



Strasbourg, 28 March 2023

T-PVS(2023)06

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

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

2nd meeting

10 March 2023 (9.30 – 13.00 CET)
(online meeting)

MEETING REPORT

*Document prepared by
the Secretariat of the Bern Convention*

1. Opening of the meeting by the Chair

The Chair, Mr Charles-Henri de Barsac, welcomed the members of the *Ad hoc* Drafting Group of an Amending Protocol (Annex 1) and introduced the meeting agenda to the Group.

2. Report of the first meeting of the *Ad hoc* Drafting Group of an Amending Protocol

The Chair recalled that the first meeting had not been intended to be conclusive, but that it had aimed at providing guidance to the members and identifying orientations of work for the elaboration of an amending protocol to ensure the financial sustainability of the Bern Convention. Comments on the draft report of the first meeting [T-PVS\(2023\)01](#) had been provided by two members of the Drafting Group.

As a matter of procedure, the representative of the UK stressed the importance of ensuring that the record of the meeting accurately reflected discussions and was agreed by all members of the Drafting Group. To this end any comments or proposed changes to documents should be shared with all members of the Drafting Group in sufficient time to allow for discussion and agreement ahead of the next Drafting Group meeting.

It was agreed, that to facilitate transparency, members of the Drafting Group would consent to sharing contact details and that, when submitting comments on circulated draft documents, all members would be put on copy so issues could be resolved and record agreed, ahead of future Drafting Group meetings. The Secretariat would then integrate the comments in the document provided that there are no objections from other members and the comments do not require further clarification.

3. Purpose of the protocol amending the Bern Convention

The Secretariat recalled the need to establish a sustainable mechanism moving from the uncertainty of voluntary contributions to a secured and foreseeable budget. 3 different options for resolving this were discussed:

Option (1a): The original proposal, based on the model used for the Enlarged Partial Agreement, was that the budget would be entirely funded by only those Parties which have ratified the amending protocol. Members were concerned about the fairness of such an approach, the fact it did not provide an incentive for Parties to ratify and the potential for significant variability in contributions for some parties.

Option (1b): Recognising the need to ensure financial stability for the convention the Drafting Group requested the Secretariat to assess whether a relevant threshold of Parties ratifying the protocol could be set to minimise the impact of the concerns set out in option 1a and allow for 100% funding by only those Parties which have ratified the protocol. Should the findings be successful, the Secretariat should then elaborate financial scenarios based on the threshold identified.

This option could also include a threshold based on a minimum proportion of the budget being covered by the scale contributions of the ratifying Parties, thus limiting the increase in those Parties' contributions pending other Parties deciding to ratify.

The representative of the Directorate of Legal Advice and Public International Law stated that there appeared to be no legal or practical reason why including both criteria (minimum number of Parties and minimum proportion of budget) in the entry in to force provision should not be possible in principle.

Option (2): To ensure fairness and to encourage Parties to ratify the protocol Members of the Drafting Group agreed –to explore an option whereby the financial contributions of Parties ratifying the protocol would not compensate the shortfall represented by the contributions of Parties which did not ratify the protocol. Therefore, until and unless all Contracting Parties have ratified the protocol, a part of the programme of activity would either need to be funded by voluntary contributions provided in priority by parties which have not (yet) ratified the protocol or be frozen pending the availability of financial resources.

Finally, members of the Drafting Group also suggested that the Council of Europe should commit and support the Bern Convention by funding the Secretariat through the Ordinary Budget and that the budget resulting from the amending protocol should provide resources for the programme of activity.

4. Amending protocol

The Secretariat presented a first draft of a protocol amending the Bern Convention drawing on the recommendations of the Drafting Group from its first meeting.

The draft protocol (see document [T-PVS\(2023\)05](#)) includes a relatively short preamble, proposed amendments inspired by the text prepared for the amendment pursuant Article 16 of the Bern Convention and final provisions foreseeing, for the time being, a clause of provisional application and a clause enabling the entry into force of the protocol once a threshold of ratifications is reached.

Members of the Drafting Group exchanged preliminary views on this first draft acknowledging that it was a good starting point and that it would continue to evolve along the discussions and reflection.

The discussion addressed in particular whether Articles 19.3, 19.4, 19.5 and 19.6 sufficiently specify the “mandatory” character of financial contributions, and whether to make reference to the “core” programme of work in Article 19.2 in addition to the mention in the annex. The Drafting Group also discussed whether or not to define what the financial mechanism referred to in Article 19.1 encompasses and whether staff is included in the programme of work.

The representative of the Directorate of Legal Advice and Public International Law (DLAPIL) recommended to keep the wording more general and to not make reference in the protocol to concepts which are not used within the Council of Europe (such as “core” programme of work).

5. Procedures and functioning of the amending protocol

The Secretariat presented a first attempt of definition of criteria for differentiating core and programmatic activities (see document [T-PVS/Inf\(2023\)05](#)).

The document assesses how the UN handles the matter. The UN distinguishes between (1) essential, recurring or long-term and (2) temporary or short-term and complementary activities. The essential and recurring or long-term activities are funded by the core budget while temporary or short-term and complementary activities are funded by voluntary contributions.

The document proposes also to consider the different categories of activities existing within the Council of Europe. The Council of Europe distinguishes between (1) monitoring, (2) standard setting and (3) cooperation activities. Monitoring activities stem from the provisions of the Convention. Standard setting activities concern mainly the specialised Groups of Experts. Cooperation activities are usually beneficial to one or a small group of Contracting Parties.

Members of the Drafting Group exchanged views not so much on the proposed definition and criteria but focused mainly on where the definition and the criteria should fit in. Some members were in favour of having a definition included in the protocol. Other members suggested to remain more flexible and to envisage that documentation accompanying the amending protocol could be adopted, either as Recommendations or Resolutions by the Standing Committee.

The representative of the Directorate of Legal Advice and Public International Law alerted the members of the Drafting Group that being too restrictive could be counterproductive. She also flagged that the explanations on how the provisions of the protocol were intended to work in practice could be reflected in an explanatory report to the protocol. She further explained that an explanatory report would neither need to be adopted by the Committee of Ministers nor would it be binding for Parties. However, it could not be easily amended should the criteria or the modalities change or evolve over the years.

Concerns were also expressed as the term “core” programme is not used by CoE and use in relation to this protocol is likely to generate significant debate within the Committee of Ministers and risks delaying the adoption of the protocol.

Finally, the members of the Drafting Group agreed that a smaller working group, comprising the Chair, the representatives of the European Commission and Switzerland, and the Secretariat, should assess, in consultation with the Council of Europe legal experts, the possibility of rewording the provisions of the draft protocol with a view to defining more explicitly the allocation of the financial resources resulting from the protocol.

6. Scale of financial contributions

The Secretariat introduced the two simulation tools designed using the scale of the contributions of the Ordinary Budget of the Council of Europe. The first tool considers all 51 Contracting Parties to the Bern Convention. The second tool brings together 36 Contracting Parties. Both tools enable the calculation of the individual contributions of Parties depending on the overall budget to be considered.

While the simulation tool with 36 Contracting Parties does not comply with the requests of the Drafting Group as specified under item 3 of the present meeting report, it shows the impact of the shortfall of contributions of 15 Contracting Parties on the contribution rates of the remaining 36 Parties.

The Secretariat also drew the attention of the Drafting Group to the very significant gap between small and major contributors. Small contributors contribute 300 times less than the major contributors.

Finally, the Secretariat flagged that for either 51 or 36 Parties, the contributions of the major contributors are much higher than the suggested voluntary contributions of Resolution No. 9 (2019) for a hypothetical budget of 800 000 euros.

Members of the Drafting Group agreed that the minimum contribution should be higher and mandated the Secretariat to elaborate new scenarios with a minimum contribution of 2 500 euros. The Secretariat should also assess how the minimum contribution would impact the contribution rates of the medium and major contributors.

At the request of the Chair, the Secretariat should also prepare scenarios not only with a minimum contribution but also a maximum contribution set at 60 000 euros. The Secretariat informed the members of the Drafting Group that these scenarios of setting a minimum and a maximum contribution would significantly increase the contribution rates and mitigate the differences between the contribution rates of medium contributors.

Aside from the discussions on the minimum and maximum contribution, the representative of Germany informed the Group that his Ministry’s financial authorities would request a detailed overview of what is included in the budget appended to the programme of activity of the Bern Convention, especially regarding staff costs (including costs for social security and pension contribution).

7. Date of the next meeting of the *Ad hoc* Drafting Group of an Amending Protocol

The Group requested the Secretariat to prepare a list of forthcoming major activities at which their Permanent Representations could advocate for the Bern Convention.

The members of the Group agreed to hold the Group’s third meeting on Tuesday 2 May 2023 (9.30 – 13.00 CEST) online.

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 Charlotta VON TROIL Senior Ministerial Adviser, Legislative Affairs International and EU Affairs Unit 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	Mr Babak MILLER Policy Advisor Division International Species Conservation, Wildlife Trade Federal Ministry for the Environment Nature Conservation, Nuclear Safety and Consumer Protection
Switzerland	Mr Norbert BÄRLOCHER Head Rio Conventions (Climate Change, Biodiversity) International Affairs Federal Office for the Environment FOEN 3003 Berne
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	Ms Ana GOMEZ Head of Division Directorate of Legal Advice and Public International Law Ms Catherine du BERNARD ROCHY

	<p>Head of Division Directorate of Programme and Budget</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> <p>Ms Nadia SAPORITO Junior Professional – Bern Convention</p>
--	--