

The Bern Convention, the EU Habitats Directive and the conservation of Balkan lynx (*Lynx lynx balcanicus*) and other large carnivores



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Balkan lynx camera-trapped in Kosovo, February 2019; © BLRP/ERA.

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1. Introduction: research question, method, context

The focus of this report is on the current and potential future relevance of the Council of Europe's 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)¹ and the European Union (EU) 1992 Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive)² for the conservation of the Balkan lynx (*Lynx lynx balcanicus*) and other large carnivores in the south-west Balkans, especially brown bear (*Ursus arctos*) and wolf (*Canis lupus*). In particular, the report seeks to answer the following central research question:

What are the principal legal obligations imposed by the Bern Convention and the EU Habitats Directive of actual or potential relevance for the conservation of the Balkan lynx and other large carnivores in the south-west Balkans?

The answer to this question can provide a benchmark to facilitate an informed assessment of the changes in the laws, policies and practices of North Macedonia, Albania and Kosovo which are necessary in order to ensure the conformity of those laws, policies and practices with the requirements of the Bern Convention and the Habitats Directive.

The primary method used to answer the research question is international and European legal research methodology consisting, in particular, of the identification and analysis of relevant legal provisions, including their interpretation according to the applicable rules from the international law of treaties as codified in the 1969 Convention on the Law of Treaties (Vienna Convention),³ and as refined with regard to EU law by the Court of Justice of the EU (CJEU), while also taking account of guidance provided by the European Commission.

Regarding the Habitats Directive it should be noted that only the CJEU has the ultimate authority to determine the correct interpretation of the obligations in the Directive. Important interpretive documents under the Bern Convention are the decisions (Recommendations, Resolutions) adopted by the Standing Committee, which is the main decision-making body in which all parties are represented. These decisions are not themselves legally binding, but depending on their phrasing and context, they can inform the interpretation of the binding provisions in the Convention itself. Another relevant document is the Explanatory Report Concerning the Convention on the Conservation of European Wildlife and Natural Habitats (Explanatory Report) written by the committee which drafted the text of the Convention in 1979. As the Explanatory Report itself explains, it 'does not constitute an instrument providing an authoritative interpretation of the text of the Convention although it may facilitate the understanding of the Convention's provisions' (par. II).

With regard to the two legal instruments at issue here, it should be noted that all EU member states and the EU itself are contracting parties to the Bern Convention, and that the Habitats Directive must therefore be interpreted consistently with the Convention. Also, other legal instruments of relevance to the conservation of Balkan lynx and other large carnivores exist, for instance concerning environmental impact assessment, trade and public participation.

¹ Convention on the Conservation of European Wildlife and Natural Habitats (adopted 19 September 1979; entered into force 1 November 1983) ETS 104.

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1979] OJ L206/7.

³ Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 333.

2. Legal status of Balkan lynx, brown bear and wolf

The Bern Convention, which currently has 51 contracting parties, provides the overarching legal framework for nature conservation in Europe. Its objectives are ‘to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation,’ giving particular emphasis to ‘endangered and vulnerable species’ (Article 1). To achieve these objectives, the Convention sets out various obligations, mainly concerning the protection of species and sites (see below). North Macedonia and Albania have both been parties to the Bern Convention since 1999. Kosovo is not a party.

The Habitats Directive is the principal nature conservation instrument of the EU, and binds its member states. It aims for the maintenance or achievement of a ‘favourable conservation status’ for a range of species and habitat types, in order to contribute to biodiversity conservation in Europe (Article 2). The status of a species is deemed favourable when, *inter alia*, the species ‘is maintaining itself on a long-term basis as a viable component of its natural habitats’ and ‘there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis’ (Article 1(i)). Some interpretive unclarity remains, however, regarding the precise meaning of the concept (see, e.g., Epstein et al. 2016; Trouwborst et al. 2017a). Like the Convention, the Directive spells out various specific obligations to achieve its aims, which also mainly concern the protection of species and sites. There is considerable overlap between the obligations in the two instruments, but also some significant differences, both in the way they are phrased and the way they are interpreted (see below).

Both legal instruments employ lists of species (Appendices/Annexes), with specific sets of obligations associated with each list. The following species lists are of relevance for the purposes of this report:

Bern Convention:

- **Appendix II:** ‘Strictly protected fauna species’
- **Appendix III:** ‘Protected fauna species’

Habitats Directive:

- **Annex II:** ‘Animal and plant species of Community interest whose conservation requires the designation of Special Areas of Conservation’
- **Annex IV:** ‘Animal and plant species of Community interest in need of strict protection’
- **Annex V:** ‘Animal and plant species of Community interest whose taking in the wild and exploitation may be subject to management measures’

The Balkan lynx, as a subspecies, was uplisted from Appendix III to Appendix II of the Bern Convention in 2017, upon a proposal by Albania, making it a strictly protected species under the Convention. As indicated in Table 1, brown bear and wolf have a similar status under the Bern Convention, although this status does not apply with respect to North Macedonia as a result of a reservation filed by this country when it became a party to the Convention. The Appendix II status of the three (sub)species would also apply to Kosovo were it to accede as a party to the Convention without reservations for these (sub)species. Table 1 also indicates the Habitats Directive regimes

which would presumably apply with regard to these (sub)species for Albania, North Macedonia and/or Kosovo once they were to attain EU membership. Meeting the associated legal requirements under the Directive would be a condition for such membership.

Table 1. Actually/potentially applicable regimes

	Balkan lynx	Brown bear	Wolf
Bern Convention	Appendix II	Appendix II	Appendix II*
Habitats Directive	Annex II & IV	Annex II & IV	Annex II & IV (or V)

* Except in North Macedonia, where wolf is exempt from Appendix II through a reservation.

In the following sections of this report, the most relevant obligations from the Bern Convention and the Habitats Directive are identified and analyzed. In doing so, the primary focus will be on their relevance to Balkan lynx conservation, while bearing in mind that in most instances very similar considerations will apply to brown bear and wolf, and indeed other listed species.

3. Obligations under the Bern Convention

3.1. Article 2 – population level

Article 2 contains a general obligation applicable to all European wildlife, therefore including Balkan lynx, brown bear and wolf:

Article 2

The Contracting Parties shall take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the sub-species, varieties or forms at risk locally.

The Explanatory Report written by the committee which drafted the text of the Convention describes this provision as ‘a main obligation that follows from the aims stated in Article 1’ (par. 21). Neither the Convention text nor the Explanatory Report define in more detail what the ‘level’ mentioned in Article 2 amounts to precisely. Much would this appear to depend on the circumstances of each instance and on the positions taken by contracting parties involved. However, as clarified in more detail elsewhere, it does appear safe to assume that species should at a minimum be conserved with a view to avoiding their becoming threatened in terms of national or international Red Lists (Bowman et al. 2010; Trouwborst et al. 2017b). Likewise, the formulation of Article 2 apparently suggests that conservation considerations should outweigh socio-economic considerations in instances of irreconcilable conflict between the two (Bowman et al. 2010; Trouwborst et al. 2017b). Thus, domestic policies which aim for, encourage, or allow, the eradication or minimization of the population of any native species, are apparently at odds with Article 2. Furthermore, it would seem that monitoring the conservation status of native species, at least at a basic level, is a prerequisite for meeting the requirements of Article 2. Incidentally, it would appear that the reservation by North Macedonia concerning the Appendix II status of the wolf does not affect its obligation to ensure a population status for wolves in the country which conforms to the requirements of Article 2 (Trouwborst et al. 2017b).

In sum, Article 2 imposes a significant obligation on contracting parties. The precarious, Critically Endangered status of the Balkan lynx as indicated on the IUCN Red List, clearly suggests that this obligation is currently not met by the Convention parties that are (or were) range states of this subspecies, and that urgent action is required of them to improve the subspecies’ conservation status.

3.2. Article 4 – habitat protection

Several habitat protection obligations are laid down in Article 4 (see box). Parties are required to take the necessary measures to ‘ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II’ (Article 4(1)) – i.e., including the habitat of Balkan lynx.

Based on these obligations, the Standing Committee has developed the ‘Emerald Network’ of Areas of Special Conservation Interest (ASCI), as a protected area network equivalent to the Natura 2000 network set up under the Habitats Directive, and complementing it beyond the EU (see Recommendation No. 16 (1989); Resolution No. 4 (1996); Resolution No. 6 (1998)). The

various Resolutions and Recommendations are not themselves legally binding, but they do provide authoritative guidance on the correct implementation of Article 4. Acting in accordance with these decisions would appear to provide a strong presumption, albeit not a guarantee, that the party in question is complying with its obligations under Article 4.

According to the agreed ASCI designation criteria, a site is eligible *inter alia* if it ‘contributes substantially to the survival of threatened species, endemic species, or any species listed in Appendices I and II’ (Recommendation No. 16 (1989)). Moreover, Eurasian lynx (*Lynx lynx*, evidently including Balkan lynx *L.l. balcanicus*), brown bear and wolf have all been earmarked by the Standing Committee as ‘species requiring specific habitat conservation measures’ in this regard (Resolution No. 6 (1998)). The current list of officially nominated candidate ASCI for the Emerald Network includes several sites of actual or potential importance to Balkan lynx, such as Mavrovo NP in North Macedonia and the Albanian Alps and Korabi in Albania (Bern Convention Doc. T-PVS/PA (2018) 21). Unfortunately, however, Munella Mountain in Albania is still missing on this list, even though the absence of protected status for this crucial site for Balkan lynx has been flagged as an issue of grave concern, including at the International Balkan Lynx Symposium in 2015 (Von Arx and Breitenmoser 2015). The lack of protection for Munella Mountain raises serious questions regarding Albania’s compliance with its obligations under Article 4 of the Bern Convention.

Article 4

1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the conservation of the habitats of the wild flora and fauna species, especially those specified in Appendices I and II, and the conservation of endangered natural habitats.
2. The Contracting Parties in their planning and development policies shall have regard to the conservation requirements of the areas protected under the preceding paragraph, so as to avoid or minimise as far as possible any deterioration of such areas.
- ...
4. The Contracting Parties undertake to co-ordinate as appropriate their efforts for the protection of the natural habitats referred to in this article when these are situated in frontier areas.

Article 4 is also at the center of a ‘case file’ procedure under the Convention concerning hydropower development in Mavrovo National Park, the Balkan lynx’s core area (Neslen 2015). Under the ‘case file’ procedure, alleged breaches of the Convention can be brought to the attention of the Standing Committee, usually by NGOs. The Committee can then examine the potential violation, including through an on-the-spot appraisal, and as appropriate recommend a particular course of action to the contracting party involved to resolve the situation. A complaint was submitted in 2013 alleging that plans for extensive hydropower development affecting Mavrovo National Park were incompatible with the obligations of North Macedonia under the Bern Convention. In 2014, the Standing Committee opened a case file on the subject and decided to carry out an on-the-spot appraisal, which took place in June 2015 and resulted in a critical report (Galland 2015). In December 2015, the Committee adopted a Recommendation to resolve the case, noting that ‘Mavrovo National Park and its immediate surroundings are among the core reproduction areas of the critically endangered Balkan lynx,’ and urgently calling upon the North Macedonian authorities to suspend the implementation of the works concerned within the National Park until a strategic environmental assessment (SEA) has been completed (Recommendation No. 184 (2015)). In the SEA, specific attention was to be paid to the cumulative effects of all planned

developments within the area, and the authorities were to ‘address the specific conservation needs of those species of fauna and flora for the conservation of which the Mavrovo National Park bears special responsibility, including the species and habitats for which this site was nominated as candidate Emerald site’ – a statement clearly covering the Balkan lynx (Recommendation No. 184 (2015)). Furthermore, the Recommendation directly called on ‘international financial institutions to consider the results of the strategic environmental assessment when deciding on the financing of the hydropower projects in the Park’ (Recommendation No. 184 (2015)). Subsequently, the European Bank for Reconstruction and Development (EBRD) pledged to fully abide by the Recommendation and await the outcome of the SEA before deciding on its funding (Melohina 2015), whereas the World Bank canceled its proposed investment in the contested hydropower development outright. Concerns remain regarding the cumulative impact of smaller projects, and to date the case file remains open.

3.3. Articles 6-9 – species protection

Generic species protection obligations are laid down in Articles 6-9 of the Bern Convention (see box). These apply with regard to (sub)species listed in Appendices II and III.

Currently, the Balkan lynx is a strictly protected subspecies on Appendix II of the Bern Convention – and so are wolf and bear. However, until its uplisting took effect in early 2018, the Balkan lynx was on Appendix III, where the other subspecies of Eurasian lynx remain. Therefore, between 1999 and 2018, North Macedonia and Albania were under the obligation to apply the Appendix III regime to Balkan lynx, which is good reason to address this regime here – also because it is generally less known and published on than the regime of Appendix II. This Appendix III regime leaves more flexibility to parties than the currently applicable strict protection regime of Appendix II (discussed below). Nonetheless, the former also places clear limits on the discretion of parties with respect to the species concerned. Article 7 imposes an obligation to take ‘appropriate and necessary legislative and administrative measures to ensure the protection’ of such species. In addition, any exploitation of Appendix III fauna shall be regulated ‘in order to keep the populations out of danger.’ Measures to be taken ‘shall include closed seasons and/or other procedures regulating the exploitation’ and the ‘temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels’ (Article 7).

It is evident that, under the Bern Convention, any lawful ‘exploitation’ of Balkan lynx has been out of the question for many years. In any event, the text of Article 7 clearly indicates that the Balkan lynx population must be kept ‘out of danger’ and restored to ‘satisfactory population levels’. The Convention’s Explanatory Report underscores this, explaining that each party may authorize exploitation of Appendix III species ‘on condition that this affects only those species not threatened on its territory and that such exploitation does not jeopardise the animal population concerned’ (par. 35). Furthermore, parties must supervise the exploitation and, ‘if necessary, impose stricter measures.’ Significantly, when implementing Article 7, parties must ‘have regard for sub-species and varieties which are at risk locally’ (Explanatory Report, par. 36), a conclusion which also follows naturally from Article 2 of the Convention discussed above.

Regarding the currently applicable Appendix II regime, Article 6 of the Convention requires parties in unequivocal terms to prohibit *inter alia* ‘all forms of ... deliberate killing’. Exemptions from this and the other required prohibitions may be allowed by contracting parties’ authorities only when three cumulative conditions are met: (i) the exception is made for one of the purposes stated in Article 9; (ii) there is ‘no other satisfactory solution’; and (iii) ‘the exception

will not be detrimental to the survival of the population concerned' (on the interpretation of this exemption clause see further Linnell et al. 2017).

Article 6

Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:

- a. all forms of deliberate capture and keeping and deliberate killing;
- b. the deliberate damage to or destruction of breeding or resting sites;
- c. the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of this Convention;
- d. ...
- e. the possession of and internal trade in these animals, alive or dead, including stuffed animals and any readily recognisable part or derivative thereof, where this would contribute to the effectiveness of the provisions of this article.

Article 7

1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.
2. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2.
3. Measures to be taken shall include:
 - a. closed seasons and/or other procedures regulating the exploitation;
 - b. the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels;
 - c. the regulation as appropriate of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals.

Article 8

In respect of the capture or killing of wild fauna species specified in Appendix III and in cases where, in accordance with Article 9, exceptions are applied to species specified in Appendix II, Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species, and in particular, the means specified in Appendix IV.

Article 9

1. Each Contracting Party may make exceptions from the provisions of Articles 4, 5, 6, 7 and from the prohibition of the use of the means mentioned in Article 8 provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned:
 - for the protection of flora and fauna;
 - to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property;
 - in the interests of public health and safety, air safety or other overriding public interests;

- for the purposes of research and education, of repopulation, of reintroduction and for the necessary breeding;
 - to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.
2. The Contracting Parties shall report every two years to the Standing Committee on the exceptions made under the preceding paragraph. These reports must specify:
- the populations which are or have been subject to the exceptions and, when practical, the number of specimens involved;
 - the means authorised for the killing or capture;
 - the conditions of risk and the circumstances of time and place under which such exceptions were granted;
 - the authority empowered to declare that these conditions have been fulfilled, and to take decisions in respect of the means that may be used, their limits and the persons instructed to carry them out;
 - the controls involved.

With regard to species from Appendices II and III both, parties are required to ‘prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations’ (Article 8). In particular, they are to prohibit the means specified in Appendix IV of the Convention, which enumerates snares, poisoned baits and (semi) automatic weapons among various other prohibited items. Exemptions from these required prohibitions may be permitted only under the same three aforementioned conditions of Article 9.

3.4. Other provisions

Other relevant provisions include Articles 3, 11 and 22 of the Convention. Article 3 sets out several requirements of a general nature. For instance, each party ‘undertakes, in its planning and development policies ... to have regard to the conservation of wild flora and fauna.’ Article 11 lays down an overarching transboundary cooperation duty, committing parties to ‘cooperate whenever appropriate and in particular where this would enhance the effectiveness of measures taken under other articles’ of the Bern Convention. Lastly, Article 22 enables the filing of so-called reservations, to the effect of excluding certain species or means of capture and killing from the scope of certain obligations under the Convention vis-à-vis the submitting party. Such reservations may, however, only be submitted at the time that party becomes bound by the Convention, not thereafter. A reservation may be withdrawn at any moment by the party involved, through the mere submission of a notification to the Secretary General of the Council of Europe (Article 22(4)).

3.5. Recommendations, strategies and action plans

Over the years, the Standing Committee has adopted various Recommendations with specific guidance for the application of the Convention to large carnivores (Table 2). Seven of these indirectly or directly address the plight of the Balkan lynx (Table 2). The same is true of a species-specific, pan-European Action Plan for the Eurasian Lynx adopted in 2000, which contains both general and country-specific recommendations (Breitenmoser et al. 2000). Several initiatives with a specific focus on Balkan lynx have unfolded under auspices of, and/or with assistance from, the Bern Convention and the Council of Europe. These include a 2005 seminar and workshop in

Mavrovo National Park; a 2008 workshop in Peshtani, resulting in a Strategy for the Conservation of the Balkan Lynx in North Macedonia and Albania (Balkan Lynx Strategy Group 2008); two workshops held in 2009 in Skopje and Tirana, resulting in National Balkan Lynx Action Plans for North Macedonia and Albania (KORA 2009); and an International Balkan Lynx Symposium held in Dajti National Park in 2015 (Von Arx and Breitenmoser 2015).

By the year 2000, it was already observed in the Bern Convention Action Plan for Eurasian Lynx that, despite uncertainties regarding status, distribution and number of lynx in the Balkan population, ‘there can be no doubt that this autochthonous population is highly threatened and urgent actions are needed’ (Breitenmoser et al. 2000). The Plan recommended various country-specific actions to Balkan lynx range countries, including that ‘lynx should be given strict legal protection and the law should be enforced’ and that ‘landscape in lynx areas or potential lynx areas should be managed according to the requirements of the species.’

Table 2. Standing Committee Recommendations addressing large carnivores.

Recommendation	Topic
No. 10 (1988)	Brown bear
No. 17 (1989)	Wolf
No. 19 (1991)	Iberian Lynx
No. 20 (1991)*	Eurasian Lynx
No. 37 (1992)	Brown bear, Cantabrian population
No. 74 (1999)*	Large carnivores (5 species), Action Plans
No. 82 (2000)*	Large carnivores (5 species), Action Plans follow-up
No. 89 (2001)	Eurasian lynx, Alpine population
No. 94 (2002)	Iberian lynx
No. 100 (2003)	Large carnivores, Carpathians
No. 101 (2003)	Eurasian lynx, Alpine population
No. 115 (2005)*	Large carnivores, transboundary populations
No. 137 (2008)*	Large carnivores, population level management
No. 148 (2010)	Large carnivores, Caucasus
No. 162 (2012)*	Large carnivores, populations requiring special attention
No. 163 (2012)	Large carnivores, expanding populations
No. 173 (2014)	Wolf-dog hybrids
No. 184 (2015)*	Balkan lynx, Mavrovo hydropower case file
No. 198 (2018)	Large carnivores (especially brown bear), artificial feeding

Recommendations of relevance to Balkan lynx are marked with *. Recommendations can be accessed at www.coe.int/en/web/bern-convention.

The Balkan Lynx Conservation Strategy of 2008 has as overall objective a ‘viable Balkan lynx population living in a matrix of protected and sustainably managed habitat in coexistence with the rural population’ (Balkan Lynx Strategy Group 2008). This objective is to be achieved *inter alia* through the promotion of appropriate wildlife management practices to reverse decline of lynx and prey alike; maintenance and restoration of structure, function and connectivity of landscape for wildlife; improvement of coverage and management of protected area systems;

adaptation of legislation and improvement of law enforcement; and development of transboundary cooperation (Balkan Lynx Strategy Group 2008).

Furthermore, two Standing Committee Recommendations deserve special attention. In 2005, the Committee expressly called for transboundary cooperation at the population level for the conservation of ‘lynx in the Balkans’ (Recommendation No. 115 (2005)). In 2012, the Committee specifically urged North Macedonia and Albania to ‘draw up and implement, as a matter of urgency, action plans for the last remaining autochthonous population of lynx in the region, using as appropriate the Strategy for the Conservation of the Balkan Lynx’ (Recommendation No. 162 (2012)).

In legal terms, the various treaty obligations highlighted above, applied to the situation concerning the critically endangered Balkan lynx, and interpreted in light of subsequent decisions adopted by the Standing Committee, apparently lead to the following conclusion. In order to comply with their obligations under the Bern Convention, the authorities of North Macedonia and Albania must do what it takes – effectively address illegal killing, conserve habitat, ensure prey availability, cooperate – to conserve and restore the population of Balkan lynx. This may require adjustments to the formulation and application of various national laws and policies, as well as effective practical action. The same is true for Kosovo if it were to desire to bring its own law, policy and practice to a level where they meet the standards of the Bern Convention.

4. Obligations under the Habitats Directive

4.1. Articles 3-6 – habitat protection

The Habitats Directive requires EU member states to identify the most important sites for the conservation of Annex II species within their territory, for designation as Special Areas of Conservation (SAC) as part of the Natura 2000 protected area network (Article 4). Designation follows a multi-step procedure involving both the member states and the European Commission (Articles 4-5). Criteria to be used in this selection process are *inter alia* the ‘size and density of the population of the species present on the site in relation to the populations present within national territory’ and the ‘value of the site for conservation of the species concerned’ (Article 4 and Annex III). Selection must be based on ecological criteria only, and the CJEU has made it clear that economic considerations, or expected future management difficulties, are to play no part in the designation process (e.g., CJEU Case C-355/90, 1993; Case C-44/95, 1996; Case C-3/96, 1998). As noted above, by default Eurasian lynx, brown bear and wolf are Annex II species, and this status can be expected to apply also with regard to North Macedonia, Albania and Kosovo if and when they were to attain EU membership. To provide two illustrations with reference to Balkan lynx, for Albania to comply with the standards of the Habitats Directive would apparently require the designation of Munella Mountain as SAC, and Mavrovo National Park for North Macedonia.

For designated SACs, Article 6(1) of the Habitats Directive requires member state authorities to take ‘the necessary conservation measures’ which ‘correspond to the ecological requirements’ of the species involved. With regard to Balkan lynx, brown bears and wolves, this will entail *inter alia* ensuring the absence of illegal killing, the availability of sufficient wild prey (which will require effective regulation of any hunting of prey species by humans), and of adequate cover for refuge and denning. In addition, for prospective and designated SACs selected for lynx, bears and/or wolves, Article 6(2) requires member states to ‘take appropriate steps to avoid’ any significant ‘disturbance’ (a broad term), and any deterioration of the species’ habitat. Finally, any project or plan that is potentially harmful to the conservation of the lynx, bears or wolves within a Natura 2000 site selected for them is subject to a restrictive authorization scheme, laid down in Article 6(3)-(4).

The CJEU has developed an extensive jurisprudence regarding the interpretation of Article 6, with an overall tendency to interpret the rules in such a way as to maximize their effectiveness in light of the Directive’s nature conservation objectives. For instance, the Court has determined that under Article 6(3), plans or projects may in principle be authorized only ‘where no reasonable scientific doubt remains as to the absence’ of harmful impacts on the species for which the site was designated (Case C-127/02, 2004). Thus, the Habitats Directive’s Annex II regime may have consequences for, *inter alia*, mining activities, hydropower development, the construction of highways and other infrastructure, the erection of fences, the construction of wind turbines and other activities in or nearby SACs designated for large carnivores. If adverse effects cannot be excluded, such projects may only be permitted under the strict conditions of Article 6(4).

Furthermore, Articles 6(1) and 6(2) must both be considered as laying down obligations of result rather than effort (e.g., Case C-96/98, 1999; Case C-117/00, 2002). In other words, member states must do what it takes to conserve the species involved within the corresponding SACs. To illustrate, if a member state tolerates the poaching of lynx or wolves in or around SACs designated for them, it has not met its obligation under Article 6(2) to avoid ‘significant disturbance’. The latter term should be interpreted broadly, as including ‘[a]ny event which contributes to the long-

term decline of the population of the species on the site' (European Commission 2000), and thus clearly covers illegal killing (Trouwborst 2014).

Article 6

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

4.2. Articles 12-16 – species protection

Regarding the generic protection of species, strict protection under Annex IV of the Habitats Directive is the default regime for Eurasian lynx and brown bear, and also applies to many European wolf populations. Where this regime applies, Article 12(1) of the Directive imposes an obligation on member state authorities to 'take the requisite measures to establish a system of strict protection' for the species in question. This entails that prohibitions must be put in place under national legislation on the killing, capturing and disturbing of individual animals, and on the 'deterioration or destruction of breeding sites or resting places'. This protection is generic, and applies across member states' entire territories, both within and beyond SACs. The obligation in Article 12(1) imposes a high standard. The acts in question must not only be prohibited, but the authorities must also take all measures necessary to ensure that the prohibitions are not violated in practice (e.g., CJEU Case C-103/00, 2002; Case C-221/04, 2006). Consequently, authorities are

under an obligation to take all measures necessary to prevent the (illegal) killing of lynx, bears and wolves, and to protect their denning sites. Exemptions from the various prohibitions may not be granted unless all of the three conditions laid down in Article 16(1) are met. That is to say, (1) such derogations may be allowed only for one of the purposes enumerated in this provision; (2) satisfactory alternatives must be absent; and (3) a derogation may not hinder the maintenance or achievement of a favourable conservation status. It is for the authorities wishing to derogate from one of the prohibitions, to show convincingly, with reference to the best scientific information available, that each condition is met (see, most recently, CJEU Case C-674/17, 2019).

Article 12

1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:
 - (a) all forms of deliberate capture or killing of specimens of these species in the wild;
 - (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
 - (c) ...
 - (d) deterioration or destruction of breeding sites or resting places.
2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.
3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.
4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

Article 14

1. If, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.
2. Where such measures are deemed necessary, they shall include continuation of the surveillance provided for in Article 11. Such measures may also include in particular:
 - regulations regarding access to certain property,
 - temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations,
 - regulation of the periods and/or methods of taking specimens,
 - application, when specimens are taken, of hunting and fishing rules which take account of the conservation of such populations,
 - establishment of a system of licences for taking specimens or of quotas,
 - regulation of the purchase, sale, offering for sale, keeping for sale or transport for sale of specimens,
 - breeding in captivity of animal species as well as artificial propagation of plant species, under strictly controlled conditions, with a view to reducing the taking of specimens of the wild,
 - assessment of the effect of the measures adopted.

Article 15

In respect of the capture or killing of species of wild fauna listed in Annex V (a) and in cases where, in accordance with Article 16, derogations are applied to the taking, capture or killing of species listed in Annex IV (a), Member States shall prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of such species, and in particular:

- (a) use of the means of capture and killing listed in Annex VI (a);
- (b) any form of capture and killing from the modes of transport referred to in Annex VI (b).

Article 16

Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.

3. The reports shall specify:

- (a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) the means, devices or methods authorized for the capture or killing of animal species and the reasons for their use;
- (c) the circumstances of when and where such derogations are granted;
- (d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task;
- (e) the supervisory measures used and the results obtained.

The CJEU has clarified that Article 12(1) ‘requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures,’ and also that this provision presupposes the ‘adoption of coherent and coordinated measures of a preventive nature’ (Case C-183/05, 2007). The CJEU and the European Commission

both recommend species action plans, ‘on condition that they are correctly established and applied,’ as effective means of implementing the requirements of Article 12 – without such plans or similarly comprehensive and species-specific measures, ‘the system of strict protection contains gaps’ amounting to a violation of the Habitats Directive (Case C-183/05, 2007). For instance, in a case concerning hamsters in France, the Court determined that ‘by failing to establish a programme of measures to ensure strict protection of the European hamster (*Cricetus cricetus*), the French Republic has failed to fulfil its obligations under Article 12(1)(d) of the Habitats Directive’ regarding breeding sites and resting places (Case C-383/09, 2011). A comprehensive and focused set of measures for each Annex IV species is thus required under EU law, and species protection plans are recommended to give this shape.

Where Habitats Directive Annex V applies to wolves or other large carnivores, authorities have significantly more discretion regarding the tools they may use to conserve and manage populations. The aforementioned prohibitions of killing and capturing are not required. The Directive enumerates a number of measures that may be applied by member states to regulate the exploitation of Annex V populations, for instance closed seasons and license systems, but these are presented as options rather than obligations (Article 14). Authorities’ discretionary room regarding Annex V populations is not unlimited, however. Firstly, there is a general obligation to ensure a favourable conservation status (CJEU Case C-75/01, 2003; European Commission 2007). Secondly, the Directive outlaws the use of certain means and modes of capture and killing in respect of animals from Annex IV and V alike, including poison(ed baits), (semi) automatic weapons and all other ‘indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations’ (Article 15). Exceptions to allow such means may only be made under the three aforementioned conditions set out in Article 16. Thirdly, there is a monitoring duty which also applies to both Annex IV and V species, which requires that surveillance of all species covered by the Directive ‘is undertaken systematically and on a permanent basis’ (Article 11).

Where Annex IV applies, there is an additional specific obligation to monitor ‘incidental capture and killing,’ with member states being required to take the conservation measures necessary to ensure that such incidental killing does not have a ‘significant negative impact’ on the species involved (Article 12(4)). Traffic mortality is an example of such incidental killing.

5. Concluding observations

The principal legal obligations imposed by the Bern Convention and the EU Habitats Directive that are of actual or potential relevance for the conservation of the Balkan lynx and other large carnivores in the south-west Balkans, have been reviewed above. A benchmark has thus been provided to assist an informed assessment of the changes in the laws, policies and practices of North Macedonia, Albania and Kosovo which are necessary in order to ensure the conformity of those laws, policies and practices with the requirements of the two European legal frameworks.

The principal obligations in these two legal frameworks concern site protection and generic species protection, as well as some other issues including, importantly, monitoring. Several of these obligations are demanding and set high standards. They range from requirements concerning national legislation to plain obligations of result concerning population levels and conservation status to be achieved and maintained.

The precise changes needed in a given country to conform to the standards of the Bern Convention and Habitats Directive are dictated principally by the prevailing factual circumstances, in particular the status of and threats to Balkan lynx, brown bear and wolf, and the state of national legislation and relevant policies and practices.

Regarding the Balkan lynx, the documentation supporting the Balkan lynx's 2017 Bern Convention uplisting proposal sums up the main threats to the survival of the subspecies in its remaining range countries as being 'illegal killing of lynx and their prey species, decreasing prey populations (roe deer, Balkan chamois & brown hare) due to unsustainable wildlife management and illegal killing and habitat degradation and fragmentation' (Ministry of the Environment of Albania 2017). Accordingly, attaining the standards of the Bern Convention and the Habitats Directive may necessitate the adjustment of legislation and practices in many sectors, such as nature conservation, hunting, forestry, infrastructure development, et cetera. Concretely, attaining these European standards requires each range country to do the following (to name some of the principal requirements):

- systematically monitoring the conservation status of Balkan lynx;
- designating the most important sites for Balkan lynx as protected areas, and effectively safeguarding them from activities that may adversely affect lynx conservation;
- adopting and carrying out effective policies to prevent the illegal killing of lynx;
- effectively restoring and maintaining healthy populations of prey species (*inter alia* by ensuring that any hunting of these prey species is sustainable), to meet the requirements of a healthy lynx populations;
- adopting and carrying out a tailor-made and comprehensive set of measures to ensure the restoration and conservation of the species, preferably in the form of a species action plan.

To meet the requirements of the Bern Convention and Habitats Directive, all of these measures must be taken with urgency, given the precarious conservation status of the subspecies.

It is hoped that this report will serve as a useful blueprint against which the various national situations can be measured, in order to determine the extent of the changes that are required to bring them in conformity with the standards set in the Bern Convention and Habitats Directive.

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