995/1; 1995/6; 2004/1.

<sup>25</sup> Cases 1997/1; 1999/5; 2000/1.

<sup>26</sup> 1989/1; 1989/3, 1990/2; 1990/3; 1990/4; 1990/5.

<sup>27</sup> Other similar cases are 1986/1 (Sorgenti del Fiume), when the committee asked for information from Italy and decided to open a file. 1984/5 (Markemeer, The Netherlands).

<sup>28</sup> Cases 1984/2; 1999/1.

<sup>29</sup> Cases 1999/3; 2002/3; 2005/1.

<sup>30</sup> Cases 1983/1, 2001/5; 2002/2.

<sup>31</sup> Cases 1998/6; 1999/4; 2001/1; 2001/7; 2002/1; 2003/1.

recommendation. It has also happened that due to insufficient scientific data, the Standing Committee has decided not to open a file, as in the case of the wind farms of the Smøla Archipelago (2001/2). This does not mean however that the file is closed. On the contrary, it is subject to a follow-up in accordance with the decision of the Standing Committee. Monitoring can be continuous until the Committee decides to close it, or it can be put in a latent situation, where at any moment the Secretariat may address the Party concerned and asked them to submit a follow-up report. Sometimes this situation renders the status of the cases unclear. Once the case advances to the “follow-up” procedure, the Standing Committee is less clear in terms of stating when the case is definitely closed or when it is left for eventual follow-ups.

- Closed files: The decision to close a file is taken when the difficulties to implement the Convention have been solved, whether the file has been opened or not. This issue will be analysed further later on in this paper.

Currently the number of case files dealt with by the Standing Committee of the Bern Convention stands at 96. The first two cases saw the light in the first Standing Committee meeting in 1982. Since then, the number of cases evaluated every year has increased considerably. The number of closed cases is 30. For the last Standing Committee meeting, in 2006, the Secretariat presented nine cases, in addition to the follow-up of another four previous cases.

➤ **Uncovered issues:**

It is important to stress that no formal conclusions can be withdrawn from the information provided above. As it has been stressed, the Standing Committee remains free to take whatever solution it considers appropriate based on whatever grounds. The possibility of the Standing Committee to decide freely in each and every case enhances the open discussion and the collaboration among the Contracting Parties. On the other hand, one could say that there are certain practices that have been adopted by the system and which have become *ius cogens* at a certain point, like the consultation to the European Commission. This freedom has also another consequence: it is difficult to determine beforehand the fate of a case. To a certain extent, the procedure lacks certainty and transparency, since there are no specific reasons to take measures and decisions

Moreover, decision taken in Standing Committee meetings may be delayed by several reasons, just like in Bureau meeting. This situation may interfere with the adoption of an appropriate solution to the problem, and while a decision is taken, the threat can become a real danger and, finally, a real fact.

The reasons for delays are several:

- Lack of information from the Party concerned. This problem was already raised during the 6<sup>th</sup> meeting of the Standing Committee, where the Secretariat complaint of the lack of information from Contracting Parties. This may be due to several causes, for instance the allocation of competences within the country. In some federal or quasi-federal states like Germany, Switzerland and Spain, the management of environmental matters is done at various and different levels. It may take some time for the central administration to have contacts and transmit the answer to the Secretariat, as it has happen in cases such as Sorgenti dil Fiume in Italy (1986/1), Alluvial Forest of Rastatt in Germany (1986/4) or the Santoña Marshes in Spain (1987/3). In the Laganas Bay case, the Prefecture wanted to implement legislation but the municipality had a different vision on how to manage the beaches along the bay<sup>32</sup>. Even for no so controversial issues, like the preparation of a biennial report, some Contracting Parties have to struggle with the regional authorities to gather all the information<sup>33</sup>. The Secretariat sends the

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<sup>32</sup> T-PVS (87)19, On-the-spot appraisal of *caretta caretta* conservation at Laganas Bay, Zakynthos Beach, Secretariat Memorandum, 27/8/1987

<sup>33</sup> At the 6th meeting of the Standing Committee (8-11 December 1987), the delegates of The Federal Republic of Germany and Switzerland acknowledged the difficulties they had to obtain information from the Cantons and the

requests at the same time to the region and the central government, and for the sake of the normal pace of the case, it accepts the answers that arrives directly from the regional government. In other cases, the Secretariat sends reminding letters, which at the very best, will be responded a few days before the meetings take place. And this is another reason for delays.

- Late or incomplete submission of information from Parties. Incomplete submissions are those who are not done in one of the two official languages of the Council of Europe and which therefore cannot be considered or those who do not present the case within the scope of the Convention. Late replies are considered by the Standing Committee, though their discussions suffer from the late distribution of documents and the little time given to Parties to consider them.
- The absence of the Party concerned at the Standing Committee meeting has already delayed some cases. When the representative of the country concerned is not present, a decision cannot be taken, as it happened for example in *cases 1986/1* and *1989/1* (Sorgenti dil Fiume and Gulf of Orosei, both Italian cases), when the approval had to be postponed to the next meeting. In the first case, the Standing Committee decided to wait until Italy was present. However, the second time the draft recommendation was sent to Italy for comments with the idea to approve it on the next meeting, whether the representative was there or not.

## B. Closing of Files

***10. If, after it has examined the report made by an expert following an on-the-spot enquiry or the report forwarded by the Contracting Party concerned as part of the follow-up to a specific recommendation (see paragraph 15 below), the Standing Committee finds that the difficulties relating to implementation of the Convention have been resolved, it decides by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8.b of the Rules of Procedure, to close the file.***

The decision to close a file is taken when the difficulties to implement the Convention have been solved. This decision may be temporal, due to the fact that the situation may appear again, like in the Vikos-Aaos case (1986/6). The Standing Committee has the power to re-open the file and start the procedure all over again, as it happened in the case of Dorset Heathlands, in UK (1989/2). It is also possible to request the Contracting Party to report on the situation, even if the file is closed (*case 2000/1, Chelonia Mydas* in Turkey). Nevertheless, there are other reasons why a file could be closed. In the Lagana Bay case, the Committee decided to close the file, acknowledging the failure to put an end to the situation, after 14 years of procedure. Some cases are closed not because the threat has disappeared for good, but because the Party has collaborated and the only need is to monitor progress in the believe that actions will be effectively taken. Determining whether a file has been closed or has not been opened is of basic importance due to their practical implications: if the file has been closed, the only way to re-open it is through a fresh complaint on the subject, whereas if the file has not been opened at all, the Standing Committee remains free to request information or a follow-up report at any moment in time.

## C. Follow-up of the measures

In the basis of Article 14(1), indent 4, and ***in accordance with the practice that has developed in recent years, the Standing Committee adopts two types of recommendation:***

- ***General recommendations: pursuant to its general programme of action (recommendations arising in particular from meetings of Groups of Experts, the work of consultants or seminars);***
- ***Specific recommendations: following its examination of a file which it has decided to consider. Specifically addressed to one or more Contracting Parties, these recommendations concern***

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Lander. Also, Spain's Biennial Report indicated which exceptions had been applied in each "Autonomous Community" at the regional level, and not in the whole country (T-PVS (89) 46, Biennial Report 1987-1988, 13/11/1989, Report presented by the Spanish Delegation.

*situations in which the implementation of the Convention raises, in a particular case, problems over the conservation of flora, fauna, or a natural habitat (for example, unsatisfactory protection of a species of fauna in a specified location).*

*The recommendations constitute essential means of giving substance to the provisions of the Convention and may even constitute, in time, international customary law. The monitoring of their follow-up is therefore fundamental.*

This report will only deal with the follow-up of specific recommendations.

The first document issued by the Secretariat containing the foundations of what would become the provisional rules of procedure, also mentioned the follow-up as a part of the procedure itself<sup>34</sup>. This first step envisaged annual reports from the Parties to which recommendations were addressed *until the Committee decides to close the file*. This idea changed in the second draft of the document, approved by the Standing Committee at its 4<sup>th</sup> meeting. A report will only be required for the subsequent meeting following the issuing of the recommendation. The file could be closed by a simple majority.

A few years later, the 12<sup>th</sup> meeting of the Standing Committee agreed to the Secretariat's proposal that certain recommendations should be followed up on an experimental basis, and proceed in this way for all specific recommendations. The results of this experience are embodied in the provisional text approved at the 13<sup>th</sup> meeting. Nevertheless, practice has overcome these rules and follow-up can be done in different ways.

**14. For the purpose of following up specific recommendations, the Secretariat writes to the Contracting Parties concerned asking them to submit a report summarising the legal and/or other measure or measures adopted to comply with the policies laid down in those recommendations.**

**15. After receiving the reports, within a period of about four months, the Secretariat prepares, with the agreement of the Bureau, a "Summary of Specific Recommendations" containing, for each of them:**

- ***the text of the recommendation;***
- ***the report submitted by the Contracting Party or Parties concerned, any excessively bulky appendices or documentation included with the report being kept available for consultation at the Secretariat; and***
- ***a proposal that also takes account of any other available information.***

In general lines, the follow-up of specific recommendations is done through:

- **Biennial reports**: Indeed the first follow-up of the first two specific recommendations was done through biennial reports in 1988.
- **Group of Experts**: The creation of the Group of Experts on the conservation of amphibians and reptiles gave a turn to the follow-up procedure. From 1992 the Group was charged with the task of reviewing the implementation of specific recommendations. At its meeting in 1992, the Group of Experts reviewed the situation of the very first *case 1982/1* (Gran Sasso in Italy) and of *case 1986/7* (*Caretta caretta* in Dalyan Beach).
- **Progress reports to the Standing Committee**: The first "reporting" record relates to *case 1986/7* (*Caretta caretta* in Dalyan Beach). These reports are seldom not sent to the Secretariat as they are provided orally to the Standing Committee.

There are no clear lines when following up the implementation of such recommendations. Some cases are reviewed only by one instrument, others by a combination of them. In general, follow-up actions are not reflected in the Standing Committee agenda. Until the 10<sup>th</sup> Standing Committee meeting, held in January 1991, there was no agenda item dedicated to the follow-up procedure. At that moment, a new point appeared

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<sup>34</sup> T-PVS (83)3, Recommendation ex Article 14, Secretariat memorandum, 5/05/1983.

as *Information provided by the Contracting Parties*, giving information on previous cases that had not been closed yet. In successive years, the “information point” would provide with all sort of updates on cases, including the implementation of certain recommendations. It was only in 2001, at the 21<sup>st</sup> meeting, that a specific item for the *follow-up of selected recommendations from previous meetings* appeared. These recommendations only become visible when the information is relevant and a decision needs to be taken, or eventually when the Standing Committee expressly requires for it, as in *Recommendation 69 (1998)* when, despite the file having been closed, the Standing Committee requested annual reports on the number of badgers killed (*Case 1998/4*). This renders very difficult to properly track the situation of the cases, as it is difficult to assess their current status, whether there were any measures taken and whether these were satisfactory. Another important issue is that it is not stated how the Bureau and Secretariat take the decision of including recommendations in the draft agenda, which eventually could be criticised as lack of transparency.

**16. The Standing Committee decides in the light of this document and after discussion whether, in the case of each recommendation, the measure or measures adopted by the Contracting Party or Parties concerned are sufficient or not. It decides by consensus, or in the absence of consensus by a two-thirds majority of the votes cast, as required under Rule 8 b. of the Rules of Procedure:**

**a. if the measures taken by the Contracting Party(ies) are sufficient, to consider that the implementation of the specific recommendation is satisfactory and to close the file (see paragraph 10 above);**

**b. if, on the contrary, they are insufficient, to consider that the Contracting Party(ies) has(have) failed to comply with its(their) obligations under the Convention in the case concerned.**

In a nutshell, one can say that 11 cases have already been closed by the Standing Committee following an assessment of the implementation of recommendations, like *Recommendation 79(1999)* in *case 1999/5 (Cricetus cricetus* in the Netherlands). Four are currently being followed-up by the Committee, while it is difficult to assess the status of another 16, either because:

- a Group of Experts is dealing with it and it requires a deeper research, like *Recommendation 96(2002)* in *case 2001/5* (exotic forest plantation in Iceland); or
- the Standing Committee did not take any decision on them, like in *case 2001/7* where some information on the follow-up of *Recommendation 97 (2002)* was provided at the 24<sup>th</sup> Committee meeting but no further steps were taken; or
- the decisions taken at the Standing Committee level are not clear enough, like in the case of *Caretta caretta* in Kaminia (*1995/7*) where the Committee decided to keep the file for information and it has never been in the agenda again; or
- the Secretariat considers that there is no need to submit the follow-up to the Standing Committee, which is the case for the rest of files for which there are no further news, like for instance for *Recommendations 83 (2000)* or *Recommendation 55 (1996)*.

On the other hand, it can be said that there is a hand-full of cases from which a recommendation has been issues, but which are still opened or considered as possible files.

This situation helps discharge the Standing Committee of the time consuming activity which is reviewing the implementation of every single recommendation adopted. However,, the down side is that it is difficult to track which is the status of each case, since the results of certain reports are not presented to the Standing Committee, and therefore the final decision on whether measures are considered sufficient or not is not taken by the Committee. It is has been impossible to research and review all reports containing information on these cases due to time constrains. A more in-depth analysis could be done in the future.

**17. If paragraph 16 b. above applies, the problem then arises as to the attitude to be taken by the Standing Committee in cases where, despite the maintenance of a specific recommendation, the Contracting Party(ies) to which it is addressed continue(s) not to implement it. In this connection it is appropriate to**

*refer to Article 18, paragraph 2 of the Convention, which provides for the possibility of recourse to arbitration for any dispute over the interpretation or application of the Convention. The Standing Committee might look into this possibility and, in certain cases of particular gravity, invite one or more Contracting Parties to set in motion, on behalf of the Standing Committee, the procedure laid down in Article 18 of the Convention.*

This possibility has never been used.

## **V. SUGGESTED RECOMMENDATIONS BASED ON ISSUES RAISED THROUGH THE APPLICATION OF THE CASE FILE SYSTEM:**

After an in-depth analysis of the rules of procedure and of the practice of the case-file system, one needs to raise the question of whether there is a real need either to declare this instrument as permanent or to modify it.

The adoption of this text as an official document would recreate all the problems already encountered 12 years ago: the European Commission stated at that time that for internal reasons they would prefer to have a protocol attached to the Convention containing the complaints procedure to be followed by the Standing Committee<sup>35</sup>. At that time, the Council of the European Union was awaited to give an answer on the issue. If the Standing Committee is to consider an adoption of the rules of procedure, it should first approach the European Union and organise a new Group of Experts to discuss in which way this document would be related to the Bern Convention.

Should the European Commission's opinion continue to be the same, the barriers to adopt a new document would be numerous: the length of the period needed to draft a protocol, the time to approve it and to have it entered into force, together with the great possibility of not having all Contracting Parties signing the Protocol. These constraints discourage this option and lead us to think that the best possible solution is to leave the document as it is: guidelines to be taken into consideration when the complaints procedure is triggered.

Since 1993, only Birdlife International has addressed the Secretariat with the intention of stressing some of the problems raised in the application of these rules. Despite several, well isolated problems, the system has been functioning in a satisfactory manner. After a review of all 96 case-files, it can be seen that the success or the failure of a certain situation encountered by the Standing Committee depends most of the times on the will of the Parties, and not on the rules guiding the procedure. In this respect, the procedure should only be modified in order to give an answer to an encountered problem. Moreover, the solution to these problems may be found out of the framework of the guidelines, something which would save the inconvenience of creating a new group to draft a new document.

Specific recommendations addressing problems not addressed by the 1993 Guidelines are presented as follows:

- **Registration of files:** It would be advisable to follow a system to number the old files and the newcoming ones. This would provide a quicker access to the information related to them. It would also simplify the situation when one needs to refer to any of them. A suggestion is that the reference includes two elements: the year when the complaint was filed with the Secretariat, and a number, indicating when possible the chronological position with respect of that same year. For those cases (especially those presented during the early years of the Convention) when it is not possible to determine the exact date of the complaint, the date of the document that first mentions the case could be used, which will be either a Secretariat Memorandum on the subject or directly the Standing

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<sup>35</sup>T-PVS (95) 49, Group of Experts on the File Procedures concerning European Community States, Report File procedure and cases likely to affect Member States of the European Community, Contracting Parties to the Bern Convention, 12/10/1995.

Committee or Bureau Meeting report where the file was discussed. As an example, the first case assessed by the Standing Committee was at the first Standing Committee Meeting, and it dealt with the *Gran Sasso* in Italy, where there were plans to build a wintersports complex, threatening species included in Appendices I and II of the Convention. The first document referring to the case was the Standing Committee meeting report, from September 1982. According to this proposal, the reference number would be **1982/1**. In line with this approach, Annex I of this paper contains a table proposing a reference number for each case file. It also includes the status of every case file until today, the species affected, the rationale of the complaint, the recommendations issued from on-the-spot appraisals, and follow-up steps taken, if any.

- **Questionnaire for the complainants:** The rules of procedure state that it is the task of the Secretariat to do a first screening, disregarding all complaints that will not be presented to the Bureau. Nevertheless, the Secretariat does not count with a list of criteria to take into consideration at this point. In order to save time and efforts from the Secretariat and to provide the system with transparency, it could be positive to consider establishing a way to clarify the formal and substantial conditions that a complaint needs to fulfil. This could be done through a simple questionnaire for complainants to fulfil or through a simple information notice on the web site indicating the important points a complainant should consider before submitting the complaint, such as the language used, the species likely to be affected or the size and location of the site concerned.
- **Fix deadline for the transmission of information to the Secretariat before the meetings:** Documents from all interested parties, either NGOs or governments, which arrive just before the meetings are very difficult for the Secretariat to deal with: they need to be processed and sent to the members of the Bureau/Standing Committee for their information. This creates a great deal of confusion during the meetings, as sometimes the draft agenda does not contain many new documents and the members of the Bureau/Standing Committee have not had enough time to prepare. In the three days prior to the Bureau meeting of March 2007, the Secretariat received nine new documents related to the case-files, which will have to be considered at the next Bureau meeting. It was decided that the Secretariat would fix a deadline to receive documents several days before the meeting takes place. After that time, no documents or reports will be considered.
- **Delay of discussions:** As it has already been mentioned, there are various reasons for delays in consideration of cas files. One of them is the Contracting Party's internal allocation of competences. At this point it is important to note that there has been previous cases when the Secretariat has presented a case of its own initiative, based on the importance of the species/site and the seriousness of the threat. In extremely serious cases this solution may be triggered as well, since there is nothing prohibiting it. Another solution could be to set strict deadlines for the different steps of the procedure as well as for the duration of discussions within the Standing Committee, while making the "threat" of Article 18 more present.
- **Lack of transparency:** The Bureau could enumerate the reasons on which it bases its decisions in order to help complainants understand which elements are considered to be essential. This would also provide more transparency and certainty to the procedure and also guide the Secretariat itself so that the first screening can be done adequately. The Bureau could also prepare an internal non-exhaustive list of priority cases bases on several reasons that would justify a speed-up procedure in order to avoid future inconveniences like unjustified delays. The list could be based on:
  - The intervention/opinion of the Group of Experts: If the species is being dealt with already by a Group of Experts and its opinion with respect of the urgent need of protection is clear.
  - The international level of protection: if the site/species is included in one or several international agreements: Ramsar, Barcelona, CITES, ACCOBAMS, European Diploma, etc.
  - Specific characteristics of the site/species: endangered level

- Characteristic of the threat: whether an imminent threat (project being constructed) or serious threat (great loss of biodiversity)

Whenever the Bern Convention's institutions are confronted with such cases, the procedure would be speeded in order to avoid unnecessary delays. The file could pass more rapidly to the status of "possible", so that the Standing Committee would intervene faster and the concerned Party would give its reasons quicker as well. The number of Standing Committee meetings could also be limited and Article 18 used as a last resort.

- **Follow-up problems.** The down side of the follow-up system is that it is difficult to track which is the situation for every case, since the Standing Committee has not taken a decision for every recommendation on whether measures are considered sufficient or not. It is up to the Bureau to present the follow-up information to the Standing Committee and this has not been done for all cases. This creates the risk of having some recommendations not being followed-up until the issue is triggered again by an NGO or any other complainant. On the other hand, the system may be accused of lack of transparency, since there are no specific criteria for the implementation of a recommendation to be assessed or not. At this point, it would be advisable to make a complete review of the final status of recommendations since 1982.

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## VI. ANNEXES

## 1. Table case-files 2007

N	NAME	COUNTRY	COMPLAINANT	SPECIES	CASE REF	REASON	STATUS	RECOMMENDATIONS	O-T-S	FOLLOW-UP	DURATION	INTERESTING POINTS
1	Gran Sasso	Italy	Not specified	Several protected species	<b>1982/1</b>	Winter sport project affecting the habitat of species in both Appendices I/II	File not opened	R. (1982)1		Bienal Report 1988 GoE Amphibians and reptiles 1992	Less than 1 year 1 <sup>st</sup>	1 <sup>st</sup> Recom. Vague in its points.
2	Hunting in Valle Furlana	Italy	Not specified	Several protected species	<b>1982/2</b>	Hunting activities	File not opened	R. (1982)2		Bienal Report 1988	Less than 1 year 1 <sup>st</sup>	
3	Wadensca	ND	LWV n.s.d	Natural area, habitat of several species	<b>1983/1</b>	Development projects	File not opened				2 years (2 <sup>nd</sup> -4 <sup>th</sup> )	Problem solved. NL reported on the subject two years in a row.
4	<b>Hainburg Alluvial Forest</b>	Austria	Dutch Delegation, NGO and EC Commission	Natural area; Hainburg sector of Danube	<b>1983/2</b>	Power Station Project	Provisionally closed	General Rec. 12(1982)			7 years (3 <sup>rd</sup> -9 <sup>th</sup> )	Case put forward by three different complainants. No decisions were made until Austria provided with information (6 <sup>th</sup> ). Rest of meetings situation improved & halted project. Case closed
5	Management of wetlands in Ravenna	Italy	WWF Italy	Several species	<b>1984/1</b>	Hunting, fishing and shooting	Closed				Less than 1 year 4 <sup>th</sup>	Not much info on this case. 4 <sup>th</sup> SC Meeting Report is missing

6	Inch Level Wetland Area, County Donegal	Ireland	Inch Level Action Committee 5.3.84	Wetland area, habitat for several species	1984/2	Drainage project	File not opened				Less than 1 year 4th	Subject of the complaint withdrew
7	Halvergate Marshes and Benone Region in Northern Ireland	UK	"Information has reached" and magazine numbers 23.10.84	Marshes Natural area	1984/3	Drainage and development project	File not opened				Less than 1 year 4th	4 <sup>th</sup> SC Meeting missing.
8	Spring shooting	Greece	1 <sup>st</sup> International Council for Bird Preservation 10.84	Birds	1984/4	Spring shooting	File not opened				Less 1 year in both cases 4 <sup>th</sup> Bureau meeting Sept 94	Good example of case that was not opened but remains closely monitored by an NGO until it decides to bring it back. Case brought back in 1994 but dealt and refused in a Bureau meeting
9	Markemmeer	The Netherlands	NVVB Netherlands Society for the protection of birds 5.11.1984	Birds	1984/5	Polder construction	File closed				1 year (4 <sup>th</sup> -5 <sup>th</sup> )	The file was opened in 4 <sup>th</sup> to obtain more info. Closed in 5 <sup>th</sup> because NL explanations on the subject were satisfactory
10	Hunting migratory Birds	Cyprus	NVVB 16.11.84	Birds	1984/6	Hunting and killing of birds	File not opened	General Reco 5 (1986);		Progress Reports for SC from	Less than 1 year	Again we miss 4 <sup>th</sup> SC meeting Report.

	T-PVS (01)49; (02)19		CCF, COS and BirdLife International				Recom. 90 (2001)		Cyprus and UK (2002)2; (2003)25 Item for info 2005	(4 <sup>th</sup> ) 3 years (22 <sup>nd</sup> -25 <sup>th</sup> )	Case reappeared in 21 <sup>st</sup> meeting. Follow-up until 2005
11	St Petersburg Limestone Galleries	The Netherlands	Fauna and Flora Protection Society 11.84	Bats Mammal	<b>1984/7</b>	Degradation of galleries due to human activity	File not opened			Less than 1 year (4 <sup>th</sup> )	4 <sup>th</sup> SC Meeting missing. Even if St Petersburg Limestone did not regard the Convention, they are galleries important for the hibernation of bats protected.
12	Dulich Peat Moss T-PVS (85) 18	UK	Royal Society for the Protection of Birds n.s.d in 1985	Birds	<b>1985/1</b>	Peat extradtion	Closed			3 years (4 <sup>th</sup> -7 <sup>th</sup> )	Area is considered by experts of international importance and the potential damage would be irreversible. Even though, case was never opened.
13	<b>Sorgenti del Fiume Pescara</b> T-PVS (87)37, (88)38, (89)42	Italy	Asoziacione Sole Italiano 04.86	<i>Podiceps ruficollis</i> , Bird	<b>1986/1</b>	Sport Development Project	Closed	Recom. 32 (1991)	9 <sup>th</sup> "o-t-s"	6 years (5 <sup>th</sup> , opened 7 <sup>th</sup> , 11 <sup>th</sup> )	IT had problems to co-ordinate actions / national and regional government: competences were regional and they showed no interest. Reco. Derives from o-t-s.
14	Lake Akrotiri	Cyprus	International Council for Bird Preservation 16.07.86	Bird Habitat	<b>1986/2</b>	Sewage development plant in northern part of the lake.	File not opened			Less than 1 year 5 <sup>th</sup>	Cyprus was not contracting party at that time.
15	Hares	UK	Devon Trust	Protected	<b>1986/3</b>	Road	File			Less	No consensus. The

16	Alluvial Forest of Rastatt T-PVS (87)25	Germany	WWF Germany 19.8.86	Nature reserve of international importance	1986/4	Industrial Establishment close to the Alluvial plain of the Rhine	File closed				3 years (6 <sup>th</sup> -9 <sup>th</sup> )	Regional competences instead of national. File opened though not expressly said. Agreement among parties requested. Project finally meets obligations of Bern+ enough compensation
17	Grenchener Wit T-PVS (87)24	Switzerland and	Swiss League for the Protection of Nature 1.9.86	<i>Migratory limicolae</i> (Birds)	1986/5	Road Construction Project	File closed				6 years (5 <sup>th</sup> -11 <sup>th</sup> )	File opened though not said. Switz. changed plans because of this case. Positive outcome.
18	Vikos-Aaos Nat. Park T-PVS (87)27	Greece	? 10.86	Natural Park	1986/6	Road Construction Project in the Nat. Park	Provisionally closed				2 years (5 <sup>th</sup> -6 <sup>th</sup> )	No decisions on whether to construct road, therefore file was provisionally closed
19	<i>Caretta caretta</i> in Dalyan Beach T-PVS (98)38	Turkey	Dutch Delegation, GoE 5 <sup>th</sup> SC Meeting 12.1986	A & R	1986/7	Development of the beach	File not opened	Rec.8 (1987) & General Reco 12 & General Reco 24	11 <sup>th</sup> Info Update Report to the GoE, 1992		Less than 1 year (6 <sup>th</sup> ) Back 2 years (17 <sup>th</sup> -18 <sup>th</sup> )	First Rec in 1987. Since then, no follow-up until 11 <sup>th</sup> . We can't say the case was solved, but neither was there a follow-up until 11 <sup>th</sup> . Report was asked for 12 <sup>th</sup> . GoE dealt with it. 17 <sup>th</sup> appeared again but not opened
20	<i>Caretta caretta</i> in	Greece	MEDASSSE T	A & R	1986/8	Development projects	File closed	Reco 9 (1987) Decision	GOE Amphibians		14 years (5 <sup>th</sup> -19 <sup>th</sup> )	Longest case. SC waited for information

	Laganas Bay T-PVS (98)43		12.86						(24.3.1995; 3.12.1999) & Declaration (4.12.92)	1987; T-PVS (89)37 1 visit Secretariat			1 year (6 <sup>th</sup> -7 <sup>th</sup> )	throughout the years. Pressure from tourism increased. Chance to new gov. No implementation of promised measures. 18 <sup>th</sup> Commission opened infraction procedure. 19 <sup>th</sup> Case in the ECJ. Closed: failure to implement. 2002 ECJ ruling
21	Jersey and Channel Islands	UK	Not specified Dec 1987, 6 <sup>th</sup> SC Meet Report		Ratification of the Convention by UK on behalf of the islands	Closed								SC decided this was not a case to be dealt as a file
22	Chafarinas Islands	Spain	Not specified Dec 1987, 6 <sup>th</sup> SC Meet Report	<i>Larus Andovini</i> Bird	Military operations in the island	Provisionally closed							Less than 1 year 6 <sup>th</sup>	Military operations had stopped at the time of the Meeting
23	Santoña Marshes T-PVS (88) 39	Spain	Not specified Dec 1987	Marshes of international importance	Factories Development Project	Closed (though never formally)					Biennial Report		5 years (6 <sup>th</sup> -11 <sup>th</sup> )	File opened in 1987. Problem with distribution of powers: regional authorities lack of co-operation, and constant lack of info. SC did not decide to close the file, but open with biennial reports. ECJ landmark ruling
24	Cabrespine Cave	France	Not specified Dec 1987	<i>Minopterus schreibersi</i> (bats)	Conservation of the site	File closed							4 years (6 <sup>th</sup> -10 <sup>th</sup> )	FR not a contracting party until 8.1990. Even though, file opened in 1987.

				mammal															
25	Vipera Kaznakovi in Hopa	Turkey	Societas Europaea Herpetologica (SEH)	<i>Vipera Kaznakovi</i> . A & R	1988/1	Uncontrolled Collection	File not opened	General Recom. 26 (1991)	T-PVS (97)5	Group of Experts (GoE) Amphibians 92-94-96-98 (conservation proposals)	1 year (7 <sup>th</sup> -8 <sup>th</sup> )	File opened in 1988. From 89 GoE directly deals with case. No info to Committee. Asked for an o-t-s. Turkey delayed its answer during 4 years (93-97). SC took note of report.							
26	Gulf of Orosei	Italy	SEH/WWF T-PVS (89)32	Several herpetile species A&R	1989/1	Increase of touristic activities	Closed (though not expressly said)	General Reco. 13 (1988) and specific 42 (1993)	T-PVS (92)57	GoE Amphibians & Reptiles	4 years (9 <sup>th</sup> -13 <sup>th</sup> )	This case was raised during the follow-up of general Rec 13. File was opened. GoE deals directly. Late adoption of the Reco absence of IT.							
27	Dorset Heath lands	UK	SEH/WWF T-PVS (89)33	Species of reptiles from Annex II A&R	1989/2	Insufficient protection to the area (development works)	File provision ally closed in 13 <sup>th</sup> closed 18 <sup>th</sup>	Recom. 67	T-PVS (98)29	Biennial Reports T-PVS (93)8-T-PVS (96)63 Written Report to SC T-PVS (97)50, T-PVS (2000)48	4 years + 2 years (9 <sup>th</sup> -13 <sup>th</sup> ) (17 <sup>th</sup> -18 <sup>th</sup> )	Case provisionally closed due to lack of consensus. Bureau, NGOs and UK agreed a common solution: provisionally closed. Follow-up: biennial report. Reviewed 17 <sup>th</sup> . Reco proposed by expert adopted.							
28	<i>Podarcis muralis</i>	The Netherlands	WWE/SEH T-PVS (89)33	<i>Podarcis muralis</i> A & R	1989/3	Bad management of its habitat	Closed			GoE Amphibians & Reptiles	2 years (9 <sup>th</sup> -10 <sup>th</sup> )	File opened due to a request from the SC to the GoE to examine in depth the case at his meeting. Problem solved: closed							
29	Bufo Calamitas in Castlegr	Ireland	Irish National Trust/Inhabitants from	<i>Bufo Calamitas</i> A & R	1989/4	Golf course development in a major habitat for the	File closed	Reco. 33 (1991)	T-PVS (91)50	GoE Amphibians & Reptiles	4 years (9 <sup>th</sup> -13 <sup>th</sup> )	Direct contact CoE-Ministry of Environment to change legislation. Again threaten still							

	egory		Castlegregor y		species				Biennial Reports			there, but party compromised to change situation and Sc closed in believe. Expert's reco adopted.
30	<i>Vipera Lebetina</i> schweizeri in Milos T-PVs (97)62	Greece	SHE Follow-up Implementat ion reco 33	1989/5	Cement works disrupting a proposed refuge for the species	File not opened	General Reco. 13 (1988) General Reco. 26 (1991) Specific Reco. 84 (2000)	T-PVS (92)8 2; T-PVS (2000)51	GoE Amphibians & Reptiles Written Report to SC T-PVS (98)74, (2001)74, (2003)18	Less than 1 year (9 <sup>th</sup> )	Rec 13. In the follow-up of Reco, 9 <sup>th</sup> Sc decided it would be the GoE dealing with the case. O-t-s decided by GoE 92. Discussed 17 times (12 SC/5 GoE) over 14 years. Many written reports because Greece was not implementing Recos. properly. All adopted according to expert's proposal	
31	Bottle-nosed in Moray Firth (Scottian d)	UK	Greenpeace Sec. presented it at 9 <sup>th</sup> , Dec 1989	1989/6	Sea outfall construction damaging the largest colony of the specie	File not opened		Written Report (91)4	2 years (9 <sup>th</sup> -10 <sup>th</sup> )	SC decided not to open because an EIA was taking place. UK informed on it and case stayed as decided.		
32	Poisoned Baits	Greece	Sec. presented it at 9 <sup>th</sup> , Dec 1989	1989/7	Placement of poisoned baits in several refuge places	File not opened		Written Report T-PVS (91)4	2 years (9 <sup>th</sup> -10 <sup>th</sup> )	Information was required from one meeting to the other and SC decided not to open		
33	Dam of Vidrieros/ Ursus arctus in Cantabria	Spain	Political groups from Palencia, local and national associations and scientific bodies	1989/8	Dam construction in important areas for the <i>Ursus Arctos</i>	File closed	Reco. 37 (1992)	T-PVS (92)4 7	4 years (9 <sup>th</sup> -13 <sup>th</sup> )	File opened in 89. o-ts 92. The expert's Report triggered a new case related to the species in FR. SC did not formally close case, but linked ES with FR and continued. Expressed serious concerns about the dam, but no		



34	<i>Vipera Ursini Rakosie nensis</i>	Hungary	GoE Amphibians & Reptiles	A & R	1990/1	Document missing	File not opened	Reco. 23 (1991)		GoE Amphibians & Reptiles	Less than 1 year	GoE dealing with it. In 2001 Hungary updated on implementation.
35	<i>Hyla Arborea</i>	Sweden	SEH T-PVS (90)22	<i>Hyla Arborea</i> A&R	1990/2	Need to improve legislation to protect the specie	Closed			Biennial report	1 year (10 <sup>th</sup> -11 <sup>th</sup> )	File was opened in 91. No reason stated. A management plan was put in place. File closed with the requirement of update for next biennial report
36	<i>Bufo Calamita</i>	Austria	SEH T-PVS (90)22	<i>Bufo Calamita</i> A&R	1990/3	Project for sealing the area (Gmund)	Closed			GoE Amphibians & Reptiles	2 years (10 <sup>th</sup> -12 <sup>th</sup> )	Closed due to abandonment of the project
37	<i>Bufo Viridis and Eptesicus Serotinus</i> in Leimen	Germany	SEH T-PVS (90)22	<i>Bufo Viridis and Eptesicus Serotinus</i> A&R	1990/4	Rubbish fillings in a quarry hosting most important national population of <i>B. Viridis</i>	Closed				3 years (10 <sup>th</sup> -13 <sup>th</sup> )	Closed because Germany declared area a natural reserve
38	<i>Vipera Wagneri</i>	Destination countries (Switzerland, Germany, NL, Sweden)	SEH T-PVS (90)22	<i>Vipera Wagneri</i> A&R	1990/5	Illegal trade of the species, Appendix III	Closed				1 year (10 <sup>th</sup> -11 <sup>th</sup> )	Closed because at that moment trade of species not prohibited under international law.

39	La Loire	France	Secretariat 10 <sup>th</sup> SC Meeting, Dec 1991	Whole biosphere	<b>1991/1</b>	Increasing problems facing the river Loire	Closed					1 year (10 <sup>th</sup> -11 <sup>th</sup> )	Case opened due to the importance of the area: the whole river Loire. Closed due to satisfactory measures from the party concerned (development plan for the Loire)
40	<i>Testude Hermanni</i> in Maures	France	Follow-up implementation on Rec 26 GoE A&R April 92 (92)26 2 <sup>nd</sup> SNPN 2003	<i>Testude Hermanni</i> A&R	<b>1992/1</b>	Road construction in habitat of last French population of <i>Testudo hermanni</i>	Possible file	Rec 118(2005)	T-PVS (05)13	Written Report to SC for 2007	1 year (12 <sup>th</sup> -13 <sup>th</sup> ) 24 <sup>th</sup> -....	Case first appeared in 12 <sup>th</sup> SC meeting. 13 <sup>th</sup> SC decided needless to open because FR had a conservation plan. SC stressed importance of site an asked for implem Reco. 26. 25 <sup>th</sup> expert's recom adopted. In 26 <sup>th</sup> possible file. FR needs to report to the SC	
41	<i>Ursus Arctus</i> in the Pyrenees	France	Expert Report 30/11/92 12 <sup>th</sup> SC (92)47 See case 32 T-PVS (95)59; (96)78; 997)49	<i>Ursus Arctus</i> Mammal	<b>1992/2</b>	Habitat of the ursus in the Pyrenees was not being taken care of.	Closed		T-PVS (92)47	Report to SC (96)16; (97)49	3 years (14 <sup>th</sup> -17 <sup>th</sup> )	Case triggered by an o-t-s appraisal for another case. File was not opened but continuous reports asked, until 17 <sup>th</sup> when case was expressly closed, with request to have continuous info	

42	Totes Moores (Saxony)	Germany	GoE update on issues of importance for herpetile conservation	<i>Lacerta agilis &amp; coronella austriaca</i> A&R	1992/3	Peat extractions in the area affecting	Closed				5 years (12 <sup>th</sup> -17 <sup>th</sup> )	Germany implemented measures properly
43	Missolo nghi Wetlands  T-PVS (95)60; (96)79	Greece	RSPB + 5 other NGOs T-PVS (92)78	Wetlands as habitat of dozens of species Appendix II	1992/4	Hydroelectric power and irrigation	File not opened	Reco. 38 (1992)		Implementation followed by Secretary EC Biennial Report Written Report to SC on implementation (97)62	9 years (12 <sup>th</sup> -21 <sup>st</sup> )	This case is interesting because EC involvement: several projects candidate to receive EC funding. EC was asked to report back and biennial. It was delayed several times for lack of information or insufficient info from GR: 3 years not presenting update report and when they do it is incomplete. Commission had already initiated a complaint.
44	Dam project in Salamanca	Spain	Los verdes (Salamanca) 7/12/92	oak forest and several species Plant	1992/5	Dam construction threatening	Closed	Reco. 46 (1995)	T-PVS (94)10	Follow-up Report (96)9	2 years (13 <sup>th</sup> -15 <sup>th</sup> )	Spain did not answer on time, thus the Bureau decided to place it as a possible file. In the end, SC satisfied with party's answers

45	<i>Caretta caretta</i> in Patara	Turkey	MEDASSE T 4/03/1993	<i>Caretta caretta</i> A&R	1993/1	Building projects in Patara beach	File provision ally closed	General rec. 24 (1991); Rec 54(1996); Rec 66(1998)	T-PVS (96)6 5	GoE A&R (98)28 22 <sup>nd</sup> & 23 <sup>rd</sup> Item for info	8 years (13 <sup>th</sup> -21 <sup>st</sup> )	Barcelona Convention involved. Case of great concern. Bureau asked to decide on o-t-s in the 13 <sup>th</sup> . Only done at 16 <sup>th</sup> . 17 <sup>th</sup> opened a file in order to control the implementation of a plan for development of SPA of Patara. 21 <sup>st</sup> file closed in view of + developments.
46	<i>Phoca vitulina</i> in the Bay of Somme T-PVS (95)56; (96)76	France	Town of Crotoy 3/93	<i>Phoca vitulina</i> (Appendix III) Mammal	1993/2	Destruction of explosives in the Bay	File not opened				2 years (15 <sup>th</sup> -17 <sup>th</sup> )	Destruction stopped, thus file was not opened
47	Wind Farm in Tarifa (Cádiz) T-PVS (95)21; (95)53; (96)81	Spain	Spanish Ornithological Society (SEO) 2/7/93	Birds	1993/3	Wind farm project affecting one of the most important migration routes in Europe	File not opened			Report to SC (96)94 NGO Reporting (98)70	3 years (14 <sup>th</sup> -17 <sup>th</sup> )	Existing Commission complaint from the beginning. Situation discussed but no specific decisions taken. SC asked for info continuously. Finally SC asked national and regional govns not to authorise mills in critical areas. Asked for report for 18 <sup>th</sup> , never presented

48	Trade of <i>Caretta caretta</i>	Senegal	MEDASSE T	20.10.1993	<i>Caretta caretta</i> A&R	1993/4	Carapaces of <i>caretta caretta</i> sold in gift shops in Senegal	File not opened				Less than 1 year	SC satisfied with response from Senegal
49	Hoiz Dam Project (Navarra)	Spain	Lega per l'Abolizione della Caccia Lombardia and José Beaumont Aristu	5/10/93 10/2/94	Natural reserves of interest for birds	1993/5	Dam project that would have serious environmental effects on three natural areas of interest for birds	Closed				2 years (14 <sup>th</sup> -16 <sup>th</sup> )	Commission considered that project had no serious implications. SC felt that it was not necessary to open a file, but ES reported anyway. SC decided to wait for a Supreme Court ruling. Finally, sufficient info provided
50	<i>Testudo Marginata</i>	Greece	Apparently the Sec put it forward in line with the last GoE meeting in 1994, that assessed implem. Reco. 26/27		<i>Testudo Marginata</i> A&R	1994/1	Specie highly threatened in GR	File not opened	General Rec. 27			1 year (16 <sup>th</sup> -17 <sup>th</sup> )	SC decided not to pursue case during its meetings. GoE.
51	<i>Tryonix triunguis</i>	Turkey	Sec put it forward in line with the last GoE meeting in 1994, that assessed implem. Reco. 26/27		<i>Tryonix triunguis</i> A&R	1994/2	Development projects	File not opened	General Rec. 26		GoE Amphibians & Reptiles (98)28 Written Report (98)42	2 years (16 <sup>th</sup> -18 <sup>th</sup> )	

		Date GoE meeting (94)19									
52	<i>Rana Holzi</i>	Turkey	Idem	<i>Rana Holzi</i>	1994/3	Conservation measures. Espécie restricted to two sites in the world	File not opened		GoE Amphibians & Reptiles (98)28 Written report to SC (98)42	2 years (16 <sup>th</sup> -18 <sup>th</sup> )	
53	<i>Galloccantha Marshes</i> T-PVS (95)57; (96)83	Spain	SEO 12/94	<i>Grus Grus</i> Bird	1994/4	Agricultural activities on a migration site	File not opened			1 year (15 <sup>th</sup> -16 <sup>th</sup> )	Problems between national/regional governments. Secretariat contacted directly Aragón but ES delegate reported back. Satisfactory info provided
54	Grünewald Forest T-PVS (95)55; (97)37; (98)47	Luxembourg	M.R. Schauls, president of the a.s.b.l. "Fird de Grégenwald	Protected forest, habitat of several species	1995/1	Road construction project close to the Grunewald, largest area of beech forest of sandstone plateau	Closed	T-PVS (96)58		2 years (16 <sup>th</sup> -18 <sup>th</sup> )	not-s proposed due to numerous doubts. File is opened due to the importance of the site. SC considered mesures well implemented
55	Porto (Island of Tinos) T-PVS (96)41	Greece	Mr. Nikos A Kyrtatos, biologist and ecologist, Centre for Marine and Coastal Research in Tinos	Unique and ecologically valuable biotype	1995/2	Building works in the Island of Tinos	File not opened			1 year (16 <sup>th</sup> -17 <sup>th</sup> )	Good measures. SC decided to rely on GR's good will to inform on future developments.

56	<b>Burdur Lake</b> T-PVS (96)35	Turkey	Turkish Association for the Conservation of Nature Resources for the province of Burdur	Ramsar Convention site+ home of white headed duck	1995/3	Installation of an industrial complex in the vicinity.	File not opened			Written Reports to SC (97)56, (98)42	2 years (16 <sup>th</sup> -18 <sup>th</sup> )	
57	Biltzheim Forest T-PVS (96)71	France	«Sauvegarde de la Faune sauvage/ WWF-France 3.07.95	Forest, habitat for several species appendix II	1995/4	Plans for a motor-racing circuit in Biltzheim	File not opened Rec. 55 (1996)				Less than 1 year 16 <sup>th</sup>	
58	Introduction of exotic bees T-PVS (96)37	Portugal	Spanish Ministry of Agriculture and Fishing 15.11.95	Bees Insects	1995/5	Potential threaten of the introduction of the Meliponinae Quadrifasciata from South America in PT	File not opened			GOE Legal aspects introduction and reintroduction in wildlife Species	Less than 1 year 16 <sup>th</sup>	Issue passed to the GOE for monitoring
59	Akamas Peninsula T-PVS (06)14	Cyprus	Friends of Akama 3.12.1995, 1.3.1996	Several species, specially <i>Chelonia Mydas</i>	1995/6	Tourist development project in Akama, valuable natural area	Open Rec. 63(1997)	T-PVS (97)21; (02)1 (Bureau)	Written Report to Sc (98)80, (00)37, (01)61, (02)23, (03)17, (04)27	10 years (16 <sup>th</sup> -26 <sup>th</sup> )	Area of great environmental value. World Bank assessment. Opened due to the importance of the site. SC reacted to the lack of progress regretting the situation and urging to implement Reco. (drafted by secretariat), Commi	

										mission launched a LIFE project in area. Urgent measure: Bureau proposes o-t-s.	
60	<b>Caretta caretta</b> in <b>Kannina</b> <b>a</b>	Greece	MEDASSE T/CMTP 19.12..95/23 .2.96	habitat of <i>caretta caretta</i> A&R	<b>1995/7</b>	Plans for a tourist resort at Kannina Beach	File for information/ closed	Rec. 64 (1997)	Written Report to SC (98)64, (99)80 GOE 1998 (98)28	3 years (16 <sup>th</sup> - 19 <sup>th</sup> )	Apparently file was opened in 16 <sup>th</sup> . 17 <sup>th</sup> Rec and from there, follow-up. SC decided to keep the file for information.
61	<i>Lacerta Agis</i>	The Netherlands	SHE 15 <sup>th</sup> SC Jan 1996	<i>Lacerta Agis</i> A&R	<b>1996/1</b>	Construction of high speed road	File not opened		GOE Amphibians	2 years (16 <sup>th</sup> - 17 <sup>th</sup> )	This case appeared in the follow-up of Rec 26/27, when NL committed to report on allegations by SHE. Project not approved
62	<i>Triturus cristatus</i> Orton Brick Pits	UK	WWF UK 14.8.1996/ 25.9.1996	<i>Triturus cristatus</i> A&R	<b>1996/2</b>	Urbanisation of one of the most important breeding sites for the species	File not opened	Rec. 70 (1998)	SC follow-up 21 <sup>st</sup> GOE Amphibians	3 years (15 <sup>th</sup> - 18 <sup>th</sup> )	Commission had already started infringement procedure.
63	<i>Oxyura leucocephala</i> (White headed duck)	UK (and others)	GOE Conservation of Birds May 1997	Proliferation of <i>Oxyura jamaicensis</i> Birds	<b>1997/1</b>	Absence of measures	Closed	General Rec. 61 (1997)		3 years (17 <sup>th</sup> - 20 <sup>th</sup> )	Satisfactory measures After discussions, UK offered to organise a workshop. Open due to seriousness of the case.
64	Rhine-Rhone Grand Canal	France	Saône & Doubs Vivants /WWF	Flora, fauna and natural habitat	<b>1997/2</b>	Construction of the Rhine-Rhone Grand Canal	File not opened			Less than 1 year	Construction of the canal was abandoned

	Project T-PVS (97)47		France 26.9.97							17 <sup>th</sup>	
65	Lake Vistonis and Lafra-lafrouda Lagoon T-PVS (98)36	Greece	Birdlife International 11.1.1997	Ramsar wetland + 2 Natura 2000 sites+National Park of East Macedonia and Thrace	1997/3	Development projects affecting a wetland system	File not opened	Rec. 83 (2000)	T-PVS (00)6 1	2 years (18 <sup>th</sup> - 20 <sup>th</sup> )	Project funded by EC. In the last SC meeting Commission informed of an infringement procedure. Recon proposed by expert adopted
66	<b>Bialowi esa Project</b>	Poland	Birdlife International January 1998	Natural area. Great biological importance	1998/1	Management of forests around the park. Buffer zone subject to logging.	Closed			Less than 1 year 18 <sup>th</sup>	Satisfactory measures. European Diploma Report would update on the matter, if necessary. Diploma 2006: conditions imposed
67	<i>Caretta caretta</i> in Belek T-PVS (98)37	Turkey	WWF and Society for the Protection of Nature January 1998	<i>Caretta caretta</i>	1998/2	Plans to build a yacht marina in core area of SPA in Belek, nesting site for caretta caretta	File not opened		GOE Amphibians	1 year (18 <sup>th</sup> - 19 <sup>th</sup> )	SC decided not to open because project was only a plan and there was no breach of the Convention. In the end the plan was abandoned
68	<i>Cricetus cricetus</i> in Alsace T-PVS (98)31; (99)65	France	Sauvegarde Faune Sauvage 13 & 22..2.1998 Same NGO complaint 2006	<i>Cricetus cricetus</i> mammal	1998/3	Agricultural damage to specie. Alsace in only area where it is present in FR	Closed but again, possible new	Rec. 68 (1998)	Written Report SC (00)71; 901)87	1 year (18 <sup>th</sup> - 19 <sup>th</sup> ) 26 <sup>th</sup> .....	SC requested annual written reports. 26 <sup>th</sup> since FR did not respond on time, possible new. Inadequate measures taken. Bureau waiting for answer.

69	<i>Meles Meles</i> T-PVS (98)39; (99)28	UK	West Wales Badger Group, National federation of Badger Groups and Das & Boon (NL)	<i>Meles Meles</i> mammal	<b>1998/4</b>	Massive badger kills due to the transmission of bovine tuberculosis to cattle. Appendix III	Closed	Rec 69 (1998)	Written Report to SC(00)50	1 year (18 <sup>th</sup> - 19 <sup>th</sup> )	UK requested for annual reports on progress and number of badgers killed
70	<b>Doñana National Park</b>	Spain	SEO Birdlife 11.1998	Ecological disaster.	<b>1998/5</b>	Due to the destruction of a dam that contained sub products from mining.	File not opened		Written Report (98)73	Less than 1 year 19 <sup>th</sup>	Secretariat visited area. Bureau took urgent measures. Subject to be discussed in the Diploma
71	<i>Sciurus Vulgarius</i> T-PVS (99)51	Italy	Instituto Nazionale per la Fauna Selvatica & Italian Environmental Ministry 17.11.1998	<i>Sciurus Vulgarius</i> mammal	<b>1998/6</b>	Eradication of the grey squirrel halted as a consequence of animal welfare group opposition	File not opened	Rec 78(1999)	In 22 <sup>nd</sup> SC meeting	Less than 1 year 19 <sup>th</sup>	There were two meetings of follow-up
72	El Regajal Nature Reserve T-PVS (99)63	Spain	Dept. Zoology & Biological Sciences, Autonomous University of Madrid 1.02.1999	Nature reserve	<b>1999/1</b>	Constructions plans of a motorway cutting across a nature reserve	File not opened			Less than 1 year 19 <sup>th</sup>	Spain had changed the planning and established compensation measures
73	<i>Ursus Arctos</i> T-PVS (99)45	Greece	ARCTUROS 24.02.1999	<i>Ursus arctos</i> mammal	<b>1999/2</b>	Plan construction of a motorway cutting habitat of 30 ursus arctos	File not opened			Less than one year 19 <sup>th</sup>	Supreme Court decision ruling out the license to build & asking for new alternative

74	<i>Canis Lupus</i> T-PVS (99)49	Norway	Norwegian Carnivore and Raptor Society	24.02.1999	<i>Canis Lupus</i> mammal	1999/3	Permission to kill one-wolf pair on the bases of expected sheep loss	File not opened			GOE Carnivores	Less than a year 19 <sup>th</sup>	GOE was asked to deal with the management of carnivores in Scandinavia. 21 <sup>st</sup> discussion asked by Sweden
75	<i>Meles Meles</i> T-PVS (99)52	Ireland	An MEEP, Irish Wildlife Trust and Bagervatch	25.02.99 & 06.04.99	<i>Meles Meles</i> mammal	1999/4	Capture of badger with snares to eradicate bovine tuberculosis. Risk of local disappearance	File not opened			Report progress annually	1 year (19 <sup>th</sup> -20 <sup>th</sup> )	Ireland would report annually until the research programme put in place would be finished. SC requested IR to consider methods used and avoid disappearance of badgers in the area
76	<i>Crictus Crictus</i> T-PVS (99)64; (00)31	The Netherlands	Badger to Bear Foundation	9.04.1999	<i>Crictus Crictus</i> mammal	1999/5	Absence of a pro-active policy to protect this specie	Closed	Rec 79 (1999)		Report to SC (01)87	1 year (19 <sup>th</sup> -20 <sup>th</sup> )	File was opened due to the serious situation of the species in many territories, not only in NL (FR, DE) A general rec. was issued. File closed after all interested countries reported
77	Exploitation and trade of <i>Lithophaga lithophaga</i> T-PVS (00)39; (01)24	Spain	Spanish Society of Macology	18.12.1999	<i>Lithophaga lithophaga</i>	1999/6	Commercial exploitation of the specie in the Balearic Islands	Closed	General Reco 85 (2001)			1 year (20 <sup>th</sup> -21 <sup>st</sup> )	Closed because necessary measures taken

78	Green turtle in Kazanlı T-PVS (00)59; (01)39; (02)20; (03)22; (04)16	Turkey	Sec proposes based on commission ed study on impact of tourism activities for marine turtles. T-PVS (00)59, 02.10.00	<i>Chelonia Midas</i> A&R	2000/1	Seriously threatened specie in the remaining nesting beaches, 2 <sup>nd</sup> most threatened species in the Mediterranean	Provision ally closed	Rec. 95 (2002)	T-PVS (02)2	Follow-up Report (06)3 Bureau	4 years (20 <sup>th</sup> -24 <sup>th</sup> )	File was opened in 2000 and TU was reporting back until 2004, when closed due to determination of Turkish government. But it needs to report on situation. 2006 SC asked to be back in possible new and involvement of Barcelona Convention
79	Olympic Rowing Centre in Marathon T-PVS (01)24	Greece	Hellenic Society for the Protection of Nature /WWF Greece Sec Report T-PVS (01)24; 04.2001	wetland of ecological importance	2001/1	Development of a rowing centre	File not opened			Item for information in 2003	Less than 1 year 21 <sup>st</sup>	Case being discussed in Ramsar & Commission. SC saw no need to open a file but asked for regular reports
80	Wind farms in Smola Archipe lago T-PVS (01)21	Norway	SEO/ Birdlife International Sec Report (01)21; 17.08.2001	White-tailed eagles birds	2001/2	Wind Farm Project. Area of international importance	File not opened				Less than 1 year 21 <sup>st</sup>	SC did not open due to insufficient data to assess impact of wind farms on birds. Asked Norway not to licence second phase without assessing effects of first phase

81	Dam construction in Vistula River	Poland	WWF International Sec Report (01)18; 17.08.2001	Bird species and priority habitats	2001/3	Plans to build a dam	File not opened					Less than 1 year 21 <sup>st</sup>	This case was never discussed. Only presented for information at the 21 <sup>st</sup> SC meeting.
82	Motorway construction Project Kresna Gorge T-PVS (06)15	Bulgaria	Group of Bulgarian NGOs Sec Report (01)22; 16.09.2001	Emerald Network site	2001/4	Plans for a motorway	Opened	Rec. 98(2002)	T-PVS (02)7	Written Report to SC (05)4	21 <sup>st</sup>	SC gave the Bureau the power to open a file if project ever approved without EIA. File was opened 25 <sup>th</sup> and in 2006 Commission initiated infringement procedure	
83	Exotic forest plantations in areas of biological importance T-PVS (01)48; (02)13; (03)27	Iceland	Birdlife International /RSPB Sec Report (01)48; 29.09.2001	Several bird species	2001/5	Afforestation Programme	File not opened	Rec 96 (2002)	T-PVS (02)3	GOE Conservation of Birds	1 year (21 <sup>st</sup> - 22 <sup>nd</sup> )	O-t-s helped improve situation. SC satisfied with measures implemented by Iceland	
84	UK Military Antenna	UK	Cyprus Conservation Foundation, Cyprus Ornithological Society and Birdlife International 29.9.2001	wetland of a great ecological value	2001/6	Plans to install a large communication antenna at Akrotiri (UK Base)	File not opened	Rec 113 (2004)	T-PVS (04)21		1 year (23 <sup>rd</sup> - 24 <sup>th</sup> )		

85	Tourist Development in Souss Massa Nat. Park T-PVS (01)78; (02)19	Morocco	SEO/Birdlife Sec Report (01)78; 31.10.2001	National Park, home of last wild population of <i>bald ibis</i> bird	2001/7	Plans to build a holiday centre	File not opened	Rec 97 (2002)	(02)6	Inform provided in SC Meeting	1 year (21 <sup>st</sup> - 22 <sup>nd</sup> )	Follow-up since 2003. Items reported not satisfactory. Poposals amending Rec. submitted too late. Not considered.
86	<b>Odelouca Dam</b> T-PVS (02)12; (03)24	Portugal	Portuguese Ligue of Nature Protection 4.02.2002	Natura 2000 site of interest to the <i>Iberian Lynx</i> mammal	2002/1	Plans to build a dam	File not opened	Rec 107(2002)	T-PVS (03)16	Bureau Info to the 25 <sup>th</sup> SC Info to the 27 <sup>th</sup> SC	1 year (22 <sup>nd</sup> - 23 <sup>rd</sup> )	In 2002, complaint lodged with Commission. Everything was negative: no action plan for lynx, infringement procedure in Commission, plan based on reasons of overriding public interest.
87	Caves in the Thrace Region	Turkey	IUCN 06.2002	bat population representing 13 species mammal	2002/2	Tourism developments projects likely to harm	File not opened				Less than 1 year 24 <sup>th</sup>	This is an example of lack of inform from party, and Bureau sending it directly to Possible files
88	Wolf control T-PVS/Files (02)4; (03)23; (04)17	Switzerland	Legambiente 12.07.2002 Sec. Report	<i>Canis lupus</i> mammal	2002/3	Authorisation for the killing of a wolf entering territory from Italy	File not opened				2 years (22 <sup>nd</sup> - 24 <sup>th</sup> )	Decision pending federal Council on withdrawal of protection status of wolf. SC decided not to open a file since case was related to appendix amendment.

89	Motorway project Via Baltica	Poland	Birdlife International (02)2 & 3; 22 <sup>nd</sup> SC 12.2002	Biebrzans ki National Park	2002/4	Motorway plans to cut through the park	Follow- up	Rec. 108 (2003)	T- PVS (03)2 6	Follow-up Info 26 <sup>th</sup>	1 year 22 <sup>nd</sup> - 23 <sup>rd</sup>	Follow-up from 2004. In 2006 "item for info" due to info brought by expert assessing a site in Poland for the Diploma. No SEA to the project until 2006. Infringement procedure Commission.
90	Hydro- electric Damsat Karáhnj úkar and Nordlin gaalda T-PVS (03)27; (04)28	Iceland	Group of six NGOs Icelandic and elsewhere Sec Report (03)27; 23.10.2003	Areas of interests for birds and master plan for hydro and thermal resources	2003/1	Two projects of hydropower stations	Follow- up	Rec 112 (2004)	T- PVS (04)5	Follow-up report (06)12	1 year 23 <sup>rd</sup>	Rec was adopted in 2004, but there has been a continuous follow-up. IC has to submit follow- up report for 2007.
91	Bystroe Estuary Canal T-PVS (06)18	Ukraine	Danube Environment Forum 10.02.2004	Danube Delta dynamics (Unesco, Ramsar)	2004/1	Navigable waterway which may affect the whole area	Opened	Rec. 111 (2004)	T- PVS (04)3		24 <sup>th</sup> -	Bureau proposed o- t-s due to importance of the site. Committee of Ministers informed. Dialogue States, international organisations, NGOs. UK will host a meeting. Secretariat asked for a draft Rec for 2007

92	Wind farm Via Pontica T-PVS (06)19	Bulgaria	BSPB/BirdLife Bulgaria	2004	Birds	2004/2	Wind farm project affecting second most important migratory flyway in Europe	Opened	Rec 117 (2005)	T-PVS (05)8		23 <sup>rd</sup> -	In this case Bulgaria renounces to reconsider the decision to approve the farm as suggested by the Rec. A meeting among involved parties shall be organised.
93	Lesser white-fronted goose	Sweden	Norway 25 <sup>th</sup> Sc meeting		<i>Anser erythropus</i> bird	2005/1	Norway expressed concerns on re-introductions in SW using populations outside the area	File not opened				Less than 1 year	2005 item for information. Sweden informed that re-introduction had already been stopped.
94	Green toad in Alsace	France	BUFO Association 10.04.2006		<i>Bufo viridis</i>	2006/2	Insufficient impact assessment for bypass project	Possible file				26 <sup>th</sup>	Bureau asked to inform again 2007
95	Wind Farm Project	Slovenia	Coalition 24 NOGs T-PVS (2006)7, Bureau Meeting, 28.4.06		Area of vital importance for several species protected under Bern	2006/3	Wind farm project in Southern Slovenia	Possible file				26 <sup>th</sup>	Bureau instructed to follow progress and report back
96	Motorway across Drava Marshlands/hydro-power river dobra	Croatia	Friends of the Earth T-PVS (2006) 15 update of cases 8.9.2006		local biodiversity	2006/4	Road construction and hydro-power projects	Possible file				26 <sup>th</sup>	Lack of info. Bureau placed it as Possible. Hydro-electric in last phase. Road construction already started. Pending o-t-s

GoE : Group of Experts  
EIA: Environmental Impact Assessment  
A&R : Amphibians and Reptiles  
CoE: Committee of Ministers  
SC: Standing Committee  
o-t-s: on-the-spot appraisal  
Reco/Rec: Recommendation  
EC: European Community  
SPA: Specially Protected Areas  
SEA: Strategic Environmental assessment