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LIMITE

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CONTRIBUTION

From: General Secretariat of the Council
To: Working Party on International Environment Issues (Biodiversity)
Nº Cion doc.: 14265/22 + ADD 1
Subject: Bern Convention Council Decision: Comments from delegations

Following the call for comments launched on 5 March 2024 (WK 3545/24), delegations will find attached the comments received by [REDACTED] the European Commission.

**Comments by [REDACTED] to the Presidency Steering Note
on the Proposal for a Council Decision on the position to be taken on
behalf of the European Union on submitting proposals for amendment
of Appendices II and III of the Convention on the Conservation
of European wildlife and natural habitats with a view to the meeting
of the Standing Committee of the Convention**

Indicative questions on process

- *Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?*

Measures and tools adopted [REDACTED] targeted at supporting the farmers and livestock breeders, including by partial damage compensations, as well as in specific cases at mitigating and solving conflict situations. Thus, [REDACTED] is able to react adequately under the current legal framework, although the tools and measures might need to be optimised as more experience is gained in the future.

At the same time, [REDACTED] supports further steps to increase the flexibility in resolving conflict situations, including within the existing legal framework, and calls, in particular, for further strengthening and facilitating support at EU level for livestock protection, also considering the increased costs for livestock breeders.

The proposal put forward by the European Commission focuses on a single species, while there are more species whose populations are recovering and approaching favourable conservation status. A wider discussion that would include a detailed scientific assessment and search for a comprehensive solution regarding the species listed in Bern Convention annexes would therefore further support the established systematic approach.

- *Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?*

Financial and methodological support to purchase adequate preventive measures against wolf attacks in [REDACTED] is provided from the Operational Fund Environment (OPE) as the basic subsidy programme in the field of environmental protection from EU funds (the European Regional Development Fund and Cohesion Fund). Financial support for wolf damage prevention measures was included in OPE programming period of 2013-2020 resulted in [REDACTED] applications in sum of more than [REDACTED]. In the OPE programming period 2021-2027 so far around [REDACTED] applications for projects are being administered.

Direct damage (kill, veterinary care for injured animals, rendering plant) is in full amount compensated from the state budget according to [REDACTED]. Since 2023 a new tool to compensate for multiple costs associated with the maintenance of preventive measures or change in grazing (manipulation with the farm animals to protect them, etc.) is available for land owners or tenants in the area of repeated wolf occurrence, also from the state budget, according to [REDACTED].

If the changes under the Bern Convention and subsequently the Habitats Directive were adopted, a reduction in the status of wolf protection would require incorporation of these changes into the

national system and a modification of the system of providing funds for prevention or compensation of damage, *inter alia*, with regard to the current linking of possible support to the classification of the species as strictly protected. The change would probably also require the adoption of legislative changes to ensure that the requirements for ensuring the favourable status of the species are met even in the case of its management.

- *Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?*

As the case is still in progress, it is difficult to assess the role of the opinion in the process. In general, the case is highly relevant for the discussions regarding the protection status of wolf and its management in the European Union.

Indicative questions on substance

- *How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?*
 - o *How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?*

[REDACTED] considers that the "in-depth analysis" published by the Commission in December 2023 is an up-to-date and relatively comprehensive overview of the current situation, but it does not provide a clear justification for the proposed change in the level of wolf protection. The current situation and recent developments can be taken into account. In view of the above, it is impossible to predict the final outcome of the revision of the annexes, but room for discussion should be provided.

- o *Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?*

The latest scientific data were submitted to the Commission for the "in-depth analysis" in 2023.

- *Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.*
 - o *Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?*

The EU and its MS have many examples of good practice to share regarding the co-existence with large carnivores, although specific circumstances and the latest development regarding the countries/species in question need to be considered. Further data could be collected and shared regarding for example the preventive measures and their efficiency or related difficulties. Harmonisation of monitoring the populations beyond national level would be useful.

This could also be achieved for example via project cooperation extending to non-EU countries – in this case, [REDACTED] would like to point out to project [REDACTED]

[REDACTED]

- Could Member States share concerns in their countries where such conflicts remain a problem?

Rural areas [REDACTED]

- Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

In the absence of a detailed discussion on further action and the appropriate level of protection, the proposal, if adopted, would not contribute to the implementation of Target 4 of the GBF.

COMMENTS FROM

Working Party on International Environment Issues 4 April 2024

Proposal for a Council Decision on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention

Presidency Steering Note

In December 2023, the Commission proposed a draft Council Decision to:

- request for an extra Standing Committee of the Bern Convention, in order to
- propose an amendment to move the Wolf from Appendix II to Appendix III of the Bern convention.

On 25 November 2022, the Council adopted a Decision to oppose the proposal from Switzerland to move the Wolf (*Canis lupus*) from Appendix II to Appendix III at the 42nd session of the Bern Convention Standing Committee, having the legal basis of Article 192(1) TFEU together with Article 218(9) TFEU.

As the new proposal is different from what was defended by the EU during the 42nd Session of the Bern Convention Standing Committee, the Presidency wishes to evaluate how this proposal stands regarding the following aspects:

- respecting the EU acquis,
- ensuring compliance with the obligations as Parties under the Bern Convention, and
- avoiding any negative consequence for the EU as a Party to several Multilateral Environmental Agreements (MEA) and to its credibility as a negotiation partner in international fora regarding the conservation of species, in particular given the EU's role in the recently adopted Kunming-Montréal Global Biodiversity Framework (GBF) and its Target 4¹ and during the CMS COP14.

To that end, the Presidency is seeking the views of the Member States with regards to the scientific and legal processes underpinning the proposal by the Commission. The following questions will guide our further discussions, but Member States are invited to share other information that may be relevant in assessing the Commission's proposal in the context of the above considerations.

¹ The Kunming-Montreal Global Biodiversity Framework (GBF) was adopted during COP15. This Framework sets out an ambitious pathway to reach the global vision of a world living in harmony with nature by 2050. Among the Framework's key elements are 4 goals for 2050 and 23 targets for 2030. Target 4 'Halt Species Extinction, Protect Genetic Diversity, and Manage Human-Wildlife Conflicts'. See <https://www.cbd.int/gbf/targets/4>

Indicative questions on process

- Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?

- o If so, please provide examples.

Yes, basically the implementation of the current regulations of the Berne Convention in the Habitats Directive [REDACTED] enables the removal of wolves that have killed livestock protected by reasonable herd protection measures. [REDACTED]

However, we will continually evaluate whether these regulations are sufficient to resolve conflicts with grazing livestock. [REDACTED]

[REDACTED] This is intended to allow a quicker response to problematic wolves in order to be able to remove them after livestock cracks based on current law.

- o If not, please further clarify.

- Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

According to current information, no targeted measures to prevent wolf attacks are being carried out by [REDACTED] as part of the EAFRD funding. Measures to protect against wolf attacks are anchored in the framework plan of the national joint task "Improvement of agricultural structure and coastal protection" and have been notified by [REDACTED] to the EU-COM under [REDACTED]. [REDACTED] states have notified further protective measures to the EU-COM. The regulations are not expected to change if the wolf is moved from Appendix II to III of the Bern Convention or in the event of a possible change in wolf management due to a change in protection status.

- Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24²), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

The decisions of the European Court of Justice are a valuable source for the interpretation of legal provisions. The national court in [REDACTED] raises several questions concerning the scope of the habitats directive.

A prerequisite for the granting of a derogation under Article 16 Habitats Directive is the maintenance of the population of wolves at a favourable conservation status in their natural range. The favorable conservation status of a species is determined by the Member States as part of the Habitats Directive report. In the last habitats report, that covers the period 2013-2018, the wolf has not yet reached a favorable conservation status in all three biogeographical regions in [REDACTED]. The next report is due in 2025 and will cover the period of 2019 – 2024.

The proposal of the Commission shall be brought in line with the opinion of advocate general Kokott (delivered on 25 January 2024 in case C-436/22, MN 67) where she recalls that the EU legislature clearly assumed that the conservation status of the species listed in Annex V is favourable and not in principle adversely affected by the taking and exploitation of specimens. Conclusion regarding the conservation status can be drawn from reports under Article 17 habitats

² All information on the legal case can be found on: [CURIA - Case information \(europa.eu\)](#)

directive or comparable scientific knowledge (see opinion of advocate general Kokott ,case C-436/22, MN 85).

Indicative questions on substance

In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role.

A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024.

- How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

A decision to move the wolf from Appendix II to Appendix III should be based on the best scientific evidence. The conservation status should play an important role taking into account inter alia the population size. It seems reasonable to wait for possible studies and the results of the reporting according to Article 17 of the Habitats Directive.

How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

The assessment of the wolf population in the past, in particular under Article 17 of the Habitats Directive, was based on the assessment of its conservation status. This took into account the parameters of habitat, population, future prospects and distribution. The analysis presented now by the Commission focuses on the population size of the wolf and leaves other parameters aside. In addition, when specifying the number of farm animals killed by wolves, no distinction is made between protected and non-protected animals. However, the issue of herd protection is crucial when assessing the impact of wolves on livestock. This limitation to just one parameter in the assessment and the neglect of the question of herd protection represents a new approach to the assessment of wolves.

- Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?
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However, this information focuses on the population size. The current figures on the conservation status will not be available until the 2025 habitats report (Article 17).

██████████ is currently developing the reference values for a favorable population size and a favorable distribution area for the wolf as a basis for the upcoming habitats report.

- Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.
- Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?

A compilation of best practice experiences in dealing with large carnivores in the different EU member states by the EU COM would be helpful.

In addition, any extension of the funding of herd protection measures is a sensible step for the successful co-existence of wolves and humans.

- Could Member States share concerns in their countries where such conflicts remain a problem?
- Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

The EU-COM proposal does not contribute to Target 4 of the GBF: The wolf is in the repopulation stage in Europe and has not yet reached a favorable conservation status throughout all biogeographical regions. In addition, the population size presented in the EU-COM proposal does not take into account the genetic diversity of the wolf population. It is not clear how the EU-COM proposal should improve the management of human-wildlife conflicts, as the removal of wolves will probably not bring about any improvement for unprotected livestock. Herd protection is the main factor in implementing this part of Target 4 of the GBF. In this context we would like to recall the reasoning of the position of the EU and its Member States taken to GBF T4: The target should also ensure actions to effectively manage human-wildlife interactions to avoid or reduce human-wildlife conflict. Human-wildlife conflicts may not be solved to the detriment of the conservation status of the wild species. In addition, a precedent would be set for other species in which a protected species' protection status would be reduced immediately after the population has successfully recovered.

As a summary of the answers above and in addition to them, we request answers to the following questions:

1. As part of the meeting of the standing committee of the Bern Convention in December 2022, the EU has positioned itself against changing the protected status of the wolf. Could the Commission please explain which factors have changed compared to the situation in December 2022?
2. Until now, the conservation status has been the key factor in assessing species - also with regard to management. Why are the results of the HD Report 2025 not being awaited?
3. The habitat, distribution and future prospects parameters usually used are hardly taken into account in the EU-COM analysis. Why is the approach here different from that of the habitats directive report, focusing only on the population?
4. In the analysis of the EU Commission, there is no distinction between protected and unprotected livestock. This is a key factor, particularly for questions of management and possible removals. Why is there no distinction in the analysis between protected and unprotected livestock?
5. What procedure is the EU Commission planning for changing the Habitats Directive in order to move the wolf to Annex V? What consequences would this have for the Directive as a whole? We would like to ask for clarification/confirmation from the Council Legal Service.
6. Does the COM have any plans to add further endangered species or habitat types in the course of updating or downdating the Annex?

COMMENTS FROM [REDACTED]

PRESIDENCY STEERING NOTE

WPIE 4 April 2024

Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?

Yes, we believe it provides sufficient flexibility. The exceptions contemplated in the Bern Convention are the basis for those included in the Habitats Directive and are similar to those that most Member States have translated into national law. The conditions established by Article 9 to grant exceptional measures are reasonable and based on the assumption that conservation status will not be affected at biogeographic scale and there will be a control and monitoring of the implementation of the exception. It is also reasonable and proportionate the need to evaluate alternative solutions, in a framework of flexibility to decide if permits can be granted or not.

Implementation of article 9 of the Bern Convention is done through [REDACTED]

[REDACTED] which establishes the strict protection of the wolf, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The [REDACTED] foresees the following steps:

1. The obtention of information on the wolf population and its coexistence with extensive livestock at local scale
2. The need for a derogation based on article 9 of the Bern Convention, under the interpretation of the document *The strict protection of animal species of Community interest under the Habitats Directive* (<https://op.europa.eu/en/publication-detail/-/publication/bbc7ace0-27e2-11ec-bd8e-01aa75ed71a1/language-en>),
3. The evaluation of the effects of the proposal on the species conservation status at biogeographic level and at national level.

Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

In [REDACTED] the implementation of prevention and compensation measures is paid mainly by the [REDACTED] are made available yearly so that [REDACTED] can implement these measures, which are split in [REDACTED] for prevention and [REDACTED] for compensation measures. Additionally, [REDACTED] has benefited from some Next Generation EU funds for demonstrative projects. LIFE Regulation has been a relevant player and has funded several projects on good practice [REDACTED]

Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24 2), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

██████████ fully respects the opinion of the European Court of Justice and the answers and ██████████ The derogation's regime must be implemented considering the conservation status of the species and the impact of the derogation at local and national scale. These implies close monitoring of the population and management based on scientific criteria.

How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

We believe it would be pertinent to wait until this study is concluded in July 2024 to be able to evaluate the conservation status of wolf, and whether this could be defined as favourable or unfavourable. Until then, it seems premature to propose any change in its legal protection status. On the other hand, in 2025 the article 17 report will be available and will provide a global vision of the status and trends of the population. It seems reasonable to wait until those data are available before discussing or promoting any change of the legal status under the Bern Convention.

How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

The scientific basis is insufficient since there are still many aspects of wolf ecology which are not well understood. The report issued in December 2023 on The Situation of the Wolf (*Canis lupus*) in the European Union, an In-depth Analysis, describes adequately the situation of wolf in the EU, but the data and information contained do not justify neither advice to undertake changes in the legal status.

Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?

Recent studies from an international group of scientists have found that ██████████ population, despite its apparent stability, has lost genetic diversity, which poses a risk to its survival. The wolf would benefit from favouring connectivity within the population as well as genetic exchange with other European populations, to avoid excessive fragmentation and local inbreeding depression. The ██████████ population have probably disappeared along with the extinction of this population. Fragmentation and low genetic variability are serious concerns for the conservation ██████████
██████████
██████████

There are also other studies promoted by the ██████████ ██████████ aimed at determining the number of packs and individuals ██████████ ██████████ as well as the capture and tagging of individual wolves with GPS collars. Also, the efficiency of preventive measures is being tested in different parts ██████████

Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?

The EU could promote the implementation of livestock protection measures through legal tools related to the welfare of domestic animals, as well as economic measures to promote practices that are effective to protect livestock. Coexistence between large carnivores and extensive livestock could be enhanced through a combination of incentives and obligations which could boost the application of preventive measures. Payment of these subsidies needs to be articulated, since the environmental conditionality of CAP does not include them.

Furthermore, it is necessary to disseminate best practice examples that have successfully worked in different territories and livestock management systems, [REDACTED]

[REDACTED] B [REDACTED] C [REDACTED] where preventive measures have helped to reduce the number of wolf attacks. Training seminars and communication materials are needed in this respect. Likewise, it would be very useful to have harmonised methods to undertake objective assessments of conservation status at biogeographical level. Lastly, it is necessary to increase the funding for new and more efficient techniques of livestock keeping, taking into account the most up to date technologies.

Could Member States share concerns in their countries where such conflicts remain a problem?

There are currently some concerns in [REDACTED] regarding wolf management and coexistence with rural communities. These can be summarised as follows:

- There is an increase in social polarization around wolf, and this is spreading to nature conservation in general. Some rural populations are being persuaded that measures for restoration and nature conservation go against their social and economic interests, allegedly driven by lucrative or political goals originating in the urban population.
- The potential increase of illegal killing of wolves and habitat fragmentation can threaten their populations and can jeopardize the conservation efforts undertaken over the last years.

Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

GBF T4 mentions explicitly the need to reduce extinction risk, as well as to maintain and restore genetic diversity within and between populations to maintain their adaptive potential, and to effectively manage human-wildlife conflict for coexistence. We don't see how the transfer of wolf from Appendix II to Appendix III of the Bern Convention can contribute to GBF T4; the key issue would be promoting coexistence, not changing the legal status of the species.

COMMENTS FROM [REDACTED]

Indicative questions on process

- Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?

o If so, please provide examples.

Article 9 of the Bern Convention mentions “populations”, so it offers the possibility of management of strictly protected species from Appendix II on population level.

o If not, please further clarify.

- Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

[REDACTED] have benefited from the EU funding rules for prevention measures as part of the support for *Non-productive investments in agriculture for climate and environment* as part of the former Rural Development Programme and now the Strategic Plan. Up to now support in amount of [REDACTED] has been approved for construction and renovation of existing simple housing for livestock, purchase of electric shepards and investments in housing for livestock and electric shepards. We believe that downlisting of wolf, if happens, must not effect the termination of support for measure Non-productive investments in agriculture for climate and environment, i.e. financial support for preventive measures from the CAP must continue.

- Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

The European Court of Justice's opinion regarding Case C-601/22 could bring more clarity regarding preconditions for downlisting. Opinion proposed by the Advocate General in relation to the 1st and the 2nd question indicates that **favourable conservation status on the national level** is the main prerequisite for downlisting. Furthermore, it reiterates that the precautionary principle must apply and removal of a species from the protective annex could happen once their favourable conservation status is certain and there would be reasonable evidence that the factors that caused it to have an unfavourable status, no longer apply. From such opinion it could be understood that downlisting on the level of the EU could be proposed only if favourable conservation status of the wolf is reached and is certain on national level in all MSs.

Indicative questions on substance

In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role.

A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024.

- How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

Results of the envisaged study on assessing the conservation status of large carnivores that is due in July 2024 and the article 17 reporting that is due in 2025 will be very important and relevant for better understanding of wolf population's status and population trends in the EU. For the purpose of effective management of the wolf, especially in the critical areas with increased conflicts, it would be beneficial for the process to be based on the most recent data, such as from the study due in July 2024 and national reports in 2025. For that reason, Commission proposal on downlisting seams to come to early.

- o How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

We see this question in conjunction with the previous one. Having in mind that new data from the study commissioned from the Adelphi - Callisto consortium and the next round of the article 17 reporting will be available in 2025, it is most probable that in the near future there will be a better scientific knowledge available for assessing status of wolf populations in the EU. In the introductory part of the Council decision, Commission is referring to previous three attempts for downlisting by the Switzerland and documents supporting these proposals, including the LCIE assessment for the Bern Convention from 2022, results of the MS article 17 reporting in 2019 for period 2013-2018 and to the In-depth analysis of the status of the wolf in the EU from December 2023. Commission stated that results of In-depth analysis "confirms the upward trend in population size as well as the ongoing expansion of the wolf's range". However, from these documents, and especially from the results of the Article 17 reporting in 2019 and the LCIE assessment for the Bern Convention from 2022, it is not clear how, at this stage, Commission concluded to have the best available scientific knowledge on the basis of which with no doubts, downlisting is possible.

Also, the article 17 reporting in 2019 showed that at the level of the EU biogeographical regions wolf was in unfavourable-inadequate conservation status in 6 EU biogeographical regions and in favourable status only in one, the Alpine biogeographical region.

For the reasons mentioned, at this moment, we believe that precautionary principle should apply because there is no undoubtable scientific evidence that conservation status of the wolf in the EU is favourable.

- o Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?

has shared the most recent and best available scientific data through the survey conducted in autumn 2023 by the Commission and that data was taken into account in the In-depth analysis of the status of the wolf in the EU.

- Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.
 - o Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?
 - o Could Member States share concerns in their countries where such conflicts remain a problem?
 - o Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

From our experience, to reduce the human-wildlife conflicts and improve co-existence with large carnivores/predators it is of utmost importance to have the best possible data on the population size, trends and distribution of such species which are the basis for adequate population management (including compensation for damage and prevention of damage) and to have regular monitoring in place. Furthermore, adequate management and monitoring require certain human capacities and, usually, quite extensive amount of funding. In that regard we believe that EU MS can support the global debate by offering to transfer knowledge and best practices/lessons learned and to offer financial support to projects dealing with data gathering/analysis, preparation and implementation of management plans, preparation and implementation of monitoring programmes, implementing best practices for human-wildlife coexistence, especially for prevention of human-wildlife conflicts, etc.

If needed, [REDACTED] can share experience and concerns regarding human-wildlife (wolf) conflicts.

In relation to the question how this proposal contributes to Target 4 of the GBF, once this proposal could, with no doubts, show that favourable conservation status of the wolf is reached and is certain in all EU MS, it could serve as a good example showing how strict protection can lead to the recovery of the species and, consequently, can change its protection status and allow hunting.

COMMENTS FROM [REDACTED]

Working Party on International Environment Issues

4 April 2024

Proposal for a Council Decision on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention

Answers to Presidency Steering Note

Indicative questions on process

Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?

Yes

Although not [REDACTED] but the practice of adaptive management (harvesting), bag sizes and the effectiveness of the management measures of the Barnacle Goose (*Branta leucopsis*), [REDACTED] also listed on Appendix II, but not huntable in the EU (not listed in Annex II of the Birds Directive), is described in the International Single Species Management Plan for the Barnacle Goose. Harvest is possible and is implemented in large numbers by derogation.

[REDACTED]
[REDACTED]

Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

Not relevant in [REDACTED] due to the small numbers of wolves as well as incidents of damage caused by wolf in the country. Prevention measures have been supported from national budget but no compensation is paid. Recently through the Interreg project LECA (Supporting the coexistence and conservation of Carpathian Large Carnivores) there is an opportunity to finance some prevention measures (e.g. electric fences).

Given the current protection of the Wolf in Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

We are aware of the court case of Austria, and also of the fact that compensations can be applied for (and have been paid to applicants) without using any prevention measures.. It is advisable to wait for the outcome of the case and for the decision of the Court.

Indicative questions on substance

How do Member States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

Currently the conservation status determined by IUCN and the Habitats Directive and the datasets they are based on do not correspond with each other (see: Blanco JC and Sundseth K (2023). The situation of the wolf (*Canis lupus*) in the European Union – An In-depth Analysis. A report of the N2K Group for DG Environment, European Commission.). We are of the view that it is premature to make a decision at this stage. We should definitely wait for the Habitats Directive Article 17 reports due in July 2025, which should assess the conservation status of the wolf populations in the Member States on the basis of the results of the study as they will provide the fundaments for further evaluation and decision-making. The envisaged timeline is as follows:

1. development of methodology to be applied in all Member States to assess the conservation status (2024)
2. compilation and submission of reports according to Article 17 (2025)
3. assessment of reports (2025)
4. evaluation of conservation status (2025-2026)

How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

We fully agree with the position [REDACTED] on this question. It is essential to assess whether the proposal is justified in the light of Article 191 TFEU before expecting a position from Member States on downgrading the level of protection of an Appendix II species.

Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?

According to the most recent estimates based on data collected in the field and indirect data from poaching activities, the [REDACTED] population has been decreasing, now estimated to be between 50-70 specimens, with poaching being identified as the primary threat and cause for decline.

Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.

Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?

Once the EU and MS solve their internal problems by developing best practices to follow in conflict situations between wildlife, livestock and the human population, and manage to co-exist with large predators on national, EU and international level, these practices may be shared globally as an exercise to follow in policy-making and implementation.

Could Member States share concerns in their countries where such conflicts remain a problem?

Although there are hardly any conflict situations [REDACTED] that originate from wolves (or any other large carnivores) damaging livestock, [REDACTED] should cover the compensation to be paid for the damage contributed to large carnivores, with the provision of submitting evidence.

Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

Target 4: Halt Species Extinction, Protect Genetic Diversity, and Manage-Human Wildlife Conflicts

The Commission's proposal is not in line with Target 4.

- Species extinction: reduction of the international level of protection of a species not proven to be of favorable conservation status will not halt its extinction.
- Protection of genetic diversity: wolves are proven to make long journeys and thus ensuring genetic diversity of their populations. A [REDACTED]
[REDACTED]
- Managing conflicts: the focus should shift to actual conflict management and the development of best practices instead of the downgrade of the species that can be controlled locally by derogation if there is no other (sustainable) way to facilitate co-existance.

Developing and applying a methodology to follow by the Parties to Bern Convention to assess the conservation status of the populations and assessing the data compiled in the national reports according to Article 17 of Habitats Directive are fundamental to maintaining an objective, scientific approach.

Views with regards to the scientific and legal processes underpinning the Proposal for a Council Decision on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention (doc. COM(2023) 799)

1. Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately? If so, please provide examples. If not, please further clarify.

Art. 9 of the Bern Convention provides for exceptions to the ban on killing and capture to conduct specific management actions with sufficient flexibility to adequately address potential problems. As far as we know, there are no criteria to assess the adequacy of the degree of flexibility of the mechanism envisaged by the Convention. By way of example, it is reported that, [REDACTED] wolf specimens were removed in 2020 and 2023 and destined for permanent captivity for reasons of public safety. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2. Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

As far as the request to indicate whether [REDACTED] has benefited from the EU funding rules for prevention and compensation measures is concerned, the latest available information dates back to 2019. At that time, in addition to the compensation funds, [REDACTED] had allocated resources to subsidize the use of prevention systems in addition to those allocated by the [REDACTED]

[REDACTED] albeit sometimes not continuously over the years. The financed preventive measures were mostly intended for the use of fences, followed by guard dogs and deterrents. In the mountain pasture areas, the eligible costs also concerned the transport of the necessary materials. To these funds were added those committed to some [REDACTED] measures activated by [REDACTED] which contribute to the diffusion of prevention systems. The main measure that intervened was [REDACTED] concerning investments in agricultural companies, specifically in [REDACTED]. In some particular cases, other measures were involved: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] No analyzes are currently available on the impact of a possible downgrading of the wolf on the availability of European funding for prevention and compensatory measures.

3. Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24 2), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

It is believed that it is not up to the executive to comment on an ongoing judicial procedure, in compliance with the division of powers in our Constitution.

4. In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role. A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024. How do Member States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

No assessments appear to have been carried out regarding the scientific basis used by the European Commission for this proposal with respect to the need to use the best available scientific knowledge, determined with due care and taking into account the precautionary principle. However, it should be noted that, to conduct its analysis, last autumn the European Commission asked [REDACTED] to confirm some data (e.g. livestock preyed upon, number of wolves present in [REDACTED] etc.). These data were partially corrected, in accordance with the most recent information available, and sent back to the Commission.

4.1. How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

The precautionary principle, established in art. 191 of the Treaty on the Functioning of the European Union (TFEU), is an approach to risk management whereby, if it is possible that a certain policy or action could cause harm to citizens or the environment and if there is not yet a scientific consensus on the issue, the policy or action in question should not be pursued or may be pursued but should be reviewed as more scientific information becomes available. Considering the timing of the adoption and implementation of the proposed action, it is considered appropriate to await the results of the aforementioned study and above all the reporting required by the art. 17 of the Habitats Directive to avoid having to re-examine the proposed action following these outcomes.

4.2. Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?

Regarding the conservation status, there is no data published after December 2022.

5. Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.

5.1. Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?

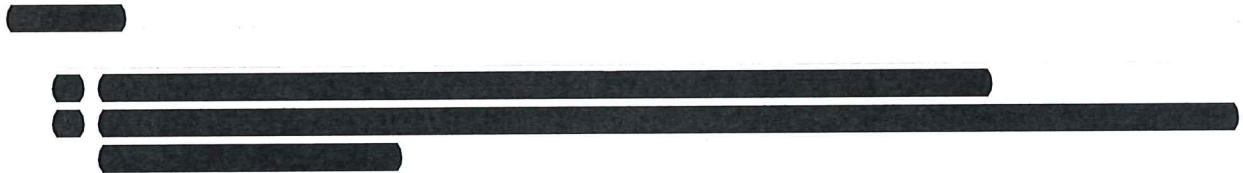
As regards the request to indicate any examples to be shared of good practices of coexistence between the human population and the wolf, it is reported that in [REDACTED] the establishment of operational units that help each individual farmer in identifying and managing suitable prevention tools against predation on farm animals. [REDACTED]
[REDACTED]
[REDACTED]

5.2. Could Member States share concerns in their countries where such conflicts remain a problem?

Concerning the request to share any concerns at a national level regarding the problems generated by conflicts between human populations and wolves, it is reported that in recent years numerous expressions of concern have been made by the main interest groups involved in the conflict between the human population and wolves.

5.3. Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

Goal 4 of the Kunming-Montreal Global Biodiversity Framework (GBF) aims to “halt species extinction, protect genetic diversity and manage human-wildlife conflicts”. This means to “ensure urgent management actions to halt human induced extinction of known threatened species and for the recovery and conservation of species, in particular threatened species, to significantly reduce extinction risk, as well as to maintain and restore the genetic diversity within and between populations of native, wild and domesticated species to maintain their adaptive potential, including through in situ and ex situ conservation and sustainable management practices, and effectively manage human-wildlife interactions to minimize human-wildlife conflict for coexistence”. The proposed Decision is expected to be in line with this objective; if it is not, the proposal is expected to be improved to ensure effective management of human-wildlife interactions in order to minimize conflict between humans and wildlife for better coexistence.



COMMENTS FROM [REDACTED]

Indicative questions on process

- Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?
 - o If so, please provide examples. In the [REDACTED] the conditions described in article 9 of the Bern Convention are also applied to nationally designated protected species (species not protected under the Bern Convention). This means that these conditions provide sufficient flexibility to address potential issues adequately in [REDACTED]
 - o If not, please further clarify. [REDACTED]
- Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?
[REDACTED] have not benefited from the EU funding rules for prevention measures and compensation and we do not expect the arrangements to change.
- Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24 2), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process? All information on the legal case can be found on: CURIA - Case information (europa.eu)
[REDACTED] expect it to become even more difficult to reach the favourable conservation status of the wolf in our country, due to [REDACTED] country and high density of the human population and infrastructure. We were under the impression that the favourable conservation status could be considered in relation to the larger [REDACTED], but the upcoming opinion makes it clear that the favourable status has to exist first and inevitably at the national level. We doubt whether that can ever be reached [REDACTED]

Indicative questions on substance

In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role.

A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024.

- How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?
[REDACTED] would prefer the decision on the proposal to be made based on the outcome of the study's report and the Habitats Directive reporting, as this gives a more solid base for such a serious issue.
 - o How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?

[REDACTED] welcome the use of the best available scientific knowledge and are not yet convinced that this has been the case in preparing the current proposal.

- Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?

[REDACTED] do not have any new scientific data. The (non-scientific) data on the amount of wolves and the livestock damages from [REDACTED] have been shared with the Commission on their request in 2023.

- Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.

- Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?

More scientific information and research would be necessary for the debate in order to substantiate a change in status. Also more information and education on co-existing are needed.

- Could Member States share concerns in their countries where such conflicts remain a problem?

The main concerns for [REDACTED] are the co-existence and reaching a favourable conservation status, due to the small area and high density of the population and infrastructure we have.

- Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

The proposal could lead to more possibilities to protect livestock, which could lead to increased acceptance of the wolf in our country. This acceptance is needed to co-exist with large predators. On the other hand co-existence is also served by more acceptance in correlation with more knowledge and information on the ecological benefits of wolves. This proposal may actually work against this side of acceptance.

COMMENTS FROM [REDACTED]

Following the proposal for a Council Decision on the position to be taken on behalf of the European Union on the proposal to downgrade the protection status of the wolf in Europe from Appendix II to Appendix III of the Bern Convention [Brussels, 20.12.2023, COM (2023) 799 final, 2023/0469 (NLE)], the current Presidency of the Council of the European Union is asking the Member States to comment on a series of questions regarding the scientific and legal grounds on which the proposal presented by the Commission is based. Below are the Portuguese answers to these questions, as well as other information deemed relevant.

Indicative questions on process

- Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?

If so, please provide examples.

[REDACTED] management model has never required the application of Article 9 of the Bern Convention. However, according to the conclusions of various legal and scientific analyses (e.g. Linnell et al. 2017, Shine 2005), Article 9 allows for the adoption of management measures, including capture, to resolve exceptional situations involving species strictly protected by this Convention, provided that they are duly justified and proportionate to the conservation status of the species in the Member State in question.

- Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?

In the last two EU Support Frameworks, [REDACTED] has benefited from EU funds to promote the coexistence of livestock farming with the presence of wolves, through a measure to support the maintenance of livestock protection dogs.

Since the early 2000s that [REDACTED] have has identified the need for EU support for livestock owners to effectively protect their animals from wolf attacks (e.g. purchase and maintenance of livestock protection dogs and fencing). However, even though the wolf is a strictly protected species at European and national level, it was only in 2014 that measures to support the protection of livestock were included in the national regulation on Community support for rural development.

It is therefore very likely that a reduction in the level of wolf protection will make it difficult to integrate and/or reduce the amounts available for measures to protect livestock from wolf attacks.

- Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24 2), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?

[REDACTED] hopes that the European Court of Justice's decision will encourage the European Commission to promote the adoption of non-lethal strategies for the coexistence of wolves and livestock, rather than reducing the species' protection status. As has been shown in various countries and situations, there are a number of effective livestock protection measures, which should be the first step towards ensuring coexistence. However, should it prove necessary, as already mentioned, it is understood that Article 9 provides sufficient flexibility to adequately manage specific situations of significant damage, in which the Member State demonstrates that

it is not possible to apply other solutions (e.g. preventive measures), as long as it does not compromise the favorable conservation status of the species in its territory.

Indicative questions on substance

In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role.

A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024.

- How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?

According to the results of the latest assessment, the wolf's favorable conservation status has not yet been reached in at least 50% of the area where this species occurs in Europe and of the 7 biogeographical regions where the wolf occurs at European level, only the Alpine region, which represents 12% of the wolf's distribution area in Europe, has a favorable conservation status.

A comparison of the wolf's conservation status in European populations, measured under the Habitats Directive for the 2007-2012 and 2013-2018 assessment periods, shows that the number of biogeographical regions in which the wolf has an unfavorable conservation status has increased from 5 to 6, out of a total of 7 biogeographical regions in Europe.

In view of these results, [REDACTED] as a Member State, believes that it is essential that the European Commission not only waits for the results of the aforementioned study, but also for the results of the assessment for the 2019-2024 period, under Article 17 of the Habitats Directive, before taking any decision on changing the wolf's protection status.

- *How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?*

As a Member State, [REDACTED] considers that the grounds presented in the proposal for a Council Decision under analysis are not scientifically rigorous. Firstly, because it is not based on an overall assessment of the species' conservation status, but only on some of the parameters that contribute to this assessment (e.g. trends in some populations). On the other hand, the arguments put forward are essentially based on data collected from a few experts in each Member State, whereas they should be based above all on an analysis of the results of the last assessment carried out under Article 17 of the Habitats Directive, which is the official instrument for assessing the implementation of the Habitats Directive.

Furthermore, [REDACTED] finds that insufficient weight has been given to the vast scientific evidence showing that there are several effective strategies for minimizing predation on livestock (Linnell *et al.* 2001, Chapron *et al.* 2014) and that the exploitation and control of

populations of large carnivores can have counterproductive effects, namely because it can alter the population dynamics of the species, increase predation levels and reduce the level of tolerance of populations towards it (e.g. Treves & Bruskotter 2014, Treves *et al.* 2016, Santiago-Avila 2018).

The proposal also fails to accurately present the economic impact of wolf predation on livestock farming. Although the subchapter "Economic considerations" presents the number of animals killed by wolf attacks, there is no indication of the percentage of livestock in each Member State, which does not allow any conclusions to be drawn. There is also no comparison of these figures with the impact of other causes of livestock mortality (e.g. diseases).

Finally, although one of the criteria to be taken into account when proposing an amendment to Annex II of the Bern Convention is the ecological role of species, the fact that the presence of the wolf, as a top predator, is crucial to the balance of the ecosystems to which it belongs is not really taken into account in the proposal presented.

In view of the above, it seems that several aspects of Article 191 of the TFEU regarding the Union's policy on the environment have not been safeguarded, namely the prudent and rational use of natural resources (n.1), the objective of achieving a high level of protection based on the precautionary principle (n.2) and taking into account available scientific and technical data (n.3).

- ***Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?***

[REDACTED] has since finished analyzing the data collected [REDACTED]
[REDACTED] and has recorded a decrease of around 20% in the area where wolves are present. These results contrast with the indication of a general trend of wolf growth in Europe.

- Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.

- ***Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?***

As has already been identified by numerous countries with large carnivores and mentioned in various published works, there should be greater integration of European agricultural and environmental policies, particularly with regard to the rules for access to incentives for extensive livestock production in areas with large carnivores. Given the existence of scientifically validated measures to protect livestock, these should be requirements integrated into support for livestock production in large carnivore areas.

The European Commission should therefore work harder to promote protection measures, as this is the best way to coexist and not to reduce the wolf's protected status. In the regions/countries where the wolf has been exploited for hunting [REDACTED]
[REDACTED] the levels of conflict are no lower than those where the species is protected, so the way forward is not to reduce the protection status but to invest more, financially and technically, in identifying and implementing the most appropriate protection measures for each situation.

- Could Member States share concerns in their countries where such conflicts remain a problem?

In [REDACTED] situations of increased conflict between livestock farming and the presence of wolves have been identified, associated with the increase in the number of cattle grazing extensively, particularly bovine cattle, as a result of EU incentives for livestock production, along with the lack of requirements to ensure effective protection of livestock from the presence of large carnivores [REDACTED]

- Could Member States share their views on how this proposal contributes to Target 4 of the GBF?

In view of the above, it is unacceptable that, when most Member States have not yet reached a favorable conservation status for the wolf population present in their country, which is the objective of the Bern Convention and the Habitats Directive, the European Commission should consider changing the legal framework for the protection of this species at European level.

[REDACTED] therefore remains unequivocally opposed to this proposal.

COMMENTS FROM

Working Party on International Environment Issues 4 April 2024

Proposal for a Council Decision on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats with a view to the meeting of the Standing Committee of the Convention

Presidency Steering Note

In December 2023, the Commission proposed a draft Council Decision to:

- request for an extra Standing Committee of the Bern Convention, in order to
- propose an amendment to move the Wolf from Appendix II to Appendix III of the Bern convention.

On 25 November 2022, the Council adopted a Decision to oppose the proposal from Switzerland to move the Wolf (*Canis lupus*) from Appendix II to Appendix III at the 42nd session of the Bern Convention Standing Committee, having the legal basis of Article 192(1) TFEU together with Article 218(9) TFEU.

As the new proposal is different from what was defended by the EU during the 42nd Session of the Bern Convention Standing Committee, the Presidency wishes to evaluate how this proposal stands regarding the following aspects:

- respecting the EU acquis,
- ensuring compliance with the obligations as Parties under the Bern Convention, and
- avoiding any negative consequence for the EU as a Party to several Multilateral Environmental Agreements (MEA) and to its credibility as a negotiation partner in international fora regarding the conservation of species, in particular given the EU's role in the recently adopted Kunming-Montréal Global Biodiversity Framework (GBF) and its Target 4¹ and during the CMS COP14.

To that end, the Presidency is seeking the views of the Member States with regards to the scientific and legal processes underpinning the proposal by the Commission. The following questions will guide our further discussions, but Member States are invited to share other information that may be relevant in assessing the Commission's proposal in the context of the above considerations.

¹ The Kunming-Montreal Global Biodiversity Framework (GBF) was adopted during COP15. This Framework sets out an ambitious pathway to reach the global vision of a world living in harmony with nature by 2050. Among the Framework's key elements are 4 goals for 2050 and 23 targets for 2030. Target 4 'Halt Species Extinction, Protect Genetic Diversity, and Manage Human-Wildlife Conflicts'. See <https://www.cbd.int/gbf/targets/4>

Indicative questions on process

- Given the need for specific management actions according to different regions, do the Member States consider that Article 9 of the Bern Convention provides sufficient flexibility to address potential issues adequately?
 - o If so, please provide examples.
 - o If not, please further clarify.
- This question is irrelevant for EU countries, since it is the Habitats Directive that applies.
- Regarding the interpretation of the Habitats Directive [REDACTED], the national courts have very strict interpretation of the Article 16 leaving hardly any flexibility.
- Could Member States indicate if they have benefited from the EU funding rules for prevention measures and compensation and if they expect the arrangements to change should the Wolf be moved from Appendix II to III in the Bern Convention?
 - [REDACTED] covers the costs of the prevention measures and compensation of the damages from the national budget. However, there is a limit to compensation set by the Commission.
 - If wolf was moved from Appendix II to Appendix III of the Convention, more flexibility would most likely mean better adaptation and response to socio-economic damages, which in turn would lower the need for funding on preventive measures and compensation for damages.
- Given the current protection of the Wolf in the Habitats Directive, and the ongoing legal case before the European Court of Justice (C-601/22 from 18/1/24²), how do Member States assess the role of the upcoming European Court of Justice's opinion in the process?
 - Question is not relevant. Speculating on upcoming or future legal cases is not justifiable.

Indicative questions on substance

In the absence of defined criteria governing the inclusion of a species in Appendix II or III of the Bern Convention, reference should be made to Recommendation 56 (1997) of the Standing Committee, who proposed to take into account the following 2 criteria: (1) define the threats to the species and (2) identify the ecological role.

A study commissioned by the European Commission from the Adelphi - Callisto consortium aims to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status. The exercise will be applied to the Wolf on this scientific basis. The study's report is due in July 2024.

² All information on the legal case can be found on: [CURIA - Case information \(europa.eu\)](http://CURIA - Case information (europa.eu))

- How do Members States envision the articulation of the timeline on a decision on a possible move of the Wolf from Appendix II to Appendix III with the study expected in July 2024 and the reporting according to Article 17 of the Habitats Directive in 2025?
 - The in-depth analysis by the Commission, which represents the latest scientific data on wolf in the EU, covers adequately the criteria set in the Recommendation 56 (1997).
 - How do Member States assess the scientific basis used by the Commission for this proposal with regards to Article 191 TFEU which requires the best available scientific knowledge, determined with due care and taking into account the precautionary principle?
 - The in-depth analysis by the Commission covers adequately the criteria set in the Recommendation 56 (1997).
 - Article 19 of the Habitats Directive should be noted in this context. Article 19 of the Habitats Directive explicitly provides for the possibility to adapt the Annexes of the Directive based on the advancement of technology and science. The intention of the legislative body was to allow for the dynamic adjustment of the Habitats Directive's Annexes when necessary. The obligation stated in Article 19 of the Directive is not a mere formality; it is a binding legal provision which has the purpose to ensure that the content of the Annexes to the Directive corresponds to the current situation regarding the conservation status of each species or specific population of a species.
 - Could Member States share any new scientific data concerning the conservation status of the Wolf since December 2022?
 - The in-depth analysis covers adequately the data concerning the conservation [REDACTED]
- Wildlife/Human and Wildlife/Livestock conflicts (GBF T4) are always an important element for developing countries and part of many discussions in MEAs.
 - Could Member States indicate how the EU could constructively contribute to the global debate with best practices on how to co-exist with large predators?
 - Could Member States share concerns in their countries where such conflicts remain a problem?
 - Could Member States share their views on how this proposal contributes to Target 4 of the GBF?
 - It is hard to see the relevance of these questions. The wolf remains protected if the proposal by the Commission is accepted and thus its conservation status will continue to be reviewed on a regular basis. With commission's proposal flexibility in addressing the socio-economic problems and conflicts would be enhanced within each member state while continuing at the same time to ensure wolf's favourable conservation status in member states and EU as a whole.

COMMENTS FROM THE EUROPEAN COMMISSION

The Commission wishes to provide the following clarifications with respect of the Presidency Steering Note on the Commission Proposal for a Council Decision on the position to be taken on behalf of the European Union on submitting proposals for amendment of Appendices II and III of the Convention on the Conservation of European wildlife and natural habitats:

- The document mentioned in Section Indicative questions on substance of the Note and presented as aimed “to propose a method for assessing the conservation status of large carnivores and to quantify the reference values for defining a favourable status” is in fact not a study. It is rather a task to be carried out, among several others, within the recently launched Commission procurement contract “Support for Coexistence with Large Carnivores”.
- The Task aims to develop a specific, operational methodology to help Member States better define and quantify the Favourable Reference Values (both for range and for population) for the species wolf, brown bear, European lynx and golden jackal, on the basis of the existing art. 17 reporting guidelines and Extracts from explanatory notes and guidelines on Favourable Reference Values under art. 17.
- The timeline for the finalisation of this Task, initially foreseen to be finalised by June 2024 was amended during the kick-off meeting with the contractor, which took place on 24.1.2024. Its finalisation is postponed to December 2024 to allow for the use of the updated distribution maps also developed in the frame of the contract and due by June 2024. The postponement of the finalisation of this task will also allow sufficient time for the consultation of the Expert Group on Reporting under the EU Habitats and Birds Directive.