



Strasbourg, 11 February 2022

T-PVS(2022)01

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

INTER-SESSIONAL WORKING GROUP ON FINANCES

5th meeting (*virtual*)

7 February 2022
(9.00 am – 12.30 pm)

Meeting Report

*Document prepared by
the Secretariat of the Bern Convention*

1. Opening of the meeting and welcome to the participants by the Secretariat

The Secretariat opened the meeting and welcomed the participants to the 5th Intersessional Working Group on Finances [Annex].

The Secretariat recalled the following decisions:

- The GR-C requested the Standing Committee to review all options available and explore possible new options to ensure political, institutional, and financial stability of the Bern Convention.
- The 41st Standing Committee:
 - *extended the mandate of the Intersessional Working Group on Finances, and instructed it, in collaboration with the Secretariat, to assess the feasibility to establish the EPA in the light of the last survey and to follow up the GR-C instruction to review all options available and explore possible new options for consideration by the 42nd Standing Committee;*
 - *instructed the Secretariat to liaise with Parties which are either not ready yet to join the EPA or which have not yet expressed their intentions, to clarify the operation and governance of the EPA. The Secretariat should also prepare a questions and answers document summing up Parties' concerns;*
 - *took note of the state of play of the preparation of the amendment to the Bern Convention and mandated the Intersessional Working Group to pursue its elaboration and to submit it to the 42nd Standing Committee for possible adoption.*

2. Election of the Chair of the Intersessional Working Group on Finances

The members of the Group thanked Mr Jan Brojáč (Czech Republic) for his excellent work in chairing during the past year and elected Mr Charles-Henri De-Barsac (France) as the new Chair.

3. Enlarged Partial Agreement

- 3.1 Outcome of the exchange between the Parties, which are either not ready yet to join the EPA or which have not yet expressed their intentions, with the Secretariat to clarify their concerns.
- 3.2 Preparation of a questions and answers document summing up Parties' opinions and concerns.
- 3.3 Feasibility to establish the EPA in the light of the autumn survey on the Parties' interest to join the EPA and of the discussions held at the Standing Committee.

The members of the Group discussed the shortcomings for establishing an Enlarged Partial Agreement (EPA). They took note that only two Contracting Parties out of 12 had replied to the Secretariat's survey of December/January addressed to those Parties, which were considering joining the EPA but were not ready yet to announce it publicly, in order to understand and try to address their concerns. One of the two replying Parties had changed its initial decision and announced its intention of not joining the

EPA. The second Party had informed the Secretariat that it would wait for the evolvement of the discussions before taking a decision.

The members of the Group considered the lack of feedback to the survey as an indicator of the difficulties met by the Parties on taking a decision whether they wish to join the EPA. The intervention of the Director of Legal Advice and Public International Law at the 41st Standing Committee expressing his concerns about the EPA contributed to the Parties' uncertainty. The Secretariat pointed out that, considering the absence of sufficient feedback from the Parties, it had not been possible to produce a questions-and-answers document summing up Parties' concerns.

The Working Group took note of the obstacles to pursue with the EPA, reiterated its willingness and determination to cooperate with the Directorate of Legal Advice and Public International Law, the Permanent Representatives and the GR-C to find an appropriate solution to ensure the institutional and financial stability of the Convention.

4. Amendment of the Bern Convention

4.1 Development of a proposal for Article 14 bis and its Annex [T-PVS(2022)02].

The Secretariat presented the draft proposal Article 14bis and its Annex for amending the Bern Convention, as mandated by the 41st Standing Committee.

The representative of the EU expressed her contentment on the draft Annex and proposed a minor amendment to the second bullet point and introduced a new bullet point as follows:

- *Shall ~~should~~ not result in a European Union contribution higher than 2,5% for the total contributions;*
- *New: Shall not affect existing obligations of Contracting Parties under this Convention.*

The Working Group requested the Secretariat to consult all Contracting Parties to the Convention on the proposed Article 14 bis and its Annex in order to gather their comments and possible consensus.

5. Review all options available and explore possible new options

The Secretariat introduced the document prepared by the Directorate of Legal Advice and Public International Law on pros and cons on three different legal avenues that exist for the inclusion of a financial mechanism within the Bern Convention [T-PVS/Inf(2022)05]: (1) amendment pursuant to Article 16 of the Bern Convention, (2) amending protocol to the Bern Convention, (3) additional protocol to the Bern Convention. A protocol establishing a financial mechanism under the Bern Convention has no precedent and would present a departure from the traditional financing system of the Council of Europe regarding treaties, based on the ordinary budget and voluntary contributions. The Secretariat emphasised that the Committee of Ministers' mandate must be required before starting working on a protocol.

Both an amending and an additional protocol to the Bern Convention could include a clause on the possibility to apply the instrument provisionally. Such a provisional application would allow the

accumulation of funds via the new financing mechanism to commence on a medium-term basis, such as for example, from the moment the protocol would be open for signature.

In the likely scenario that not all Contracting Parties to the mother convention would ratify the additional protocol, two treaty regimes would co-exist with possible follow-up issues concerning, e.g. whether the Standing Committee can decide on the use of funds generated by the additional financing mechanism even though not all delegations represented in the Standing Committee are Parties to the additional protocol, or whether the rules of procedure of the Standing Committee should foresee, for instance, that decisions regarding financial resources provided by Parties to the additional protocol are to be taken with the votes of those Parties only. It would further remain possible for new Parties to accede to the Bern Convention without accepting the changes introduced by the additional protocol. Likewise, it would stand open to Parties to denounce the additional protocol separately while remaining a Party to the mother convention. In contrast, in the case of a revised convention amended by an amending protocol, a Party can only accede to and denounce the revised convention as a whole.

The introduction of a financial mechanism to the Bern Convention would, in order to fulfil its purpose, require that a large majority of Contracting Parties, if not all, be bound by such a mechanism. Therefore, whether by way of an amending or an additional protocol, the minimum number of Parties for the entry into force of such a protocol must be high. Due to the lengthy ratification procedures in most countries, the different possibilities proposed for amending/supplementing the Bern Convention are likely to take a long time.

After discussing the pros and cons of the different legal options, the Working Group acknowledged that it had no mandate from the Standing Committee for pursuing either the amending or the additional protocol and agreed that, in order to avoid a similar situation as with the EPA, it was necessary to assess which of the legal options would gather the most support from the Standing Committee and the Committee of Ministers.

The Working Group decided to:

- remain open to the three amendment options and to consult Contracting Parties in order to identify which of the three options is likely to have the highest support from the Parties;
- mandate the Secretariat to seek the Directorate of Legal Advice and International Law's legal evaluation on the most appropriate amendment option for the Bern Convention and/or to indicate the most inappropriate option from a legal point of view;
- instructed the Secretariat to convey a message to the GR-C/CM on the importance to keep the momentum to ensure a political, institutional, and financial stability to the Bern Convention;
- mandate the Secretariat to seek the GR-C/CM's views on what they would consider as the most appropriate solution, considering that any of the options available for setting up a financial mechanism will create a precedent in the Council of Europe;
- instructed the Secretariat to elaborate in writing an interim/temporary option to set up a Fund consisting of voluntary contributions to ensure the implementation of the programme of work.

6. Other business

No further issues were discussed.

ANNEX
LIST OF PARTICIPANTS

Contracting Party	Name
Albania	Ms Jona SULI Expert Directorate of Tourism and Development Programs Ministry of Tourism and Environment
Czech Republic	Mr Jan BROJÁČ Ministry of the Environment Ms Eliška ROLFOVÁ Unit of International Conventions Department of Species Protection and Implementation of International Commitments Ministry of the Environment Ms Sylva SCHACHERLOVÁ Ministry of the Environment Ms Lenka VÁŇOVÁ Ministry of the Environment
European Commission	Ms Iva OBRETENOVA Policy Officer DG Environment Directorate ENV. D Natural Capital
France	M. Charles-Henri DE BARSAC Chargé de mission « accords internationaux et européens faune sauvage » sous-direction de la protection et de la restauration des écosystèmes terrestres Ministère de la Transition Ecologique et Solidaire
Norway	Mr Andreas Benjamin SCHEI Senior Advisor Norwegian Environment Agency
Poland	Ms Ewa PISARCZYK Senior Expert General Directorate for Environmental Protection Department of Nature Conservation
Slovenia	Ms Maja HUMAR Nature Conservation Division Ministry of the Environment and Spatial Planning
Switzerland	M. Martin KREBS Département fédéral des affaires étrangères DFAE Secrétariat d'Etat DFAE Division prospérité et durabilité DPD Environnement, énergie et santé
United Kingdom	Mr Simon MACKOWN Department for Environment, Food & Rural Affairs <i>apologised for absence</i>
Council of Europe Secretariat	Mr Gianluca SILVESTRINI Co-ordinator of the Department for Culture, Nature and Heritage Ms Ursula STICKER Secretary of the Bern Convention Mr Marc HORY Bern Convention Project Manager