



Strasbourg, 17 June 2024



T-PVS/Inf(2024)19

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

The Bern Convention financial situation

*Document prepared by
the Secretariat*

I. Introduction

1. The budgetary allocation of the Council of Europe Ordinary Budget to the programme of activity of the Bern Convention was reduced by 67% between 2007 and 2023 and, over the same period, staff was moved progressively to extrabudgetary resources with a culmination in 2020/21 when 80% of the Secretariat was funded via voluntary contributions (75% in 2022/23). In 2023, the positive momentum for the environment generated by the 4th Summit and the Reykjavík Declaration led to a Committee of Ministers decision to increase by €500K the budget allocated to the Bern Convention, the Reykjavík process on the environment and its Secretariat for 2024. This amount enabled to more than double the Ordinary Budget resources for the activities of the Bern Convention from €164,8K in 2023 to €332,7K in 2024 and allowed for its Secretariat staff members to be moved from financing on voluntary contributions to the Ordinary Budget. The Ordinary Budget allocations of the Bern Convention are set out below. In addition, to the 5 indicated jobs, the Director and Head of Department, both paid by the Ordinary Budget, also contribute part of their time to the work of the Bern Convention. An additional A post is paid through voluntary contributions.

Bern Convention Ordinary Budget

Resources (in €K)	
Non-staff	332,7
Staff	5 jobs (2A 3B)

2. The Bern Convention Standing Committee has been exploring different options to secure the budgetary sustainability of the Convention system for the last four years, and in that context, in October 2022, received a mandate from the Committee of Ministers to prepare a draft Protocol amending the Bern Convention, setting up a mechanism of compulsory financial contributions by the Parties. The latest information on the preparation of the draft was communicated to the Standing Committee at its meeting in December 2023 and reviewed at its Bureau meeting in March 2024.

3. Following that meeting of the Bern Standing Committee and of its Bureau, there have been additional internal consultations involving the Secretary General's Private Office, the Committee of Ministers Secretariat, DLAPIL, DPB and DGI. In light of the relatively recent budget developments explained above, the Secretariat has come to the conclusion that pursuing further the avenue of the amending Protocol is not advisable and recommends the prompt exploration of alternative solutions to secure sustainable financing of the Convention including the consolidation of Ordinary Budget appropriations, as well as the establishment of a Trust Fund.

II. Work on the draft amending Protocol

4. The aim of the draft amending Protocol to the Bern Convention is to institute a compulsory financial contribution system for the Parties to the Convention with a view to ensuring adequate financing now and in the long term. In light of the preparatory work on the draft Protocol it has come to light that this avenue raises significant issues both of principle and substance, putting in doubt whether such a Protocol could reach its aim, or may unintentionally harm the financial stability of the Convention system and interfere negatively in the existing regulatory and institutional framework of the Organisation.

5. The issues of principle concern how the Council of Europe operates financially. In the Council of Europe setting, core conventional functions are, as a general rule, funded through the Ordinary Budget or through Partial agreements while additional related activities to the convention are funded through extrabudgetary resources. Any consideration of such a novel system should be approached within the broader context of the Council of Europe taking into account its institutional and regulatory framework, as overseen by the competent bodies — the Budget Committee and the Rapporteur Group of the Committee of Ministers on the Programme, Budget and Administration (GR-PBA). Having a Protocol amending the Bern Convention to put in place a mechanism of mandatory financial

contributions would create a deleterious precedent with unforeseeable effects on the future functioning of the rest of the Organisation other than that it would be unlikely to solve a budgetary shortage in the short or medium term.

6. Similarly, the rate of the EU's contribution to the Organisation, including the Bern Convention, cannot be evaluated in isolation from existing rules and the overall context of the Council of Europe-EU interplay.

7. The proposed voting regime is not in line with the Statute of the Council of Europe where unanimity is not practiced, and it could have the unintended effect of making it possible for any Party to block the adoption of the budget by the Bern Standing Committee entirely. Moreover, the proposed substantial provisions create interference between the Committee of Ministers, the Standing Committee and the Parties to the proposed protocol as far as the decision on the core convention activities and the budget appropriations relating thereto. The proposed draft contains a footnote to try to clarify the situation, but other than the fact that it is not customary to have footnotes in international treaties, it does not clarify but creates more uncertainty.

8. From a practical standpoint, although the aim of the Protocol would be to provide greater certainty and stability, it is important to note that a protocol would not yield immediate or medium-term effects, providing neither certainty nor stability. While the draft Protocol developed by the Working Group of the Bern Standing Committee in 2023 includes a clause on provisional application of the draft Protocol pending its entry into force, and entry into force three years after opening for signature (provided that the Protocol "has at least thirty-four Parties and that the sum of their financial contributions represents at least 65% of the resources determined by the Standing Committee to the Convention"), it is unlikely that the Protocol would enter into force – or even be provisionally applied by the majorities of the Parties to the Convention – three years following its opening for signature. In fact, according to the financial simulations at the disposal of the Working Group, 36 Parties would contribute €2500 and it is unlikely that with such amounts at stake national parliaments would fast track processing of the proposed protocol ratification bills.

9. In the meantime, the Protocol would lead to two treaty regimes, with only those parties having ratified it (and, before its entry into force, having agreed to provisional application), being bound by the financial obligation the Protocol creates. This would institute an inequitable regime of contributions and uncertainty as to the budgetary situation of the convention. The question also arises as to how the contributions of those who are not Parties would be covered and by whom, whether the other Parties or the Ordinary Budget, creating an additional layer of complication and confusion rather than clarifying the relations between the Ordinary Budget and the compulsory contributions and extrabudgetary contributions.

10. Even more concerning is the message such a Protocol would convey i.e.: that the Ordinary Budget should not cover the core expenses of the Bern Convention system, despite being the cornerstone of the Organisation's budgetary framework and the recent political support and momentum.

11. The institutional rules governing member States' contributions to the budgets of the Council of Europe are set out in – Resolution Res(94)31 and were determined by the Committee of Ministers, in accordance with the Statute. These rules are the basis for calculating member States' contributions to the Ordinary Budget and partial agreements and it follows that it should also be the basis determining member States' contributions in the framework of the amending protocol. For non-members of the Council of Europe which participate in Council of Europe conventions, the financial arrangements are established jointly between the Committee of Ministers and the non-member. To facilitate agreement, the Committee of Ministers has adopted Resolution CM/Res(2022)6 setting out a calculation method specifically for this purpose.

12. Finally, it should be noted that the proposed text contains significant lacunae regarding the situations where a Party would fail to comply with its obligations by virtue of the Protocol including

the late payment interest regime and the sanctions regime. These matters are thoroughly regulated in the Financial Regulations of the Organisation and operated in conjunction with the institutional setting of the Organisation.

III. Securing a sustainable financing of the Convention

a) Consolidation in the Ordinary Budget

13. The favourable political momentum surrounding the Bern Convention today, particularly following the Reykjavík Summit, should allow for consolidation of Ordinary Budget appropriations in future budgetary cycles, thus ensuring the core function of the Bern Convention system.

b) Consolidation of extrabudgetary resources

14. Over the years, the Bern Convention has benefited from a steady stream of extrabudgetary resources which have allowed it to operate. These resources amount to €484K in 2024 and reflect significant support from specialised ministries. The table in Appendix 2 shows the detailed 2024 contributions including countries which have contributed in previous budgetary years. Similar levels were registered in the years 2021 and 2022. Resource mobilisation should be enhanced to consolidate and develop the extra budgetary resources to provide additional resources to the core conventional functions.

15. It should be recalled that for this purpose, on 15 June 2022, the Committee of Ministers decided to establish a “Fund” for the Bern Convention, to collect voluntary contributions to preserve and promote biological diversity and assist Contracting Parties in implementing policies and strategies to prevent environmental degradation (see CM/Del/Dec(2022)1437/9.2). In fact, as such, no “Fund” as a distinct financial vehicle was set up but rather the preexisting special account continued to be used, as this is the case for all voluntary contributions to the Organisation, and the related PMM project was renamed “Fund”.

c) Institutionalisation of a Trust Fund

16. Following the above-mentioned decision of the Committee of Ministers, supported by the Bern Convention Committee at its Standing Committee meeting in December 2022, and building on the political momentum which Reykjavík provides, and the existing patterns on extrabudgetary resources to the Bern and other related Conventions, the establishment of a dedicated Environment Trust Fund including the Bern Convention could be envisaged. This Trust Fund would constitute a distinct financial vehicle with its own establishing legal agreement, strategic and financial framework, and governance. It would be prepared building on the experience of the Organisation’s similar funds and the specific needs relating to the Bern Standing Committee and possible contributors to the Fund, including those which require a legal obligation to contribute. The Fund would supplement, *inter alia*, the core Convention’s budgetary resources provided for in the Ordinary Budget and would allow for the necessary degree of earmarking depending on the wishes of the contributors. Contributions intended for the Protocol regime could instead be directed to this Trust Fund together with other extra-budgetary contributions achieving the same objective of budgetary sustainability immediately while enhancing visibility, interest, and political backing.

17. The timeline for establishing this Trust Fund could be aligned with the Ministerial Session in May 2025, during which the Committee of Ministers is due to adopt the Council of Europe Strategy on the Environment, emphasising the Bern Convention’s role, among others. Prior to this, steps could be taken to secure participation.

18. Therefore, it is recommended that both the GR-C and the Bern Standing Committee Bureau address this matter beforehand, and work be undertaken without further delay.

Conclusion

19. There is significant support for the Bern Convention as reflected not only by the Ordinary Budget allocations decided by the Committee of Ministers but also by the strain of extrabudgetary resources provided by Parties to the Convention.

20. The avenue which an amending protocol represents, providing solely for compulsory contributions is not a suitable solution. At a practical level, it does not provide a solution any time soon and is unlikely to enter into force. At a substantial level, in its current state it is not in line with the Organisation's regulatory and institutional framework.

21. The Reykjavík process declaration has crystallised support for the Bern Convention and created a favourable political momentum to consolidate and develop the Convention's budgetary resources. This could be done by consolidating the Ordinary Budget allocation, enhancing and stabilising its extrabudgetary resources and institutionalising a dedicated Trust Fund in line with the decisions of the Committee of Ministers already taken in June 2022.

22. At a more general level, this has raised the issue of finding alternative ways of providing compulsory contributions to the conventional system of the Council of Europe. This is a relevant issue in light of scarce budgetary resources and should be addressed at a general level by the specialised bodies, the budget committee and the Rapporteur Group on Programme, Budget and Administration (GR-PBA) of the Committee of Ministers.

Appendix 1

Timeline of relevant decisions

1. Since 2001, the budgetary allocation of the Council of Europe to the Bern Convention has been gradually reduced, with 6 major cuts operated in 2001, 2005, 2011, 2016, 2018 and 2019 as a consequence of the consecutive reforms within the Organisation.
2. In the period 2011-2013, the Standing Committee created an Ad hoc Advisory Group on Budgetary matters with a mandate to identify with the Bureau a viable system for funding the Bern Convention. As a result of this work, the Standing Committee decided, on 6 December 2013, to maintain a double funding system consisting of the Ordinary Budget and voluntary contributions to finance both the Secretariat and the programme of activities.
3. In November 2018, the Standing Committee to the Bern Convention set up an Inter-sessional Working Group, working to ensure a stable, sufficient, predictable, long-lasting and fair future financial mechanism for the Convention.
4. In November 2019, the Standing Committee decided that Contracting Parties should steer the process to ensure the financial sustainability of the Bern Convention. The Standing Committee also adopted a scale of suggested voluntary financial contributions to the budget of the Convention by its Contracting Parties.
5. The Committee discussed the possible legal options for the establishment of a new mechanism for financing the Bern Convention and agreed that an Enlarged Partial Agreement (EPA) and the amendment of the Convention pursuant to Article 16 could install a new system for obligatory financial contributions by the Parties. In 2020, a proposal of the Enlarged Partial Agreement (EPA) and an amendment of the Bern Convention pursuant to Article 16 was drafted and preliminary exchanges of views were conducted with the GR-C.
6. In 2021, the Standing Committee acknowledged that the uncertainty of the Parties regarding their intention towards the Enlarged Partial Agreement was an obstacle to pursuing this option. Moreover, DLAPIL pointed out that the Enlarged Partial Agreement option did not conform with the Council of Europe's institutional framework, in particular the Statutory Resolution Res(93)28 on Partial and Enlarged Partial Agreements.
7. On 15 June 2022, the Committee of Ministers decided to: establish a Fund for the Convention for the Conservation of European Wildlife and Natural Habitats (Bern Convention), in order to collect voluntary contributions to preserve and promote biological diversity and assist Contracting Parties in implementing policies and strategies to prevent environmental degradation; to encourage member States to support the Bern Convention by committing to provide voluntary contributions; and to consider, as soon as possible, options for ensuring the institutional and financial stability of the Bern Convention in the long term.
8. On 2 December 2022, the Standing Committee of the Bern Convention welcomed the Committee of Ministers' decision of 15 June 2022 to establish a Fund for the Bern Convention, stressing that it must neither lead to a reduction of the efforts in seeking for an institutional financial mechanism, nor to a decrease of the resources provided by the ordinary budget of the Council of Europe. The Fund should also facilitate the procedure for the payment of voluntary contributions and allow the funding of more ambitious projects in the interest of all Parties. The Standing Committee further acknowledged that the success of the Fund relied on significant mobilisation of resources and communication.
9. In 2022, based on a document prepared by DLAPIL on "Advantages and disadvantages and consequences of possible options", the GR-C considered the establishment of a Protocol amending the Bern Convention to be a more realistic, faster and flexible option than the amendment pursuant to

Article 16 of the Convention. On 19 October 2022, the Committee of Ministers mandated the Standing Committee to elaborate such a Protocol.

10. In 2023, the Secretariat assisted the Drafting Group created by the Standing Committee to elaborate an Amending Protocol to the Bern Convention, an Explanatory Report and an indicative scale of financial contribution. In September 2023, unexpectedly, the European Commission requested to include in the Amending Protocol a reference to the EU contribution rate (as a contracting party) limited to 2.5% to avoid a double financial contribution with EU member States (whereas the EU is considered as a major contributor according to the Council of Europe rules).

11. In December 2023, the Standing Committee was informed of the positive momentum for the environment generated by the 4th Summit and the Reykjavik Declaration, which had led to a Committee of Ministers' decision to increase by €500K the budget allocated to the Bern Convention, the Reykjavik process on the environment and its Secretariat.

12. The Standing Committee nevertheless extended the mandate of the Ad hoc Drafting Group of an Amending Protocol and adopted its revised Terms of Reference, tasking it with dealing with the documentation of the Protocol, and tasking the Secretariat with resuming bilateral meetings between relevant Services of the European Commission and of the Council of Europe to explore options regarding the contribution rate of the EU.

13. In March 2024, the Bureau of the Standing Committee took note of the Secretariat's strong recommendation to put the current work on the Amending Protocol on hold due to several reasons but decided nevertheless to pursue the work on the Amending Protocol to ensure the financial autonomy of the Bern Convention and mitigate possible future budget cuts.

14. On 25 April 2024, the GR-C held an exchange of views with the Chair of the Standing Committee and the Director of Social Rights, Health and Environment and took note of the situation having regard to the mandate by the Committee of Ministers to the Standing Committee of the Convention set out in (CM/Del/Dec(2022)1446/9.1) and agreed to hold a dedicated meeting in this respect. This meeting took place on 3 June 2024.

Appendix 2**Extrabudgetary resources of the Bern Convention as of 4 June 2024 (bilingual)**

Donor	Entity	2024
Andorra	Ministry of Foreign Affairs	
Austria	Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology	
Azerbaijan	Ministry of Ecology and Natural Resources of the Republic of Azerbaijan	
Belgium	Government of Flanders	€ 694
Belgium	Ministry of Foreign Affairs	€ 730
Belgium	Région de Bruxelles-Capitale	€ 46
Belgium	Service public de Wallonie	€ 15 000
Croatia	Ministry of Economy and Sustainable Development	€ 000
Cyprus	Ministry of Agriculture, Rural Development and Environment	
Czech Republic	Ministry of the Environment	€ 000
Estonia	Ministry of Climate	€ 000
Estonia	Ministry of the Environment of Estonia	
European Union (EU)	European Commission DG Environment	€ 24 700
Finland	Ministry of Environment	
France	Ministère de la Transition Écologique et de la Cohésion des Territoires	€ 55 000
Georgia	Ministry of Foreign Affairs	
Germany	Federal Ministry for the Environment, Nature Conservation and Nuclear safety	
Hungary	Ministry of Foreign Affairs	
Luxembourg	Ministère de l'Environnement, du Climat et du Développement Durable	€ 2 000
Malta	Environment and Resources Authority	
Republic of Moldova	Ministry of Agriculture, Regional Development and Environment	€ 1 300
Monaco	Le Département des Relations extérieures et de la Coopération	€ 20 000
Netherlands	Dutch Ministry of Agriculture, Nature and Food Quality	€ 20 000
Norway	Ministry of Climate and Environment of Norway	€ 2 000
Norway	Norwegian Environment Agency	
Serbia	Ministry of Environmental Protection	€ 000
Slovak Republic	Ministry of Environment	€ 000
Slovenia	Ministry of the Environment and Spatial planning	
Sweden	Swedish Environmental Protection Agency	€ 17 117
Switzerland	Office fédéral de l'environnement	€ 163 375
United Kingdom	Department for the Environment, Food and Rural Affairs	€ 1 392
	TOTAL	€ 483 856