



Strasbourg, 7th November 2023

T-PVS/Inf(2023)14

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

43rd meeting
Strasbourg, 27 November - 1 December 2023

**CONSIDERATIONS OF THE *AD HOC* DRAFTING GROUP OF AN
AMENDING PROTOCOL**

*Document prepared by
the Secretariat of the Bern Convention*

The *Ad hoc* Drafting Group of an Amending Protocol was set up by the 42nd Standing Committee (28 November – 2 December 2022)¹ to draft a Protocol amending the Bern Convention by creating a mechanism of compulsory financial contributions².

The *Ad hoc* Drafting Group of an Amending Protocol met online 6 times in 2023³. The purpose of this document is to provide Contracting Parties with an insight on the considerations made by the Drafting Group and on the various options examined which in the end lead to the present proposal of Protocol.

Guiding principles

The *Ad hoc* Drafting Group of an Amending Protocol adopted the following principles:

- The need to establish a sustainable mechanism moving from the uncertainty of voluntary contributions to a secured and foreseeable budget.
- The Protocol should be attractive for all Contracting Parties.
- Drawing from the experience of the discussions on the Enlarged Partial Agreement, significantly deviate from a model where the budget would be entirely funded by only those Parties which have ratified the amending protocol to an option whereby the financial contributions of Parties ratifying the protocol would not compensate the shortfall of the Parties which did not ratify the Protocol. The contributions of Parties would therefore remain the same independently from which and how many Parties ratify the Protocol.
- Define basic criteria to differentiate which activities are “core” and could be funded through the Protocol, and “programmatic” activities which would still rely on voluntary contributions.

Amendment of the Convention

The *Ad hoc* Drafting Group of an Amending Protocol capitalised on the previous work of the Intersessional Working Group on Finances and considered as a basis the wording of the amendment pursuant to Article 16 of the Bern Convention.

For the record, the draft amendment built on the financial provisions of other environmental conventions and took also into consideration the respective roles of the Standing Committee and of the Committee of Ministers of the Council of Europe.

The Drafting Group discussed at length the original wording of the draft Protocol. It focused on the allocation of the resources resulting from the financial mechanism created by the Protocol (see the section below on “core and programmatic activities”), on the way the decisions on financial issues will be taken (consensus vs unanimity) and on whether decisions will be taken by the Standing Committee or the Parties to the Protocol.

At its 4th meeting, the Drafting Group decided to consider an alternative wording of the Protocol which is less focused on the technical aspects of the Protocol, to clarify any ambiguities and to provide guarantees to the Parties which are going to ratify the protocol.

¹ [List of decisions and Adopted texts](#) of the 42nd Standing Committee

² [Mandate](#) of the *Ad hoc* Drafting Group of an Amending Protocol

³ [Report](#) of the first meeting (24 January 2023)

[Report](#) of the second meeting (10 March 2023)

[Report](#) of the third meeting (2 May 2023)

[Report](#) of the fourth meeting (8 June 2023)

[Report](#) of the fifth meeting (7 September 2023)

[Report](#) of the sixth meeting (6 October 2023)

Core and programmatic activities

Like the previous Intersessional Working Group on Finances set up by the 39th Standing Committee (3-6 December 2019), the *Ad hoc* Drafting Group of an Amending Protocol looked into the financial mechanisms of other international environmental conventions and to which criteria their resources were allocated to activities.

The UN distinguishes between (1) essential, recurring or long-term and (2) temporary or short-term and complementary activities. The essential and recurring or long-term activities are funded by the core budget while temporary or short-term and complementary activities are funded by voluntary contributions.

The Council of Europe distinguishes between (1) monitoring, (2) standard setting and (3) cooperation activities. Monitoring activities stem from the provisions of the Convention. Standard setting activities concern mainly the work of the specialised Groups of Experts on specific topics. Cooperation activities are usually beneficial to one or a small group of Contracting Parties.

The Drafting Group agreed to reflect on the typology of activities used within the Council of Europe (i.e. monitoring, standard setting and cooperation activities) to ensure consistency in wording with the programme and budget of the Organisation.

The Drafting Group also agreed to specify that the funds resulting from the mechanism created by the Protocol would be allocated to “core activities of the programme of work” and supported the addition of a footnote defining the nature and scope of “core activities of the programme of work”.

At the same time, the Drafting Group believed that it was important to also state in the Protocol that the allocation from the Ordinary Budget has to provide for the “basic functioning” of the Convention. Considering that no definition of the “basic functioning” existed within the Council of Europe and that the allocation of the Ordinary Budget remained a prerogative of the Committee of Ministers of the Council of Europe, the Drafting Group supported the further amendment of the Convention by the addition of an article specifying that the Secretariat shall be provided by the Council of Europe.

Entry into force

The *Ad hoc* Drafting Group of an Amending Protocol initially considered as working assumption a threshold for the entry into force of at least 2/3 (34) of Contracting Parties (51) ratifying the Protocol, composed by both major and small contributors.

However, to ensure the financial sustainability of the Convention, the Drafting Group supported the introduction of a double criteria for the entry into force of the Protocol, namely the number of countries ratifying the protocol and the proportion of budget they will cover.

Financial simulations were produced based on a working assumption of a threshold of 2/3 Parties (i.e. 34 Parties) and updated along the criteria for the scale of contributions supported by the Drafting Group, namely a minimum contribution of 2 500 euros for the small contributors and a maximum contribution of 10% of the budget for the major contributors (see section on Scale of contributions below).

The table below presents the proportion of budget covered by various samples of 34 contributors.

Set up of contributors	No major contributor, all small contributors and a few of intermediary contributors	One major contributor and a mix of intermediary and small contributors	Two major contributors and a mix of intermediary and small contributors	Three major contributors and a mix of intermediary and small contributors	Four major contributors and a mix of intermediary and small contributors	Four major contributors, all intermediary contributors and a few small contributors
Proportion of budget covered (%)	27	51	61	69	79	89

The Drafting Group agreed that a proportion of the budget between 61 and 69 %, with the commitment of between 2 and 3 major contributors would represent a positive start of the protocol and considered that a proportion of 65 % of the budget constitutes a good basis of discussion.

Scale of contributions

Like for the option on the Enlarged Partial Agreement, the scale of contributions related to the financial mechanism resulting from the Protocol amending the Bern Convention is grounded on Resolution 94(31) of the Committee of the Ministers of the Council of Europe which considers the population and the Gross Domestic Product of countries.

The starting point of the reflection of the *Ad hoc* Drafting Group of an Amending Protocol has been the scale of contributions considered for the Ordinary Budget of the Council of Europe. The simulations resulted in contributions for the major contributors much higher than the voluntary contributions suggested in Resolution No. 9 (2019) of the Standing Committee and in very significant gaps between small and major contributors (i.e. small contributors contribute 300 times less than major contributors).

Therefore, the Drafting Group decided to set a higher minimum contribution at 2 500 euros and a ceiling contribution at 60K euros.

The Drafting Group noted that these new criteria significantly increased the contribution rates of intermediary contributors and mitigated the differences between the contribution rates of intermediary and major contributors.

The Drafting Group anticipated a possible resistance from the intermediary contributors to compensate for the contribution ceiling of major contributors. While remaining open to the principle of a maximum contribution, the Drafting Group acknowledged that the Protocol should remain attractive for intermediary contributors and there should be a reasonable difference between the contributions of major and intermediary contributors.

The Drafting Group further elaborated the criteria. Based on the previous simulations, the Drafting Group concluded that a scale of contributions with a minimum contribution of 2 500 euros and a maximum contribution of 10% of the budget would satisfy many of the concerns expressed and constitutes an optimal proposal to be considered by the Standing Committee.

To inform Parties of how their contributions could look like depending on the evolvement of the budget, the Drafting Group agreed on financial scenarios putting these criteria into practice and ranging from 300 Keuros up to 800 Keuros

Documentation accompanying the Protocol

The *Ad hoc* Drafting Group of an Amending Protocol discussed what type of documentation would be needed to ensure the functioning of the Protocol. As a matter of priority, the Drafting Group focused on drafting the Protocol and its Explanatory Report which should be submitted together to the consideration of the Committee of Ministers of the Council of Europe for possible adoption.

The Drafting Group listed below the documents which should be finalized and prepared in 2024 in order to be examined by the 44th Standing Committee.

Nature / type of document	To be examined / endorsed / adopted by	When should the doc be ready at the latest?	Purpose of the document
Protocol amending the Bern Convention	<ul style="list-style-type: none"> - <i>Ad hoc</i> Drafting Group of an Amending Protocol - Standing Committee to the Bern Convention - Committee of Ministers 	1 month before the 44 th Standing Committee	The protocol amending the Bern Convention will aim to set up a mechanism of financial mandatory contributions. It should be endorsed by the Standing Committee before being submitted to the Committee of Ministers for formal adoption.
Explanatory report of the protocol	<ul style="list-style-type: none"> - <i>Ad hoc</i> Drafting Group of an Amending Protocol - Standing Committee to the Bern Convention - Committee of Ministers 	1 month before the 44 th Standing Committee	The explanatory report endorsed by the Standing Committee and submitted to the Committee of Ministers of the Council of Europe does not constitute an instrument providing an authoritative interpretation of the text of the protocol amending the Bern Convention, although it aims to facilitate the understanding of the provisions of the protocol.
Revised Rules of Procedures of the Standing Committee	Standing Committee to the Bern Convention	1 month before the 44 th Standing Committee	The Rules of Procedures of the Standing Committee should be amended to reflect the new prerogatives of the Standing Committee and the way it should take decisions regarding the programme of work and budget of the Convention.
Guidance doc for the elaboration of the	Standing Committee to the Bern Convention	1 month before the 44 th Standing Committee	Guiding principles should be agreed on to

programme of work and budget			help the Standing Committee elaborating and approving the programme of work and budget of the Convention.
ToR of the Group of Experts in charge of elaborating the programme of work and budget	Standing Committee to the Bern Convention	1 month before the 44 th Standing Committee	A dedicated working group consisting of representatives of Contracting Parties could be entrusted with the elaboration of the draft programme of work and budget for the consideration of the Standing Committee. A description of the tasks and responsibilities of this working group should be prepared and adopted by the Standing Committee.