



Strasbourg, 2nd December 2022

T-PVS/Inf(2022)27

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

**CASE-FILE SYSTEM:
Summary of general procedures for the processing of complaints -
a resource for the Bern Convention stakeholders**

*Document prepared by
the Secretariat of the Bern Convention*

1. INTRODUCTION

This document aims to compile the general procedures for the processing of complaints under the Bern Convention case-file system. There have been several texts produced over the years which addressed the various processes and reflections of the case-file system, but it was deemed useful to provide now a short and easy-to-use summary of the main procedures that the operators and users of the system, as well as the wider Bern Convention network and interested general public, could refer to. It must be made clear that the below procedures do not constitute a strict rulebook. The case-file system has flourished over nearly 40 years thanks to the flexibility of the Standing Committee (and its Bureau) to make decisions on a case-by-case basis, unbound by rigid rules and criteria.

The origin of this document came from a Bureau and Secretariat-driven reflection process during 2021 whereby the multiple aspects and issues which relate to the case-file system were addressed, with some solutions proposed to increase the efficiency and effectiveness of the system. The Secretariat memorandum, entitled “Case-File System: Reflections and possible restructuring in the framework of the Bern Convention Vision and Strategic Plan for the period to 2030, can be found here: [T-PVS/Inf\(2021\)30](#). The 41st Standing Committee in December 2021 decided to mandate a wider consultation of the reflection with the Contracting Parties and interested Observer NGOs.

The reflection and following consultation in early 2022 resulted in two outcomes: the present document (T-PVS/Inf(2022)27) on the general processing of complaints throughout their lifecycle, as well as a document on proposals for increasing the efficiency and effectiveness of the case-file system going forward ([T-PVS/Inf\(2022\)28](#)).

The 42nd Standing Committee in December 2022 supported the Guide and stated that it should become the go-to handbook for users of the system and the general public when dealing with the case-files.

Finally, it is intended that the reflection and relevant updates and modernisation of the case-file system becomes a more regular practice, thus this text can be considered as a “living document”.

2. CASE-FILE SYSTEM: GENERAL PROCEDURES FOR THE PROCESSING OF COMPLAINTS

A. Submission of complaints

1. A concerned stakeholder, e.g. an association, private person or Contracting Party, may submit to the Secretariat of the Bern Convention a complaint on an alleged breach of the Convention by one or more Contracting Parties- the digital complaint form (Annex I), within which submission criteria are stated, should be used.
2. Anonymous complaints are not admissible, but the Secretariat will take measures to protect the confidentiality of the complainant. One email address will be needed as a minimum when cooperation with different stakeholders takes place.
3. The reason for the potential breach of treaty obligations must be clearly explained, efforts to address the matter with local, national, and/or alternative international procedures must be demonstrated; and the complaint should be sufficiently serious to warrant examination at international level, bearing in mind the importance of the habitat, species or population concerned.
4. If a fellow Multilateral Environmental Agreement (MEA) or other international organisation is already treating the issue, the added-value of the Bern Convention also treating this case should be assessed, in order to avoid unnecessary duplication at the international level.
5. If the Secretariat in the initial screening process (requesting further information from the complainant if need be) should deem that the complaint satisfies the above criteria and is thus

admissible, it will forward the complaint form to the Contracting Party concerned requesting a response.

6. The Contracting Party concerned will be requested to provide a response report, and will be given a minimum of three months to respond, with a deadline of approximately one month ahead of an upcoming Bureau meeting, to which the complaint will be added on the agenda.
7. Following the first Bureau examination of a case-file, should the complainant change or an additional complainant wish to contribute to the case, this can be accepted provided that the original complainant confirms the change. If the original complainant is unable to do so, the Bureau will decide on a case-by-case basis whether to accept the new complainant.

B. Assessment of complaints and complaint classifications

8. The Bureau will discuss the complaint form and report of the Contracting Party and take a preliminary decision. Such a decision may entail requesting more information from the Contracting Party, the complainant, or both, expressing concern or recommending certain actions, upgrading the status of the complaint if it is deemed serious/urgent, or dismissing the case if it is deemed not sufficiently serious to warrant examination at international level, or outside of the mandate of the Bern Convention's case-file system.
9. There are four categories of complaints. A "New complaint" is one which has been received, processed and registered by the Secretariat. Once discussed at the Bureau, its follow-up must be decided. If further information or clarification is required from the Contracting Party and/or the complainant, the complaint may remain "new" for up to one year.
10. If the complaint is deemed sufficiently serious to warrant continued monitoring by the Bureau but not urgent enough to be brought to the attention of the Standing Committee, the Bureau may elevate the complaint to a "Complaint on stand-by".
11. If the complaint is deemed sufficiently serious and urgent to necessitate Standing Committee attention, the Bureau may elevate the complaint to a "Possible File".
12. The Standing Committee, which generally deals only with "Open" and "Possible" files, may decide to elevate a complaint to the highest category, "Open File", if it agrees by consensus (or in the absence of consensus by two-thirds majority vote, as stipulated in Rule 8 of the Rules of Procedure), that the complaint pertains to a violation of some aspect of the Convention.

C. Information requests and deadlines

13. The Bureau or Standing Committee typically request that the Contracting Party and complainant send an update report for a future meeting on any relevant updates on the issue of the complaint, or on specific requests for clarification. The Bureau or Standing Committee meeting at which the complaint will next be discussed is also defined at the time of the decision.
14. The Secretariat will set a deadline of approximately one month ahead of the meeting date for the reception of reports. The Contracting Party and the complainant are required to send single consolidated reports by the deadline.
15. For Bureau meetings, the Bureau has the discretion to accept reports after this deadline on a case-by-case basis and if the delay is justified by the Contracting Party or complainant.
16. For Standing Committee meetings, exceptions to late submission of documents are specified under Rule 6 of the Rules of Procedure.
17. Reports are made public on the Bern Convention relevant meeting webpage several weeks before the meeting.

D. Late or lack of reporting

18. For new complaints and complaints on stand-by, if no information is received from the Contracting Party for two consecutive Bureau meetings, the Bureau may decide to bring this complaint to the attention of the Standing Committee by raising it to a “possible file”, or exceptionally as a “complaint on stand-by” to the Standing Committee agenda.
19. For new complaints and complaints on stand-by, if no information is received from the complainant for two consecutive meetings, the Bureau may decide to dismiss the complaint.
20. For Open and Possible Files and concerning an ongoing lack of response from the Contracting Party a letter originating from the Chair of the Standing Committee (as opposed to the usual letter of the Secretariat) may be addressed to the Contracting Party strongly advising them to react to the situation as a matter of urgency. A letter may also be addressed to the Permanent Representation of the Contracting Party in Strasbourg.
21. For Open and Possible files and concerning an ongoing lack of response from the complainant, a letter originating from the Chair of the Standing Committee (as opposed to the usual letter of the Secretariat) may be addressed to the complainant encouraging a prompt reaction, and warning that the complaint may be dismissed if no updates are received.

E. On-the-spot appraisals (OSA)¹

22. The decision to recommend an on-the-spot appraisal shall lie with the Standing Committee, which shall reach the relevant decision in accordance with Rule 8.c of its Rules of Procedure, subject to the agreement of the Contracting Party within whose territory the habitat under consideration is situated.
23. In urgent cases, the Chair may authorise the Secretariat to consult the Bureau at one of its meetings or by electronic consultation in order that a decision be made in accordance with the foregoing paragraph. A decision of the Bureau in such an exceptional circumstance would require a unanimous agreement of the Bureau members.
24. The expert detailed to carry out the on-the-spot appraisal shall be appointed by the Secretary General of the Council of Europe. The expert cannot be a person who represents or has represented a State on the Standing Committee, or a national of the Contracting Party in whose territory the natural habitat to be visited is situated. The appointment of the expert must be agreed by the Contracting Party and complainant concerned.
25. The expert shall be accompanied during the on-the-spot appraisal by a member of the Secretariat and representatives of the Contracting Party and complainant concerned.
26. In close consultation with the Standing Committee and/or the Bureau, the concerned Contracting Party and the complainant, the Secretariat shall draw up terms of reference for the on-the-spot appraisal. Both the concerned Contracting Party and complainant must submit their agreement before the terms of reference can be accepted.
27. After completing the on-the-spot appraisal, the expert shall submit a written report to the Standing Committee in one of the official languages of the Council of Europe. The expert may be called upon to present the report to the Standing Committee at one of its meetings.
28. In order to ensure that the said expert may carry out the on-the-spot appraisal in full independence, the travel and subsistence expenses pertaining to the on-the-spot appraisal and those arising out of the presentation of the report to the Standing Committee shall be borne by the Council of Europe.

¹ NB: Points 22-28 originate from Appendix 1 to the Rules of Procedure of the Bern Convention Standing Committee and include proposed amendments to Appendix 1. They may be adjusted following the decision of the Standing Committee on possible modifications to these Rules.

The host country of the on-the-spot appraisal shall arrange local interpretation, local transportation and translation of documents, and shall bear the expenses thereof.

29. In case of absence of the concerned Contracting Party at the Standing Committee where a decision on opening a file or mandating an on-the-spot appraisal is to take place, such a decision may be postponed until the next meeting. However, at the next meeting, and in case of continued absence, the Standing Committee may take a decision *in absentia*, which, in the case of an on-the-spot appraisal, would be subject to the later written agreement of the concerned Contracting Party.
30. The Secretariat should investigate if a parallel inspection is being organised by a fellow MEA or other international organisation. If this is the case and in order to avoid duplicative efforts, it may be considered to postpone a Bern Convention parallel procedure until results of the other procedure have been made clear, or to investigate the possibility of joining the other mission.

F. Recommendations and follow-up

31. Following the results and mission report of an OSA, the expert will present draft recommendations to the Standing Committee, which usually entail proposals of action to the Contracting Party, as well as possibly to the complainant and other stakeholders of the case in question.
32. If adopted at the Standing Committee, the Contracting Party or other stakeholder concerned is expected to keep the Bureau and/or Standing Committee updated with progress on fulfilment of the Recommendation.
33. Depending on progress, the Standing Committee may decide to close the case, but to request that the Contracting Party and/or other stakeholder in question continue to report on a less regular basis, in which instance the case will be classified as a "Follow-up Recommendation".
34. Such a Follow-up Recommendation may return on the agenda as an active case-file if deemed necessary by the Standing Committee.

Annex 1 – Revised complaint form

Convention on the Conservation of
European Wildlife and Natural Habitats



COMPLAINT FORM INSTRUCTIONS:

NB: Submitting a complaint to the Bern Convention is a serious accusation against the concerned Contracting Party(ies). Complaints must demonstrate a sufficient degree of seriousness or urgency related to species or habitats of European importance, and the complainant must demonstrate that the issue has already been raised at local and/or national level.

Complaint forms must be submitted in electronic word format, in English or French, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis. Anonymous complaints are not admissible; however the Secretariat will take measures to keep the personal details of the complainant confidential.

Please, fill in this form and send it to the attention of:

Bern Convention Secretariat

Directorate of Democratic Participation

Council of Europe

F-67075 Strasbourg Cedex

E-mail: Bern.convention@coe.int

First name:.....

Surname(s).....

On behalf of (if applicable):
.....

Address:.....

Town/City:.....

County/State/Province:.....

Postcode:.....

Country:.....

Tel.:.....

E-mail:

Website:

Date: Electronic Signature

1. Please state the reason of your complaint (refer also to the Contracting Party/ies involved and the Articles of the Convention which might be violated)

2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention that are potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)

3. What might be the negative effects for the specie/s or habitat/s concerned?

4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald Network, UNESCO site? Are there pending procedures within another international institution?

5. Have you attempted to address this issue with the relevant local and national authorities? Please describe. Are there any pending procedures at national level regarding the object of your complaint?

6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc) (for large files, please add a separate annex document, as mentioned in the above instructions)