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Strasbourg, 04 December 2020

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 30 November-4 December 2020

**PROPOSALS ON FINANCING
THE IMPLEMENTATION OF THE WORK PROGRAMME OF
THE BERN CONVENTION**

*Memorandum of the Secretariat
established by the Directorate of Democratic Participation*

Background

At its 39th meeting held on 3-6 December 2019 the Standing Committee adopted Resolution No. 9 (2019) on the financing of the Bern Convention on initiating the establishment of a new system of compulsory financial contributions by Parties. It further decided to establish an inter-sessional working group on finances to further develop, with the support of the Secretariat and the Bureau, proposals on Option 1 and Option 3 as contained in document T-PVS(2019)1rev for the future financing and development of the Bern Convention, namely:

- The inclusion of financial clauses by amending the articles of the Bern Convention;
- The establishment of a Partial Agreement.

In its Resolution No. 9 (2019), the Standing Committee complemented that the inter-sessional working group on finances shall with the support of the Secretariat and the Bureau draft full proposals for amending the Convention and for a Partial Agreement. Both proposals shall be made available to Parties four months before the date of the 40th Standing Committee for discussion, possible adoption and possible submission of either or both proposals for approval by the Committee of Ministers of the Council of Europe.

Proposed mandate of the inter-sessional working group on finances

Considering the decisions of the Standing Committee at its 39th meeting, the inter-sessional working group on finances, in collaboration with the Secretariat and the Bureau, should:

1. Prepare full proposals for the inclusion of financial clauses by amending the articles of the Bern Convention and for the establishment of a Partial Agreement;
2. Present the above-mentioned proposals at least four months before the 40th meeting of the Standing Committee (i.e. by 31 July) in order to be considered at the meeting

Procedure

In order to facilitate discussions, the Secretariat of the Bern Convention has prepared, in consultation with the Directorate of Legal Advice and Public International Law and the Directorate of Programme and Budget of the Council of Europe, draft texts for both options on a new mechanism for the future financing of the Bern Convention presented in this document.

The Bureau at its virtual meeting on 7-8 April 2020 discussed both options and invited the Inter-sessional Working Group on Finances to examine the draft proposals presented below in this document.

Option I: Inclusion of financial clauses by amending the articles of the Bern Convention (page 3);

Option II: Establishment of a Partial Agreement on biodiversity (page 5).

Following a written consultation, the Inter-sessional Working Group on Finances met virtually on 27 May 2020 to elaborate further both proposals.

Note:

Following its potential approval of the Committee of Ministers, the amendment of the Convention (option I) will require **all** Contracting Parties to formally accept the amendments before it enters into force. Should the Partial Agreement (option II) be preferred, a **threshold** number of Contracting Parties will be required to confirm their willingness to become members of the agreement before it enters into force.

OPTION I:

INCLUSION OF FINANCIAL CLAUSES BY AMENDING THE ARTICLES OF THE BERN CONVENTION

The Bern Convention can be amended using the procedure of amendments pursuant to Art. 16 of the Convention:

“Chapter VII – Amendments

Article 16

- 1 Any amendment to the articles of this Convention proposed by a Contracting Party or the Committee of Ministers shall be communicated to the Secretary General of the Council of Europe and forwarded by him at least two months before the meeting of the Standing Committee to the member States of the Council of Europe, to any signatory, to any Contracting Party, to any State invited to sign this Convention in accordance with the provisions of Article 19 and to any State invited to accede to it in accordance with the provisions of Article 20.
- 2 Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Standing Committee which:
 - a) for amendments to Articles 1 to 12, shall submit the text adopted by a three-quarters majority of the votes cast to the Contracting Parties for acceptance;
 - b) for amendments to Articles 13 to 24, shall submit the text adopted by a three-quarters majority of the votes cast to the Committee of Ministers for approval. After its approval, this text shall be forwarded to the Contracting Parties for acceptance.
- 3 Any amendment shall enter into force on the thirtieth day after all the Contracting Parties have informed the Secretary General that they have accepted it.
- 4 ...”

Considering the provisions of Article 16.1 of the Convention, the **Secretary General of the Council of Europe could intend to forward the following Protocol amending the Convention** on the Conservation of European Wildlife and Natural Habitats (Bern, 19.IX.1979), **at least two months before the meeting of the Standing Committee** to the member States of the Council of Europe, to any signatory, to any Contracting Party, to any State invited to sign this Convention in accordance with the provisions of Article 19 and to any State invited **to accede to it in accordance with the provisions of Article 20**. Then, the procedure mentioned in Article 16.2.3. could be followed.

Amendment to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 19.IX.1979) - ETS No.104.

Strasbourg,

Amendment approved by the Committee of Ministers, in Strasbourg, on...

The member States of the Council of Europe and the other Parties to the Convention on the Conservation of European Wildlife and Natural Habitats European (ETS No.104) opened for signature in Bern on 19 September 1979 (hereinafter referred to as "the Convention"),

Wishing to amend the Convention, according to its Article 16.

Have agreed as follows:

Article 1

A new article (Article 14 bis), is added after Article 14:

"Article 14 bis

1. The Standing Committee shall determine the appropriate financial mechanism to achieve the objectives of the Convention.
2. The Standing Committee shall determine for each financial period the appropriate financial resources for the implementation of the programme of work in the light of the ordinary budget allocation from the Council of Europe;
3. The Standing Committee shall agree, at each of its annual meetings, on a scale of financial contributions in order to complement the ordinary budget allocation of the Council of Europe;
4. The scale of financial contributions agreed on by the Standing Committee shall be endorsed by the Committee of Ministers of the Council of Europe;
5. Each Contracting Party shall contribute to the financial resources of the Convention according to the scale of annual contributions adopted.

Article 2 – Entry into force

This Amendment shall enter into force on the thirtieth day after all the Contracting Parties have informed the Secretary General that they have accepted it.

Article 3 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the European Union and any State which has acceded to the Convention of:

1. any acceptance of this Amendment;
2. the date of entry into force of this Amendment, in accordance with Article 2;
3. any other act, notification or communication relating to this Amendment.

Done at Strasbourg, this ... day of ..., in English and French. Both texts are equally authentic and shall be deposited in a single copy in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Union and to any State having acceded to the Convention.

OPTION II:

ESTABLISHMENT OF A PARTIAL AGREEMENT ON THE FUND FOR THE IMPLEMENTATION OF THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS (BERN CONVENTION)

The [Guide](#) of the Committee of Ministers (CM) of the Council of Europe on Procedures and working methods states:

“2. Partial Agreements

2.1 Partial and enlarged agreements – regulatory framework

By virtue of Statutory Resolution [Res\(93\)28](#) on partial and enlarged agreements, the CM may authorise some member States to carry out activities in the framework of a partial agreement or, together with non-member States, in an enlarged partial agreement. The decision is taken by a two-thirds majority of the Representatives casting a vote and a majority of the Representatives entitled to sit on the CM, as set out Article 20.d of the [Statute](#).

The Statutory Resolution also sets out the applicable rules with regard to the budget and functioning of the agreement as well as admission of members, observers and the EU. For financial and administrative arrangements see [Chapter X, § 2.2 on partial and enlarged agreements](#).

Criteria for establishing partial and enlarged agreements are set out in Resolution [Res\(96\)36](#) establishing the criteria for partial and enlarged agreements of the Council and as amended by Resolution [CM/Res\(2010\)2](#).

The detailed modalities governing a state’s accession to and withdrawal from agreements are set out in [CM\(2013\)58-final](#).

2.2 Wording of decisions taken in the framework of partial/enlarged agreements

The Deputies use the wording “the Committee of Ministers/the Deputies in its/their composition restricted to the representatives of the states members of [a partial agreement]” in their decisions relating to such agreements.[\[133\]](#).”

According to Statutory Resolution [Res\(93\)28](#) on partial and enlarged agreements, the Committee of Ministers of the Council of Europe could authorise some member States to carry out activities in the framework of a partial agreement or, together with non-member States, in an enlarged partial agreement.

Draft Resolution CM/Res(2020)..**establishing an Enlarged Partial Agreement on the Fund for the implementation of the Convention on the Conservation of European Wildlife and Natural Habitats¹ (Bern Convention)**

*(Adopted by the Committee of Ministers on ...
at its ...meeting of the Ministers' Deputies)*

The representatives on the Committee of Ministers of ...,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering the wish of the Council of Europe to co-operate with each other and with other States in the field of nature conservation;

Considering that biodiversity, and the benefits it provides, is fundamental to human well-being and a healthy planet. Despite ongoing efforts, biodiversity is deteriorating worldwide, and this decline is projected to continue or worsen under business-as-usual scenarios.

Recalling that Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) is the main legal instrument in the field of biodiversity at pan-European level, having been ratified by fifty States, the European Union and by several North African States and

Stressing that for over forty years, this Council of Europe treaty has had remarkable success in the conservation of wild flora and fauna species and their habitats within its geographic scope, giving special attention to endangered and vulnerable species and habitats conservation through the Emerald Network;

Stressing that the Bern Convention can only be enhanced in the implementation of its policies and activities when it receives adequate and predictable funding and therefore desiring to take concrete measures to this end in order to contribute to the conservation and management of biodiversity in Europe;

Considering Statutory Resolution [Res\(93\)28](#) on partial and enlarged agreements adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session;

Having regard to Resolution [Res\(96\)36](#) establishing the criteria for Partial and Enlarged Agreements of the Council of Europe, adopted by the Committee of Ministers on 17 October 1996 at the 575th meeting of the Ministers' Deputies as amended by Resolution [CM/Res\(2010\)2](#), adopted by the Committee of Ministers on 5 May 2010 at the 1084th meeting of the Ministers' Deputies,

Resolve as follows:

1. An Enlarged Partial Agreement on the Fund for the implementation of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) is hereby created, to be managed in accordance with the provisions contained in the statute appended to this resolution;
2. Staff of the Enlarged Partial Agreement will be part of the Council of Europe Secretariat;
3. The Enlarged Partial Agreement shall be set up for an initial period of three years, at the end of which the Committee of Ministers shall be presented with a report on its achievements and its specific contribution. On the basis of this report, the Committee of Ministers shall review the mandate of the Enlarged Partial Agreement and decide on its future.

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¹ ETS No. 104

Appendix to Resolution CM/Res(2020)...

Statute of the Enlarged Partial Agreement on the Fund for the implementation of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

Article 1 – Aims and tasks

1.1. Purpose and resources

The Fund for the Bern Convention will serve to contribute to resolve the current biodiversity challenge by fostering implementing actions of the Convention on the Conservation of European Wildlife and Natural Habitats and thus supporting the implementation of the United Nations Sustainable Goals (SDGs) and the Global Biodiversity Framework of the Convention of Biological Diversity.

The Fund for the Bern Convention shall receive, hold, and use the resources allocated to it in accordance with Article 4 below.

1.2 Programme

The Fund for the Bern Convention shall implement a programme as decided by the Governing Board in accordance with the Work Programme adopted by the Standing Committee of the Bern Convention.

Article 2 – Accession and membership

2.1 Any member State of the Council of Europe and any Party to the Bern Convention may join the Fund for the Bern Convention by notification addressed to the Secretary General of the Council of Europe.

2.2 The Committee of Ministers, in its composition restricted to the representatives of the member States of the Enlarged Partial Agreement, may, by the majority stipulated in Article 20.d of the Statute of the Council of Europe, invite any non-member state of the Council of Europe to join the Fund for the Bern Convention, following consultation of members of the Enlarged Partial Agreement which are not members of the Council of Europe. A non-member state which receives such an invitation shall notify the Secretary General of its intention to become a member of the Enlarged Partial Agreement.

2.3 Member States of the Council of Europe and other Contracting parties to Council of Europe conventions not joining the Enlarged Partial Agreement may request the status of Observer for a period of maximum two years. Decisions in such matters, including on possible financial contributions by Observers, will be made by the Governing Board of the Fund for the Bern Convention.

2.4 The Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe and the Conference of INGOs, may participate in the work of the Enlarged Partial Agreement in accordance with Article 3.4 below.

Article 3 – Governing Board

3.1 The Governing Board of the Fund for the Bern Convention shall be composed of one representative appointed by each member of the Enlarged Partial Agreement.

3.2 The Governing Board shall elect from among its members a Bureau comprised of a chair, one vice-chair, three other members, for a term of office of two years, renewable only once.

3.3 The Governing Board shall:

- be responsible for the general implementation of the tasks conferred to the Fund for the Bern Convention;
- adopt the draft annual programme of activities of the Fund for the Bern Convention and submit it, in conformity with the Financial Regulations of the Council of Europe, to the Secretary General of the Council of Europe relating to the elaboration of the draft annual budget, prior to its transmission to the organ set up under Article 4.2 below;

- decide on projects consistent with the Council of Europe's political priorities;
- monitor the implementation of the programme of activities;
- adopt and transmit an annual activity report to the Committee of Ministers and to the Standing Committee to the Bern Convention.

3.4 The Governing Board shall meet once a year. It may invite representatives of the relevant Council of Europe bodies to attend its meetings, without voting rights, according to the items on its agenda.

3.5 The Governing Board may assign operational tasks to its Bureau. The Bureau shall be convened by the chair of the Governing Board at least once a year.

3.6 The Governing Board shall adopt its decisions by a two-thirds majority of the votes cast, with each member having one vote. Procedural matters shall be settled by a majority of the votes cast. In all other matters, the Governing Board shall adopt its own rules of procedure and modus operandi and any other arrangements for the implementation of its activities.

3.7 In order to discharge the Secretary General from responsibility for the management of the Fund for the Bern Convention for the financial year in question, the Governing Board shall transmit to the Committee of Ministers the annual accounts, together with its approval or any comments, and the report drawn up by the External Auditor, as provided for in the Financial Regulations.

Article 4 – Budget

4.1 The resources of the Fund for the Bern Convention shall comprise:

- annual contributions from each member of the Enlarged Partial Agreement and, if appropriate, contributions by Observers in pursuance of Article 2.4;
- any other contribution, donation or bequest to the Fund, subject to the provisions of paragraph 4.4 below.

The Fund for the Bern Convention may receive contributions by the European Union.

4.2 The budget of the Fund for the Bern Convention and the specific scale of contributions shall be adopted annually by the Governing Board composed of the representatives on the Committee of Ministers of the member states participating in the Enlarged Partial Agreement and the representatives of the other members who shall thus be entitled to vote.

4.3 Expenditure related to the implementation of the programme and related to both the secretariat of Enlarged Partial Agreement and of the Bern Convention shall be covered by the Fund for the Bern Convention.

4.4 The Fund for the Bern Convention may also receive voluntary and other contributions to the Fund connected with the work of the agreement, subject to the authorisation of the Governing Board prior to their acceptance. These contributions shall be paid into a special account, opened under the terms of Article 4.2 of the Financial Regulations of the Council of Europe, monitored by the Governing Board and shall be earmarked for the objectives and tasks specified, provided that they are consistent with the aims of the statute.

4.5 The Enlarged Partial Agreement assets shall be acquired and held on behalf of the Council of Europe and shall benefit as such from the privileges and immunities applicable to the Council's assets under existing agreements.

4.6 Travel and subsistence expenses of persons attending meetings of the Governing Board shall be borne by the state or the organisation concerned.

4.7 The Financial Regulations of the Council of Europe shall apply, *mutatis mutandis*, to the adoption and management of the budget of the Fund for the Bern Convention.

Article 5 – Secretariat

5.1 The Secretariat of the Fund for the Bern Convention shall be provided by the Secretariat General of the Council of Europe.

5.2 The Secretariat of the Fund for the Bern Convention may call on institutions and independent experts to support the delivery of the programme of work agreed by the Governing Board to the Fund for the Bern Convention.

5.3 The headquarters of the Fund for the Bern Convention will be located in the Council of Europe, Strasbourg.

Article 6 – Amendments

The Committee of Ministers, in its composition restricted to the representatives of the States members of the Enlarged Partial Agreement and after consultation with members of the Enlarged Partial Agreement that are not members of the Council of Europe, may adopt amendments to this statute by the majority provided for under Article 20.d of the Statute of the Council of Europe.

Article 7 – Withdrawal

7.1 Any member may withdraw from the Enlarged Partial Agreement by means of a declaration sent to the Secretary General of the Council of Europe.

7.2 The Secretary General shall acknowledge receipt of the declaration and so inform the members of the Enlarged Partial Agreement.

7.3 By analogy with Article 7 of the Statute of the Council of Europe, withdrawal shall take effect:

- at the end of the financial year in which it is notified, if such notification is given before 1 June of that financial year;
- at the end of the following financial year, if notification of withdrawal is given on or after 1 June of the financial year.

7.4 In accordance with Article 18 of the Council of Europe's Financial Regulations, the Governing Board shall examine the financial consequences of the withdrawal of a member and shall make the appropriate arrangements.

7.5 The Secretary General shall immediately inform the member concerned of the consequences of its withdrawal.