



Strasbourg, 15 September 2023

T-PVS(2023)23

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

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

5th meeting

7 September 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), in particular Mr Andy Kammer representing Germany in the absence of Mr Babak Miller and introduced the meeting agenda to the Drafting Group which was adopted without amendments.

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

The Chair recalled the main outcomes of the 4th meeting of the *Ad hoc* Drafting Group presented in the document T-PVS(2023)12. He recalled the following outcomes:

- The inclusion in the Protocol of a footnote defining “core activities” of the programme of work of the Bern Convention building on the document presenting attempts for designing criteria differentiating core and programmatic activities (doc T-PVS/Inf(2023)05).
- The further amendment of the Bern Convention by the addition of a new article to the Protocol stating that the Secretariat shall be provided by the Council of Europe to meet the request of the Drafting Group to ensure that the basic functioning of the convention is ensured by the Council of Europe and that the protocol does not substitute to the ordinary budget and results in the disengagement of the Committee of Ministers from the Bern Convention.
- The preparation of a revised version of the Protocol based on the proposal of the representative of the UK for the consideration of the Drafting Group at its 5th meeting.
- The preparation of a draft Explanatory Report for the consideration of the Drafting Group at its 5th meeting.
- The preparation of a financial simulation tool considering a minimum contribution of 2 500 euros and a maximum contribution of 10% of the budget.

The meeting report was adopted.

3. Amending protocol

The Secretariat presented the 3rd version of the Protocol amending the Bern Convention based on the proposal of the representative of the UK and raised the attention of the Drafting Group to the following salient changes:

- This new version of the Protocol included a new article 1 reading as following:

“The secretariat of the Standing Committee shall be provided by the Secretary General of the Council of Europe and shall ensure organisational support to the work of the Committee”

This wording was taken from other legal instruments of the Council of Europe and should therefore not be challenged by the Committee of Ministers.

With reference to the comments received from the representative of Germany that this article went beyond the mandate of the Drafting Group, the Secretariat recalled that a number of members of the Drafting Group conditioned their support to the Protocol to the increased commitment of the Council of Europe to provide appropriate resources to the Bern Convention.

The Drafting Group acknowledged that the wording may not entirely reflect the intention of the Drafting Group but, considering that the allocation of the Ordinary Budget remained a prerogative of the Committee of Ministers (CM) and the Parties to a convention can neither substitute the function of the CM nor impose obligations to the CM, this wording might be optimal. The Drafting Group further considered that the amending Protocol could only function if the allocation of the Ordinary Budget was maintained or increased. The new Article 1 was an integral part of the financial mechanism and aimed to secure its functioning.

➤ This new version of the Protocol changed also the way decisions regarding the compulsory financial contributions were taken. In the previous version of the Protocol decisions were taken by unanimity. In the present version the consensus was needed.

Members of the Drafting Group exchanged views on the difference between “consensus” and “unanimity”. The Drafting Group discussed at length whether a vote could be required for agreeing on a budget. A number of members was in favour of switching back to the “unanimity” as this wording was already mentioned in the text of the Bern Convention. The Drafting Group acknowledged that the question should be brought to the Standing Committee.

➤ In the final provisions of this new version of the Protocol, the Secretariat had also added a new article 9 specifying that no reservations could be made to the Protocol.

The Drafting Group had no objection regarding the new article 9.

In the subsequent discussion the Drafting Group looked again at the terms of the provisional application of the Protocol. Upon the suggestion of the representative of the UK, the Drafting Group agreed on an amendment of Article 8 extending the provisional application of the Protocol beyond its entry into force for Parties which have signed but not yet ratified the Protocol.

Finally, the representative of the EC informed that the Legal Services of the EC had reservations regarding the legal basis of the Protocol and requested to organise a bilateral meeting with the respective legal services.

The members of the Group agreed on the changes to be reflected in the 3rd draft Protocol and instructed the Secretariat to circulate the revised version for possible further comments by 25 September 2023.

4. Explanatory report

The Secretariat introduced to the Drafting Group a first draft of the Explanatory Report to the Protocol amending the Bern Convention. The purpose of the Explanatory Report was to present the genuine intention of the drafters of the Protocol and facilitate the interpretation and implementation of the Protocol. While the Explanatory report should be submitted together with the Protocol to the Committee of Ministers for possible adoption, it was not a binding document.

After a comprehensive introduction presenting the rationale and recalling the context within which the Protocol had been initiated, the Explanatory report followed article by article and paragraph by paragraph the structure of the Protocol amending the Bern Convention.

Members of the Drafting Group had at this stage only minor comments. The representative of the EC informed that she should consult the Legal Services of the EC before sharing her comments on the Explanatory Report with the Drafting Group. The Chair also requested to translate the Explanatory Report into French for the next meeting of the Drafting Group.

The Drafting Group requested that the draft Explanatory Reports is revised along the changes reflected in the Protocol and to add in track changes the amendments proposed by Germany to the definition of the “core activities” of the programme of work of the Bern Convention for easy reference and discussion at the next meeting.

5. Scale of financial contributions

At its 4th meeting, the Drafting Group requested that the Secretariat explores the possibility to create a simulation tool considering a minimum contribution of 2 500 euros and a maximum contribution of 10% of the budget.

Unfortunately, a combination of a minimum amount and a maximum rate does not allow the creation of a simulation tool and an automation of the calculation of the contributions of Parties according to the budget considered.

Therefore, a series of scenarios with budgets ranging from 300 Keuros up to 800 Keuros have been produced. Budgets increase by tranches of 50 Keuros which gives a realistic insight of the evolvement of the contribution rates and contribution amounts of Parties. It appears that the rate of intermediary contributors increases proportionally with the increase of the budget.

The Secretariat underlined that the EU contribution rate was still under discussion, and it should be discussed by the Committee of Ministers of the Council of Europe.

A number of members of the Drafting Group noted that expressing maximum contributions in percentages of the overall budget was a suitable approach. Overall, the Drafting Group appreciated these last scenarios presented and supported their presentation to the 43rd Standing Committee for information.

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

The Group decided to hold its 6th and last meeting online on 6 October 2023 (9.30 – 13.00 CEST).

The Secretariat reminded that all the draft documents must be finalised at the last meeting in order to be presented in time at the 43rd Standing Committee for decision.

ANNEX I

**LIST OF PARTICIPANTS IN THE 5TH MEETING OF THE
AD HOC DRAFTING GROUP OF AN AMENDING PROTOCOL**

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 Adviser Nature Conservation Department Ministry of the Environment
European Commission	Ms Iva OBRETEŇOVA Policy Officer European Commission, DG Environment ENV.D3 - Nature Conservation Unit
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 Andy KAMMER Policy Advisor Division International Species Conservation, Wildlife Trade Federal Ministry for the Environment, Nature Conservation and 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
United Kingdom	Mr Simon MACKOWN Head of Species Recovery and Reintroductions Policy National Biodiversity Division Department for Environment, Food and Rural Affairs (DEFRA)