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# **SCOPING STUDY**

## **on the development of the Bern Convention reporting evaluation system**

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## BACKGROUND

The Convention on the Conservation of European Wildlife and Natural Habitats is a binding international legal instrument in the field of nature conservation, which was signed in Bern in 1979. Fifty countries and the European Union (EU) have signed up to the Bern Convention.

Article 9 of the Convention provides for the possibility “to make exceptions from the provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8 provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned” and “the Contracting Parties shall report every two years to the Standing Committee on the exceptions made”.

In recent years, the number and quality of the biennial national reports to the Bern Convention has been decreasing; therefore, there is a need to reverse this trend and improve the reporting system.

The expert was requested to prepare this Scoping Study to advise the Secretariat on how to improve the reporting system and to support the development of the Bern Convention reporting evaluation system.

## ANALYSIS OF THE PRESENT REPORTING SYSTEMS

### The Biennial report to the Bern Convention

According to the overview of the biennial reports to the Bern Convention published on <https://www.coe.int/en/web/bern-convention/biennial-reports>, 44% of the Parties did not deliver their report during the last reporting round (period 2019-2020). Six Countries have never sent a report since 2009. The countries which send most regularly their report are mainly the EU Member States (MS), but only 7 out of 27 EU MS during the last cycle delivered a complete report which has to be composed of the annual Birds 2019 & 2020 and biennial Habitats 2019-2020.

The following reports from non-EU Contracting Parties have been analysed.

Act	Last national reports submitted (non-EU countries)		Format
Bern	Georgia, Iceland, Liechtenstein, Morocco, Norway, Serbia (2019-2020)	Andorra, Armenia and Monaco (2017-2018) Ukraine (2015-2016)	PDF, csv

Among the reports analysed, Andorra's report is empty while the report from Armenia is incomplete as only some fields have been filled in; the report from Georgia includes only the exceptions relative to *Canis lupus*. The reports from the EU MS are incomplete as they do not include information on the appendices of the Bern Convention<sup>1</sup>, the information on falconry is not immediate and complete, and the means listed in Annex IV (a) of the EU Birds Directive/Annex VI (a) of the EU Habitats Directive or Appendix IV of the Bern Convention are not specified (the specification is to be included in a free text field, not allowing a real match with those listed in the EU Directives Annexes/Bern Convention Appendix).

Afterwards, the Online Reporting System ([ORS](#)) for submitting information on the exceptions made under the Bern Convention has been analysed. Strengths and weaknesses are reported below.

<sup>1</sup>[Appendix I](#) - Strictly protected flora species, [Appendix II](#) - Strictly protected fauna species, [Appendix III](#) - Protected fauna species, [Appendix IV](#) - Prohibited means and methods of killing, capture and other forms of exploitation.

## Strengths

- Online species database is already organised per Appendix of the Bern Convention. This avoids the insertion of species not covered by the Convention and to avoid making mistakes with the appendices.
- The ORS is the same as for some other international reporting obligations (e.g. CMS and AEWA).
- Fields are complete, including all the information required by Article 9.2 of the Bern Convention and further data, allowing to obtain a full and accurate picture of the use of the exceptions.
- An icon appears with an error message signalling when some mandatory questions remain unanswered.

## Weaknesses

- Too many different sections to be filled in: one for each Appendix of the Convention and falconry separately.
- The species cannot be inserted directly: one must start with the selection of the Phylum/class and then can proceed to the species.
- It is not clear in the ORS nor in the [User's Guide](#) how the mandatory fields are marked. One can assume that all the questions with the red asterisk are mandatory, but during the testing of the ORS the icon of error appeared also when all the questions with the red asterisk were answered.
- The model for reporting includes the request for “*The number of specimens involved*” but only “(when practical)”. This is a fundamental information and should be mandatory.
- Too many questions to be answered through free text. This allows the respondent, for instance, to insert a wider range of activities than those prohibited by the Bern Convention, making the assessment of exceptions difficult.
- Some fields to be filled in are redundant and not very useful, such as. “no. of licenses” and “impact on population”, while others are missing. The pressure on a species would be better related to the number of individuals actually affected by the exception. An overarching condition for granting an exception is that it is not detrimental to the population, therefore the reply to the question on “impact on population” should never be “negligible”.
- The error message is not specific: it does not show the mandatory questions left unanswered, and it becomes difficult and time consuming to understand what has not been filled in.
- The biennial report export (pdf and csv formats) has a narrative format which facilitates its reading, but it is an obstacle in case of a quantitative analysis of the exceptions.

## Other reporting systems on exceptions

A preliminary survey on the main International Acts (Conventions, Agreements, EU Directives) on nature conservation in Europe has been carried out to select those acts that foresee a periodical reporting on exemptions to the provisions of some articles, as the Bern Convention does.

The following acts have been selected:

- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora - Habitats Directive (European Union)

### Article 16

1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and reintroducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.



2. Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.

3. The reports shall specify:

- (a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;
- (c) the circumstances of when and where such derogations are granted;
- (d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;
- (e) the supervisory measures used and the results obtained.

➤ **Directive 2009/147/EC of the European Parliament and the Council of 30 November 2009 on the conservation of wild birds<sup>2</sup> - Birds Directive (European Union)**

**Article 9**

1. Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:

- (a) — in the interests of public health and safety,  
— in the interests of air safety,  
— to prevent serious damage to crops, livestock, forests, fisheries and water,  
— for the protection of flora and fauna;
- (b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
- (c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations referred to in paragraph 1 must specify:

- (a) the species which are subject to the derogations;
- (b) the means, arrangements or methods authorised for capture or killing;
- (c) the conditions of risk and the circumstances of time and place under which such derogations may be granted;
- (d) the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom;
- (e) the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of paragraphs 1 and 2.

➤ **Convention on the Conservation of Migratory Species of Wild Animals - 1979 -CMS (UNEP)**

**Article III Endangered Migratory Species: Appendix I**

[...]

5. Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. Exceptions may be made to this prohibition only if:

- a) the taking is for scientific purposes;
- b) the taking is for the purpose of enhancing the propagation or survival of the affected species;
- c) the taking is to accommodate the needs of traditional subsistence users of such species; or
- d) extraordinary circumstances so require;

provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.

[...]

7. The Parties shall as soon as possible inform the Secretariat of any exceptions made pursuant to paragraph 5 of this Article.

➤ **Agreement on the Conservation of African-Eurasian Migratory Waterbirds – 1995- AEWA (UNEP)**

**Annex 3 - Action plan - 2. Species Conservation -2.1 Legal measures**

[...]

**2.1.3** Parties may grant exemptions to the prohibitions laid down in paragraphs 2.1.1 and 2.1.2, irrespective of the provisions of Article III, paragraph 5, of the Convention, where there is no other satisfactory solution, for the following purposes:

- (a) to prevent serious damage to crops, water and fisheries;

<sup>2</sup> Amended act of the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

- (b) in the interests of air safety, public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance to the environment;
- (c) for the purpose of research and education, of re-establishment and for the breeding necessary for these purposes;
- (d) to permit under strictly supervised conditions, on a selective basis and to a limited extent, the taking and keeping or other judicious use of certain birds in small numbers; and
- (e) for the purpose of enhancing the propagation or survival of the populations concerned.

Such exemptions shall be precise as to content and limited in space and time and shall not operate to the detriment of the populations listed in Table 1. Parties shall, as soon as possible, inform the Agreement secretariat of any exemptions granted pursuant to this provision.

The list of target species of the above Acts and the requirements for reporting partially overlap. This means that the exemptions issued for a species interest all the acts that protect it, and the specific information is included (or should be included) in all the relevant reports.

Ten of the most recent reports per international act, which are available at the following links, have been analysed with a summary of the findings below.

- Reports to the European Commission (EC) on derogations issued under art 16 of the Habitats Directive available at <https://rod.eionet.europa.eu/obligations/268/deliveries>
- Reports to the EC on derogations issued under art.9 of the Birds Directive available at <https://rod.eionet.europa.eu/obligations/276/deliveries>
- CMS National reports<sup>3</sup> available at <https://www.cms.int/en/documents/national-reports>
- Reports on the implementation of the AEWA available at <https://www.unep-aewa.org/en/documents/national-reports>

Act	Last National reports submitted		Format
CMS (2019)	Finland, Malta, UK, Spain, Belgium, Cyprus, Austria	Italy and Portugal (2017) Lithuania (2014) Norway (2008)	PDF
AEWA (2018-2020)	Estonia, Spain, Italy, Denmark, Czech Republic, UK, Sweden, Switzerland, Serbia, Romania	-	PDF
Habitats Directive (2019-2020)	Bulgaria, Czech Republic, Germany, Spain, Italy, Denmark, Finland, Estonia, Hungary, Ireland	-	Excel, xml, html
Birds Directive (2020)	Belgium, Cyprus, Czech Republic, Germany, Spain, Denmark, Italy, Ireland, Poland, The Netherlands	-	Excel, xml, html

The CMS report seems to be asking for less information about exceptions, which concerns only a minor section of the report, while, on the contrary, the derogation reports under the Birds and Habitats Directives are specifically and only asking for exceptions issued, as does the biennial report to the Bern convention. The AEWA reports represent an in-between approach.

The following information is required in all reports concerning exceptions:

- A. the authority granting the exceptions;
- B. the species concerned (partially overlapping in the different international acts);
- C. purpose of the exception, the same for all the acts (with less details in the CMS):
  - to prevent serious damage to crops, water and fisheries;
  - in the interests of air safety, public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance to the environment;

<sup>3</sup> It was not possible to analyse the excel file relative to the exceptions issued as it is available only in the ORS, accessible only with credentials.

- for the purpose of research and education, of re-establishment and for the breeding necessary for these purposes;
  - to permit under strictly supervised conditions, on a selective basis and to a limited extent, the taking and keeping or other judicious use of certain species in small numbers;
  - for the purpose of enhancing the propagation or survival of the populations concerned;
- D. time span of the exception (from date x to date y);
- E. number of individuals/eggs for which the exception was granted.

From the analysed reports, it emerges that the section relative to the exceptions for CMS and AEWA is, in most cases, empty, as the respondent replied “No” to the answer “Were exemptions granted?”. However, a double-check with the reports under other acts showed that some exemptions were issued.

It is to be underlined that Sweden has used the relevant part of its derogations report under the Birds Directive to provide to AEWA information on exemptions granted, while UK sent the same derogations report submitted under the Birds Directive, which also included non-relevant information for AEWA.

The table below summarises the present situation on timing and deadlines of reporting, focusing on the last report delivered and the next report foreseen.

Act	Last deadline	Period covered	Interval	Next deadline
CMS	17/08/2022	mid2019-mid2021	Triennial	17/08/2025 <sup>4</sup>
AEWA	08/04/2021	2018-2020	Triennial	31/12/2023
Bern	31/10/2021	2019-2020	Biennial	31/10/2023
Habitats Directive	31/12/2021	2019-2020	Biennial	31/12/2023
Birds Directive	31/12/2021	2020	Annual	31/12/2022

Based on the table above, the report to the CMS is not in line with the other Acts: this is the only report that includes exemptions starting from mid-year. In addition, it is to be delivered each three years, as the AEWA report, while the Bern reports are biennial. The timing and period covered by the derogations reports to the Birds/Habitats Directives are perfectly compatible with the biennial reports to the Bern Convention.

AEWA and CMS use the same Online Reporting System (ORS) as the Bern Convention uses, while the EC uses the Habides+ System tool. However, an agreement was reached between the EU and Bern and now the derogations reports submitted in the Habides+ System by EU MS are considered applicable for Bern reporting purposes, to avoid a double-reporting.

## RECOMMENDATIONS TO IMPROVE REPORTING

### Aimed at increasing reporting numbers

- Provide a greater purpose to report in addition to the requirements of the Convention. For instance, the number of derogations reports submitted to the EC has increased since the assessments of the national derogation reports have been published online after a consultation with the relevant MS<sup>5</sup> (even though about 18% of EU MS still do not deliver reports).
- Improve the usability of the same data also for other reporting obligations (see the following points) and for national exceptions monitoring/control systems purposes.

<sup>4</sup> Estimated

<sup>5</sup> [https://ec.europa.eu/environment/nature/knowledge/rep\\_birds/index\\_en.htm](https://ec.europa.eu/environment/nature/knowledge/rep_birds/index_en.htm)  
[https://ec.europa.eu/environment/nature/knowledge/rep\\_habitats/index\\_en.htm](https://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm)

## Aimed at improving the Online Reporting System

### ➤ Simplify data entry, by:

- **limiting the fields** to the most important/useful data. Please consider that licensed and actually affected numbers should be mandatory.
- allowing the **direct entry of species**, without selecting beforehand classes, order and family. For instance, by listing all the species covered by the appendices in a single selection box and allowing the choice through a few digits of the name of the species (the system should then automatically associate the species with the relevant appendix).
- Exploring the possibility of filling in **one single section**, which would allow to simply select the concerned species (instead of compiling one section per Appendix as now). As all exception data inserted is linked to a species, and the species are the protection target of the Bern Convention, “Species” could be the only section to be filled in. The System could automate the linkage of the selected species to the Appendix and allow the reply to the questions of the template. The System could automatically create a database where the relevant Appendix is selected/flagged in correspondence to each species/exception. This would allow a proper extraction and analysis of data entered.

Please see the example below:

Species	Appendix I	Appendix II	Falconry	Appendix III
<i>Adonis distorta</i>	x			
<i>Alisma wahlenbergii</i>	x			
<i>Anagyris latifolia</i>	x			
<i>Ablepharus kitaibelii</i>		x		
<i>Accipiter gentilis</i>		x	x	
<i>Acipenser sturio</i>		x		
<i>Alcedo atthis</i>		x		
<i>Balaenoptera acutorostrata</i>		x		
<i>Bubo bubo</i>		x	x	
<i>Tyto alba</i>				x
<i>Ursus arctos</i>				x

## Aimed at improving the efficiency & usability of the reporting at all levels (regional, national, international)

- Enable the **databases of other reports to be uploaded**, in particular the derogation reports under the Habitats and Birds Directives, the CMS reports and reports to AEWA (please see next chapter for the reasoning).
- Allow to **download the report in a tabular form** (Excel or Access) (please see next chapter for the reasoning).

## Aimed at a further harmonisation with other reporting systems

- Try to establish **one single reporting period** for the Bern, AEWA (at least) and CMS reports, as there are no issues related to the timing of derogations reports to the Birds/Habitats Directives.

This has been already successfully carried out to harmonise the report ex art.17 of the Habitats Directive and art. 12 of the Birds Directive and the “Reporting exercise on measures put in place at national level for the implementation of the Bern Convention Recommendations and Resolutions on the Emerald Network”.

The harmonisation of the reporting periods among the different International Acts would make it easier for the Parties to collect and report information and would increase the reporting numbers.

- The fact that AEWA, CMS and Bern use the same Online Reporting System is a strength which should be exploited to create the possibility of exporting/importing similar data in different reports or in **creating one single tool for the three reports**.

This would avoid Parties having to enter the same information several times in different tools, increasing both the cost benefits of the work done and the gratification of the operator. This solution could be explored to increase the number of reports delivered to the Bern Convention.

In addition, possible incongruities on information provided, i.e. “No exceptions” for species X declared in one report and “list of exemption granted” in another report for the same species, would no longer exist.

- As concerns the Habitats and Birds Derogations reports, the possibility of **importing data from the Habides+ System** should be created. Moreover, the **Habides+ tool should** be improved to **include information useful for the Biennial reports**, e.g. falconry, or appendices. This has been already explored in the past and it could be feasible (please see the document T-PVS/Inf (2006) 22 of November 8, 2006<sup>6</sup>): *“The extension of HaBiDeS to cover the specific needs of the Article 9 of the Bern Convention is possible. It would considerably simplify reporting to the Bern Convention and allow Contracting Parties to use one common system to report on the whole range of derogations covered by EU legislation and the Bern Convention. It would also facilitate Community reporting to the Convention, analysis of derogations by the Convention's Secretariat and share of information among users. A number of changes will have to be made to the current system to adapt it to the specific needs of the Bern Convention reporting”*.

This solution would increase the quality of data provided to the Bern Convention.

## PROPOSAL FOR A SYSTEM TO ASSESS THE BIENNIAL REPORTS

### Requirements

One of the fundamental requirements for a correct assessment, in particular if quantitative data has to be evaluated, is the possibility to download the biennial report in Excel or Access format. Now, one can download the data only in PDF and CSV formats. The Excel or Access formats would allow the use of queries to extract specific data needed for the evaluation.

The report on Falconry should be downloaded in a separate file, as the information requested is peculiar and different from that requested in the rest of the exceptions report.

Two different codes should be used for action “a. all forms of deliberate capture and keeping and deliberate killing” to distinguish capture from killing, because the two actions have different impact on the species concerned.

An example of a spreadsheet including a set of data needed for the assessment of exceptions is attached.

### Assessment methodology

Each report should be evaluated following the procedure below:

1. A national report should be analysed as soon as it becomes available and, possibly, no later than 2 months after the actual delivery.

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<sup>6</sup> CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS Standing Committee 26th meeting - Strasbourg, 27-30 November 2006 “Introduction on the procedures and the purpose of HaBiDeS (HABITATS AND BIRDS DIRECTIVE DEROGATION SYSTEM)”- <https://rm.coe.int/convention-on-the-conservation-of-european-wildlife-and-natural-habita/16807465ec>



Timing is important in case the report is impossible to evaluate and the Secretariat has to reject the report and ask for a new one (see point 2). The request should be sent to the Party not too long after the compilation of the report so that the people who filled in the report still have the fresh data in mind and could integrate the report more easily.

2. If any vital reporting information required for assessing exceptions included in the report is missing or any major technical problems arise making the analysis impossible, the evaluator should inform the Bern Convention Secretariat, so that it can ask the Party to correct and resubmit the report within a given deadline.
3. Once the report is available, the evaluator should provide a **list of those exceptions** that are potentially **in violation of the Convention**, identifying for each of them the legal requirement(s) that have been infringed and/or the information missing.
4. Starting from the biennial report in Excel/Access format, the evaluator could apply specific queries to extract relevant data.

Problematic exceptions may be identified on the basis of a lack of significant information and/or potential violations of the Convention.

5. For any exemption identified as being possibly problematic towards the objectives of the Convention, the evaluator should indicate why these are problematic and, when possible, a level of importance in relation to the conservation impacts in order to help the Secretariat to decide on a possible follow up.

The assessment of the evaluator should at least include the following:

- Country
- Reporting period
- Date of submission
- Overview of exceptions granted: total exceptions granted; total exceptions per reason and the activities allowed per reason.
- Main problems, in terms of lack of significant information or inconsistencies.
- Main problems, BY SPECIES, towards the objectives of the Convention, including the basic facts why these exceptions are problematic and, when possible, a level of importance in relation to the conservation impacts.

## Time and cost estimates

The workload per Contracting Party will vary depending on the number of exceptions issued and on the format of the report. Data in excel would speed up the assessment.

On the basis of past experience in assessing the derogations reports under the Birds and Habitats Directives, an average of 1.5 day/report would be needed to analyse the report and to draft a synthetic assessment.

The cost per person/day varies from 350 to 700€ on the basis of the level of experience (junior/senior) of the evaluator.

In order not to duplicate the work on the same reports, an agreement with the EC Directorate General for Environment should be reached on the assessment of the reports from EU Member States, considering that the EC has assessed the EU derogation reports since 2002.