Strasbourg, 11 October 2023 **T-PVS(2023)29**

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Ad hoc Drafting Group of an Amending Protocol

6th meeting
6 October 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 Alejandro LAGO CANDEIRA, representing Spain and joining the Drafting Group for the first time, and introduced the meeting agenda to the Drafting Group which was adopted without amendments.

2. Report of the 5th meeting of the *Ad hoc* Drafting Group of an Amending Protocol

The Chair recalled the main outcomes of the 5th meeting of the *Ad hoc* Drafting Group presented in the document T-PVS(2023)23.
He recalled that the Drafting Group examined the 3rd version of the Protocol amending the Bern Convention. This version of the Protocol included a new article 1 stating that "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". The Drafting Group also examined for the first time the Explanatory Report to the Protocol and supported financial scenarios combining a minimum amount of 2 500 euros and a maximum percentage of 10% of the budget.
In the final provisions of this new version of the Protocol, a new Article 9 specifying that no reservations could be made to the Protocol had been added.

The meeting report was adopted.

To reply to a question of the representative of the European Commission (EC) regarding the on-going discussions on a possible increase of the Ordinary Budget of the Bern Convention, the representative of the Directorate of Programme and Budget of the Council of Europe (CoE) informed the Drafting Group of the Secretary General's proposal to increase the Ordinary Budget of the Bern Convention in 2024 of 0.5M€ to finance operational activities as well as the core staff of the Secretariat. This increase of funds should ensure the sustainability of the Bern Convention and also the follow up of the Reykjavik process on environment. Under this condition, the work on the Amending Protocol could be suspended.

The Secretariat pointed out that at the forthcoming Standing Committee two scenarios for the 2024 Programme of Activity will be presented: one option based on the assumption that the Secretary General's proposal to increase the Ordinary Budget of the Bern Convention would not be adopted by the Committee of Ministers and voluntary contributions would continue financing the staff, and another scenario based on the approval of the increased Ordinary Budget. The Group was also informed of the forthcoming reorganisation of the administrative structures and transfer of the environment sector (Bern Convention, Landscape Convention, Major Hazards Partial Agreement) to a new Directorate to be created under the Directorate General of Human Rights and the Rule of Law in 2024.

3. Amending protocol

The Secretariat recalled that the 3rd version of the Protocol had been revised along the outcomes of the discussion of the 5th meeting of the Drafting Group and still reflected an amendment to the footnote defining "core" activities proposed by Germany and informed members of the Drafting Group that the representative of the EC had provided comments and a proposal of amendment to paragraph 4 of Article 19 introduced by the Protocol.

The representative of the EC suggested to remove the reference to the method of calculating the scale of member States' contributions to Council of Europe budgets which is in operation at the Council of Europe referred to in paragraph 3 of Article 19 as she was concerned by the application of the method to the EU. Pending an agreement on the contribution rate of the EU, she proposed the following amendment to paragraph 4 of Article 19:

The Parties to the Protocol amending the Convention that are not members of the Committee of Ministers of the Council of Europe, shall be entitled to participate in the adoption by the Committee of Ministers of the scale of financial contributions, agreed on by the Standing Committee for the Protocol.

Members of the Drafting Group flagged that not referring to a methodology of calculating contributions will lead to endless discussions for agreeing on a scale of contribution.

Moreover, the representative of the Directorate of Legal Advice and Public International Law of the CoE stressed that the governing rules of the Committee of Ministers cannot be changed because of the Bern Convention and in the present rules of procedures it was not foreseen to invite non-member States in the budgetary discussion. The contribution rate of the EU to the Bern Convention was a matter of a much wider debate in relation also to the possible accession of the EU to CoE conventions. Reaching an agreement between the EU and the CoE on this issue went beyond the competence of the Drafting Group and of the Standing Committee.

The members of the Drafting Group had no objections to the amendment proposed by the representative of Germany to the footnote defining the nature and scope of the "core" activities of the programme of work.

Considering the unsolved matters to finalise the Protocol which were outside the remit of the Drafting Group and the responsibility of the Secretariat of the Convention, the Chair proposed to present the Protocol at the 43rd Standing Committee for information and continue the discussion in 2024 to avoid interferences during the Committee of Ministers' debate on the possible adoption of an increased Ordinary Budget for the Bern Convention. In the meantime, the dialogue between both Organisations should continue and all possible options explored.

4. Explanatory Report

The Secretariat recalled that the Explanatory Report had been revised to reflect the amendments in the Protocol agreed on at the 5th meeting of the Drafting Group.

The representative of Germany had provided comments. He had still concerns with Article 1 stating that the Secretariat shall be provided by the Secretary General and was wondering about the reasoning behind entrusting the Standing Committee with the decision on the ambition of the Convention (paragraph 2 of Article 19) and limiting the decision on the allocation of the resources to the countries which have ratified the Protocol and provide mandatory contributions (paragraph 3 of Article 19).

The Explanatory Report would be updated to reflect the comments and amendments of the EC in the Protocol.

5. Scale of financial contributions

The Secretariat informed the Drafting Group that Belarus resigned from the Bern Convention and its withdrawal would be effective as from April 2024. The Belarussian financial contribution of 2 500 € would be relocated to the Parties and the scale of contributions would be updated in due course.

The Secretariat further informed the Drafting Group that the simulations regarding the double criteria for the entry into force of the Protocol namely the proportion of the budget covered by the 34 countries constituting the threshold were updated to reflect the criteria supported by the Drafting Group (i.e. a minimum contribution of 2 500 euros and a maximum contribution of 10% of the budget).

The results of the simulations are presented in the table below:

Set up of contributors	No major contributor, all small contributors and a few of intermediary contributors	One major contributor and a mix of intermediary and small contributors	Two major contributors and a mix of intermediary and small contributors	Three major contributors and a mix of intermediary and small contributors	Four major contributors and a mix of intermediary and small contributors	Four major contributors, all intermediary contributors and a few small contributors
Updated simulations **Proportion of budget covered (%)**	27	51	61	69	79	89
Initial simulations **Proportion of budget covered (%)**	33	58	66	72	79	89

The Drafting Group had considered that between 2 and 3 major contributors should join the Protocol to ensure its sustainability. With the new criteria the proportion of the budget provided by 2 major contributors dropped from 66 to 61% and the budget covered by 3 major contributors dropped from 72 to 69%.

The Drafting Group had considered that 70% would be an appropriate proportion. In the light of the new simulations, the Drafting Group agreed to change it to 65%.

6. Compliance with the Vienna Convention on the Law of Treaties: were Parties in capacity to take informed decisions regarding the possible options for setting up a financial mechanism for the Bern Convention?

At the 5th meeting of the *Ad hoc* Drafting Group of an Amending Protocol, the representative of the EC informed that the Legal Services of the EC had concerns regarding the procedure the development of the Protocol had been initiated. A bilateral meeting bringing together representatives of the legal services of the CoE and the EC took place on 18 September 2023.

The lawyers of the EC flagged that the decision initiating the elaboration of the Protocol did not comply with the provisions of the Vienna Convention on the Law of Treaties. They considered that Parties, in particular those which are not members of the CoE were not aware of what the options on the table entailed and had not been given the opportunity to contest the option of the Protocol.

Furthermore, the lawyers of the EC anticipated an issue regarding the procedure for the adoption of the Protocol. For the records, the draft Protocol is supposed to be approved by the Standing Committee and subsequently adopted by the Committee of Ministers of the CoE. Here again, all Parties, in particular those which are not members of the CoE and represented in the Committee of Ministers should confirm their agreement with the adoption procedure.

The representative of the EC informed the Drafting Group that it was not any longer their intention to claim that the Bern Convention procedure did not comply with the Law of Treaties at the Standing Committee and invited the Secretariat just to explain how this decision was taken.

The Secretariat took note of the information. Nevertheless, to guarantee that no critics would be raised regarding

the procedure the protocol had been developed even beyond the forum of the Standing Committee, the Secretariat foresaw to include in the agenda of the 43rd Standing Committee a discussion on the procedure the development of the Protocol had been initiated and on the procedure the Protocol was to be adopted. To ensure all Parties including those which will not attend the 43rd Standing Committee were informed of the discussion, the convocation would point specifically to the relevant agenda items.

7. Preparation of the 43rd Standing Committee

Considering the unsolved issues namely the amendment to the Protocol proposed by the EC because of the absence of agreement on the contribution rate of the EU and the discussion on whether all the Parties, in particular those which are not members of the CoE agreed with the elaboration of a Protocol amending the Bern Convention as the suitable sustainable financial solution, it would be counterproductive to submit the Protocol to the 43rd Standing Committee for possible endorsement. The draft Protocol, the Explanatory Report and the financial scenarios would be presented for information only followed by an exchange of views with Parties. The Standing Committee would also be invited to extend the mandate of the *Ad hoc* Drafting Group of an Amending Protocol to 2024 which would leave time to the legal services of the CoE and the EU to find a solution regarding the contribution rate of the EU and to draft the other pending documents accompanying and describing the functioning of the Protocol. An entire package of documents could be submitted to the 44th Standing Committee in 2024.

The Secretariat introduced the new document "Considerations of the *Ad hoc* Drafting Group of an Amending Protocol" (T-PVS/Inf(2023)14) which presents the reflections and options examined by the Drafting Group. The Secretariat invited the members of the Group to share their comments within a week to be able to finalise the document in time.

The Drafting Group agreed to present the Amending Protocol and related documents to the 43rd Standing Committee for information. Meanwhile, the dialogue between the legal services of the CoE and the EU should continue in order to find appropriate solutions to the pending obstacles to the approval of the Protocol.

The work of the Drafting Group shall resume next year. For this purpose, the Chair proposed to revise accordingly the mandate of the *Ad hoc* Drafting Group of an Amending Protocol to be adopted by the 43rd Standing Committee.

ANNEX I

LIST OF PARTICIPANTS IN THE 6TH 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
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
Germany	**Mr Miller BABAK** Policy Advisor Division International Species Conservation, Wildlife Trade Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and Consumer Protection
Spain	**Mr Alejandro LAGO CANDEIRA** Environmental Legal Advisor
United Kingdom	**Mr Simon MACKOWN** Head of Species Recovery and Reintroductions Policy National Biodiversity Division Department for Environment, Food and Rural Affairs (DEFRA)