



Strasbourg, 30 January 2023

T-PVS(2023)01

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

***Ad hoc* Drafting Group of an Amending Protocol**

1st meeting

24 January 2023 (9.00 – 13.00 CET)

(online meeting)

MEETING REPORT

*Document prepared by
the Secretariat of the Bern Convention*

1. Opening of the meeting

The Secretariat welcomed the members of the *Ad hoc* Drafting Group of an Amending Protocol (Annex 1) and presented the expected outcomes of this first meeting.

The Group was invited to provide guidance to the Secretariat on:

- the wording of the protocol amending the Bern Convention and setting up a financial mechanism;
- describing the functioning of the financial mechanism resulting from the protocol;
- elaborating a scale of contributions and financial scenarios.

2. Election of the Chair

Charles-Henri de Barsac (France), former Chair of the Intersessional Working Group on Finances, was elected Chair of the *Ad hoc* Drafting Group of an Amending Protocol following the approval by all members of the Group.

3. Amending Protocol

The Secretariat recalled that the Standing Committee, at its last meeting in December 2022, had mandated the Group to draft a protocol amending the Bern Convention with the aim of setting up a financial mechanism for the Convention. While amending protocols exist within the Council of Europe, there are no precedents of amending protocols that establish a financial mechanism for a convention.

The Secretariat presented three examples of existing amending protocols of the Council of Europe:

- [Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data \(CETS No. 223\)](#)
- [Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons \(CETS No. 222\)](#)
- [Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters \(CETS No. 208\)](#)

The three examples of amending protocols pursue different aims but have a similar structure:

- a) the “**preamble**” introducing the protocol and providing the reasoning behind the amendment;
- b) the “**amendments**” which the Parties are invited to agree on;
- c) the “**final provisions**” explaining how and when the protocol will enter into force.

a) Preamble

The Secretariat invited the Drafting Group members to define the content of the preamble. The Group recommended to draft a short preamble. It decided to refer to the increasing challenges biodiversity is facing, the need for more human and financial resources to implement the Bern Convention, and the Committee of Ministers’ decision to mandate the Standing Committee to elaborate an amending protocol for ensuring a financial and institutional stability of the Convention.

b) Amendments

This section should list the amendments to the Bern Convention. The Secretariat proposed to consider the wording of the Article 14 bis, drafted for the previous consultations of the Intersessional Working Group on Finances, as model for the drafting of the text of the amendments. The Group agreed to

consider the wording of the Article 14 bis for the drafting of the amending protocol but supported the creation of a separate chapter dealing with financing rather than the insertion of a new article and proposed to revise the present draft wording accordingly.

Resulting from the discussion, the Drafting Group addressed several matters:

- considering that the scale of contributions will be fixed by the Committee of Ministers, there is no necessity for the Standing Committee to reexamine it annually. Furthermore, considering Article 13.4 of the Convention stating that the Standing Committee shall meet at least every two years and the ongoing reflection on possible biennial Standing Committee meetings, the reference to “annual” meetings of the Standing Committee should be avoided in the provisions of the protocol;
- the governance structure for the financial mechanism (e.g. whether or not to limit the decisions to the countries which have ratified the amending protocol and contribute financially to the Bern Convention);
- the incentive vs disincentive to ratify the protocol (e.g. no projects implemented in countries which have not ratified the protocol and do not contribute financially to the programme of activities via the amending protocol);
- the need to distinguish between “core” and “programmatic” activities, the former to be financed by both the ordinary budget of the Council of Europe and the mandatory contributions and the latter by voluntary contributions;
- the necessity to discuss and approve the budget resulting from the protocol for a period longer than one year (e.g. two or four years);
- the necessity to stress in the protocol that the mandatory contributions resulting from the amending protocol were not aimed to substitute but to complement the ordinary budget. The ordinary budget should therefore be maintained at its current level;
- the oversight of the budget implementation and the mitigation of risks;
- the possibility to continue paying voluntary contributions in addition to compulsory financing;
- where to set the threshold so as to ensure that the countries ratifying the protocol will have the financial capacity for guarantying the sustainability of the funding;
- the possibility to include provisions which are not in the amending protocol itself into the Explanatory Report.

The Drafting Group supported:

- the incentive approach to influence positively the Contracting Parties to sign/ratify the amending protocol and to ensure the maximum coverage for the protection of biodiversity;
- entrusting a representative group of Contracting Parties with the preparation of the budget so that Contracting Parties take ownership, a budgetary oversight is ensured and the agenda of the Standing Committee meetings is not overburdened with the discussions on finances;

- the necessity to define basic criteria to differentiate which activities are “core” and “programmatic”;
- setting as working assumption a threshold of at least 2/3 (34) of the present Contracting Parties (51), composed by both major and small contributors, to ensure the sustainability of the Convention.

c) Final provisions

This last section of the protocol should include provisions regarding:

- signature, ratification and accession;
- entry into force;
- reservations;
- notifications.

The Secretariat pointed to the Article 37 of the protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. While the protocol is supposed to be ratified by all Contracting Parties, the second paragraph sets a threshold of 38 ratifications if after 5 years not all Parties have ratified the protocol.

The Drafting Group supported the inclusion of a similar clause into the protocol amending the Bern Convention. However, it recommended to consider reducing the number of years from 5 to 3 for the entry into force of the clause.

Concerning the “entry into force”, the Secretariat underlined another specific clause, namely that “*a Party to the Convention may, at the time of signature of the Protocol or at any later moment, declare that it will apply the provisions of the Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties to the Convention which have made a declaration to the same effect.*”

A reasonable level of consensus was found among the members of the Drafting Group to not include in the protocol such a provisional clause due to the difficulty of evaluating each Party’s contribution before knowing the overall budget resulting from the protocol, which will depend on (1) the total number of ratifications and (2) the composition of the Parties (i.e. major or smaller contributors). It was pointed out by the Secretariat that it would not be feasible for the Committee of Ministers to adopt a budget without having these parameters at hand.

4. Procedures and functioning of the amending protocol

The Secretariat recalled the explanatory notes to the proposals of setting up a sustainable funding mechanism for the Bern Convention ([T-PVS/Inf\(2020\)04](#)) and outlined the process for elaborating the budget. It stressed that the process described for the amendment pursuant to Article 16 of the Bern Convention constitutes a good basis of work for the protocol amending the Bern Convention.

The following four issues were addressed by the Group:

- The draft Article 14 bis and its annex make the distinction between core and programmatic activities.
With reference to the discussions held under item 3, the Secretariat recalled that the Council of Europe does not distinguish between core and programmatic activities, but that it would prepare a proposal of basic criteria for the distinction.

- Once the financial mechanism is in place, the Rules of Procedure of the Standing Committee would have to be revised to reflect the new prerogatives of the Standing Committee.
The Group agreed to start revising the Rules of Procedure. However, as this was considered a less urgent next step, it instructed the Secretariat to prepare a draft revision at a later stage. The representative of the European Commission informed that the adoption of revised Rules of Procedure will require to follow a formal procedure within the EU.
- Once the financial mechanism is in place, a representative group of Contracting Parties could be entrusted with the preparation of the programme and budget of the Bern Convention and the follow-up on the budget elaboration process.
The Drafting Group agreed on the need to start describing the tasks which will be assigned to this representative group.

5. Scale of financial contributions

The Secretariat underlined that the protocol should, in principle, be ratified by all Contracting Parties but that there is a possibility to set a threshold for the protocol to enter into force, as discussed under item 3.

It was stressed that the threshold should be high. Firstly, with regard to the purpose of the mechanism, namely the setting-up of a sustainable, fair and balanced financial mechanism, and, secondly, to guarantee that the Parties which will ratify the protocol have the capacity to provide the required funding (the more Parties contribute, the smaller the individual contributions per Party will be).

It was flagged that when setting a threshold, similar challenges would be faced as for the Enlarged Partial Agreement as it is not known how many Contracting Parties and which Parties (e.g. major/small contributors) would ratify the protocol and by when. The Secretariat recalled that the scale of contributions was established based on the Resolution 94(31) of the Committee of Ministers, which takes into consideration the population and the Gross Domestic Product of Contracting Parties.

The Secretariat recalled the documents [T-PVS/Inf\(2021\)08rev](#) and [T-PVS/Inf\(2021\)10rev](#) which present the scales of contributions for the Enlarged Partial Agreement and the amendment pursuant to Article 16 of the Bern Convention.

The document T-PVS/Inf(2021)10rev, presenting scenarios for the amendment according to Article 16 of the Bern Convention, includes a simulation tool. Its drawback is that it is applicable only if all Contracting Parties ratify the protocol. The document T-PVS/Inf(2021)08rev, presenting ranges of contributions for the Enlarged Partial Agreement, appears more suitable for the reflection on the setting-up of the amending protocol. In case a threshold of Parties ratifying the protocol is decided, the presented scenarios for the Enlarged Partial Agreement could be a useful source of inspiration.

The Secretariat invited the Drafting Group to decide on the threshold, which criteria to consider for the scales of contributions (e.g. number of Parties; which category of contributors; minimum contribution rate; maximum contribution rate, etc.) and what overall budget should be considered for elaborating the scales of contributions.

Since 16 countries had provided approximately 400k€/year in the recent years, it was suggested to target, as working assumption, an annual budget of 800k€ to finance both staff and core activities, which, would imply twice the number of countries and correspond to approximately 2/3 (34) of the Contracting Parties (51).

As a working assumption, the Drafting Group agreed to set the threshold to 2/3 (34) of the Contracting Parties and requested the Secretariat to structure the budget according to core, programmatic and activities funded by the ordinary budget to assess the amount to be funded by the compulsory contributions.

The Drafting Group further supported considering the scale of contributions to the ordinary budget as the scale is accepted by all member States. It also considered, for the time being, not setting minimum and maximum contributions and, in parallel, identifying the core activities to be funded by the compulsory contributions.

The Group further underlined the importance that Contracting Parties provide support to the activities of the Bern Convention through their respective Permanent Representations in Strasbourg, who represent the Contracting Parties in the decision-making process within the Council of Europe on the amount and allocation of the ordinary budget.

6. Date of the next meeting

The members of the Group decided to organise their 2nd meeting, to be held online on Friday 10 March 2023 (9.30 – 13.00 CET).

ANNEX I

LIST OF PARTICIPANTS

Contracting Party	Name
Czech Republic	Ms Eliška ROLFOVÁ Unit of International Conventions Department of Species Protection and Implementation of International Commitments Ministry of the Environment
Estonia	Ms Merike LINNAMÄGI Advisor Nature Conservation Department
European Commission	Ms Iva OBRETENOVA Policy Officer European Commission, DG Environment ENV.D3 - Nature Conservation Unit
Finland	Ms Nina MIKANDER Senior Specialist Ministry of the Environment Department of the Natural Environment Biodiversity Ms Charlotta VON TROIL Ministry of the Environment
France	Mr 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
Germany	Ms Astrid WIIK Policy Advisor Mr Andy KAMMER Policy Advisor Division International Species Conservation, Wildlife Trade Federal Ministry for the Environment Nature Conservation, Nuclear Safety and Consumer Protection
Switzerland	Mr Norbert BÄRLOCHER Office fédéral de l'environnement OFEV Division Biodiversité et paysage Section Faune sauvage et conservation des espèces
Ukraine	Mr Vladyslav DANILCHENKO Chief specialist of the National Eco-Network and Landscape Planning Department of the Nature Reserve Fund and Biodiversity Ministry of Environmental Protection and Natural Resources
United Kingdom	Mr Simon MACKOWN Head of Species Recovery and Reintroductions Policy National Biodiversity Division Department for Environment, Food and Rural Affairs (DEFRA) Ms Margaret THIRLWAY DEFRA Legal

Council of Europe Secretariat	<p>Ms Ana GOMEZ Head of Division Directorate of Legal Advice and Public International Law</p> <p>Mr Gianluca SILVESTRINI Head ad interim of the Department for Culture, Nature and Heritage Head of the Biodiversity Division</p> <p>Ms Ursula STICKER Secretary of the Bern Convention</p> <p>Mr Marc HORY Bern Convention Project Manager</p>
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