



Council of the
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the Commission to negotiate, on behalf of the Union, amendments to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

Delegations will find attached document COM(2021) 136 final.

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Brussels, 24.3.2021
COM(2021) 136 final

Recommendation for a

COUNCIL DECISION

**authorising the Commission to negotiate, on behalf of the Union, amendments to the
Convention on the Conservation of European Wildlife and Natural Habitats (Bern
Convention)**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Convention on the conservation of European wildlife and natural habitats ("the Convention") aims to conserve European wild flora and fauna and their natural habitats, especially those whose conservation requires the co-operation of several States. It is an intergovernmental treaty, concluded under the aegis of the Council of Europe. The Convention entered into force on 1 June 1982.

The European Union is a Contracting Party to this Convention since 1 September, 1982¹. At present, there are 51 Contracting Parties to the Convention, including all EU Member States.

The ordinary allocation of the Council of Europe to the Bern Convention has progressively decreased over the years to the point that the functions of the Bern Convention cannot be assured without substantial voluntary contributions by the parties, but they are also in decline. It is therefore essential to establish a reliable source of finance for the Convention.

In accordance with Resolution No. 9 (2019) of the thirty-ninth meeting of the Standing Committee, adopted on 6 December 2019, on the financing of the Bern Convention on initiating the establishment of a new system of obligatory financial contributions by Parties, an inter-sessional expert working group was established to assist the Secretariat to present proposals for the inclusion of financial clauses by amending the articles of the Bern Convention and for the establishment of an Enlarged Partial Agreement, for consideration at the fortieth meeting of the Standing Committee.

Based on the outputs of the inter-sessional expert working group established at the 39th meeting of the Standing Committee, the 40th Standing Committee discussed two complementary proposals to address the financing issue. That meeting adopted a decision to support the establishment of an Enlarged Partial Agreement. With regard to the proposal to amend the Bern Convention to include financial clauses, following a statement by the Union and its Member States concerning the need for further internal discussions before it could take a decision², the Standing Committee agreed, with no objections, to postpone the decision on the possible amendment to the Convention until its 41st meeting.

As proposed to the 40th Standing Committee, the amendment to the Convention would introduce a mechanism to establish an obligatory contribution. However, the initial text did not make a distinction between the core budget and the programmatic budget, nor did it specify the scale of contributions to be applied. A revised proposal for the amendment will be negotiated in an inter-sessional working group, working throughout 2021 in the run-up to a decision at the 41st meeting of the Standing Committee. The Union should contribute actively in these negotiations.

¹ Council Decision 82/72/EEC of 3 December 1981 on the conclusion on behalf of the Community of the Convention on the Conservation of European Wildlife and Natural Habitats, OJ L 38, 10.2.1982, p. 1.

² See also Council Decision (EU) 2020/1830 of 27 November 2020 on the position to be taken on behalf of the European Union at the 40th meeting of the Standing Committee of the Convention on the conservation of European wildlife and natural habitats (Bern Convention), OJ 409, 4.12.2020, p. 34.

- **Consistency with existing policy provisions in the policy area**

Introducing a system of obligatory contributions to this Convention would be consistent with the policy followed in other areas. Indeed, the Union is party to numerous multilateral environmental agreements, in the context of which it makes obligatory financial contributions based on the requirements of the agreement and/or the financial regulations adopted on the basis of provisions in the agreement. In the context of these agreements, a distinction is normally made between the core budget and the programmatic budget, with only the former subject to obligatory contributions. However, the proposed amendment to the Convention does not clarify that the mechanism to be established would follow this precedent. Neither does the proposed amendment specify the scale of contributions to be applied. In other multilateral environmental agreements, the Union contribution is normally set at not more than 2.5% of the overall contributions.

It is therefore appropriate that the Union ensure that Parties will not be obliged to make contributions to the programmatic budget, and that the Union contribution cannot be established at more than 2.5% of the budget.

This Recommendation is entirely aligned with and indeed flows from Council Decision 2020/1830, which established the Union position for the 40th Standing Committee of the Convention.³

- **Consistency with other Union policies**

This proposal is consistent with Union objectives related to the environment and to international relations.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(3) of the Treaty on the Functioning of the European Union (TFEU) provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominate the Union negotiator. According to Article 218(4) of the TFEU, the Council may address directives to the negotiator.

Given that the negotiations will concern an act supplementing or amending the institutional framework of the agreement, Article 218(9) TFEU cannot be applied in this context.

Therefore, the procedural legal basis for the proposed decision is Article 218(3) and (4) TFEU.

The main objective and content of the envisaged act relate to environment.

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

- **Subsidiarity (for non-exclusive competence)**

Environment is a shared competence under Article 192 TFEU. The financing of this environmental Convention involves a shared competence of the Union and the Member States

³ Ibid.

for their respective contributions as Parties. Therefore, the Union needs to participate in this regard.

- **Proportionality**

A Council Decision is necessary in order for the Union to participate in these negotiations, which are essential for establishing a predictable financial basis for the Convention to which the Union is a Party.

- **Choice of the instrument**

The choice of the instrument is stipulated in Article 218(3) and (4) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The Union presently contributes a sum of 24 700 € per annum to the Bern Convention based on a suggested, voluntary scale of contributions. An obligatory contribution of 2.5% of the core budget would be very unlikely to exceed this amount, so there are no budgetary implications of this initiative.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The negotiating directives should be made public immediately after their adoption.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

Recommendation for a

COUNCIL DECISION

authorising the Commission to negotiate, on behalf of the Union, amendments to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

WHEREAS it is proposed to amend the Convention on the Conservation of European Wildlife and Natural Habitats⁴ (Bern Convention) to include financial clauses,

WHEREAS it is necessary to ensure that such amendment will be consistent with Union legislation and interest, notably not to oblige the Union to contribute more than 2.5% of the overall contributions,

WHEREAS the Commission should be authorised to negotiate, on behalf of the European Union, amendments to the Convention,

HAS ADOPTED THIS DECISION:

Article 1

- (1) The Commission is hereby authorised to negotiate, on behalf of the Union, amendments to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) establishing a new system of obligatory financial contributions by Parties, at the meetings of the Standing Committee of the Convention and at the meetings of the relevant inter-sessional expert working group.
- (2) The Commission shall conduct the negotiations on behalf of the Union, in consultation with [*name of the special committee to be inserted by the Council*] and on the basis of the negotiating directives set out in the Annex to this Decision.
- (3) To the extent that the subject matter of the amendments referred to in paragraph 1 falls within the shared competence of the Union and of the Member States, the Commission and the Member States should cooperate closely during the negotiating process, with a view to ensuring unity in the international representation of the Union and its Member States.

⁴ Council Decision 82/72/EEC of 3 December 1981 on the conclusion on behalf of the Community of the Convention on the Conservation of European Wildlife and Natural Habitats, OJ L 38, 10.2.1982, p. 1.

- (4) The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*