



Strasbourg, 15 November 2024

T-PVS(2024)13

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

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

7th meeting
8 October 2024

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 Drafting Group which was adopted without amendments.

2. New developments on the financing of the Bern Convention since the 6th meeting of the *Ad hoc* Drafting Group of an Amending Protocol

The Chair regretted that this was the first and only meeting since the last Standing Committee, and recalled the mandate and the pending challenges, namely to finalise the Protocol proposal and the other pending documents accompanying and describing the functioning of the Protocol. The work was, however, conditional on the outcome of discussions between the legal services of the CoE and the EU to find a solution regarding the contribution rate of the EU.

The Group was also informed that the positive momentum for the environment generated at the 4th Summit and the Reykjavik Declaration led to a Committee of Ministers decision to increase by 0.5M€ in the budget of the Bern Convention from the Ordinary Budget to finance operational activities and core staff of the Secretariat.

The Group was informed that the Chair of the Standing Committee of the Bern Convention participated in two meetings of the Council of Europe Committee of Ministers' Rapporteur Group in charge of the Bern Convention (the Rapporteur Group on Education, Culture, Sport, Youth and Environment, GR-C) to discuss the Bern convention financial situation. The Secretariat referred to document (GR-C(2024)7rev) which sets out problems posed by the draft Protocol such as its alignment with the institutional and regulatory framework of the Council of Europe (CoE) and that this would create a precedent with unforeseeable effects on the future functioning of the rest of the Organisation. The Secretariat made it clear that this issue went clearly beyond the context of the Bern Convention and concerned the conventional systems and the programmatic and budgetary dimensions of the CoE as a whole. The Secretariat referred to efforts to ensure the financial sustainability of the Bern Convention and the CoE activities on environment and the introduction of a CoE Environmental Trust Fund. The Bureau of the Standing Committee of the Bern Convention decided that, due to its expertise, the ad hoc drafting group should be informed of the new situation that has arisen further to the GR-C meetings in order to exchange views on the setting up of a possible Council of Europe Environmental Trust Fund and give initial feedback. Despite the actual positive situation of the ordinary budget, the Bureau stressed the importance to guarantee the long-term satisfactory financing of the Bern Convention

3. Amending protocol and its accompanying Explanatory Report

The Secretariat presented a revised version of the draft Amending Protocol (document T-PVS(2024)10) which was aligned with the concerns expressed par the CoE legal services.

The revised text of Article 19 paragraph 1 provides that the Standing Committee shall agree by a 2/3 majority (instead of unanimity as in the previous version of the text) on the expenses in carrying out the provisions of article 14 which concerns the application of the Convention, in accordance with the financial regulations of the Council of Europe. Even though this change can be understood due to the functioning of the Council of Europe, members of the group expressed concerns as contributions could be imposed on Parties to the Bern Convention without their consent, which may lead some Parties to refuse to adhere to the Amending Protocol. The Director of Social Rights, Health and Environment recalled that even though the financial regulations of the Council of Europe refer to a 2/3 majority, in practice the Committee of Ministers always seeks for consensus.

Regarding the issue of the entry into force of the Amending Protocol (Article 6), the Secretariat specified that the wording was not changed since the previous version. The representative of the Directorate of Legal Advice

and Public International Law of the Council of Europe recalled that there were precedents in other Council of Europe conventions where a Protocol could enter into force even without all parties to the convention having expressed their consent to be bound.

The Director of Social Rights, Health and Environment stressed that the ultimate objective should be to ensure the financial sustainability of the Bern Convention and the Amending Protocol was not the best mean to achieve this goal. Even if the text of the Protocol was aligned with the institutional and regulatory framework of the CoE and agreed upon, its entry into force was quite uncertain and unlikely given the lengthy ratification process. Another concern was that adopting such a Protocol would set a precedent in the way conventional work would be financed when, as a rule, it should be covered by the ordinary budget of the Organisation.

The representative from the European Commission, in view of the late submission of the document, can only express a reservation regarding the new proposal.

The Director of Social Rights, Health and Environment mentioned a meeting at Directors level organised between the Council of Europe and the European Commission, at the request of the European Commission. During the meeting, the scale of contribution of the EU to the system put in place by the draft Amending Protocol was discussed. The EU has a mandate to negotiate up to 2,5% when the Council of Europe argued that its internal rules should apply with the EU considered as a grand contributor. The example of the Istanbul Convention on preventing and combating violence against women and domestic violence was however mentioned, as the EU agreed in that context that the CoE scales applicable to grand contributors be applicable¹, with only limited adaptations. The representative from the European Commission recalled the benefit of the agreement found for the Istanbul Convention, which however does not set a precedent for other Conventions to which the EU is a Party to, nor can be considered as an acceptance of the application of Resolution CM/Res(2022)6 to the European Union. She further stressed that the European Commission remains committed to find a solution for the Bern Convention Amending Protocol with respect of the scale.

The Group agreed that the issue of the EU rate of contribution couldn't be addressed by the Ad hoc Drafting Group and should be addressed at a higher more political level. Moreover, given the initial terms of reference of the mandate, other points could not be discussed, notably the operation of the financial mechanism and the development of the procedures governing it with only one meeting of the draft group in the intercession time.

4. CoE Environment Trust Fund

The Director of Social Rights, Health and Environment referred to the possible establishment of a CoE Environmental Trust Fund in order to ensure the implementation of the CoE Strategy on Environment to be adopted at the next Ministerial session of the Committee of Ministers in Luxembourg in May 2025. This Fund was part of the overall reflections on finding sustainable funding solutions for the Bern Convention. There is a precedent within the CoE: the Human Rights Trust Fund. However, the Environmental Trust Fund would function differently. First, regarding the membership of the fund, it would be open to all CoE member states and beyond, including, possibly, non-state actors (within conditions to be set). Secondly, the scope would be larger than the Bern Convention and would concern all environmental aspects in light of the CoE Strategy on the environment. Third, it will be possible for countries to earmark their contributions. Furthermore, the obligations to contribute to the trust fund must be binding for a number of years to shield the fund from fleeting political momentums. Regarding the amount of contributions, there should be a minimum threshold as clearly today some voluntary contributions are too small and cost more to manage than what they represent. Lastly, the governance of the fund would take into account the prerogatives of the different conventional systems. The Director stressed that this was the moment to put in place such a system in regards of the current favourable political momentum within the CoE regarding the environment, with a view to have it open to signature at the May 2025 ministerial session.

¹ On the basis of both [Resolution Res\(94\)31](#) which sets out the rules for calculating member States' contributions to the Ordinary Budget and [Resolution CM/Res\(2022\)6](#) which introduces a calculation method specifically for non-members of the CoE which participate in CoE Conventions.

The representatives from the Czech Republic and Finland were favourable to such a fund if it leads to a more efficient administration of the voluntary contributions and mobilisation of additional resources while stressing the importance of earmark the financing of projects. The representative of Czech Republic stressed, however, that the Protocol still met the need for long-term financing of the Convention, whereas the Fund was more of a short- medium-term solution.

The representative from the European Commission stressed that as orally presented for the moment, the Trust Fund does not appear as an alternative to the Amending Protocol. Prima Facie, she found that it is not in line with all principles set by the Standing Committee decision from 2018 that a stable, sufficient, predictable, long-lasting and fair future financial mechanism for the Convention is established. For instance, it is important to make the fund attractive for potential future donors, while keeping the possibility of accepting small amounts. The choice of governance and the way the possibility of earmarking contributions is going to work in practice are also key elements and more information in writing on this Fund would be appreciated.

The representative of the UK highlighted the need from states regarding the accountability of their contributions. Furthermore, concerns were expressed regarding the threshold of contributions mentioned precedingly as the spirit of collaboration inherent to the Bern Convention would be undermined by the potential exclusion of small contributors.

The representative of France considered the idea of a trust fund as a useful mid-term solution and that a real long-term solution for the Bern Convention system, as the Protocol, would benefit from a cumulative approach. He also underlined the importance of ensuring the correct governance of the fund without losing specificity for instance for activities relating to the Bern Convention system. Finally, he stressed the need for a legal obligation, such as with the Amending Protocol, otherwise the fundings could be cut any time.

All the participants agreed that this matter must be brought up to the Standing Committee to be further discussed, and to have a hold of all the elements at stake especially concerning the articulation between the governance of the Bern Convention and the governance of a potential trust fund.

ANNEX I

LIST OF PARTICIPANTS IN THE 7TH MEETING OF THE
AD HOC DRAFTING GROUP OF AN AMENDING PROTOCOL

Contracting Party	Name
Czech Republic	Ms Helena KOSTOHRYZOVA Ministry of the Environment Unit of International Conventions Department of Species Protection and Implementation of International Commitments
Estonia	Ms Merike LINNAMÄGI Advisor Biodiversity Conservation Department Ministry of the Climate
European Commission	Ms Iva OBRETENOVA Policy Officer European Commission, DG Environment ENV.D3 - Nature Conservation Unit
Finland	Ms Maria WESTERMAN Ministry of the Environment Department of the Natural Environment, Biodiversity
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
United Kingdom	Mr Simon MACKOWN Head of Species Recovery and Reintroductions Policy National Biodiversity Division Department for Environment, Food and Rural Affairs (DEFRA)

Secretariat	Name
Directorate of Legal Advice and Public International Law	Ms Ana GOMEZ Head of Division / <i>Cheffe de Division</i>
Directorate General of Human Rights and Rule of Law (DGI)	Rafael BENITEZ Director of Social Rights, Health and Environment
	Mikaël POUTIERS Secretary of the Bern Convention
	Michaël NGUYEN Administrative and Project Officer, Bern Convention
	Mark BARLOW Administrative Assistant, Bern Convention
	Ines CARTER Trainee