



Strasbourg, 18 October 2023

T-PVS(2023)19

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

43rd meeting
Strasbourg, 27 November - 1 December 2023

**EXPLANATORY REPORT TO THE PROTOCOL AMENDING THE
THE CONVENTION ON THE CONSERVATION OF EUROPEAN
WILDLIFE AND NATURAL HABITATS**

*Document prepared by
the Secretariat of the Bern Convention*

1. The Protocol amending the Convention on the Conservation of European Wildlife and Natural Habitats (“this Protocol”) was endorsed by the [number] Standing Committee on [date] and subsequently adopted by the Committee of Ministers of the Council of Europe at its [number] meeting of [date] of the Ministers’ Deputies and this Protocol was opened for signature in [place] on [date]. The Committee of Ministers also took note of the explanatory report.
2. The text of this explanatory report is intended to guide and assist Parties in the application of this Protocol and reflects the understanding of the drafters as to its operation.

I. Introduction

3. The Convention on the Conservation of European Wildlife and Natural Habitats (ETS No 104, hereafter referred to as “the Bern Convention” or “the Convention”), since its opening for signature in Bern on 19 September 1979, has become an instrument with membership and impact throughout Europe and beyond, with [51] Parties at the date of adoption of this Protocol. Its uniqueness was highlighted by the Heads of State and Government in their Reykjavik Declaration “United around our values” adopted during the 4th Summit of the Council of Europe of 16-17 May 2023 in the context of the urgency of additional efforts to protect the environment.
4. Over the years, the financing of the Convention became more and more dependent on voluntary contributions paid by some of its Parties, until reaching unprecedented situations when the position of Secretary of the Convention was fully financed by voluntary contributions as from 1st January 2020. The Standing Committee to the Bern Convention (“the Standing Committee”) acknowledged that this situation was not sustainable and that solutions should be sought.
5. On 19-20 October 2022, at their 1446th meeting, Ministers’ Deputies entrusted the Standing Committee to prepare a draft Protocol amending the Convention, setting up a mechanism of compulsory financial contributions, and to submit it to the Committee of Ministers for consideration with a view to its adoption.
6. On 2nd December 2022, at its 42nd meeting, the Standing Committee adopted the terms of reference for and set up the *Ad hoc* Drafting Group of an Amending Protocol (“the Drafting Group”) to elaborate a draft Protocol amending the Bern Convention, elaborate its modalities of entry into force and functioning, and propose a scale of contribution for the consideration of the Standing Committee.
7. The Drafting Group held 7 meetings in 2023. It prepared the draft Protocol amending the Bern Convention setting up a mechanism of mandatory financial contributions and its Explanatory Report.
8. The draft amending Protocol and the explanatory report were examined and approved by the Standing Committee at its [XXth] meeting on [XX December 202X] and submitted to the Committee of Ministers on [date] for formal adoption.

II. Commentaries

9. The purpose of this Protocol is to set up a mechanism of compulsory financial contributions by Parties to ensure predictable and stable budgetary resources to the Bern Convention, complementing the Council of Europe the allocation of the Ordinary Budget to the Convention.

Preamble

10. The preamble recalls that human rights and biodiversity are intertwined and refers to the increasing challenges biodiversity is facing, and the need for adequate and predictable funding to implement the Bern Convention.

Article 1

11. This article introduces a new paragraph 5 to Article 13 of the Convention stressing that the secretariat of the Standing Committee to the Bern Convention shall be provided by the Secretary General of the Council of Europe and shall ensure organisational support to the work of the Committee. This new paragraph was introduced to highlight that the mandatory contributions resulting from the Protocol are not aimed to substitute, but to complement the allocation from the ordinary budget of the Council of Europe. The ordinary budget should therefore be maintained at its current level or be increased. The **[Drafting Group]** / **[Standing Committee to the Bern Convention]** recommended that the allocation from the ordinary budget should fund the core Secretariat of the Convention and that the resources resulting from the Protocol should provide *inter alia* for the programme of work of the Convention.

Article 2

12. This article creates a chapter dedicated to financial provisions in the Convention text.

Article 3

13. This article details the financial provisions installed by the Protocol. To this end a new article 19 is added to the Convention.
14. Paragraph 1 of the new article stresses that the financial contributions are mandatory and stipulates that each Party to the Convention should contribute to the budget of the Convention. It refers also to the scale of annual contributions which is defined by the Standing Committee and adopted by the Committee of Ministers. The paragraph concludes that the mandatory contributions are to be paid under certain conditions detailed in the subsequent articles.
15. Paragraph 2 of the new article empowers the Standing Committee with the responsibility to define the ambition of the Convention and to design an adequate budget for achieving this ambition. This budget is composed of the allocation from the ordinary budget and the mandatory contributions installed by the Protocol. Decisions of the Standing Committee regarding the budget necessary for the implementation of the programme of work under the Convention are taken by unanimity, to ensure that the priorities of all Parties to the Protocol are taken into consideration.
16. According to paragraph 3 of the new article decisions regarding the allocation and use of the mandatory contributions are taken by unanimity by the Parties which have ratified the Protocol.

This paragraph also stresses that the resources resulting from the Protocol will be allocated to “core” activities of the programme of the work of the Convention. “Core” activities are necessary to implement the Convention, in particular monitoring the obligations of Contracting Parties (such as the biennial reporting, the reporting on the conservation status of species and habitats, the case-file system, activities of the technical and scientific Groups of Experts related to the follow up of the implementation of recommendations of the Standing Committee), to developing new standards to improve the effectiveness of the Convention (such as the strategy of the Convention, recommendations to Contracting Parties drafted by technical and scientific Groups of Experts, the development of the Emerald Network) and to raising the public’s awareness of the activities undertaken within the framework of the Convention. |

Furthermore, the paragraph refers to the scale of financial contributions based on which the mandatory contributions are to be calculated. The scale is to be defined by the Standing Committee based on the method of calculating the scales of member States’ contributions to Council of Europe budgets in operation. To ensure fairness and to encourage Parties to ratify the Protocol, the Drafting Group recommended that the financial contributions of Parties to 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

Commented [HM1]: The European Union is concerned with the way the method of calculating the scale of financial contributions of MS to the Council of Europe budget is applied to the EU in the context of the Bern Convention, due to potential double counting of EU Member States’ population.

to the Convention have ratified the protocol, a part of the programme of work would either need to be funded by voluntary contributions provided in priority by parties which have not ratified the protocol or be frozen pending the availability of financial resources.

17. Paragraph 4 of the new article specifies that the scale of financial contributions will be adopted by the Committee of Ministers of the Council of Europe.

Commented [HM2]: Pending an agreement on the contribution rate of the EU, the EU proposes an amendment to the paragraph 4 entitling parties to the Protocol which are not represented in the Committee of Ministers to take part in the decision adopting the scale of financial contributions.

Article 4

18. Following the creation of a new chapter and a new article, the subsequent chapters and articles of the Convention were renumbered.

Final provisions

19. The provisions contained in this chapter are, for the most part, based both on the “Model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe”, which were adopted by the Committee of Ministers at the 1291st meeting of the Ministers’ Deputies in July 2017. As some of the articles under this chapter either use the standard language of the model clauses or are based on long-standing treaty-making practice at the Council of Europe, they do not call for specific comments. However, certain modifications of the standard model clauses require some explanation.

Article 5 – Signature, ratification and accession

20. Paragraph 1 is based on the model final clauses adopted by the Committee of Ministers for conventions and protocols concluded within the Council of Europe. It establishes that this Protocol shall be open for signature by the Parties to the Convention and subject to ratification, acceptance or approval.
21. Paragraph 2 makes clear that once the Protocol has been opened of signature and before its entry into force the consent to be bound by the Protocol shall be expressed by accession and that, any State which is not Party to the Convention, cannot become Party to it unless that State accedes simultaneously to this Protocol.

Article 6 – Entry into force

22. According to paragraph 1 of this article, the amending Protocol will enter into force when all Parties to the Convention have deposited their instrument of ratification, acceptance or approval. Considering the purpose of the Protocol, the support from all Parties is essential.
23. Paragraph 2 foresees however that in case not all Parties to the Convention ratify the protocol, it can nevertheless enter into force if, after 3 years after the date it has been opened for signature, a threshold of two-thirds (i.e. 34) of the Parties representing a proportion of 65% of the budget determined by the Standing Committee have ratified the protocol. Installing this double criterion for the entry into force aims to guarantee appropriate resources provided by a sufficient number of Parties and makes it possible to circumvent any possible blockage if a small minority of Parties do not ratify this Protocol.

Article 7 - Provisional application

24. Considering the high number of Parties to the Convention, the drafters considered it important to shorten as much as possible the period between the adoption of the amending Protocol and its possible application. Article 7 provides therefore for a provisional application of the amending Protocol pending its entry into force. (i.e. the threshold of ratifications is not achieved or the agreed proportion of the budget is not funded).
25. To that effect, a Party to the amending Protocol may declare, at the time of the signature or at any later moment, that it will apply the amending protocol on a provisional basis. In such a case, the Party declares its willingness to comply immediately with the new standards, while the other Parties remain bound by the original ones.

Article 8 – Term of provisional application

26. The provisional application of the Protocol will cease once the Protocol will enter into force namely once the threshold of ratifications is achieved and the agreed proportion of the budget is funded. Nevertheless, even once the Protocol has entered into force, Parties which have signed the Protocol but not yet ratified it can still apply the amending protocol on a provisional basis as described under Article 7.

Article 9 – Reservations

27. Considering the nature of the Protocol, reservations to its provisions are not allowed.

Article 10 - Notifications

28. This article is based on the model final clauses adopted by the Committee of Ministers for conventions and protocols concluded within the Council of Europe.