



Strasbourg, 12 June 2023

T-PVS(2023)12

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

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

**4<sup>th</sup> meeting**

8 June 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, opened the 4<sup>th</sup> meeting of the *Ad hoc* Drafting Group of an Amending Protocol, welcomed the new members: Ms Maria Westerman (Finland), Ms Clarisse Kehler Siebert (Sweden), and Ms Rachel Gaughan (UK) and thanked the outgoing members: Mr Esko Hyvärinen (Finland) and Ms Margaret Thirlway (UK) for their contribution to the work of the Drafting Group.

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

The Chair recalled that the draft report of the 3<sup>rd</sup> meeting of the *Ad hoc* Drafting Group of an Amending Protocol (T-PVS(2023)11) was shared with the members of the Drafting Group a while ago. The Chair informed that the comments provided by Finland were integrated in the report. The meeting report was adopted.

## 3. Amending protocol

### 3.a What do “core activities” and “basic functioning” of the Bern Convention entail? – proposed explanatory notes

At its 3<sup>rd</sup> meeting, the Drafting Group agreed to amend Article 19 of the protocol by specifying that the funds resulting from the mechanism created by the protocol would be allocated to “core activities of the programme of work” and by stating that the ordinary budget is aimed to provide for the “basic functioning” of the Bern Convention, and entrusted the Secretariat to draft explanatory notes

The Secretariat presented the footnote defining “core activities” added to the last version of the protocol (see document T-PVS(2023)10). The definition built on the document presenting attempts for designing criteria differentiating core and programmatic activities (see document [T-PVS/Inf\(2023\)05](#)) previously discussed by the Drafting Group and on the responsibilities of the Standing Committee as defined in Article 14 of the Bern Convention.

Regarding the footnote defining the “basic functioning” of the Convention, the Secretariat informed the Drafting Group that an appropriate solution could not be found because 1. a definition of the basic functioning of a convention did not exist and 2. the allocation of resources and adoption of the budget was the responsibility of the Committee of Ministers (CM) and parties to a convention could neither impose specific obligations to the CM nor substitute the function of the CM.

As an alternative the Secretariat proposed to further amend the Bern Convention and to add to the protocol a new Article 1 indicating that the Secretariat of the Council of Europe would assist the Standing Convention in its functions and would feed in chapter 6 of the Bern Convention related to the Standing Committee. The proposed wording was a standard sentence existing in several other Council of Europe conventions.

In the following discussion, the Drafting Group welcomed the proposed footnote defining the “core activities of the programme of work” but expressed concerns regarding the wording of the new Article 1, estimating that it was too vague and did not give any guarantee of the commitment of the Council of Europe to provide the Bern Convention with adequate resources for its “basic functioning”.

To reply to the concerns of the Drafting Group, the representative of the Directorate of Legal Advice and Public International Law suggested to assess the possibility to reflect on the wording existing in several Council of Europe Partial Agreements namely that the Secretariat shall be provided by the Council of Europe. Several members of the Drafting Group supported this proposal and looked forward to a revised wording of the new Article 1.

In conclusion, the Secretariat would follow up on the proposal and crosscheck with the Directorate of Programme and Budget whether this wording represented an interference of parties with the budget adoption.

### **3.b Alternative proposal of wording for Article 2 of the draft protocol**

At the invitation of the Chair, the representative of the UK presented a reworded version of the Article 19 of the protocol.

While the revised version of the Article 19 still required some reflection and work it aimed to lift the ambiguities of the current wording.

The purpose of the first paragraph was to provide security to the parties that have ratified the protocol by setting conditions explicated in the 3<sup>rd</sup> paragraph.

The second paragraph encompassed the unfunded programmatic activities which were missing from the existing version of the protocol. It flagged that the programme of work and ambition of the Bern Convention went beyond core activities.

The third paragraph reproduced mainly the provisions which were initially in the annex. Unlike the initial version of the protocol in which decisions were to be taken unanimously, the revised version suggested that decisions were taken by consensus as unanimity could be difficult to achieve.

In the subsequent discussion, members of the Drafting Group exchanged views on the different paragraphs of the reworded article. The point which raised the most debate was whether taking decisions by consensus was as strong as decisions taken unanimously.

The Drafting Group suggested that the representative of the UK in liaison with the Secretariat and legal experts finetune the reworded version of the Article 19 also in light of the outcomes of the discussion under agenda item 3.a and share it by the end of June with the members of the Drafting Group for written comments. Meanwhile, the representative of the EC would consult her legal services to clarify whether decisions taken by consensus are legally strong enough to comply with the mandate the EC had received from the Council of the European Union.

## **4. Procedures and functioning of the amending protocol**

The Secretariat presented to the Drafting Group a roadmap for elaborating the accompanying documentation of the protocol as well as a proposed timeline (see document T-PVS/inf(2023)08).

The Secretariat informed that the table could evolve, and other documents could be added. Its aim was mainly to help identify priorities. According to the table, the Explanatory Report of the protocol should be drafted in priority as it should be presented together with the protocol to the 43<sup>rd</sup> Standing Committee.

The other documents identified were less urgent and could be prepared in the course of 2024 or even later as they were only needed once the protocol enters into force.

The Drafting Group took note of the roadmap and suggested to add the scale of contributions to the list of documents. The Secretariat would prepare a first draft of the Explanatory Report and share it with the members of the Drafting Group towards the end of July.

## **5. Scale of financial contributions**

The Secretariat informed the Drafting Group that a new scenario had been added to the previous simulations which considered a minimum contribution of 2 500 euros and a maximum contribution of 80 000 euros for a budget of 800 000 euros.

While this new simulation did not alter the number of small contributors, the increase of the contributions of the major contributors (33,33 %) reduced by 23,75% the contributions of the intermediary contributors and resulted in a larger gap between the contributions of intermediary and large contributors.

The representative of the European Commission regretted that the contribution rate of the EU (as a Contracting Party) had not been reduced to 2,5 % in the previous as well as in the new scenarios to ensure consistency with the first scenario and provide Contracting Parties with coherent information regarding the financial implications of the

protocol. She emphasized that the European Commission was assessing the opportunity to revise the mandate it received from the Council of the European Union, that this would take time but could only result in an increase of the contribution rate of the EU which in turn would reduce the contributions of the other parties to the protocol.

The Drafting Group acknowledged the new scenario and estimated that the combination of the minimum contribution of 2 500 euros for the small contributors together with the contribution rates of the last scenario for the intermediary and major contributors could not only maintain a realistic gap between intermediary and major contributors but also contain the contributions of major contributors within an acceptable range depending on the budget considered.

The Drafting Group mandated the Secretariat to explore the feasibility of elaborating a simulation tool considering these criteria.

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

The Group decided to hold its fifth meeting online on **7 September 2023** (9.30 – 13.00 CEST).

Considering that according to the Rules of Procedures of the Standing Committee, working documents should be shared with Parties at least one month ahead of the 43<sup>rd</sup> Standing Committee, the Drafting Group also agreed to hold its last meeting of the year on **10 October 2023**.

#### **7. Conclusion of the meeting**

The Chair thanked the members of the Drafting Group and closed the meeting.

**ANNEX I**  
MEMBERS WHO PARTICIPATED IN THE 4<sup>th</sup> MEETING OF THE  
*AD HOC* DRAFTING GROUP OF AN AMENDING PROTOCOL

| <b>Contracting Party</b>                 | <b>Name</b>  |
|--|--|
| <b>Czech Republic</b>                    | <b>Ms Eliška ROLFOVÁ</b><br>Unit of International Conventions<br>Department of Species Protection and Implementation of<br>International Commitments<br>Ministry of the Environment  |
| <b>European Commission</b>               | <b>Ms Iva OBRETOVA</b><br>Policy Officer<br>European Commission, DG Environment<br>ENV.D3 - Nature Conservation Unit   |
| <b>Finland</b>                           | <b>Ms Maria Westerman</b><br>Ministry of the Environment   |
| <b>France</b>                            | <b>Mr Charles-Henri DE BARSAC</b><br>Chargé de mission "accords internationaux et européens faune<br>sauvage"<br>Sous-direction de la protection et de la restauration des écosystèmes<br>terrestres<br>Ministère de la Transition Ecologique et Solidaire   |
| <b>Sweden</b>                            | <b>Ms Linnea SUNDBLAD</b><br>Senior advisor, biodiversity<br>Swedish Environmental Protection Agency   |
| <b>Switzerland</b>                       | <b>Mr Norbert BÄRLOCHER</b><br>Office fédéral de l'environnement OFEV<br>Division Biodiversité et paysage<br>Section Faune sauvage et conservation des espèces   |
| <b>United Kingdom</b>                    | <b>Mr Simon MACKOWN</b><br>Head of Species Recovery and Reintroductions Policy<br>National Biodiversity Division<br>Department for Environment, Food and Rural Affairs (DEFRA)   |
| <b>Council of Europe<br/>Secretariat</b> | <b>Ms Ana GOMEZ</b><br>Head of Division<br>Directorate of Legal Advice and Public International Law<br><br><b>Mr Mikaël POUTIERS</b><br>Secretary of the Bern Convention<br><br><b>Mr Marc HORY</b><br>Bern Convention Project Manager<br><br><b>Ms Nadia SAPORITO</b><br>Junior Professional – Bern Convention<br><br><b>Ms Georgia FILI</b><br>Bern Convention support assistant |